
Epping Forest District Local Plan Examination

Main Modifications Consultation

1. Background

- 1.1. Cirrus Land made representations to both the Regulation 18 and Regulation 19 consultations of the draft Epping Forest District Local Plan (Local Plan) in December 2016 and January 2018 respectively. Please refer to the Regulation 19 representations submitted by Cirrus Land Ltd and L&Q New Homes Ltd, references 19LAD0109-1 through to 19LAD0109-6.
- 1.2. The Government revised the National Planning Policy Framework (NPPF) in July 2018 following a series of consultations. The 2018 NPPF states, within Annex 1 Paragraph 214: *"The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019"*. Epping Forest District Council (EFDC) submitted its Draft Plan for Examination in June 2018, therefore, in accordance with the 2018 NPPF, the policies within the 2012 Framework should be used to examine the Epping Forest Local Plan.

2. Outline of Representations

- 2.1. This representation specifically addresses MM112, which introduces policy D8 “Local Plan Review”. The policy states the following:

“Policy D8 Local Plan Review

A. The Council will complete a review of the Local Plan policies and publish its conclusions at least every five years. Conclusions from the first review will be published no later than five years from the adoption date of the Plan.

B. The Council will have particular regard to the following factors when reviewing policies within the Local Plan and determining whether or not relevant policies require updating:

- the latest Authority Monitoring Report, including reported progress against the requirements for the planned delivery of development and infrastructure;*
- conformity of policies with national planning policy;*
- changes to local circumstances (including a change in local housing need);*
- where, through monitoring, it is demonstrated that sustainable transport measures have not been effective in securing the anticipated modal shift, and no alternative physical scheme is available to mitigate the effects of development in order to avoid a severe impact on the highway network;*
- appeals performance;*
- significant local, regional or national economic changes; and*
- progress in plan-making activities by other local authorities.*

C. Where appropriate, the Council will commence an earlier review of the Local Plan to address significant changes in circumstances. The Council will promptly commence a review of the Local Plan and update relevant policies accordingly if:

- the Authority Monitoring Report demonstrates that annual housing delivery is less than 75% of the annualised requirement or the projected completion rate (whichever is the lower) for three consecutive years; or*
- the Council cannot demonstrate a five-year supply of deliverable housing land against the requirements established through the Local Plan and Housing Implementation Strategy; or*
- the monitoring to be undertaken in the relevant adopted Mitigation Strategies as set out in Policy DM2, together with updated modelling outputs and Habitat Regulations Assessment indicates that the Council, as competent authority, can no longer conclude that the delivery of planned development will not cause adverse effects on the integrity of the Epping Forest Special Area of Conservation. This will include consideration of any delay in securing and delivering the required measures set out in those strategies. In considering these matters the Council will consult with Natural England and have regard to its advice.”*

- 2.2. There are also 5 paragraphs of preamble to the policy, which are equally as relevant to this representation.

3. Representations

Preamble (paragraphs 6.55 to 6.59 inclusive).

- 3.1. These paragraphs provide a general overview of the requirement for review. However, they add no substance to the policy itself. Comments and objections are therefore provided in relation to each of these in turn:

“6.55 Local Plans need to be reviewed regularly to assess how well policies and proposals are being implemented and to ensure that they are up-to-date. Monitoring, together with the consideration of wider changes, provides the objective basis necessary for such reviews.”

- 3.2. This paragraph simply states a national position. It does not set a requirement for EFDC to carry out a review, or indicate an intention to carry out a review and subsequently update policies.

“Approach

6.56 In accordance with national planning policy and relevant Regulations, the Council will review policies within this Plan to assess whether or not they need updating at least every five years. The first review will be completed no later than five years from the adoption date of the Local Plan.”

- 3.3. This paragraph essentially reiterates the legal position of Regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (herein referred to as “Regulation 10A”). Whilst it states that EFDC will carry out a review, this review could be a simple tick box exercise and there is no requirement for an early review to reflect the poor housing position in the district. As outlined in this representation, an early review and update of the Plan is imperative.

“6.57 On completion of the review the Council will publish its conclusions, clearly indicating which policies (if any) need to be updated, and the reasons for this decision. If one or more policies do need updating, the Council will simultaneously publish an updated Local development Scheme setting out the timetable for the updates to be produced and submitted for Independent Examination.”

- 3.4. As with paragraph 6.56 this sets out the minimum that is required. It does not commit to undertaking a detailed review of any sorts, and does not commit to updating the Plan post adoption, despite the awareness that it is already falling short of current objectively assessed needs for the District.

“6.58 When reviewing the policies within the Plan the Council will take into account the latest monitoring reflected within the latest Authority Monitoring Report, in addition to a range of other local and national factors.”

