

Representation form: Consultation on the Main Modifications to the emerging Local Plan

This form should be used to make representations on the Main Modifications to the Epping Forest District Local Plan Submission Version 2017 to the Local Plan Inspector. The Main Modifications Schedule, online response form and all required supporting documentation can be accessed via the Examination website at www.efdclocalplan.org. Please complete and return representations by Thursday 23rd September 2021 at 5pm.

Please note, the content of your representation including your name will be published online and included in public reports and documents.

It is important that you refer to the [guidance notes](#) on the Examination website before completing this form.

The quickest and easiest way to make representations is via the online response form at www.efdclocalplan.org.

If you need to use this downloadable version of the form please email any representations to MMCons@eppingforestdc.gov.uk

Or post to: MM Consultation 2021, Planning Policy, Epping Forest District Council, Civic Offices, 323 High Street, Epping, Essex, CM16 4BZ

By 5pm on Thursday 23rd September 2021

This form is in two parts:

Part A – Your Details

Part B – Your representation(s) on the Main Modifications and/or supporting documents. Please fill in a separate Part B for each representation you wish to make.

The Main Modifications Schedule and supporting documents to the Main Modifications can be accessed online at www.efdclocalplan.org. The supporting documents to the Main Modifications are listed below. Representations concerning their content will be accepted to the extent that they are relevant to inform your comments on the Main Modifications. However, you should avoid lengthy comments on the evidence/background documents themselves.

- A. Council's response to Actions outlined in Inspector's post examination hearing advice (Examination document reference number ED98), July 2021 (ED133)
- B. Sustainability Appraisal Report Addendum, June 2021 (June 2021) (ED128/ EB210)

- C. 2021 Habitats Regulations Assessment, June 2021 (ED129A-B/EB211A-B)
- D. Epping Forest Interim Air Pollution Mitigation Strategy, December 2020 (ED126/ EB212)
- E. EFDC response to Inspector's Post Hearing Action 5 and supplementary questions of 16 June 2021, July 2021 (ED127)
- F. Epping Forest District Council Green Infrastructure Strategy (ED124A-G/ EB159A-G)
- G. Harlow and Gilston Garden Town Latton Priory Access Strategy Assessment Report, July 2020 (ED121A-C/EB1420A-C)
- H. Revised Appendix 2 to the Epping Forest District Council Open Space Strategy (EB703), July 2021 (ED125/EB703A)
- I. IDP: Part B Infrastructure Delivery Schedule 2020 Update (ED117/EB1118)
- J. EFDC Consolidated and Updated Viability Evidence 2020 (ED116/ EB1117) Consolidated
- K. Statement of Common Ground Addendum East of Harlow, September 2020 (ED122A-B)
- L. South Epping Masterplan Area Capacity Analysis (Sites EPP.R1 and EPP.R2), March 2020 (ED120/ EB1421)
- M. In addition to the above there are a number of Examination Documents, which include Homework Notes produced by the Council as a result of actions identified by the Inspector at the hearing sessions as well correspondence between the Council and the Inspector following hearings. These Examination Documents can all be accessed on the [Local Plan website](#).

Please only attach documents essential to support your representation. You do not need to attach representations you have made at previous stages.

Part A – Your Details

1. Are you making this representation as? (Please tick as appropriate)

a) Resident or Member of the General Public ☐ or

b) Statutory Consultee, Local Authority or Town and Parish Council ☐ or

c) Landowner ☒ or

d) Agent ☒

Other organisation (please specify)

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2. Personal Details

3. Agent's Details (if applicable)

Title	<input type="text" value="Mr"/>	<input type="text" value="Mr"/>
First Name	<input type="text" value="Steve"/>	<input type="text" value="Paul"/>
Last Name	<input type="text" value="Biart"/>	<input type="text" value="Kessler-Lyne"/>
Job Title (where relevant)	<input type="text"/>	<input type="text" value="Associate Planner"/>
Organisation (where relevant)	<input type="text" value="The Fairfield Partnership"/>	<input type="text" value="David Lock Associates"/>
Address Line 1	<input type="text" value="REDACTED"/>	<input type="text" value="REDACTED"/>
Line 2	<input type="text" value="REDACTED"/>	<input type="text" value="REDACTED"/>
Line 3	<input type="text" value="REDACTED"/>	<input type="text"/>
Line 4	<input type="text" value="REDACTED"/>	<input type="text"/>
Post Code	<input type="text" value="REDACTED"/>	<input type="text" value="REDACTED"/>
Telephone Number	<input type="text"/>	<input type="text" value="REDACTED"/>
E-mail Address	<input type="text" value="REDACTED"/>	<input type="text" value="REDACTED"/>

