



Strategic Planning & Research Unit

For and on behalf of
Peer Group PLC

**Regulation 19 Detailed Objection to the Sustainability Appraisal and Habitats
Regulation Assessment**

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Epping Forest Local Plan
Sustainability Appraisal Critical Review
On behalf of Peer Group PLC

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1.0 INTRODUCTION

1.1 This report has been prepared to undertake a critical review of the Sustainability Appraisal (SA) of the Epping Forest Local Plan 2011-2033.

Aims and Outputs

1.2 Epping Forest District Council is in the process of preparing a new Local Plan for Epping Forest. For context, Epping Forest is in the West Essex and East Hertfordshire Housing Market Area, and the 4 Councils have produced a joint Strategic Housing Market Assessment which seeks to identify the objectively assessed housing needs for the HMA, and each Local Authority Area.

1.3 The SA process began in 2010 with the production of an SA Scoping Report for the emerging Strategy and Policies DPD. This report was published for consultation from 17th May to 9th July 2010. Following the consultation, amendments were made to the Scoping Report and the final version was published in October 2010.

1.4 As is noted in the SA (paragraph 3.3, page 5) the SA Scoping Report has not been updated since 2010. This is also evident by its absence from the Local Plan evidence base on the Council's website.

1.5 In December 2016, consultation was carried out on the Draft Local Plan. This was accompanied by an updated SA report.

1.6 The current consultation is on the Submission version of the Local Plan and its accompanying SA Report:

- Epping Forest Local Plan 2011-2033: Submission Version, December 2017
- Sustainability Appraisal of the Epping Forest Local Plan 2011-2033 Submission Version Main Report, December 2017

1.7 The purpose of this review is to provide an assessment of the December 2017 SA Report; to critically appraise the SA Report produced by Epping Forest District Council, to comment on its robustness in terms of legal compliance and good practice, and to indicate whether and where there are soundness issues within the SA which may have impacted upon the preparation of policy and selection of sites. In doing this, we have referred to earlier reports produced as part of the SA process where necessary to inform our review of the 2017 SA Report, in particular to comment on information produced by earlier parts of the process. Specifically, we have referred to the 2010 SA Scoping Report and the December 2017 SA.

Summary of Findings

1.8 The Sustainability Appraisal and SA reporting invariably requires a substantial amount of work. However, legislation on Strategic Environmental Assessment (SEA), and also SA of Local Plans, is very specific and detailed about the required contents of the SA Report. As a result, SA Reports can often be long and complex, and are also regularly scrutinised and sometimes challenged through Local Plan examinations on their contents, also through legal challenge in the High Court on the process of preparation. It is therefore essential that the legislation is followed very carefully and that the SA Report is examined fully to ensure compliance.

1.9 To this end, we have made an assessment of the SA Report and have identified a degree of legal non-compliance. If the SA Report in its current form were to be

challenged in the courts, in our view a challenge may succeed, with potential ramifications for the Local Plan itself. Ultimately this could strike out all or specific policies of an adopted Plan from use in decision-making and determining planning applications. The most significant of these areas of non-compliance are as follows:

- The SA Report contains no discussion of areas likely to be significantly affected. It sets out that it is seeking to avoid adverse impacts but doesn't seem to discuss areas which would be affected
- Inter-relationships between effects do not appear to have been considered.
- A non-technical summary has been provided separately from the main SA Report. However, it does not contain all the information required by the SEA Directive.
- The reasons for selecting the preferred land use allocations and the rejection of alternatives is not given, nor is the Council's site selection process in doing so. In *Save Historic Newmarket v. Forest Heath DC* [2011] J.P.L. 1233: The primary ground of the challenge was that the Core Strategy and accompanying SA/SEA environmental report did not explain what reasonable alternatives to the proposed policies [or sites] had been considered and why they had been rejected. Collins J considered the requirement to consider alternatives in the context of an iterative plan making process (various drafts consulted upon, sifting the options, then final draft consulted upon, examined and adopted):
 - i. For there to be compliance with Article 5 of the SEA Directive, the public must be presented with an accurate picture of what reasonable alternatives there were to the proposed policies and why they were not considered to be the best option. *The Epping Forest SA only describes the assessment of alternative sites and does not set out why they were not considered to be the best option;*
 - ii. In an iterative plan-making process, it is not inconsistent with the SEA Directive for alternatives to the proposed policies to be ruled out prior to the publication of the final draft plan, but if that does happen, the environmental report accompanying the draft plan must refer to, summarise or repeat the reasons that were given for rejecting the alternatives at the time when they were ruled out and those reasons must still be valid. *There are no reasons for alternative sites being rejected at this stage or an earlier stage.*

1.10 Further to the similarities between the Epping Forest SA and *Save Historic Newmarket v. Forest Heath DC*, there is no clear site assessment process undertaken by the Council. The reasoning and justification for allocating sites is not clear from the SA. It would be useful to include a table of all sites (allocated, alternative not taken forward and those discounted or rejected at an earlier stage) and explain the reasons for the decision on those sites.

1.11 There are also several aspects which, while not an issue of legal compliance, do not follow standard good practice on SA. This has resulted in the publication of an unsound Local Plan Submission document. Several pieces of evidence have not been produced (e.g. a Water Cycle Study and Level 2 Strategic Flood Risk Assessment, both requested by the Environment Agency), and some evidence is incomplete (e.g. the air quality assessment for the HRA) which questions the robustness of the SA itself and its use to justify the approach in the Local Plan. Therefore the Local Plan is unsound because it

has not been positively prepared, it is not justified, it is not effective, and it is not consistent with national policy. This is a requirement of the NPPF (paragraph 182).

- 1.12 The following section of the report provides more detail on the work we have undertaken reviewing the current SA Report, and sets out our findings and comments.

2.0 QUALITY CHECK

Assessment of Compliance with Regulations and Good Practice

- 2.1 In order to assess compliance with Regulations and accepted good practice in a systematic way, we have reviewed the SA Report against the quality assurance checklist published in the Government’s guidance on SA of DPDs¹. While the general guidance has now been superseded, it still remains a useful checklist for SAs of Local Plans and no updated quality assurance checklist has been published by the newer guidance documents.
- 2.2 The checklist is reproduced in table 1 below. It is designed to help Local Planning Authorities ensure that the quality of the process and the SA Report is sufficient to meet the requirements of the SEA Directive and Regulations. It also builds in elements of good practice which, while not explicitly required by the legislation, will contribute to a good quality of report which fulfils its purpose under the legislation.

Table 1 The Government’s checklist for Sustainability Appraisal of DPDs

Quality Assurance Checklist Requirements:
<p>Objectives and context</p> <ol style="list-style-type: none"> 1. The Plan’s purpose and objectives are made clear. 2. Sustainability issues, including international and EC objectives, are considered in developing objectives and targets. 3. SA objectives are clearly set out and linked to indicators and targets where appropriate. 4. Links with other related plans, programmes and policies are identified and explained. 5. Conflicts that exist between SA objectives, between SA and plan objectives, and between SA and other plan objectives are identified and described.
<p>Scoping</p> <ol style="list-style-type: none"> 6. The environmental consultation bodies are consulted in appropriate ways and at appropriate times on the content and scope of the SA Report. 7. The appraisal focuses on significant issues. 8. Technical, procedural and other difficulties encountered are discussed; assumptions and uncertainties are made explicit. 9. Reasons are given for eliminating issues from further consideration.

¹ Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents: Guidance for Regional Planning Bodies and Local Planning Authorities, ODPM, November 2005

Options/Alternatives

- 10. Realistic alternatives are considered for key issues, and the reasons for choosing them are documented.
- 11. Alternatives include 'do nothing' and/or 'business as usual' scenarios wherever relevant.
- 12. The sustainability effects (both adverse and beneficial) of each alternative are identified and compared.
- 13. Inconsistencies between the alternatives and other relevant plans, programmes or policies are identified and explained.
- 14. Reasons are given for selection or elimination of alternatives.

Baseline information

- 15. Relevant aspects of the current state of the environment and their likely evolution without the Plan are described.
- 16. Characteristics of areas likely to be significantly affected are described, including areas wider than the physical boundary of the plan area where it is likely to be affected by the plan where practicable.
- 17. Difficulties such as deficiencies in information or methods are explained.

Prediction and evaluation of likely significant effects

- 18. Likely significant social, environmental and economic effects are identified, including those listed in the SEA Directive (biodiversity, population, human health, fauna, flora, soil, water, air, climate factors, material assets, cultural heritage and landscape), as relevant.
- 19. Both positive and negative effects are considered, and where practicable, the duration of effects (short, medium or long-term) is addressed.
- 20. Likely secondary, cumulative and synergistic effects are identified where practicable.
- 21. Inter-relationships between effects are considered where practicable.
- 22. Where relevant, the prediction and evaluation of effects makes use of accepted standards, regulations, and thresholds.
- 23. Methods used to evaluate the effects are described.

Mitigation measures

- 24. Measures envisaged to prevent, reduce and offset any significant adverse effects of implementing the plan are indicated.
- 25. Issues to be taken into account in development consents are identified.

The Sustainability Appraisal Report

- 26. Is clear and concise in its layout and presentation.
- 27. Uses simple, clear language and avoids or explains technical terms.
- 28. Uses maps and other illustrations where appropriate.
- 29. Explains the methodology used.

<p>30. Explains who was consulted and what methods of consultation were used.</p> <p>31. Identifies sources of information, including expert judgement and matters of opinion.</p> <p>32. Contains a non-technical summary.</p>
<p>Consultation</p> <p>33. The SA is consulted on as an integral part of the plan-making process.</p> <p>34. The consultation bodies, other consultees and the public are consulted in ways which give them an early and effective opportunity within appropriate time frames to express their opinions on the draft plan and SA Report.</p>
<p>Decision-making and information on the decision</p> <p>35. The SA Report and the opinions of those consulted are taken into account in finalising and adopting the plan.</p> <p>36. An explanation is given of how they have been taken into account.</p> <p>37. Reasons are given for choices in the adopted plan, in the light of other reasonable options considered.</p>
<p>Monitoring measures</p> <p>38. Measures proposed for monitoring are clear, practicable and linked to the indicators and objectives used in the SA.</p> <p>39. Monitoring is used, where appropriate, during implementation of the plan to make good deficiencies in baseline information in the SA.</p> <p>40. Monitoring enables unforeseen adverse effects to be identified at an early stage. (These effects may include predictions which prove to be incorrect.)</p> <p>41. Proposals are made for action in response to significant adverse effects.</p>

2.3 Table 2 below sets out the items contained in the Government’s checklist, and against each one, we provide an assessment of how the SA process and reporting has met the checklist’s requirements. The following colours are used to indicate the significance of the assessment.

Rating	Meaning
	The SA meets the requirements and is of an acceptable standard for the checklist item. No further work is necessary.
	The SA does not fully meet good practice standards in every aspect of the checklist item, but there are no significant omissions and no issues of legislative compliance. Further work could be undertaken but is not essential.
	The SA has not sufficiently met the requirements of the checklist item and may risk non-compliance with the SEA Directive if not remedied. Further work must be undertaken to meet the required standards.

Table 2 Compliance Assessment for SA of Local Plan – how does the SA compare against the Quality Assurance Checklist?

Issue		Comments
<i>Objectives and context</i>		
<p>1. The Plan’s purpose and objectives are made clear.</p>		<p>Paragraphs 2.1, 2.2 and 2.3 on page 2 of the SA Report give a very brief and very high level description of the purpose of the Plan. While probably technically legally compliant, the description gives very little help to the reader to understand the purpose and broad contents of the Plan and could be improved by a fuller description. Paragraph 2.5 on page 3 of the SA sets out the objectives of the Plan. Objectives should be specific, measurable, achievable, realistic, and time bound. The SA needs to clearly indicate how the objectives will be monitored.</p> <p>The SA Scoping report is considerably out of date. Paragraph 3.3 of the SA (on page 5) states “the SA scope has evolved somewhat as new evidence has emerged; however, the underlying scope remains fundamentally the same as that agreed through the dedicated scoping consultation in 2010”.</p>
<p>2. Sustainability issues, including international and EC objectives, are considered in developing objectives and targets.</p>		<p>International and EC objectives are not mentioned in the list of objectives. The SA should make reference to such sites in a general sense in order to acknowledge the importance of the designation. It is acknowledged that reference is made to specific internationally and nationally designated (although Epping Forest’s designation status is not mentioned) sites in the list of objectives: ‘ii. to conserve and enhance Epping Forest and its setting, including the buffer lands; iii. to protect, and encourage appropriate management of other designated wildlife sites in the District, including the Lee Valley Special Protection Area, Sites of Special</p>

Issue		Comments
		Scientific Interest, Local Nature Reserves and Local Wildlife Sites.
3. SA objectives are clearly set out and linked to indicators and targets where appropriate.		SA objectives do not appear to be linked to indicators and/or targets. This is a major omission as it will not enable the Council to monitor the effectiveness of the local plan or to address any negative effects of the Local Plan.
4. Links with other related plans, programmes and policies are identified and explained.		Appendix II of the SA provides a list of plans which provide the key policy context for the Epping Forest Local Plan 2011-2033.
5. Conflicts that exist between SA objectives, between SA and plan objectives, and between SA and other plan objectives are identified and described.		<p>Due to the omission of some of the evidence required (e.g. a Water Cycle Study requested by the Environment Agency) it is impossible to identify all conflicts.</p> <p>Furthermore, the known conflicts have not been set out clearly within the SA. It is therefore difficult for the reader to determine how policies/land allocations conflict with objectives. For example, in response to the Draft Local Plan consultation in December 2016, Natural England advised that more detail was needed on the impact of allocations on Sites of Special Scientific Interest and in particular the Latton Priory strategic site. Whilst it is acknowledged that some collaborative work has been undertaken between the Council and Natural England*, it is not clear if the impact on the SSSI has been appropriately considered in the SA. The HRA does consider the impact of the strategic allocation at Latton Priory and gives it an 'amber' score which indicates there is a 'potential impact' on designated sites. However, there does not appear to be any detailed analysis of the potential impact and how it will be mitigated.</p>

Issue		Comments
		<p>*A Memorandum of Understanding (MoU) has been drawn up and signed (February 2017) between the HMA Councils (East Herts, Epping Forest, Harlow and Uttlesford), Essex County Council, Herts County Council, City of London (Conservators of Epping Forest) and Natural England. The MoU specifically considers the impact of Local Plan implementation on Epping Forest SAC.</p>
<i>Scoping</i>		
<p>6. The environmental consultation bodies are consulted in appropriate ways and at appropriate times on the content and scope of the SA Report.</p>		<p>Statutory consultees Natural England, Environment Agency and Historic England were consulted on the SA Scoping Report in 2010, and on the Local Plan in 2010/2011, October 2012 (Issues and Options), Community Choices Consultants Report (2013), Draft Local Plan (December 2016).</p> <p>Appendix II of the SA (page 85) provides an update to the scoping information. However, it appears to be quite generalised and doesn't appear to contain specific baseline indicators or targets.</p> <p>As part of their response to the Draft Local Plan in December 2016, Natural England asked to be consulted specifically on the SA as it was progressed. It is not clear if statutory consultees have been involved in the ongoing scoping exercise.</p>
<p>7. The appraisal focuses on significant issues.</p>		<p>Section 3 on page 5 of the SA identifies the key issues that are likely to be affected. The list of issues is very general and does not seem to emphasise the most significant issues for Epping Forest. Given that the area contains a number of internationally and nationally designated wildlife sites (e.g. SAC, RAMSAR, SSSI), it is surprising that these issues are not given more consideration in the SA.</p>
<p>8. Technical, procedural and other difficulties encountered</p>		<p>Appendix I, Table C contains a checklist of the regulatory requirements of the SA. This includes</p>

Issue		Comments
<p>are discussed; assumptions and uncertainties are made explicit.</p>		<p>commentary on how the requirement has been met and any difficulties/limitations/assumptions.</p> <p>However, the evidence base for Plan preparation is incomplete in several areas and this is not explained within the SA.</p> <p><u>HRA</u></p> <p>As with SA, HRA is a legal requirement. AECOM has indicated that it has not been possible to provide up to date evidence on air quality because transport modelling is still being undertaken.</p> <p><u>Level 2 Flood Risk Assessment</u></p> <p>The Environment Agency advised that a Level 2 Flood Risk Assessment should be undertaken in their response to the Draft Local Plan consultation (2016). This does not appear to have been produced.</p> <p><u>Water Cycle Study</u></p> <p>The Environment Agency also advised that a Water Cycle Study should be undertaken. Again, this does not appear to have been produced. This is acknowledged by the Co-op for Sustainable Development Member Board (18 September 2017): Draft notes of meeting of 31 July 2017 – including review of action points “a) Waste water infrastructure – no cooperation. Have been told to do water cycle study which takes 18 months. ACTION: Agreed issue to be escalated and to be picked up by CEOs.”</p> <p><u>Transport Modelling</u></p> <p>The Highway Assessment Report (Essex Highways, December 2017) was only completed a week prior to the consultation. Consequently the transport modelling results were not available to inform the HRA air quality analysis.</p>

Issue		Comments
9. Reasons are given for eliminating issues from further consideration.		Whilst reasons are given for some issues, the SA is unclear on reasons for eliminating sites and for not considering all reasonable alternatives for the housing target.
<i>Options/Alternatives</i>		
10. Realistic alternatives are considered for key issues, and the reasons for choosing them are documented.		<p>The SA does not adequately explain why the objectively assessed housing need for the housing market area changes from 57,400 (early advice from consultants ORS) to 54,608 (revised figure produced by ORS) and then to 51,100 which doesn't appear to be based on any evidence and is a reduced housing requirement figure.</p> <p>There has been no clear consideration of meeting the housing need for Epping Forest, within the District in Full.</p>
11. Alternatives include 'do nothing' and/or 'business as usual' scenarios wherever relevant.		It does not appear to have been considered. Whilst such scenarios can provide a useful comparator for the SA it is not considered to be essential.

Issue		Comments
<p>12. The sustainability effects (both adverse and beneficial) of each alternative are identified and compared.</p>		<p>The SA is generally poor in this respect. Of concern is the fact that there is little, if any, analysis of objectively assessed housing need/housing requirement. Each alternative is identified but there is no comparison between the options.</p> <p>The option selected wasn't included in the Strategic Spatial Options Study, a paper commissioned by West Essex and East Hertfordshire authorities. The SA indicates that it is anticipated that this paper will form a critical piece of evidence for demonstrating to the Planning Inspectorate at the independent examination that the Duty to Cooperate 'has been clearly complied with'.</p> <p>The SA does not make clear the results of the Strategic Spatial Options Paper i.e. which option was most sustainable and the reasoned justification.</p> <p>Given that it is not a statutory planning document nor any other planning document there is no justification for its influence on decisions taken on the Local Plan/SA. It is unclear what relationship this document has to the SA and if it is indeed part of the Council's SA/SEA of the Regulation 19 Local Plan.</p>
<p>13. Inconsistencies between the alternatives and other relevant plans, programmes or policies are identified and explained.</p>		<p>No inconsistencies between alternatives and other PPPs are identified or explained, however there is no evidence to indicate that this leads to any particular weakness in the report.</p>
<p>14. Reasons are given for selection or elimination of alternatives.</p>		<p>The reasons for selecting and rejecting sites is not explicit within the SA. The site selection method criteria is appraised in Appendix IV but it does not include any details about specific sites rejected and selected. Appendix B of the Site Selection Report</p>