3.5. As a minimum EFDC would be expected to take into account the latest monitoring information and national “factors”, albeit this in itself is vague. However at a local level, this should not be limited to the latest annual monitoring report (AMR) as timing of a review could result in monitoring data from 2 or more years ago (ie in the most recently published AMR) being utilised. This would not allow current monitoring information and therefore current needs to be considered adequately.

3.6. **Required change:** This paragraph of the preamble should be amended to refer to the most up to date monitoring information available, including (but not limited to) the most recent AMR, Housing Delivery Test (HDT) results and Standard Method as a minimum.

“6.59 This Policy also includes a number of instances where, should relevant circumstances arise, the Council will undertake an earlier review and, if necessary, update relevant Local Plan policies accordingly.”

3.7. This paragraph arguably adds very little to the policy and its purpose. Evidently an early review will be required if for example, the council fails the HDT, does not have a 5 year housing land supply or there are changes to the national planning objectives. However, there is no objection to this paragraph remaining should the Plan be adopted.

Policy D8 part (a) – Objection

3.8. The policy sets out a two stage process; part (a) of the policy requires an internal review of the Plan to determine if it is necessary to move onto stage two, which is to formally undertake an update of the policies. The requirement to carry out a policy update is based solely on the need to have “particular regard to” criteria set out in part (b). It is only at this second stage, after the council has considered the aspects of part (b) that a policy update may occur, at which time independent examination would take place. As such, the entire need to update policies of the Plan which is arguably already outdated as explained below, is wholly dependent on EFDC subjectively determining whether an update is “necessary” in the first place.

3.9. Consequently EFDC would be able to self-certify that their Plan is effective, and compliant with national policy, even after completing the minimum review necessary that has had “particular regard” to the aspects of policy D8 part (b).

3.10. This has been experienced in other local authorities where comparable, review policies have been adopted, in particular at Reigate and Banstead Council where the adopted Development Plan included housing targets that was below the Standard Method requirement. Similarly Woking Borough Council became the first LPA to self-certify their Plan in 2018.

3.11. This situation is problematic for EFDC given that the Examining Inspector recognised the importance of a review mechanism (para 28, Letter dated August 2019) owing to the poor housing land supply position in the District.

3.12. Furthermore, there are numerous circumstances which give rise to the need for external examination of EFDC’s policy review, namely:

- The submission Plan is dated December 2017 and is already (at August 2021) 4 years old;
- The Plan was submitted in September 2018 and a considerable period of time has passed since the examination commenced (and indeed the examination is still in progress);
- A considerable period of time has passed since the Inspector's advice was received some 24 months ago and EFDC are still trying to address the comments and issues raised;
- Housing needs in the district are much greater than they were 24 months ago;
- The adopted Plan for EFDC dates back to 1998; with interim measures adopted in 2006 remaining in place some 15 years later; and
- EFDC only achieved 49% delivery in the 2020 Housing Delivery Test Results and so the presumption in favour is triggered

3.13. Given the above, it is imperative that a very robust review policy is incorporated into the Plan to ensure that, at the very least, the Inspector's concerns regarding the housing supply can be addressed immediately post adoption. Going forward, a robust review policy is essential to ensuring that the Plan is capable of being up to date, effective and consistent with national policy, or government agendas.

3.14. This can only effectively be implemented through a robust review policy that:

- i. Requires specific and measurable targets and circumstances to be fully explored;
- ii. Triggers the requirement to publish evidence of the review for public consultation;
- iii. Triggers the requirement for external examination of the review process;
- iv. Requires the findings of the external examination to be implemented and
- v. Includes the need for an early / immediate review.

3.15. Self-certification of the Plan cannot be allowed, and in these circumstances is far from the intention of the NPPF or the PPG.

3.16. The submission Plan was published in December 2017; it is already verging on four years old at the time of the Main Modifications (MM) consultation. Assuming the Plan is adopted, this will not be for some time, likely 2022, thus the main body of the Plan will be around 5 years old at that time. Bearing in mind the date of evidence base documents, and the time taken for the Plan to go through the examination process, it is questionable how compliant it can be with the tests of soundness. It is our position that the Plan, being based on evidence that is over 5 years old, is not consistent with the NPPF, PPG or Standard Method, and with fundamentally different housing figures, given adequate reason not to adopt the Plan.

3.17. In this regard, Plans are required to be reviewed at least every 5 years (Regulation 10A) and the Planning Practice Guidance (PPG) states the importance of Plans being kept up to date in order to be effective (Paragraph: 062 Reference ID: 61-062-20190315).

