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City of London Corporation
Environment Department
Epping Forest Offices
The Warren
Loughton
Essex, IG10 4RW

RESPONSE of the CITY of LONDON CORPORATION as CONSERVATORS of EPPING FOREST to the EPPING FOREST DISTRICT COUNCIL LOCAL PLAN SUBMISSION VERSION 2017 Further MAIN MODIFICATIONS CONSULTATION (Document no. ED145)

Thank you for consulting the City of London Corporation, as the Conservators of Epping Forest (The Conservators), on the Further Main Modifications (ED145²) proposed for the Epping Forest District Council (the Council) Local Plan.

Introductory comments

The Plan was originally submitted for examination in 2018 and there was a consultation on main modifications in 2021. The Conservators made response to this document in September 2021.

In June 2022 the new inspector outlined a number of actions for the Council (document ED141¹) and confirmed that further Main Modifications were required to the Plan in order for it to be determined 'sound'.

The current consultation on the Further Main Modifications is limited in scope in that it relates solely to new wording (red text in document ED145²) and focus on the issues relating to mitigation for increased recreation (associated with new housing growth) on Epping Forest SAC. These primarily relate to Policy DM2 (MMs 46-48, on pages which is on pages 68-74 of ED145).

The further main modifications are accompanied by an HRA (ED149/EB215A³)

Actions recommended by the Inspector

The Inspector's note states that Policy DM2 needs to be worded in a brief and simple manner to ensure that it is clear that harm will be prevented to the integrity of the SAC. In

¹ Inspectors note to EFDC June 2022: <https://www.efdclocalplan.org/wp-content/uploads/2022/06/ED141-Inspectors-note-to-EFDC-16-June-2022.pdf>

² Document ED145: schedule of further main modifications <https://www.efdclocalplan.org/wp-content/uploads/2022/10/ED145-MM-Schedule-271022.pdf>

³ HRA is document ED149/EB215A: <http://www.efdclocalplan.org/wp-content/uploads/2022/10/Epping-Forest-Local-Plan-HRA-October-2022.pdf> and there is also an Appendix E <http://www.efdclocalplan.org/wp-content/uploads/2022/10/ED149A-Appendix-E-Epping-Forest-SAC-Summary-Air-Quality-Modelling-Results.xlsx> which is document ED149A/EB215B.

his note he states that *'If development is incapable of meeting the policy requirements, such that a conclusion of "no adverse effect" cannot be reached, then the application will be refused. This in itself is sufficient to ensure that the plan will not have an adverse effect on the integrity of the SAC'*.

He goes on to indicate that an unnecessary amount of wording has been introduced into Policy DM2 and Policy DM22 and their supporting text through previous main modifications, much of which is repetitive and is not required to make the plan sound.

The other key theme identified by the Inspector relates to the 6.2km zone of influence. The Inspector states that the current zone should provide the basis for all the site allocations for the life of the plan and that any suggestions that the zone might change would introduce uncertainty.

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Comments on Further Main Modifications

The further main modifications address the Inspector's actions and incorporate the text provided by the Inspector for Policy DM2.

Part B of the Policy DM2 states: *'New development that will have an adverse effect on integrity either alone, or in combination with other plans or projects, will not be permitted unless mitigation measures, on-site and off-site as appropriate, are put in place to ensure that there will be no harm to the integrity of these areas'*. The mitigation strategies (air quality, SAMM and GI) are referred to in the supporting text: *'Planning applications need to be supported by sufficient information to enable the Council to conclude that the proposals would not result in an adverse effect on the integrity of either the Epping Forest SAC..... Such information may include the identification of specific avoidance or mitigation measures and how they would be secured and delivered. To help applicants identify such measures, the Council has developed and adopted a number of strategies. Each provides an overview of what impacts the strategy is seeking to address together with guidance as to what measures are likely to be the most effective and the ways that they will be delivered'*.

The Conservators are concerned on reliance of mitigation measures at Project Level, rather than at Plan Level. This makes the assessment of the quantum of growth proposed in the Plan difficult to assess and case law is clear that where mitigation measures are relied upon in relation to the HRA of a development plan, there must be sufficient information at the time of adoption of the development plan to enable the plan-making authority to be duly satisfied that the proposed mitigation can be achieved in practice.

The HRA must be able to demonstrate the achievability of the mitigation in order to be satisfied that the plan will have no adverse effect. Though, it is not necessarily the case that all details of mitigation need to be fully resolved at Plan level, it is simply necessary to be able to show it can be achieved *The Queen on the Application of Devon Wildlife Trust v*

*Teignbridge District Council v Rocklands Development Partnership*⁴. These points are also made in the Habitats Regulations Handbook⁵ which makes it clear that there needs to be caution in relying on project level assessment and certain criteria need to be met (such as the later stage – project level – will more precisely identify details such as scale of development, location etc.).