Issue		Comments
		<p>(2017) should include a list of residential sites, but this has been omitted from the SA. Appendix B of the SA report states: <i>“This appendix was being finalised at the time of publication. A final updated version of the report on site selection will be published once the detailed write-up has been completed”</i>.</p>

Issue		Comments
<i>Baseline information</i>		
<p>15. Relevant aspects of the current state of the environment and their likely evolution without the plan are described.</p>		<p>The SA does not clearly set out in detail the state of the environment and their likely evolution without the plan.</p> <p>It is also evident that some aspects of the Local Plan evidence base in relation to the effects of the Local Plan on the environment are not complete.</p> <p>AECOM produced the HRA which supports the Local Plan Submission. The HRA doesn't seem to make reference to consultation with Natural England. It just mentions NE's response to the previous HRA with regard to the air quality analysis classification (para. 2.7)</p> <p>Also, it indicates that there is further work required which is to be finished in March 2018. Extract from HRA Report (Page 15):</p> <p>Para 2.30 "As the traffic modelling of the Submission Local Plan (including traffic mitigation options) is still being refined, the air quality modelling will need to be updated. It is intended that the air quality modelling reported in Appendix C will be updated in 2018, before submission of the Epping Forest District Local Plan to the Secretary of State. This is likely to include modelling of additional parameters (particularly ammonia), allowance for queuing traffic at Wake Arms Roundabout and additional links."</p>

Issue		Comments
16. Characteristics of areas likely to be significantly affected are described, including areas wider than the physical boundary of the plan area where it is likely to be affected by the plan where practicable.		The SA Report does not appear to contain discussion of areas likely to be significantly affected, which is an explicit requirement of the SEA Directive (see item (c) of Annex I). Also, as detailed above, the evidence base is not complete so it is impossible to determine the effects in relation to flooding, water quality and air quality.
17. Difficulties such as deficiencies in information or methods are explained.		No explanation is provided for the deficiency in information relating to air quality, flooding, water quality and transport modelling.
<i>Prediction and evaluation of likely significant effects</i>		
18. Likely significant social, environmental and economic effects are identified, including those listed in the SEA Directive (biodiversity, population, human health, fauna, flora, soil, water, air, climate factors, material assets, cultural heritage and landscape), as relevant.		As highlighted above, the evidence base is incomplete. As such, it is impossible to accurately determine the likely significant social, economic and environmental effects.
19. Both positive and negative effects are considered, and where practicable, the duration of effects (short, medium or long-term) is addressed.		There is no analysis of short, medium and long term effects.
20. Likely secondary, cumulative and synergistic effects are identified where practicable.		Whilst the SA states that cumulative effects are considered (section 8, page 47), the fact that the evidence base is not complete suggests that there is a need for this to be undertaken again.

Issue		Comments
21. Inter-relationships between effects are considered where practicable.		Inter-relationships between effects do not appear to have been adequately considered and the evidence is not complete. As this is an explicit requirement of the SEA Directive (see item (f) of Annex I), the SA Report needs to clearly demonstrate how the inter-relationships between effects has been addressed.
22. Where relevant, the prediction and evaluation of effects makes use of accepted standards, regulations, and thresholds.		Although effects have not been adequately considered, the SA does appear to have used accepted standards, regulations and thresholds.
23. Methods used to evaluate the effects are described.		The SA does describe the methods used where relevant. However, it does not assist the reader to understand the reasons for selecting the Council's preferred approach, particularly in relation to sites selected and the housing target.
<i>Mitigation measures</i>		
24. Measures envisaged to prevent, reduce and offset any significant adverse effects of implementing the plan are indicated.		The SA does not provide a clear indication of mitigation measures required.
25. Issues to be taken into account in development consents are identified.		This is not explicit in the SA.
<i>The Sustainability Appraisal Report</i>		
26. Is clear and concise in its layout and presentation.		Whilst the SA Report has a reasonably clear layout and presentation, it is not easy to determine how it has informed the decisions made on the Local Plan, including the Strategy and site selection. The main report is 172 pages long which, while not particularly concise, is not unusual for an SA