Part B – Your representation on the Main Modifications and/or supporting documents

If you wish to make more than one representation, please complete a separate [Part B form](#) for each representation

4. Which **Main Modification number and/or supporting document** does your representation relate to? (Each Main Modification within the Schedule has a reference number. This can be found in the first column i.e. MM1, MM2 and each Supporting Document has a reference number beginning with ED).

Any representation on a supporting document should clearly state (in question 6) which paragraphs of the document it relates to and, as far as possible, your comments should be linked to specific Main Modifications. You should avoid lengthy comments on the supporting documents themselves.

MM no.

Supporting document reference

5. Do you consider this **Main Modification and/or supporting document**:
(Please refer to the Guidance notes for an explanation of terms)

- a) Is Legally compliant Yes No
- b) Sound Yes No

If no, then which of the soundness test(s) does it fail

Positively prepared Effective

Justified Consistent with national policy

6. Please give details of why you consider the **Main Modification and/or supporting document** is not legally compliant or is unsound. Please be as precise as possible. If you wish to support the legal compliance, soundness of the Local Plan or compliance with the duty to co-operate, please also use this box to set out your comments.

Please see Paragraphs 1.1 to 1.48 of the attached document.

(Continue on a separate sheet if necessary)

7. Please set out what change(s) you consider necessary to make the **Main Modification and/or supporting document** legally compliant or sound, having regard to the test you have identified in the question above (Positively prepared/Justified/Effective/Consistent with national policy) where this relates to soundness. You will need to say why this change will make the Submission Version of the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Please see Paragraphs 1.49-1.53 of the attached document.

(Continue on a separate sheet if necessary)

Please note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. **After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.**

8. Have you attached any documents with this representation which specifically relate to an MM or supporting document?

☒

Yes

☐

No

Signature:



Date

23/09/2021

EPPING FOREST LOCAL PLAN - MAIN MODIFICATIONS CONSULTATION**REPRESENTATIONS SUBMITTED ON BEHALF OF THE FAIRFIELD PARTNERSHIP****Site EPP.R2 (forming part of the SEMPA)*****23 September 2021***

- 1.1 David Lock Associates ('DLA') act for The Fairfield Partnership who control Site EPP.R2, which is allocated in the emerging Epping Forest District Council Local Plan ('the Local Plan') as part of the proposed South Epping Masterplan Area ('SEMPA'). These representations relate specifically to EPP.R2 ('the site'). However, the implications hold for the SEMPA as a whole.

Main Modification MM78

- 1.2 Main Modification MM78 introduces a number of changes to Policy P1. Most significantly, it introduces a revised capacity as applied now to the whole South Epping Masterplan Area ('SEMPA') and delays the submission of any planning application for the whole or part of the SEMPA until the results of air quality monitoring in 2024/25 can be incorporated into any submission.
- 1.3 We object to this enforced delay. It is without justification or merit and renders the Plan as proposed to be modified unsound. There are clear legal deficiencies in the approach taken. However, in both regards, we consider there to be remedies which would allow the Plan to be found sound, and for legal requirements to be met.
- 1.4 Our specific concern relates to the proposed introduction of a new Part to Policy P1, which for the avoidance of doubt, is set out below:

'Any application for planning permission made subsequent to the endorsed Strategic Masterplan should be accompanied by an assessment of potential air quality impacts demonstrating compliance with J. above, Policy DM2 and Policy DM22 and the Council's adopted Air Pollution Mitigation Strategy. Such an assessment must take into account the results of monitoring in 2024/2025 which is to be undertaken in accordance with the Council's adopted Air Pollution Mitigation Strategy. Accordingly no application for permission should be determined prior to such monitoring results being available.'

Summary of Objection

- 1.5 In summary, The Fairfield Partnership objects to this modification on the grounds that the change:
1. Is not sound (being not justified and not consistent with national policy).
 2. Is not legally compliant (by virtue of a breach of Articles 5 and 9 of the Strategic Environmental Assessment (SEA) Directive).

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- 1.6 These are dealt with in turn. However, the preceding context for the Main Modifications ('MMs') is relevant and briefly set out below.
- 1.7 At Examination, sessions dealt separately with plan-wide HRA matters and with site-specific matters as they relate to the SEMPA. At the hearing into the site-specific matters, discussion focussed on the physical capacity of the site and its consequential delivery and deliverability.
- 1.8 The Inspector's Advice after Hearings [ED98] set out actions following the examination. Action 5 relates to matters arising regarding discussion on HRA and related air quality matters as apply to the Epping Forest SAC. Action 19 relates to the consideration of the SEMPA, its physical capacity and its trajectory for the purposes of dealing with those constraints. The Inspector did not in any way link the SEMPA specifically with any mitigation that may be required for the purposes of avoiding effects of the Epping Forest SAC. Instead, the Inspector's Action 5 sets out that it is expected that Epping Forest District Council ('the Council') may need to consider amendments to "altering (or potentially reducing) the pattern of growth proposed in the Plan". The Inspector is very clearly taking a plan-wide approach and does not, in any way, direct the authority to consider the SEMPA specifically. The Council's apparent conflation of these matters gives rise to significant failings as set out below.

Matters relating to Soundness

- 1.9 The Fairfield Partnership considers that MM78 is not sound for the following reasons:
1. There is no justification for the modification as proposed.
 2. There are more appropriate alternatives, which have not been considered.
 3. The plan's approach does not accord with the National Planning Policy Framework (NPPF, 2021).

Lack of justification

- 1.10 The Council's approach to the SEMPA is not justified in the evidence.
- 1.11 The Inspector's Advice after Hearings [ED98] set two Actions for the Council which are now specifically relevant to MM78: Action 5, to consider whether changes to the growth pattern of the Plan are necessary to address effects upon the Epping Forest SAC; and, separately, at Action 19 to review site capacity work in relation to EPP.R1 and EPP.R2.
- 1.12 The Council's response to the Inspector's actions is set out across a number of documents, as follows.
- 1.13 The Council's response to Actions outlined in Inspector's post examination hearing advice [ED133] sets out in response to the Inspector's Action 5:

"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, an

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”.

- 1.14 The justification for this approach is not set out in the summary table, but can be found in the Council’s response to the Inspector’s Post Hearing Action 5 & supplementary questions of 16 June 2021 [ED127].

- 1.15 On the second page of the document (pages and paragraphs both being unnumbered), the Council sets out that:

“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).”

- 1.16 The Council further states on the fifth page of the document that it:

“... 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.’

- 1.17 There are evident flaws in the Council’s approach and conclusions.

- 1.18 **First**, none of the supporting documents published with the Main Modifications provide evidence that a decision-making process was entered into before deciding to delay the SEMPA on the basis of the “proximity” to the Epping Forest Special Area of Conservation (SAC). The Interim Air Pollution Management Strategy [ED126/EB212] does not rely on delays to delivery of housing as a mitigation factor and therefore delay to SEMPA is not justified on this basis. In any event, temporary exceedances are considered by the Council to be tolerable, as in its response to the

Inspector's Post Hearing Action 5 & supplementary questions of 16 June 2021 [ED127], the Council states:

"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." [our emphasis]

1.19 The Council is clearly stating that it is not necessary to delay the delivery of housing.

1.20 **Second**, in ED127, the Council does not directly respond to the Inspector's request in Action 5 to provide 'habitat specific evidence'. Instead, the Council's response focusses on the reduced quantum of development within the SEMPA and restrictions on its delivery until after the completion of the 2024/2025 monitoring. It is not clear from their response whether habitat specific evidence might have enabled the SEMPA to be delivered (at least in part) prior to the completion of the 2024/2025 monitoring and updated modelling. There is no evidence that this was considered by the Council.

