

Supplementary Representations on Epping Forest District Local Plan Submission Document (Regulation 19) – Response to additional Site Assessment

On behalf of M. Scott Properties

**Land at Chigwell
Site Ref. CHIG.R5**

April 2018



Contents

Summary	3
Effective Consultation and Plan Preparation	7
Conclusions	9

Appendices:

- A1 – Chigwell Nursery Location Plan 2016
- A2 - SR-0478A ARUP Site Assessment 2016
- A3 - SR-0478B ARUP Site Assessment 2016
- A4 - SR-0478A ARUP Site Assessment 2018
- A4 - SR-0478B ARUP Site Assessment 2018

Summary

1. Strutt & Parker are instructed by Scott Properties to submit representations in response to the Epping Forest District Council Submission Version Local Plan 2017 (LP). These representations relate to an invitation (undated) by Epping Forest District Council (EFDC) to supplement our previous representations, dated January 2018, with additional comments relating to the EFDC Site Selection Report that were not available at the earlier consultation.
2. Our client's interest is principally in site ref. SR0478A and SR0478B. The site has also been identified within the draft Chigwell Neighbourhood Plan (2017) as Site Reference CV2. The site is identified in the Submission LP as Chig.R5, which relates to Site Assessment SR0478B.
3. Paragraphs 8-14 of our January 2018 LP representations set out that the failure of the Council to provide specific documents for the LP consultation have limited our ability to fully comment on the soundness of the Local Plan. This concerned:
 - a. Appendix B of the EFDC Site Selection Report; and
 - b. The final Highway Modelling and Mitigation Strategy
4. The Council have endeavoured to correct the first of these omissions with the current supplementary consultation on the Site Selection Report. The final highway modelling is still, to our knowledge, unavailable and has not been subject to any public consultation.
5. While the Site Selection Report is now available, for the reasons set out in paragraph 6 of our January 2018 representations and these supplementary representations, we remain of the view that the Local Plan is unsound in that it is not: positively prepared; effective; justified; or consistent with National Policy. This will remain our view unless the errors identified are remedied as set out in paragraph 6 of our January 2018 representations, that is:
 - a. the Local Plan should be subject to consultation in relation to specific information that has informed the plan but is not currently available for comment, including information that has informed the SA;
 - b. the supply of land for housing should be increased to provide for the full objectively assessed housing need for Epping, as identified in the most recent SHMA Update of July 2017;
 - c. The allocation of Site Chig.R5 should be amended to include land to the east, encompassing the entire garden nursery site as per representations by M. Scott Properties, and in accordance with the Chigwell Neighbourhood Plan;
 - d. The site should be allocated as being within the settlement boundary, without a specific housing number associated with it. Appendix B of the Infrastructure Delivery Plan must be amended to reflect the estimated site capacity of 65 units as set out in Policy P7 and appendix 6e of the LP, and not 32 units as shown within the IDP.
 - e. Policy P7 should be amended for Chig.R5 to include the provision of care accommodation, to meet identified local need, and in accordance with previous submissions to the Council.
6. Without the above amendments, we consider the Local Plan to be unsound in its current form. The current focused consultation on the Site Selection Report does not resolve the above comments.
7. With regards to this focused consultation and the Site Selection Report, our client has two concerns with the material presented and how it has been used to determine the most appropriate strategy for the district:

- A. The Site Assessment for Site SR-0478A is inaccurate and is inconsistent with SR-0478B, even though site 'B' is a part of Site 'A'. The errors are noted in this submission. Several of the same errors were noted and brought to the attention of the Council under the December 2016 Pre-Submission Local Plan Consultation but those errors have not been corrected or addressed. These errors were also highlighted in our January 2018 LP Submission (see: appendices A1; A3 and A4). At that time, any correction of the errors were unknown, due to the Site Selection Report being unavailable.

The assessment for this site is therefore inaccurate for the purposes of the SA/SEA and for the purposes of identifying an appropriate strategy for Chigwell and Epping District. While our comments relate to two specific sites, we have not sought to assess whether similar errors may appear in other site assessments, which would result in significant failings in the evidence available to the Council when preparing its Local Plan.

- B. It is not evident that the Site Selection Report, which form a key part of the evidence base supporting both the SA/SEA and the Local Plan strategy, were available to the Members of the Council when deciding to consult on the Submission Local Plan. The Assessments are dated March 2018 and therefore postdate the decision by the Council to consult, taken in December 2017.
8. Our client has engaged with the Council following the Regulation 18 Consultation; engaged with their appointed consultants, ARUP, throughout 2016-17; and attended each of the Developer Forums arranged by EFDC. Our clients have been regularly engaged with the Council throughout the preparation of the Local Plan in relation to their interests in Chigwell. It is therefore disappointing to identify errors in the Site Selection Reports that were identified at the regulation 18 consultation, including in the area of land assessed (the location plan).
9. Our client's site is partially identified as an allocation for housing in the Local Plan, with Policy P7 confirming that the site is expected to deliver approx. 65 dwellings. We concur with the Council's assessment of housing provision for the site (approximately 65 dwellings) but consider that the allocation must include the whole site, SR0478A (as amended) and not only site SR0478B. The entire site is brownfield land associated with the garden centre. This allocation would provide a development density and development character more in keeping with the character of the area and allow the site to provide a high quality care home alongside the dwellings. Care accommodation is much needed in Epping Forest District and Chigwell. Such an allocation would better meet the proposed policies of the Local Plan as a whole.
10. The submission LP retains the land to the east of Chig.R5 within the Green Belt. The retention of that area would perform no Green Belt function in terms of the five reasons contained in the NPPF and this position is supported by a number of technical reports. The site is extremely well located for transport and access to services. Failure to allocate the wider parcel is a missed opportunity to meet housing need on suitable sites and to create a more appropriate Green Belt boundary.
11. For the reasons set out in this representation and within the regulation 18 representations (repeated as Appendix A of our January 2018 representations), we consider the Plan to be unsound unless changes are made and a clear assessment of the wider site (equivalent to CV2) is made available through consultation, alongside all other site assessments. We consider there to be no evidence-based rationale for the site not to be allocated in accordance with the earlier submissions by M. Scott Properties, which closely follow the most recent Neighbourhood Plan proposals. The failure to allocate the larger site for a sustainable form of development, or to identify why the wider site is unsuitable, fails the tests of soundness in relation to being consistent with national policy, being positively prepared, and being justified as the most appropriate strategy.

The Site Assessments are inaccurate and Inconsistent

12. The following Site Assessments are provided with this submission, alongside the representations to the 2016 Local Plan when the inconsistencies were first identified (Appendix 1 of the January 2018 LP Representations). These should be read alongside paragraphs 43-53 of the January reps:
 - Appendix 2 - SR0478A ARUP assessment 2016 (larger site area)
 - Appendix 3 - SR0478B ARUP Assessment 2016 (smaller, allocated site area)
 - Appendix 4 - SR0478A ARUP assessment 2018
 - Appendix 5 - SR0478B ARUP Assessment 2018
13. There are amendments to both assessments between 2016 and 2018, indicating that a review has been undertaken. However, the amendments have not corrected any of the errors identified in 2016, relating to inconsistencies between Site A and Site B; have added new items; and added explanatory notes. It is not clear that an objective review of the site assessments, with the benefit of the earlier comments, has been undertaken.
14. Site A (the larger site) has the following errors:
15. The site area has not been amended from 7.49ha in the 2016 report to the 5.46ha site submitted by the promotor, as shown by the plans below:



Area identified in EFDC 2016 & 2018 Assessments



Area identified by Promotor

16. The Council's site area includes part of a woodland which is not the subject of promotion for the site. The 2018 Assessment should be adjusted to include only the area under promotion. The area included by the Council skews the assessment in terms of ecology impact and habitats which are not part of any submission or proposal.
17. The site has consistently been promoted as a single entity comprising the entire garden centre site, including the sales area, storage areas, the associated dwelling and car parks. The character of the entire landholding as comprising the active nursery site is confirmed in the description of the site set out in the LP. The exclusion of *part* of the land associated with the garden centre is not justified by available evidence. It is our view that the Chigwell Nursery site has been artificially divided into separate sites which is not justified.
18. Errors identified in the following parts of the Assessment for SR0478A, and advised to EFDC in 2016, have not been corrected in the 2018 Assessment. It is important to recognise that Site B is within Site A:

Criteria	SR0478A Score		SR0478B Score	
1.5 – Impact on BAP Priority Species or Habitats	(-)	Features and species in the site may not be retained in their entirety but effects can be mitigated.	0	No effect as features and species could be retained or due to distance of BAP priority habitats from site.
2.1 – Level of harm to Green Belt	(--)	Site is within Green Belt, where the level of harm caused by release of the land for development would be high or very high.	(--)	Site is within Green Belt, where the level of harm caused by release of the land for development would be high or very high.
3.1 – Distance to the nearest rail/tube station	0	Site is between 1000m and 4000m from nearest rail of tube station.	(+)	Site is less than 1000m from the nearest rail or tube station.
4.1 – Brownfield and Greenfield Land.	(-)	Majority of the site is greenfield adjacent to a settlement. 100% greenfield Site	(++)	Majority of the site is previously developed land within or adjacent to a settlement. 75% Brownfield site
4.2 – Impact on agricultural land	(--)	Development would involve the loss of the best and most versatile agricultural land (grades 1-3)	(--)	Development would involve the loss of the best and most versatile agricultural land (grades 1-3)
5.1 – Landscape Sensitivity	(-)	The site falls within an area of medium landscape sensitivity – characteristics of the landscape are resilient to change and able to absorb development without significant character change.	(-)	The site falls within an area of medium landscape sensitivity – characteristics of the landscape are resilient to change and able to absorb development without significant character change.
6.1 – Topography constraints	(-)	Topographical constraints exist in the site but potential for mitigation.	(--)	Topographical constraints in the site may preclude development.

19. We fail to understand how the site has scored differently for 1.5, 3.1, 4.1 and 6.1 when the sites are significantly similar.
20. Of particular concern is the distance to rail/tube stations (criteria 3.1). Site A is closer to Chigwell tube than Site B, but the two sites are essentially the same location. For one to score (+) and the other to score (0) is inconsistent.
21. Equally, criteria 4.1 highlights that site A is '100% greenfield', even though it *contains* site B, which is identified as '75% brownfield'. More worryingly, the site submitted to the Council as Site A is the Chigwell Nursery, which contains a number of buildings, structures, a dwelling and car parking. It is entirely incorrect to describe this site as '100% greenfield', scoring (-) while site B scores (++). This is factually difficult to resolve. The aerial image below has been produced to highlight the extent of structures, hard surfacing and buildings on the wider site. This demonstrates the fallacy of artificially separating the site into two parts and questions the SSR scoring for criteria 4.1:



22. Inconsistencies in the assessment of the sites with regard to criteria 2.1 are set out in full in the 2016 submissions. The site does not perform an important green belt function and would have no harm to the purposes of the green belt if allocated. The site should score (0) on this factor, in accordance with the methodology.
23. Criteria 4.2 concerns impact on agricultural land. Both SR-0478A (CV2) and SR-0478B receive a strong negative score within the EFDC site suitability assessment, on the grounds that their development would result in the loss of *'the best and most versatile agricultural land'*. It is important to note that neither site presently, nor in recent history, have fulfilled an agricultural function or have been used in agricultural capacity. CV2 comprises an urbanised site with a combination of built form, tarmacadam hard standing and scrubland in the grounds of the commercial nursery. The allocation of CV2 for development will therefore not result in any harm to agricultural land. There is no reference to any agricultural use. The EFDC Assessment should correctly assess the site as having no impact on agricultural land (++).
24. Criteria 5.1 considers the landscape sensitivity of sites. The EFDC Site Assessment acknowledges that both SR-0478A and SR-0478B sit within a landscape area that is *'resilient to change and able to absorb development without significant character change'*. It is therefore not clear why both sites have received a negative assessment in landscape terms.
25. None of the above matters have been resolved between the two assessments.
26. Site A was removed at Stage 3 / 6.3 as it performed *'poorly on air quality, landscape sensitivity and contamination'* and is in a strongly performing Green Belt.
27. The assessment of the larger Site A in relation to air quality, landscape sensitivity, and contamination are identical to the allocated site, SR478B and they are within the same Green Belt parcel. For one site to be allocated regardless of these conflicts, while the wider site is removed for these reasons, is inconsistent and poses questions for the accuracy and effectiveness of the Site Selection Report, particularly in relation to SR0478A and B.
28. To remedy the fault and to ensure the allocations are consistent with the Objectives of the LP as a whole, and justified, site Chig.R5 should be extended to include the area of land submitted at Regulation 18 Stage.