Issue		Comments
		Report. At 31 pages, the Non-Technical Summary is concise.
27. Uses simple, clear language and avoids or explains technical terms.		The language is simple and clear and technical terms are generally not used.
28. Uses maps and other illustrations where appropriate.		There are very few maps provided in the report and none which help to assist understanding of the proposed spatial strategy, e.g. of the geography of the area and the distribution of allocated/rejected sites. However, this is not an issue of legal compliance.
29. Explains the methodology used.		The methodology is explained.
30. Explains who was consulted and what methods of consultation were used.		The SA Report does not describe in detail the methods of consultation, but this is not an issue of legal compliance.
31. Identifies sources of information, including expert judgement and matters of opinion.		References for sources of information are provided in some parts of the report but this is very patchy throughout the SA. For example, no sources of information have been provided in relation to the decisions made on the OAN. It is unclear why the 2014-based population projections in relation to the OAN have not been considered as a reasonable alternative.
32. Contains a non-technical summary.		<p>A non-technical summary has been provided separately from the main SA Report. It provides details of the reasons for selecting the preferred spatial option and reasons for rejecting other spatial options.</p> <p>However, it does not contain all the information required by the SEA Directive. Specifically, it does not provide a summary of the environmental characteristics of areas likely to be significantly</p>

Issue		Comments
		affected (item (c) of Annex I of the Directive) nor a summary of existing problems in particular relating to nature conservation sites of international importance (item (d) of Annex I of the Directive).

Issue		Comments
<i>Consultation</i>		
33. The SA is consulted on as an integral part of the plan-making process.		The SA is being consulted as part of the Local Plan process.
34. The consultation bodies, other consultees and the public are consulted in ways which give them an early and effective opportunity within appropriate time frames to express their opinions on the draft plan and SA Report.		<p>No, consultees cannot respond effectively and the timeframe is not appropriate. Whilst the consultation runs for a 6 week period - 18th December 2017 to 29th January 2018, it has been undertaken over the Christmas holiday period. Furthermore, the evidence base is incomplete and the public and statutory consultees will not have the opportunity to view and comment on evidence documents which have been completed after the consultation (e.g. HRA, Water Cycle Study, Level 2 SFRA) prior to the submission of the Local Plan to the Secretary of State.</p> <p>A letter of objection was sent to the Chief Executive of Epping Forest (Glen Chipp) on 19th December 2017 requesting an extension to the consultation period. Mr Chipp responded on 21st December 2017 stating that 'the Council had produced all the documents required in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended. In order to meet the Local Development Scheme agreed by Cabinet on 12 October 2017 the Council will be submitting the Plan for examination in March 2018. Accordingly it will not be possible to extend the publication period as you suggest. We do not accept that your client has or will be in any sense prejudiced by the fact that the Council intends to produce additional evidence after the publication period, before the Local Plan is submitted to the Secretary of State.'</p>

Issue		Comments
<i>Decision-making and information on the decision</i>		
35. The SA Report and the opinions of those consulted are taken into account in finalising and adopting the plan.		The SA Report has been published for consultation alongside the Publication Version of the Local Plan. It is assumed that the SA Report and consultee comments will be taken into account in finalising the Plan, but this has yet to take place.
36. An explanation is given of how they have been taken into account.		The SA Report does not summarise the response to consultation comments, which is standard good practice in SA although not an issue of legal compliance.
37. Reasons are given for choices in the adopted plan, in the light of other reasonable options considered.		Reasons for some choices are not clear. For example, the reason for choosing the housing target of 11,400 is not clear.
<i>Monitoring measures</i>		
38. Measures proposed for monitoring are clear, practicable and linked to the indicators and objectives used in the SA.		Measures for monitoring do not appear to be linked to indicators.
39. Monitoring is used, where appropriate, during implementation of the plan to make good deficiencies in baseline information in the SA.		No information is provided to demonstrate that monitoring will address deficiencies in the SA baseline, although this is not an issue of legal compliance.

Issue		Comments
<p>40. Monitoring enables unforeseen adverse effects to be identified at an early stage. (These effects may include predictions which prove to be incorrect.)</p>		<p>Whilst the legal requirement is to facilitate a response to unforeseen adverse effects rather than uncertain effects, there is no evidence to suggest that the monitoring recommendations would not enable this to happen. However, as an explicit requirement of the SEA Directive (see article 10), the report would benefit from a clearer explanation of how this would be facilitated.</p>
<p>41. Proposals are made for action in response to significant adverse effects.</p>		<p>No, it is not clear what actions would be taken to address 'significant effects'.</p>

3.0 GENERAL OBSERVATIONS

3.1 As highlighted in the table in Section 2 of this report, there are several omissions and flaws in the SA process. This section provides further detail of some critical errors/omissions in relation to the development/production of the Local Plan and Sustainability Appraisal.