Moving to the HRA that accompanies the further main modifications (ED199/EB215A), paras 5.19-5.21 indicate the Plan proposes 2,105 dwellings within 3km of the SAC (116 within 400m) and a further 4517 dwellings (most of which are within 3 allocations) that fall 3-6.2km from the SAC.

The HRA, in the appropriate assessment section on recreation impacts to Epping Forest SAC, summarises mitigation that will be required, in terms of:

- 1) Financial contributions towards SAMM for all applications within 6.2km, higher contribution if within 3km;
- 2) SANG for four (of the five) Strategic Masterplan Areas at 8ha/1000 population, delivered by developers/as part of the applications;
- 3) Financial contributions to SANG for the remaining Strategic Masterplan Area of Waltham Abbey North towards the delivery of enhancements within the Lee Valley Regional Park.
- 4) Financial contributions will be sought from allocations at the settlements of Debden, Theydon Bois, Loughton and Buckhurst Hill towards two Strategic Infrastructure Projects.

The HRA sets out how this mitigation will be achieved and the extent to which it can be relied on. There seems to be remaining uncertainty around the provision and effective impact of alternative sites including the two Strategic Infrastructure Projects: Roding Valley Recreation Ground and improvements to the footpaths linking to the Woodland Trust site in Theydon Bois. The HRA states these will need to deliver the equivalent of 11.5ha of new greenspace.

However, Roding Valley Recreation Ground is already used for recreation. While quite large and therefore potentially able to absorb more visitors, the HRA does not have existing visitor data to draw on to confirm that there is any further capacity. The HRA instead (para 5.26) seems to rely solely on site visits and simply suggests that there are opportunities to enhance capacity by improving footpaths, publicity, seating, wayfinding and access, without quantifying how many more visitors such works might draw to the site.

The Theydon Bois, Woodland Trust site, sits immediately adjacent to the M11 Motorway which arguably would be a significant limiting factor in its appeal as an alternative greenspace when combined with its distance from both Theydon Bois and Debden/Loughton.

⁴ [2015] EWHC 2159 (Admin)

⁵ See Tyldesley, D., and C. Chapman. The Habitats Regulations Handbook. DTA Publications, 2021.
<https://www.dtapublications.co.uk/handbook/> (section F10.1.5)

The HRA indicates that further investigation is necessary as each project is developed, including *'visitor surveys when necessary'*. Furthermore, the two Strategic Infrastructure Projects are intended as *'a starting point'* (para 5.27 of the HRA) and *'more projects may be necessary'*. The projects are clearly very much in their infancy and the HRA falls short of providing the complete, precise, and definitive findings that would be expected, given the understanding of the levels of growth and locations set out in the HRA. The conclusions are not capable of removing all reasonable scientific doubt.

In respect of Air Quality and its effect on the integrity of the EFSAC, the further Main Modifications suggest that developers will be signposted towards the Councils adopted interim Air Quality Mitigation Strategy (AQMS). There again, appears to be a burden placed on developers to address air quality matters, but many of the objectives of this strategy are not within the remit of a developer. In respect of the AQMS, there still remains uncertainty over the proposed strategies effectiveness and the Conservators would insist on being fully involved with the on-site monitoring of site specific air quality monitoring which will/may lead to the adoption of a Clean Air Zone.

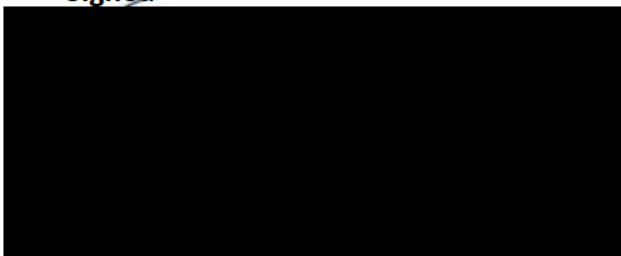
Conclusions

The Conservators observe that the Further Main Modifications adopt the comments made by the Inspector to simplify the wording in Policy DM2 to ensure that the need to prevent harm to integrity of the SAC is made clear.

However, The Conservators believe that the strategic mitigation is not sufficiently secured and there appears to be an over-reliance on the project-level HRA. This would result in the long-term on a range of project level HRAs that struggle to address the in-combination effects.

We hope that our comments here on these Main Modifications will assist in strengthening the Plan, reduce its vulnerability to challenge and help to ensure the deliverability and success of the proposed mitigation strategies.

Signed 



Benjamin Murphy CC
Chairman of The Conservators of Epping Forest

For further correspondence please contact:

