

EFDC response to the Inspector's Post Hearing Action 5 & supplementary questions of 16 June 2021, July 2021 (ED127)

Introduction

The Council is keen to support a Local Plan that has sustainable growth at its heart and that takes due account both of the environment in which people live and the specific broader responsibility for the Epping Forest Special Area of Conservation (SAC). The key to the future, is that these issues are addressed alongside providing local housing and employment opportunities for the next generation which in itself will reduce the need for unnecessary travel.

The Council is already making significant progress with many of the environmental initiatives supported by the Local Plan, including bringing forward the first three of the green infrastructure projects and also significant developments in terms of Electric Vehicle charging, demand responsive transport and safer cycling routes. Specifically in respect of air quality, the Council has implemented a published procedure where all new planning applications are scrutinised to determine whether they will deviate from the assumptions in the Local Plan air quality modelling, and to ensure that the necessary mitigation is built into their applications.

In addition to the delivery of the environmental and air pollution strategies supporting the Local Plan, the Portfolio Holder for Planning has drawn together an advisory group to include opposition party members and contribution from Essex County Council and the Corporation of London.

The advisory group not only monitors progress but also advises on how the progress can be accelerated through a variety of further actions and initiatives linked to the (interim) Air Pollution Mitigation Strategy. With the recent increase in the pace of local improvements and an emergence of national policy towards issues such as electric vehicles, these should bode well for the future. Specifically, at this moment in time concentration is being given to reducing and making more consistent movement of traffic on the motorways and other cross-forest roads and a wider set of junction improvements.

The answers to the specific questions that the Inspector has raised follows and more detail on our progress with the Green Infrastructure and (interim) Air Pollution Mitigation Strategies and the considerations of the Portfolio Holder Advisory meeting are available on request.

Inspector's Post Hearing Action 5

The Local Plan Inspector noted in her Interim Advice ([ED98](#)) at Paragraphs 12 to 16 that:

'the Council must either be clearer about the benefits of the mitigation proposed in para. 6.18 of the HRA; provide robust habitat/location specific evidence to demonstrate that any effects of development would not be adverse; or avoid the effects by altering (or potentially reducing) the pattern of growth proposed in the Plan'.

The Inspector's advice included ACTION 5: To provide robust, habitat-specific evidence that any effects of development would not be adverse; or to seek to avoid the effects by altering (or potentially reducing) the pattern of growth proposed in the Plan.

Council's response to Action 5

The Council's response to Action 5 (as per the Summary Council response to all of the Inspector's Actions ([ED133](#))) is as follows:

The air quality and traffic modelling work undertaken by the Council has reflected the Inspector's advice on other matters which has resulted in the proposed removal of some development sites (see the Council's response to Action 9 for further details). In addition, a Main Modification (MM) has been proposed to the South of Epping Masterplan Area in relation to the timing of development on this site linked to further air quality modelling and monitoring results.

The reduction in the levels of growth have been taken into account in the preparation of an Interim Air Pollution Mitigation Strategy which includes measures to address the impacts of growth to ensure that any adverse effects can be appropriately managed and mitigated for. The implementation of this Strategy means that any adverse effects will be avoided.

Therefore, whilst the quantum of development has been reduced, the pattern of growth proposed in the Local Plan does not need to be amended. The Interim Air Pollution Mitigation Strategy has been used to inform the 2021 Habitats Regulations Assessment, which supports this conclusion. Natural England, as the statutory body, together with the Conservators of Epping Forest have been engaged in the development of the approaches to developing the evidence base and the Mitigation Strategy.

This response is informed by the following key evidence documents which will be supporting documents to the Main Modifications consultation:

Epping Forest District Local Plan 2021 Habitats Regulations Assessment, June 2021 ([ED129A](#), [ED129B/EB211A](#), [EB211B](#)).

Epping Forest Interim Air Pollution Mitigation Strategy, December 2020 ([ED126/EB212](#)).