Discussion on areas likely to be affected by the implementation of the Local Plan

3.2 An explicit requirement of the Strategic Environmental Assessment (SEA) Directive is for there to be discussion of areas likely to be affected by the implementation of the Local Plan.

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (c) the environmental characteristics of areas likely to be significantly affected.

The SA does not appear to provide an adequate level of discussion on the characteristics of areas likely to be affected by the implementation of the Local Plan. Furthermore, as discussed in the checklist above, the HRA is incomplete due to the fact that it hasn't been possible to update the air quality evidence because transport modelling of the options has been delayed.

3.3 The information to be provided under Article 5(1), subject to Article 5(2) and (3) of the SEA Directive, is the following:

- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC (conservation of wild birds) and 92/43/EEC (conservation of natural habitats and of wild fauna and flora).

3.4 The Memorandum of Understanding (MoU) between the 4 Councils in the HMA, Essex County Council, Hertfordshire County Council, City of London Council and Natural England entitled "Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation", indicates (in paragraph 2.2 on page 4) that air pollution is adversely affecting Epping Forest with critical loads of nitrogen exceeded across the whole Forest and critical levels exceeded across a significant proportion of Forest land. This does not appear to have been discussed or considered in the SA. The SA simply refers to the HRA without adequately considering its findings. Paragraph 9.6 on page 48 of the SA indicates that:

"The HRA for the Submission Local Plan found that there would not be any adverse effects on the integrity of Epping Forest SAC as a result of proposed growth. It concluded that a firm commitment to the development of mitigation strategies to address air quality around Epping Forest SAC, the commencement of work on those solutions, the agreement to a deadline for devising those strategies, and the authorities commitment to monitor the efficacy of those strategies put a sufficient framework in place to ensure no adverse effect arose on the integrity of the SAC".

3.5 As the evidence on air quality is incomplete, it is difficult to understand how this conclusion has been drawn. Given the lack of detail in the monitoring process, it is difficult to understand how the Council intends to monitor the effects of Local Plan implementation on Epping Forest SAC.

3.6 The MoU (February 2017) states:

“The emerging spatial options for the distribution of growth across the HMA have been subject to an assessment of air quality to determine whether any of those options are likely to have an unacceptable impact on Epping Forest SAC. The detailed findings of this assessment are subject to a separate report as part of the Habitats Regulations Assessment (HRA process)”.

The HRA for the Regulation 18 Epping Forest Local Plan was completed in November 2016. This was subsequently updated in December 2017 to inform the Epping Forest Local Plan Submission. As already mentioned, the air quality assessment requires updating to take into consideration transport modelling data in the Highway Assessment Report published on 11th December 2017.

Missing and incomplete evidence

3.7 As highlighted previously in this report, there are some pieces of key evidence missing from the Local Plan. National Planning Policy Framework indicates in paragraph 162:

“Local planning authorities should work with other authorities and providers to assess the quality and capacity of infrastructure for transport, water supply, wastewater and its treatment, energy (including heat), telecommunications, utilities, waste, health, social care, education, flood risk and coastal change management, and its ability to meet forecast demands”.

Missing evidence includes:

- Water Cycle Study (recommended by the Environment Agency as part of their response to the Draft Local Plan consultation in December 2016);
- Level 2 Strategic Flood Risk Assessment (recommended by the Environment Agency as part of their response to the Draft Local Plan consultation in December 2016).

3.8 Incomplete evidence includes:

- HRA (December 2017);
- Site Selection Report - Appendix 2: Residential Sites (December 2017).

HRA

3.9 The HRA is a legal requirement. The Habitats Directive² requires competent authorities to decide whether or not a plan or project can proceed having undertaken the following “appropriate assessment requirements” to:

- Determine whether a plan or project may have a significant effect on a European site³
- If required, undertake an appropriate assessment of the plan or project

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. The Habitats Directive is primarily transposed in England under the Conservation of Habitats and Species Regulations 2010 and in the offshore marine area by the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007.

³ European sites include: special areas of conservation (SACs), special protection areas (SPAs), sites of Community importance (SCIs), and candidate SACs. As a matter of Government policy, potential SPAs and RAMSAR sites are also treated as European sites.

- Decide whether there may be an adverse effect on the integrity of the European site in light of the appropriate assessment.

3.10 Given that the HRA is incomplete, it cannot accurately inform decisions taken on policies and site allocations in Epping Forest Submission Local Plan 2011-2033. The HRA should be updated and the updated air quality data should be taken into consideration by Epping Forest District Council. The Local Plan should then be subject to a further 6 weeks of public consultation.