3.18. It goes on to state that most Plans are likely to require updating in whole or part at least every 5 years and even where "a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years" a Plan will be up to date unless there have been significant changes, (our emphasis) in which case a review earlier than the maximum 5 year period may be required.

- 3.19. The PPG is clear (Paragraph: 062 Reference ID: 61-062-20190315) that *“Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.”*
- 3.20. In this case, the housing target in the emerging Plan is 11,400 homes (2011-2033). This is recognised by the Examining Inspector as being below the OAN identified in the Strategic Housing Market Assessment July 2017 (SHMA 2017) of 12,573 homes (para 20 Letter dated August 2019). Indeed the Plan refers to the 2015 SHMA and associated updates as forming the basis of the housing target. Thus, should the Plan be adopted next year, it would have a housing target within that is based on evidence published at least 5 years ago (6 years if taking the 2015 SHMA alone), and data within those documents that further pre-dates their publication.
- 3.21. In isolation this is problematic. However, the Government's Standard Method for calculating housing need has also been published since EFDC's housing data was collected (and published in the SHMA), indicating a considerably higher housing need for the district than is being met by the emerging Plan (original 2017 requirement of 923 dpa; updated December 2020 indicative requirement of 953 dpa). Therefore over a 20 year period the housing need would be circa 19,000 homes. This is a figure that the Council had previously acknowledged.
- 3.22. The fundamentally different housing figures in the emerging Plan and the Standard Method are a real cause for concern, and represents a significant change as outlined above in PPG paragraph 62. Furthermore, bearing in mind the legal requirement to review Local Plans at least every 5 years, it is nonsensical for a Plan to be adopted when it is based on evidence that is already over 5 years old at the point of adoption.
- 3.23. Whilst the draft policy refers to a review within 5 years, it does not force a detailed review or update of the Plan, and in any event, such review can in itself take 3 to 4 years to carry out; thus the housing needs of the district would fail to be adequately met for a considerably longer period of time.
- 3.24. In our view, these collectively represent a clear reason not to adopt the Emerging Plan. However, a more pragmatic way forward given the stage of the examination process, is to incorporate a very robust review policy that sets an immediate requirement to undertake a review and update of the Plan, commencing on adoption.
- 3.25. An example of this in practice is Bedford Borough Council's adopted Local Plan 2030. The Plan was adopted in January 2020 and includes a specific policy for a full Plan review within 1 year of adoption. Consultation on the Draft Plan to 2040 has already started as a result. Importantly, the policy also set out clear implications should the review timetable not be followed, further ensuring that the whole Plan Review was strongly enforced. The policy states:

“Policy 1 - Reviewing the Local Plan 2030

The Council will undertake a review of the Local Plan 2030, which will commence no later than one year after the adoption of the plan. An updated or replacement plan will be submitted for examination no later than three years after the date of adoption of the plan. In the event that this submission date is not adhered to, the policies in the Local Plan 2030 which are most important for determining planning applications for new dwellings will be deemed to be ‘out of date’ in accordance with paragraph 11 d) of the National Planning Policy Framework 2019. The plan review will secure levels of growth that accord with government policy and any growth deals that have been agreed. The planning and delivery of strategic growth will be aligned with the delivery of planned infrastructure schemes including the A421 expressway, Black Cat junction, East West Rail link and potentially the A1 realignment. The review will also serve to build stronger working relationships with adjoining and nearby authorities and may result in the preparation of a joint strategic plan based on a wider geography.”

- 3.26. The above example sets a definitive requirement for a review and update of the Plan. This is not the case with draft policy D8.
- 3.27. The Examining Inspector recognises the importance of a review mechanism (para 28, Letter dated August 2019) given the housing land supply position. Therefore to ensure the required effectiveness of the Plan and its review policy, it is crucial that policy D8 includes an obligation for **immediate review and update of the Plan upon adoption**. As an absolute minimum this must include an update of specific policies which are not compliant with the NPPF, notably those relating to housing.

Required amendment to Policy D8 part a:

- Add a new part (a) to the policy requiring review of the Plan within 1 year of adoption, utilising wording from Bedford Borough Council Policy 1 (above).
- Make clear through policy wording that if the Local Plan Review and Update does not commence within 1 year or an updated Plan is not submitted for Examination within 3 years of the date of adoption, all policies relevant to the determination of planning applications for housing will be deemed out of date in accordance with the National Planning Policy Framework.
- Reword existing part (a) of policy D8 to ensure reviews are carried out, not self-certified, and independent examination takes place.