1.21 **Third**, the Council's response in ED127 includes additional references which do not support a delay to the SEMPA. Notably:

"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... 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." [our emphasis]

"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... 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.” [our emphasis]

More appropriate alternatives

- 1.22 The Council’s approach to MM78 and its supporting evidence does not demonstrate that the approach is an appropriate one, having taken into account reasonable alternatives and based on proportionate evidence, as required by the NPPF, para. 35(b).
- 1.23 **First**, there is no demonstration that a delay to the SEMPA or any other site is necessary. Conservative assumptions have been applied within the air quality modelling as are referenced in ED127. These include:
- ‘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.’
 - ‘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.’ [our emphasis]
- 1.24 Had the 10% lapse rate and/or net change from ‘brownfield’ sites been accounted for within the air quality modelling, this may have demonstrated that no delay to the growth strategy was required, and thus that no justification exist for delaying the SEMPA until beyond 2024. Other considerations are also relevant. Other sources, most notably farming, play a significant role in total nitrogen deposition within the Epping Forest SAC and it is not clear whether any consideration/discussions have been held regarding reducing emissions from agriculture, thereby creating ‘headroom’ for development (and the restriction placed on SEMPA within the Main Modifications). Although we do not challenge the use of assumptions, it is clear that those assumptions have a bearing on the conclusion that a delay I necessary to the SEMPA (or other alternatives as we describe below) and thus introduce doubt as to the conclusions reached (or more properly, assumed).
- 1.25 We further note that due to the lack of development in the district over recent years and the impact of the COVID pandemic, which has resulted in abnormal traffic conditions on roads which pass through the Epping Forest SAC, any change between the previous monitoring (2018/2019) and the current air quality conditions are not understood. Given that such changes have the potential to be favourable, early monitoring should be established to confirm whether any action is required to amend the pattern of growth proposed in the plan.
- 1.26 **Second**, there is no evidence to suggest that alternatives to the SEMPA delay were considered. Appendix A of the August 2020 Air Quality Assessment Modelling Methodology provided in Appendix D of the 2021 Habitats Regulation Assessment [ED129A/EB211A] sets out 15 modelled

scenarios. None of the scenarios explicitly assess alternative delivery assumptions in relation to the SEMPA. The Interim Air Pollution Management Strategy [ED126/EB212], Sustainability Appraisal Report Addendum [ED128/ EB210] and 2021 Habitats Regulation Assessment [ED129A/EB211A] supporting documents take the revised trajectory as their starting point, assessing it as a *fait accompli* (contrary to the stance taken in the Council's ED127). Notably, the 2024 Interim Scenario takes into account the revised Housing Trajectory, which does not include the SEMPA. No scenario has been modelled for 2024 with the SEMPA included. Therefore, there is no evidence supporting the decision to delay the development the SEMPA until after 2024 either in terms of it being assessed on a 'with and without' basis, or on a comparative basis with alternatives.

1.27 The failure to assess alternatives is not, in our view, a consequence of there being no alternatives to assess. Given the broad remit set by the Inspector in her Action 5, the Council could and should have considered other options. Importantly, there are clear reasons (which accord with the Council's own evidenced judgment) why a blanket delay to the SEMPA should not be the assumed remedy. As we deal with below, the Sustainability Appraisal Addendum indicated that there was no requirement to consider alternatives to the revised trajectory because the housing requirements for the plan were still being met. Not only does this rely upon a policy basis alone to justify a requirement to consider reasonable alternatives, but, in any event, such an argument ignores entirely the Government's imperative in the NPPF to boost housing supply and to grant permission. An obvious alternative to the revised trajectory which delays the delivery of housing is a plan which does not delay housing.

1.28 The SEMPA, as a larger strategic site, is better able to mitigate potential air pollution effects on the Epping Forest SAC through the reduction of journeys by car. This is highlighted in Paragraph 4.12 of the Interim Air Pollution Management Strategy [ED126/EB212] which notes that Strategic Masterplan sites in particular provide a key role in reducing the use of private passenger vehicles including through:

- the delivery of strong local cultural, recreational, social (including health and educational facilities where required), local employment and shopping facilities to support the day-to-day needs of residents which are within walkable distance – the 'self-sufficiency' principle.
- The provision of sustainable movement and access to local and strategic destinations (including by rail, bus and walking/cycling).
- The provision of generous, well connected and biodiverse rich green space provision so that residents do not have to travel by car to be able to access natural green space.

1.29 Paragraph 4.13 of the Interim Air Pollution Management Strategy [ED126/EB212] goes onto state:

"These site-specific requirements are key to ensuring the provision of infrastructure to support the achievement of a reduction in private car use. In particular there are significant opportunities to secure such infrastructure on the strategic masterplan sites. These larger sites also provide the opportunity to ensure that community infrastructure and services and local employment opportunities (such as education and health provision, local facilities and services, and open space) are integrated as part of the design of development. This will provide opportunities to minimise the use of the private car. These sites will also be supported by the

provision of new passenger transport services. Such provision could provide wider benefits to existing residents and businesses where current passenger transport services are limited or non-existent." [our emphasis]

1.30 Plainly, the Council's own evidence as summarised above provides a good reason to not delay the delivery of the SEMPA and its associated benefits when compared to other sites, including the potential for wider benefits to existing residents and businesses (as referred to above). Indeed, as part of the site allocation a comprehensive package of sustainable transport measures is proposed to be provided which have the potential to significantly increase the use of sustainable and active modes of transport thus reducing the impact of the private car on the surrounding highway network and the impact of air quality. These measures include the following:

- High-quality walking and cycling connections within the site allowing residents to walk and cycle to key destinations using sustainable modes of transport;
- Improvements to existing walking and cycling connections from the site to services and facilities in Epping Town Centre (including shops, doctors, dentists, schools etc, public transport such as Epping Underground Station);
- Enhancements and additions to existing bus services from the surrounding area into the site (along with improvements to existing bus infrastructure) to connect the site to the surrounding services and facilities in Epping Town Centre (including shops, doctors, dentists, schools etc, public transport such as Epping Underground Station) and beyond; and
- Traffic measures at key locations on the surrounding highway network to reduce the impact of the private vehicles and to make it easier and safer to walk and cycle such as speed limit reductions, parking restrictions, buildouts, raised table platforms, changing the position of stop lines and improving signal controls.

1.31 The Council in its 2016 Sustainability Appraisal of the Draft Epping Forest Local Plan [EB202] outlined its own site selection process (see Paragraph 6.3) demonstrating that the SEMPA is sustainably located. That process concluded that the site was considered to be more preferable in suitability terms than other sites in Epping which were proposed for allocation in the Draft Local Plan (2016) and which are also located in the Green Belt. At the settlement level, growth to the south of Epping was considered to be more preferable in terms of landscape sensitivity and Green Belt harm compared with other strategic options around the settlement. The site would therefore support a comprehensive, master planned approach to development at South Epping. An analysis of the site and its context demonstrates that the site is located within an acceptable walking and cycling distance of Epping Town Centre where the majority of services and facilities are located within a 5-minute cycle or a 20-minute walk of the site. A significant advantage that the site has over a number of other local plan allocations is its proximity to Epping Underground Station, which is within a 5-minute cycle or a 15-minute walk of the site. As such, there is potential for a significant modal shift to sustainable modes of transport to the north, particularly considered the sustainable transport measures outlined above which will allow residents to quickly and easily access this sustainable mode of transport by either walking, cycling and public transport, thus reducing the impact of the private car on the surrounding highway network and the impact of air quality.

- 1.32 Delaying the SEMPA as proposed would result in the benefits of the scheme being postponed and the Local Plan as a whole would perform less well. Additionally, as a Strategic Masterplan Area the SEMPA under the Interim Air Pollution Management Strategy [ED126/EB212] would make a greater financial contribution per dwelling towards the implementation of the Strategy (in turn providing a greater benefit to the Epping Forest SAC), when compared to smaller sites including windfall sites.
- 1.33 In this context, other sites clearly have the potential to have a greater impact on the Epping Forest SAC. For example, smaller sites including windfall sites:
- will not include SANG provisions to reduce internalised trips;
 - will be unable to support their own facilities;
 - in some circumstances are distributed closer to Epping Forest but without mitigation.
- 1.34 Yet the Council's strategy will allow such sites to come forward; the plan is currently expected to delivery some 140 windfall units prior to 2024/5 alone – the Council's approach is to favour such sites over the SEMPA sites. A more appropriate response would be to focus on the initial delivery of larger-scale planned development that is better able to mitigate potential impacts when compared to smaller or unplanned sites. Due to the size of the site there is potential for the provision of services and facilities on the site which will in turn result in more internalised trips, which can be made by sustainable modes of transport, thus reducing the impact of the private car on the surrounding highway network and the impact of air quality. This would also accord with plan-led system as per Framework, which we discuss below.
- 1.35 **Third**, no adequate provision is made for monitoring to ensure that any delay to development (whether to SEMPA or to alternatives) is responsive to the evidence. The Council relies on just one years' worth of monitoring data for determining the need for the Clean Air Zone (CAZ)/making decisions regarding the delivery of the SEMPA. This approach is flawed given that:
- There are inherent uncertainties when undertaking monitoring, particularly when undertaking passive monitoring of NO₂ and NH₃; and,
 - The next round of monitoring is proposed for May 2024 for a period of 9 months only, as opposed to 12 months. 12 months of monitoring would avoid the need for the 'annualisation' of the data (based on the ratio between the period and annual mean monitored at nearby continuous background monitoring stations), which adds a degree of uncertainty to the estimated annual mean concentrations. An additional 12 months of monitoring data would provide a more solid base of evidence for determining the need for the CAZ/making decisions regarding the delivery of the SEMPA.
- 1.36 There is additionally a lack of clarity regarding the delivery of the SEMPA should the proposed (2024/2025) monitoring demonstrate that the 2024 target for percentage EV's is not being met. The Council's ED127 is contradictory, explaining that the purpose of monitoring is "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.". It subsequently suggests that should underachievement of air quality be identified, a decision will be required as to "whether the granting of new consents must cease". The Council's approach to monitoring is therefore both technically deficient and uncertain in its implications for SEMPA.