As set out in the proposed MMs, in relation to air pollution the Council has adopted an Epping Forest Air Pollution Mitigation Strategy which sets out the actual measures that the Council will implement during the lifetime of the Local Plan. These measures range from those which will help to limit the increase in the level of traffic using roads through the Epping Forest SAC and significantly increase the uptake of electric vehicles through the implementation of a 'Clean Air Zone' should the future monitoring demonstrate that

it is required. The Air Pollution Mitigation Strategy includes targets to be achieved by 2033 together with a Monitoring Framework. This Monitoring Framework is necessary to ensure that progress towards the achievement of these targets is assessed and informs any necessary changes that may need to be made to either the Air Pollution Mitigation Strategy or to the Local Plan in terms of the quantum and location of development being proposed.

Inspector's supplementary questions to Action 5

Having considered the Council's response to Action 5, the Inspector returned to the Council on 16 June 2021 with supplementary questions. These concern how the Local Plan will ensure there are no adverse effects on the Epping Forest SAC before the proposed introduction of a Clean Air Zone (CAZ) from 2025 if monitoring demonstrates that it is required. The Inspector's questions and the Council's responses are outlined below.

1. How much development is expected to come forward until the proposed/potential introduction of the CAZ from 2025? (Can this be taken from the trajectory?)

The amount of development that has been modelled for the Interim Year (2024) has been informed by the Housing Trajectory (as set out in Appendix 5 to the proposed Main Modifications). In addition, account has been taken of windfall developments from 2017/18 onwards (this differs from the approach taken for establishing the Council's housing supply calculations which do not include windfalls within the first five years) and existing commitments. No account has been taken of, for example, the 10% 'lapse rate' that has been used within the Trajectory or the level of existing traffic that is currently generated from 'brownfield' sites which are allocated for residential use. Consequently, the Council considers that a precautionary approach has been taken in informing the level of development expected to come forward prior to the introduction of the CAZ, should the future monitoring demonstrate that it is required.

2. Why is this amount able to come forward before the introduction of the CAZ? What mitigation measures are required to ensure that this doesn't have an adverse effect; and how are these secured by the Plan?

In order to restrict pollutant growth to the necessary extent to ensure no adverse effect on the integrity of the Epping Forest SAC prior to the potential introduction of a CAZ, the Local Plan Habitats Regulations Assessment (HRA) identifies that the Interim Air Pollution Mitigation Strategy (IAPMS) must convert at least 10% of petrol cars on the SAC road network to Ultra-Low Emission Vehicles (ULEVs, principally electric vehicles) by 2024 or suppress the forecast increase in traffic on the SAC network to a similar degree by strongly discouraging petrol and diesel car ownership. In other words, on the worst affected roads 4-5% of the 2024 Epping Forest SAC vehicle fleet must either be ULEVs or be removed entirely, equivalent to approximately 1,000 trips per day. This will be accomplished through a step-change in the effort put into encouraging uptake of electric vehicles (not just on new development) and discouraging the use of other types of private car and van:

1. firstly, minimising the increase in traffic flows through the SAC as much as possible, by strongly limiting parking availability and introducing controlled parking zones to avoid on-street parking;
2. secondly, introducing initiatives to drive a significant shift in the Epping Forest SAC vehicle fleet composition to ULEV's, as these have no NOx or ammonia emissions by:
 - Awareness Raising Campaign(s) to promote the benefits of electric vehicles, the availability of charging infrastructure, and falling electric vehicle prices due to falling battery costs, to residents of Epping Forest District and particularly those who live in settlements surrounding the SAC;
 - Ensuring that electric vehicle charging infrastructure is universally available in public and private parking spaces;
 - Ensuring a high proportion of ULEV only spaces in new development where this is feasible and enforceable; and
 - Positively incentivising the uptake of electric vehicles by (for example) direct incentivisation to assist residents in converting from cars (petrol cars particularly) to ULEVs.