Policy D8 part (b) – Objection

- 3.28. With regards to part (B), this is particularly vague, lacking clarity and relevant triggers to offer the requisite certainty of a review mechanism. Although the legal requirement to review from Regulation 10A is replicated in the policy, it is still necessary for the Plan to include appropriate criteria for effective monitoring against targets and to clearly identify the circumstances that would give rise to the need for the review and resultant policy update. For avoidance of doubt, the criteria should be used as a minimum for both the recommended early review of the Plan, in addition to future reviews during the Plan’s lifetime.

- 3.29. As a minimum the criteria identified in PPG paragraph 65 (reference ID: 61-065-20190723), must be included, namely:
- *conformity with national planning policy;*
 - *changes to local circumstances; such as a change in Local Housing Need;*
 - *their Housing Delivery Test performance;*
 - *whether the authority can demonstrate a 5 year supply of deliverable sites for housing;*
 - *whether issues have arisen that may impact on the deliverability of key site allocations;*
 - *their appeals performance;*
 - *success of policies against indicators in the Development Plan as set out in their Authority Monitoring Report;*
 - *the impact of changes to higher tier plans;*
 - *plan-making activity by other authorities, such as whether they have identified that they are unable to meet all their housing need;*
 - *significant economic changes that may impact on viability.; and*
 - *whether any new social, environmental or economic priorities may have arisen.*
- 3.30. The PPG is clear that this list is not exhaustive, yet the policy D8 part (b) only partly includes some of these points, namely:
- conformity of policies with national policy;
 - changes in local circumstances (albeit there is no reference to a change in local housing need)
 - plan making activity by other authorities (albeit with no reference to meeting their housing needs); and
 - significant economic changes (albeit with no reference to viability).
- 3.31. As the current wording only requires EFDC to *have regard* to these aspects, there is no obligation to undertake a detailed review or to update any of the policies, irrespective of whether there is direct conflict with any of the aforementioned criterion, underperformance against national and local targets or failure to meet the Housing Delivery Test.

Required Changes to Policy D8 part (b):

- Revise the criterion for consideration as part of the review process to include all aspects referred to in PPG paragraph 65;
- Make clear in the wording of the policy that the list is not exhaustive and is the minimum EFDC must explore and evidence;
- And further detail and minimum triggers for a whole Plan review and policy update notably to require updates where there is any significant change in circumstances resulting in conflict between the adopted Plan (including targets) and local evidence or national policy and guidance.

Policy D8 part (c) - General Observations

- 3.32. Part c of policy D8 sets out criteria for an early review of the Emerging Plan. Arguably these add little to the overall policy and Plan. This is because if housing delivery is less than 75% for 3 or more years, the NPPF is clear that a Local Plan should not be considered up to date and thus the presumption in favour of sustainable development applies. It would be logical for any local authority to review and update their Plan immediately in such circumstances. This also applies if a 5 year housing land supply is not maintained. That being said, it must be recognised that the need for a review as set out in policy D8 is based on a measurement against the old, arguably out of date, housing targets, rather than the more up to date annualised Indicative Housing Need figure of 953dpa in the Standard Method (December 2020). This further emphasises the need for an early review and update of the Plan to be fully enforced through strong policy wording.
- 3.33. With particular regard to housing delivery, it is relevant that the Housing Delivery Test 2020 shows only 49% delivery against requirements. In the more recent monitoring year of those included, only 223 homes were delivered. This is substantially below the need for 864 homes during the same monitoring year as identified in the 2020 Housing Delivery Test table.
- 3.34. A concern also arises with the reference to “deliverable” in policy D8 part (c). Without independent scrutiny during the review process, EFDC could simply say that many (if not all) of their allocated sites are deliverable in order to demonstrate an adequate 5 year housing land supply. For the avoidance of doubt, the Plan should include the definition of deliverable from the most up to date NPPF, namely:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

General Observations, objections and Conclusion

- 3.35. The Plan covers the period 2011-2033. Ten years of this have already passed. Should the Plan be adopted next year (i.e. 2022), it will only have a residual life of 11-12 years (inclusive). The NPPF requires Local Plans to be prepared over a *minimum period of 15 years*. The emerging Local Plan will simply not meet this procedural requirement.

- 3.36. The purpose of the review mechanism is to ensure that a Local Plan is effective; it is clear that the emerging Plan cannot be considered effective if it is failing to cover a future Plan period of 15 years, fails to meet current identified housing needs in an LPA significantly under performing in housing delivery and currently includes an ambiguous review mechanism which essentially allows EFDC to undertake an internal review which is far from robust and potentially not subject to independent examination.
- 3.37. **Subsequently the required changes stated within this representation are essential to ensure robustness, soundness and legal compliance, should the Plan be adopted.**

