

Epping Local Plan

Submission Consultation (Regulation 19)

Legal Compliance Issues

1 BACKGROUND

- 1.1 Epping Forest District Council (**EFDC**) resolved to publish the Epping Forest District Local Plan Submission Version 2017 (**SLP**) for consultation on 14 December 2017. The SLP makes several changes to the Draft LP 2016, including:
- (a) removing several draft residential allocations at Epping;
 - (b) extending allocations between Epping and the M25 (South Epping Masterplan Area, **SEMA**) to yield at least 950 homes ¹, only partially offsetting the deletions.
- 1.2 The rationale for these changes is explained to only a limited extent in the SLP ² and the updated Sustainability Appraisal ³ (**2017 SA Report**). The principal rationale for the reduction in housing delivery at Epping Town is stated to be ⁴:
- (a) a reduction air quality and traffic congestion impacts on Epping Forest;
 - (b) "*greater alignment with the emerging Neighbourhood Plan*"; and
 - (c) greater critical mass and potential for new and improved infrastructure.
- 1.3 The decision to publish the SLP was informed by a Site Selection Report (**SSR**), but the SSR is not complete (in particular Appendix B ⁵).
- 1.4 EFDC appears to have decided to modify the SLP on the basis of a hybrid of 'Option B' ⁶. This is reflected 2017 SA Report ⁷, which in giving outline reasons ⁸ for the "preferred approach" confirms that it is a "hybrid" of the three additional December 2017 alternatives ⁹.

2 SUMMARY

- 2.1 There are legal issues in relation to the extent to which:
- (a) the current strategy could properly be described as 'justified' for NPPF purposes;

¹ Made up of site allocations EPP.R1 Land South of Epping – West and EPP.R2 Land South of Epping – East

² Paragraph 3.3

³ AECOM, December 2017

⁴ SSR, Paragraph 2.136

⁵ Appendix B1 states: "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".

⁶ Table 7.2 2016 SA Report

⁷ Paragraph 7.44

⁸ Paragraph 7.39

⁹ further Options A, B and C

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- (b) all reasonable alternative options have been assessed for environmental assessment purposes;
 - (c) interested parties have adequate information to participate meaningfully in the current consultation process (or the examination process, until the missing information is provided).
- 2.2 These serious shortcomings would undermine the ability to properly find the SLP sound or adopt it, if submitted.

3 ENVIRONMENTAL ASSESSMENT (HABITATS REGULATIONS)

- 3.1 It is clear from the 2017 SA Report that there is significant doubt about the environmental effects of the preferred option (and those alternatives that have been considered) – in particular in terms of crucial issues such as Air Quality and Transportation and the linked effects on designated habitats.
- 3.2 In light of the designated environmental assets affected by the DLP process (including Epping Forest), the DLP process does not satisfy the precautionary principle and fails to comply with the plan-making duties under the Conservation of Habitats and Species Regulations 2017.

4 SEA

- 4.1 The combined SA reports:
- (a) provide a flawed assessment of reasonable alternatives; and
 - (b) present no proper evidential basis for:
 - (i) the SLP examiner to accept the preferred option as the most appropriate alternative; or
 - (ii) for EFDC to conclude that the plan meets relevant EU law requirements.
- 4.2 At the strategic level, the HMA-wide SA report materials are stated not to be an SEA-compliant assessment and so no SEA has been undertaken of the HMA-level alternatives and distribution of housing growth (which reflects the fact that the overarching choice on growth has been informed by a single value judgment about constraints taken in the absence of adequate evidence of absolute constraints, or balanced choices about relative benefits of growth/ harm).
- 4.3 The 2017 SA Report does not run all the Local Plan alternative options alongside each other using a single matrix so that all the options can be said to have been examined at the same level of detail.
- 4.4 EFDC's preferred 'hybrid' option also does not appear to have been:
- (a) separately identified

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- (b) subject to scoring applying the SEA scoring criteria
 - (c) supported by, or based on, a fully evidence base
- 4.5 The options for delivery of a Western Relief Road (identified in 2014/15 as an important consideration for mitigating background traffic growth and accommodating Local Plan growth) has not been addressed. The relative benefits in terms of Town Centre improvements, infrastructure funding, air quality, habitats and human health are not established and have not been assessed.
- 4.6 As such:
- (a) All reasonable alternative options have not been assessed
 - (b) Those options that have been assessed have not been considered at the same level of detail for SEA and Habitats Regulations purposes
 - (c) The level of detail used for assessment is inadequate when considered in the context of the environmental effects involved.
- 4.7 Participation**
- 4.7.1 Interested parties have adequate information to participate meaningfully in the current consultation process (or the examination process, until the missing information is provided).
- 4.7.2 None of the following appear to be complete / available:
- (a) updated transportation evidence base, identifying likely highways effects of Options A, B and C and the preferred hybrid (TPP to confirm);
 - (b) updated Air Quality and nitrogen deposition evidence base, based on the updated transportation analysis;
 - (c) Site Selection Report Appendix B;
 - (d) the revised Green Belt assessment, which justifies the statement in the 2017 SA Report that the existing GB assessment (purpose 4 element) has been reconsidered and now supports the conclusion that the southern expansion has gone from a poor option to a good option in terms of green belt harm
 - (e) information on the suitability criteria for Tranche 2 sites re-assessed at Stage 6.3 of the site selection process or identified errors that has led to their change of status.

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5 ALIGNMENT WITH NEIGHBOURHOOD PLAN

- 5.1 The choice of spatial option is explicitly stated in the evidence base to have been shaped by "alignment with" the emerging Neighbourhood Plan. That underlines the extent to which the choice of preferred option:
- (a) has been driven by an arbitrary view on the "*furthest the authorities consider that they can reasonably go*" rather than evidence of environmental performance;
 - (b) is legally flawed by virtue of seeking general conformity with a lower order plan that is legally required to be in general conformity with the SLP (which is in turn required to be the most appropriate strategy based on evidence of justification and effectiveness rather than be led by a lower order plan that has significantly lower examination thresholds).

6 SUMMARY

- 6.1 In light of these issues:
- (a) the decision to publish the SLP does not appear to have been informed by adequate information;
 - (b) the SLP cannot properly be described as 'justified' in NPPF terms;
 - (c) interested parties do not have adequate information to participate effectively in the current regulation 19 stage, for the purposes of the SEA Directive and the SEA Regulations;
 - (d) there are obvious legal flaws in relation to the extent to which:
 - (i) all reasonable alternatives have been considered
 - (ii) adverse effects on European designated sites have been definitively excluded for the Habitats Regulations Assessment ¹⁰ purposes;
 - (iii) the existence of less harmful alternatives has been established for HRA purposes;
 - (iv) EFDC has sufficient information to decide how the reasonable alternatives are likely to effect existing (and require future) Air Quality Management Area designations to protect human health for the purposes of the Air Quality Standards Regulations 2010.

¹⁰ regulation 27(2) of the Conservation of Habitats and Species Regulations 2010