- 1.37 For all of the above reasons, there is no basis for concluding that the delay of the SEMPA is **necessary, justified, or appropriate** when considered against other alternatives.

Consistency with the National Planning Policy Framework

- 1.38 The Fairfield Partnership considers that the approach proposed under Main Modification 78 is unevidenced and prioritises unplanned development and sites that are less sustainable than the SEMPA. Reasonable alternatives to delaying the SEMPA that might result in better environmental outcomes have not been considered by the Council as part of the preparation of the Main Modifications.
- 1.39 The approach proposed by Main Modification 78 does not achieve sustainable development and therefore does not accord with the following paragraphs of the NPPF:
- **Paragraph 9**, which requires the delivery of sustainable development (through economic, social and environmental objectives) through the plan-led system in order to guide development towards sustainable solutions. The Council's own evidence demonstrates that the SEMPA achieves this, meaning that a delay to its delivery forgoes achievement of those aims.
 - **Paragraph 11**, which highlights that the presumption in favour of sustainable development means that all plans should promote a sustainable pattern of development. Again, the Council's own evidence demonstrates that the SEMPA achieves this, meaning that a delay to its delivery forgoes achievement of those aims.
 - **Paragraph 15**, which emphasises that the planning system should be genuinely plan-led that provide a framework for addressing environmental priorities. The Council's priority to unplanned windfall sites over a planned comprehensive scheme at the SEMPA contradicts the NPPF's desire.
 - **Paragraph 16**, which sets out objectives including that plans should be prepared with the objective of contributing to the achievement of sustainable development. The Council's postponement of delivery of the SEMPA undermines this objective by prioritising sites which perform less well in sustainability terms.
 - **Paragraph 31**, which states that the preparation and review of all policies should be underpinned by relevant and up-to-date evidence. It is clear that the Council's evidence justifies rather than informs plan-making.
 - **Paragraph 32**, which, with regard to the consideration of alternative options advises that significant adverse impacts on economic, social and environmental objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. The Council has failed to consider those alternatives.
 - **Paragraph 104**, which in relation to transport matters highlights the importance of identifying the pursuing opportunities to promote walking, cycling and public transport use; and that the environmental impacts of traffic and transport infrastructure should be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effect. By allowing unplanned windfall sites to proceed ahead of the SEMPA, these opportunities are undermined.
 - **Paragraph 105**, which explains that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a

genuine choice of transport modes. This can help to reduce congestion and emissions. The Council's own evidence justifies the allocation of the SEMPA and which has borne scrutiny at Examination. To now delay the SEMPA undermines the NPPF's intentions.

- **Paragraph 106**, which sets out that planning policies should: support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities; be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned; and identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development. By allowing unplanned windfall sites to proceed ahead of the SEMPA, these opportunities are undermined.

Legal Compliance

- 1.40 The Council's approach to meeting legal requirements during plan-making is deficient. Article 5 of the Strategic Environmental Assessment (SEA) Directive (as transposed by the Environmental Assessment of Plans and Programmes Regulations 2004, "the 2004 Regulations") requires an environmental report to assess "reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme".
- 1.41 Regulation 12 of the 2004 Regulations specifically requires that where an environmental assessment is required, an environmental report shall be prepared which shall "identify, describe and evaluate the likely significant effects on the environment of (a) implementing the plan or programme; and (b) reasonable alternatives taking into account the objectives and geographical scope of the plan or programme".
- 1.42 The Sustainability Appraisal process is used to comply with the 2004 Regulations (and the Directive). It is our view that the Council has not considered alternatives to the approach proposed in MM78 and that it therefore significantly fails against the obligations of the Directive.
- 1.43 The Council's justification for not undertaking a consideration of alternatives at MM stage is set out in the June 2021 Sustainability Appraisal Report Addendum [ED128/EB210] at Paragraphs 4.9-4.11. Paragraph 4.10 outlines that the that the housing requirement (~ 11,400 dwellings) for the plan period can still be delivered within the Council's preferred spatial strategy. Paragraph 4.11 then states:
- 'Taking the above into account it is not considered necessary to explore further District-wide spatial strategy alternatives or localised amendments to the spatial strategy through the SA process at this stage.'*
- 1.44 There are very clear alternative outcomes which might arise from different patterns of growth. The Council's own analysis demonstrates that larger and more sustainably located sites offer better sustainability outcomes than other sites. A strategy which promotes the delivery of larger sites and delays smaller sites therefore has the clear potential to affect environmental outcomes. As a consequence of the Council's failure to consider the potential for alternatives (aside from its

failure to then go on to assess those obvious alternatives), it fails to meet the obligations of the Directive.

1.45 The Fairfield Partnership considers that there are reasonable alternatives which could and should have been assessed by the Council, including the potential remedies set out further below. Reasonable alternatives include:

1. The original development strategy; or
2. Introducing a delay on one or more sites on the basis of impacts/typologies (for example windfall sites) as is described above.

1.46 Additionally, Regulation 16 requires information to be made available on the reasons for the plan which has been adopted, including *"a statement summarising how ... the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with..."*

1.47 While this requirement is engaged at the time of the adoption of the Plan, the Sustainability Appraisal gives no indication of these matters which are critical to understanding why the approach was justified. As evidenced above:

1. No explanation has been given of the decision-making process and particularly how it was decided that the SEMPA should be delayed.
2. No evidence has been presented to demonstrate that the decision taken by EFDC is appropriate. It is necessary for EFDC to provide evidence of the effects with/without the proposed change to the delivery of the SEMPA as related to air quality thereby demonstrating why the change is necessary.

1.48 Having regard to these matters and advice received from Counsel the Fairfield Partnership concludes that EFDC's approach as proposed in Main Modification 78 is not legally compliant.

Remedy

1.49 Despite the failures identified above, remedies are available which would ensure that the Plan, once subject to further assessment and modification, could meet tests of both soundness and legality. Such remedies would render the Plan sound upon Examination.

1.50 The remedies are as follows:

1. The Habitats Regulation Assessment should be updated to review alternatives to the delay to the SEMPA. This should include consideration of a 2024 Interim Year scenario which considers the impact of the Local Plan including the SEMPA allocation.
2. The Sustainability Appraisal for the location plan should be updated to review alternatives to the delay to the SEMPA.
3. The Council should assess in transport and air quality terms the impacts of alternative options and publish its detailed evidence to substantiate its decisions in relation to any change in the pattern of growth.

1.51 The above measures address legal matters and would demonstrate compliance the strategic environmental assessment requirements.

4. Should revised assessment demonstrate that changes are required to the pattern of growth, the 280 housing units anticipated to be provided in windfall sites (see MM11), which are

unlikely to support sustainable transport measures or provide SANG, should be held in abeyance instead of delaying the more sustainable SEMPA.

5. Should further measures be required, small allocation sites at Epping not offering SANG and/or unlikely to support sustainable transport measures should be held back instead of delaying the more sustainable SEMPA.
 6. The SEMPA should be released for development now with an initial capacity of 450 homes with further capacity to be reviewed following the results of air quality monitoring in 2024/25.
 7. The Council's air quality monitoring should provide a more robust basis for interim and ongoing air quality monitoring ensuring that any early evidence that necessary targets are being achieved, would allow any restrictions on the pattern of growth (whether at the SEMPA or as otherwise necessary) can be lifted.
- 1.52 The above measures accord with the National Planning Policy Framework by promoting plan-led sustainable development, and by providing a robust and justified basis for plan preparation.
- 1.53 Our proposed remedies may lead to consequential amendments to other policies and allocations as may necessary.