Site Selection Report – Appendix B1 Assessment of Residential Sites (ARUP 2017)

3.11 It is the purpose of the SA to test whether the 'preferred approach' remains that way after a fair and public analysis of what the Council regards as reasonable alternatives. Given the lack of information about the sites selected and the reasonable alternatives considered i.e. omission of Appendix B of the Site Selection report, it is evident that the SA is not legally compliant.

Failure to Consider Reasonable Alternatives

3.12 The SA should consider reasonable alternatives, and this is especially important in a situation where the even the lower OAN in the flawed SHMA is not being met.

3.13 The SA fails to consider reasonable alternatives in two critical areas. These are:

- a. the alternative assessments of Housing Need, including those proposed by objectors to the plan and the more recent DCLG consultation figure of 923 dpa.
- b. the assessment of the client's proposal as a reasonable alternative for housing development.

3.14 The SA has not sought to assess the implications of accommodating a higher level of housing instead it leaves this to the MoU and the SHMA (SA paragraph 7.6). There is clearly a range of potential levels of housing requirement including the 923 dpa suggested in the DCLG consultation as well as the most recent household projection plus the 20% uplift previously considered acceptable by the council's consultant as a response to market indicators. Neither have been tested.

3.15 The assessment of our client's proposal is completely missing from the SA and reference to the ARUP December 2017 report does not assist as the crucial evidence Appendix B is missing.

3.16 Heard v Broadland District Council, South Norfolk District Council, Norwich City Council

In the judgement, issued on 24 February 2012, the court found that those parts of the Joint Core Strategy (JCS) concerning the North East Growth Triangle should be remitted for further consideration and that a new SA for that part of Broadland should be prepared.

3.17 Judgement was made in favour of the claimant in respect of the failure to explain which reasonable alternatives had been selected for examination in the SA, and due to the fact that the reasonable alternatives were not examined in the same depth as the selected option. This case emphasises the importance of a complete and robust evidence base.

4.0 CONCLUSIONS

- 4.1 This report identifies a number of fundamental flaws in the SA process, some of which indicate that the SA is not legally compliant or sound. Of most concern is the omission of crucial evidence.
- 4.2 It is our view that the SA Report in its current form could be successfully challenged in the courts, with potential ramifications for the Local Plan including the striking out all or specific policies of an adopted Plan from use in decision-making and determining planning applications. The most significant of these areas of non-compliance are as follows:
- a. The SA Report contains no discussion of areas likely to be significantly affected. It sets out that it is seeking to avoid adverse impacts but doesn't seem to discuss areas which would be affected;
 - b. Inter-relationships between effects do not appear to have been considered;
 - c. A non-technical summary has been provided separately from the main SA Report. However, it does not contain all the information required by the SEA Directive;
 - d. The reasons for selecting the preferred land use allocations and the rejection of alternatives is not given, nor is the Council's site selection process in doing so. This is essential as demonstrated by the decision in the *Save Historic Newmarket v. Forest Heath DC* [2011] J.P.L. 1233: Collins J considered the requirement to consider alternatives in the context of an iterative plan making process (various drafts consulted upon, sifting the options, then final draft consulted upon, examined and adopted) included the following:
 - i. For there to be compliance with Article 5 of the SEA Directive, the public must be presented with an accurate picture of what reasonable alternatives there were to the proposed policies and why they were not considered to be the best option. *The Epping Forest SA only describes the assessment of alternative sites and does not set out why they were not considered to be the best option*
 - ii. In an iterative plan-making process, it is not inconsistent with the SEA Directive for alternatives to the proposed policies to be ruled out prior to the publication of the final draft plan, but if that does happen the environmental report accompanying the draft plan must refer to, summarise or repeat the reasons that were given for rejecting the alternatives at the time when they were ruled out and those reasons must still be valid. *There are no reasons for alternative sites being rejected at this stage or an earlier stage.*
- 4.3 Further to the similarities between the Epping Forest SA and *Save Historic Newmarket v. Forest Heath DC*, there is no clear site assessment process undertaken by the Council.
- 4.4 There are also several aspects which, while not an issue of legal compliance, do not follow standard good practice on SA. This has resulted in the publication of an unsound Local Plan Submission document. Several pieces of evidence have not been produced (e.g. a Water Cycle Study and Level 2 Strategic Flood Risk Assessment, both requested by the Environment Agency), and some evidence is incomplete (e.g. the air quality assessment for the HRA) which questions the robustness of the SA itself and its use to

justify the approach in the Local Plan. Therefore the Local Plan is unsound because it has not been positively prepared, it is not justified, it is not effective, and it is not consistent with national policy. This is a requirement of the NPPF (paragraph 182).

- 4.5 As Epping Forest District Council is aware, the NPPF requires Local Plans to be legally compliant and sound. NPPF (paragraph 182):

“The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is “sound” – namely that it is:

- *Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;*
- *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;*
- *Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and*
- *Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”*

- 4.6 In its current form, the Epping Forest Local Plan fails to meet these requirements.

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