Whilst the Local Plan has tested the overall quantum of development that can be brought forward up to 2033 and a strategic approach to identifying mitigation measures there is still a requirement for the Council, as competent authority, to undertake a site specific HRA (both screening and if necessary, an appropriate assessment), for each relevant application. Applicants are required to provide sufficient information to enable the Council to undertake the HRA and the Council has developed specific guidance for applicants on what this entails depending on the scale and nature of the scheme as part of the Council's [Local Validation requirements](#).

The Council has therefore implemented a published procedure where all new planning applications are scrutinised to determine whether they will deviate from the assumptions in the Local Plan air quality modelling, and to ensure that the necessary mitigation is built into their applications. Recent appeals in Loughton (Planning Inspectorate References: [APP/J1535/W/20/3258787](#) and [APP/J1535/W/20/3263876](#)) are good examples of this approach as a considerable number of positive measures to protect the SAC were achieved (50% of parking spaces with active EV charging provision with the remaining 50% having passive charging infrastructure, 30% of spaces reserved for ULEVs only, support with introducing a Controlled Parking Zone, an Awareness Raising Campaign, and direct financial incentives to residents to convert from petrol cars to ULEVs).

Many of the early IAPMS measures, prior to the introduction of a CAZ in 2025, should the future monitoring demonstrate that it is required, inevitably have a degree of uncertainty since we cannot force people to convert to ULEVs for example. However, all mitigation strategies have a degree of uncertainty such as those for recreational pressure and case law has established that a competent authority could be certain that there would be no adverse effects even though, objectively, absolute certainty was not proved¹. To address this the IAPMS contains a monitoring framework whereby progress towards achieving the

¹ R (Champion) v North Norfolk District Council [2015] UKSC 52 at [41], and Smyth v Secretary of State for Communities and Local Government [2015] EWCA Civ 174 at [78].

predicted air quality outcomes at a particular point in time will be tracked. As this will be done based on a robust approach to on-site monitoring this will give a complete, precise and definitive picture as to the progress being made. If it appears that the air quality within the EFSAC predicted for a given stage is not going to be met then the Council, in consultation with Natural England, will need to review the most appropriate course of action to address any underachievement including what further mitigation measures may need to be put in place if they are available and effective (recognising that some measures may emerge over time based on new technologies for example), and if necessary whether the granting of new consents must cease. That is the ultimate fallback to ensure protection of the EFSAC.

Related to this, the Council is building on the current monitoring that it undertakes for the purposes of publishing its Authority Monitoring Reports to ensure that all necessary information needed to provide the context for informing the on-site monitoring and modelling in 2024/25 is collected.

The Council is satisfied, having spent a considerable amount of time reviewing and refining Local Plan policies DM2, DM22 and D8 in particular, that the policies are robust in terms of securing and delivering the necessary on-site and off-site measures. The IAPMS is specifically linked to Policy DM2 and DM22. In addition, the IAPMS clearly identifies both within Section 5 and Appendix 3 what measures are required to be provided on-site and which will be provided off-site for which a financial contribution will be required. Natural England, as the statutory body, together with the Conservators of Epping Forest have been engaged in the review of policy wording and the development of the approaches to developing the evidence base and the Mitigation Strategy.

The Council recognises that a different approach has been taken to the South of Epping Masterplan Area as per the Council's response to Action 19 of the Inspector's post Examination hearing advice. This outlines a delay on the delivery of any dwellings within the Masterplan Area until after the results of additional traffic modelling on roads within 200m of the Epping Forest SAC which will be undertaken in 2024/25 in accordance with the adopted Interim Air Pollution Mitigation Strategy. The Council proposes that the timescales for delivery of the site is managed through a Main Modification to Policy P1. This approach has not been adopted elsewhere having given consideration both to the proximity of sites to the EFSAC and to reflect the fact that there are other factors that need to be taken into account in terms of, for example, the quantum of development needed to support necessary infrastructure, and the opportunities provided at these other sites for greater modal shift.

3. Is the amount of development expected to come forward before the introduction of the CAZ a "maximum" amount? If it is, how will the Plan impose this limit?

The quantum of development that has been modelled to 2024 is the maximum that is considered likely to come forward based on the evidence provided to inform the Housing Trajectory and has been used as a way of 'sense-checking' the air quality part of the way through the Plan period as a precautionary measure rather than the maximum that can be delivered for HRA purposes. This is because it is the Local Plan in its entirety up to 2033 that is required to be assessed for HRA purposes.

In considering the amount of development that can come forward it is important to recognise that it is the Plan as a whole that is being assessed in terms of any

adverse effect on the EFSAC rather than phases of development within it. The testing of an interim (2024) level of development was introduced in order for the Council to be able to monitor the effects of development on the Epping Forest Special Area of Conservation (EFSAC) to inform the five-year review of the Local Plan rather than to specifically provide a point at which no further development could come forward.

The inclusion of a phased release of a quantum of development would, in the Council's view, undermine the point of having the IAPMS. This reflects the fact that the purpose of the IAPMS is to identify the mitigation measures required to mitigate the effects of Local Plan development to 2033.

The IAPMS and the Habitats Regulations Assessment 2021 (HRA 2021) have identified the need for a number of mitigation measures to be implemented in order to mitigate the full effects of development allocated in the emerging Local Plan to 2033, including the introduction of a Clean Air Zone (CAZ) in 2025, should the future monitoring demonstrate that it is required.

Flexibility has been built into the emerging Local Plan to enable the Council to respond to changing circumstances/the findings of monitoring in its approach to protecting the Epping Forest Special Area of Conservation (EFSAC). As such it would not be appropriate for the emerging Local Plan policies to specify precise amounts of development that can come forward at particular periods of time based on any "milestones". This is for a variety of reasons including:

- potential changes in background air quality in due course (this could worsen or improve as a result of COVID or improve if the take up of electric vehicles or modal shift happens faster than anticipated or if assumed traffic growth is lower in reality).
- reflects the reality that not all development that is consented is implemented (which is an accepted planning principle as evidenced by the need to include a "lapse rate" when assessing housing supply) and that taking the "milestone" approach could potentially limited the ability of the Council to consent development which would not adversely affect the integrity of the EFSAC whilst helping to meet its other duties/requirements.
- that there are other mechanisms which can be brought to bear which do not require the phasing of development to be established within the emerging Local Plan including through Policy D8 and the Monitoring and Review Section of the IAPMS.

The HRA 2021 and the IAPMS include targets against which the effectiveness of the range of mitigation measures can be monitored. The purpose of this is in order to track the actual change in pollutant concentrations against the projections in the modelling rather than leaving any assessment until the end of the Local Plan period. This reflects, in part, the fact that for HRA purposes not all of the mitigation measures can be directly modelled with reasonable scientific certainty (as acknowledged within both the HRA 2021 and the IAPMS). The on-site monitoring proposed to be undertaken in 2024/25 is therefore a key mechanism by which any potential adverse effect on the integrity of the EFSAC can be further assessed and the Plan updated should this be necessary. This approach also enables the combined effectiveness of the mitigation measures (i.e. both those that are capable of being modelled and those which cannot) to be better understood.

Considering the level of development at the 2024 'point in time' gives the Council the opportunity to be able to examine the effects of development based on a known number of dwellings that have been completed across different parts of the District to then ascertain through on-site monitoring whether the predicted air quality improvements that have been forecast are or are not as anticipated. In addition, the air quality modelling is based on a range of assumptions which could be considered precautionary (as set out in paragraph 6.35 page 134 of the HRA 2021) and monitoring air quality at 2024 therefore allows those changes to be taken into account. In reality, strict phasing of development is not required because, if a greater number of dwellings were to be completed and occupied by 2024 than has been modelled, their effects on the EFSAC would be temporary due to the implementation of the CAZ, should the future monitoring demonstrate that it is required, and to maximise certainty of no adverse effect on the EFSAC an update to the Local Plan could be undertaken in line with Policy D8 to ensure the quantum of overall development to 2033 does not exceed that allocated/modelled. It is therefore ultimately the total quantum of development allocated in the Local Plan to 2033 that is considered to be the maximum that can be developed without an adverse effect on the EFSAC, based on the current evidence (again recognising the precautionary approach that has been taken). For completeness, a summary of the range of required measures, when they will be delivered and by who is set out in Appendix 3 of the IAPMS and replicated below.

Appendix 3: Mitigation Measures Framework for Delivery

| Measure | When | How | Whom |
|---|---|---|------------------------------------|
| Electric Vehicle Charging Points | Now and on-going | Planning condition | Planning applicants |
| Electric Vehicle charging points in EFDC car parks | 2021 onwards | Financial investment by the Council | EFDC |
| Awareness Raising campaign | 2021 | Development and implementation of publicity and information sharing | EFDC |
| Introduction of Clean Air Zone | September 2025 (see detailed indicative timeline below). | Securing financial contributions from relevant planning applications. | EFDC/ECC |
| Implementation of right-turn ban from A121 to Forest Side. | Prior to the first operation of any development permitted on Land north of the A121 (Wal.E8). | Legal agreement in relation to any development permitted on Land north of the A121 (Wal.E8). | ECC/EFDC |
| Veteran Tree Management Plan | 2021 and then on-going implementation | Securing financial contributions from relevant planning applications. | EFDC/Conservators of Epping Forest |
| Initiatives to support walking, cycling and increased public transport use. | Now and on-going | Through the implementation of the Harlow and Gilston Garden Communities, Masterplan sites, and/or securing financial contributions from relevant planning applications in accordance with the emerging Local Plan and Harlow and Gilston Garden Town Infrastructure Delivery Plans. | ECC/EFDC/Planning applicants. |
| Route Management Strategies | Now and on-going | Planning condition and/or Section 106 planning obligation. | ECC/EFDC/planning applicants. |
| Supporting home working | Now and on-going | Planning condition and/or Section 106 planning obligation to secure broadband/digital infrastructure. | Planning applicants |
| Trialling City Trees | Indicative timescale: 2021 | Securing financial contributions from relevant planning applications. | EFDC/landowners |
| Road based pollution extraction system | Indicative timescale: 2021 | Securing financial contributions from relevant planning applications or on a trial basis. | ECC/EFDC |

In reality some of those measures may have the same effect as the 10% conversion from petrol to ULEV by 2024 but cannot be modelled with sufficient scientific certainty for HRA purposes. Furthermore, as set out above, no account has been taken in the modelling of sites which have existing uses on them. This is an important point in that some sites (whether allocated or which come forward for development through the Prior Approval Route) when assessed on a site-specific level have demonstrated that the existing authorised use generates a greater proportion of AADT than that proposed. Therefore, it would be an oversimplification to apply a straight line correlation and apply a policy in the Plan that only a defined number of dwellings can be permitted up to 2024.

Even with the traffic and air quality measures identified in the IAPMS to be introduced by 2024, there are specific locations in Epping Forest SAC where medium or large residual nitrogen doses are still forecast by 2024 (as documented in the HRA). As a

result, to ensure that the delivery of mitigation measures over the plan period keeps pace with delivery of development, there are also specific habitat management interventions included in the IAPMS to improve resilience of the SAC, particularly regarding the production and implementation of Veteran Tree Management Plans for certain roadside trees in the SAC and the improvement of habitat management around sundew populations in the SAC. Some limited additional further growth prior to introduction of a CAZ, should the future monitoring demonstrate that it is required, could potentially be allowed provided additional mitigation was secured but each application would need to be scrutinised to determine whether it could be addressed without delivery of development outstripping the pace of delivery of necessary mitigation.