Effective Consultation and Plan Preparation

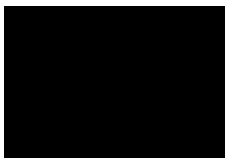
29. EFDC's Local Plan was approved for public consultation and subsequent submission to the Secretary of State at an Extraordinary Meeting of Council on 14 December 2017.
30. The precise date of the finalisation and publication of the complete Site Assessment Report (including appendices) is not known, but what is clear is that it was not available at the time this decision was taken, nor at any point during the Regulation 19 consultation (18 December 2017 – 29 January 2018). It is notable that there are a number of plans within the Site Assessment Report Appendix B which are dated March 2018. The first we were made aware of the publication of the Site Assessment Report in full was via email from EFDC dated 26 March 2018.
31. We expressed concerns as to the absence of the Site Selection Report in full for the duration of the pre-submission consultation period within our Regulation 19 representations.
32. The Site Selection Report clearly plays an important role in the plan-making process, specifically in respect of decisions as to whether to allocate or to reject potential sites for allocation for development. The importance of the Site Selection Report to the Local Plan process becomes acutely apparent upon review of Appendix B, which comprises a series of documents which assess the suitability, availability and achievability of sites through an iterative process; and through which sites which fail to meet certain criteria are rejected, whereas others are ultimately progressed and – subject to the findings of the Site Selection Report – may ultimately be proposed for allocation.

33. In addition, it is noted that Appendix B attempts to fulfil the important role of explaining the justification as to why certain sites are rejected and others are proposed for allocation. Not only does this form an important element of seeking to demonstrate the soundness of the Local Plan, it is particularly pertinent given that the SA/SEA published alongside did not, unlike many SA/SEAs at this juncture, include a detailed comparative assessment of potential sites, nor did it set out the justification for the selection or rejection of sites.
34. In relation to the SA/SEA, we raised concerns in our original January 2018 representations, questioning how EFDC's Local Plan met the requirement of the Environmental Assessment of Plans and Programmes Regulations (2004) for SA/SEAs to set out the reasons for the selection of preferred options, and the rejection of alternatives.
35. As noted in our January 2018 representations, references to the Site Selection Report (in the future tense) are made in the SA/SEA. The SA/SEA also makes reference to the role of the Site Selection Report (specifically the 2017 iteration) in decision-making process.
36. As per our January 2018 representations, we consider that the absence of key elements of the Site Selection Report 2017, together with the absence of anything within the supporting evidence base which made clear the reason for the rejection of sites such as SR0478A represents a substantial concern in respect of the plan's legal compliance. However, and again as we sought to stress in our January 2018 representations, such flaws can be addressed – as confirmed through *Cogent Land LLP v Rochford District Council* [2012] defects in the SA/SEA can be cured at later stages.
37. Whilst we welcome EFDC's acknowledgment that action is required, and attempts to cure defects in the Local Plan process to date, we nevertheless still have reservations that the invitation to pre-submission consultation respondents to supplement their representations may not be sufficient to ensure the Local Plan is sound and legally compliant. Our remaining concerns can be summarised as follows:
 - The decision by the Council to both publish the LP for pre-submission *and* subsequently submit the Local Plan to the Secretary of State appears to have been taken in the absence of a complete version of the Site Selection Report (and Highway Modelling), with elements unavailable at that time including the detailed assessment of sites, and the justification for their rejection or selection. It is unclear how key information within Appendix B of the Site Selection Report could have been considered and used by decision-makers to inform their decision to agree the LPSV and its submission.
 - The status of the invitation to supplement representations made on the LPSV, and the scope of those who have been invited to comment is unclear. It is not clear, for example whether only those who responded to the original consultation on the LPSV have been invited to comment again at this juncture (as could be inferred from the letter that was issued). Such an approach could of course potentially exclude those who may have an interest in the future development of the District, but may have chosen not to respond to the original consultation in the absence of assessment of site and an explanation as to why sites had been selected / rejected.
 - Linked to both of the above points, we remain concerned as to whether the SA/SEA is legally compliant given the lack of information contained within it explaining the assessment of sites, why options had been selected / rejected, and its reference to what was – at the time the SA/SEA was published – an incomplete Site Selection Report. We are not aware of the SA/SEA having been updated to reflect the completed Site Selection Report, nor does the invitation to supplement comments on the LPSV appear to include invitation to comment on the SA/SEA.

38. We are of the view that the above issues can be addressed, and a sound and legally compliant Local Plan for Epping Forest District can still be prepared. However, we would urge the Council to seek to take action to resolve the above. This may require, for example, the LP to be reconsidered by decision-makers in light of the information now available to Members in the complete Site Selection Report.

Conclusions

39. Our clients, M. Scott Properties, support the proposed allocation of land at Chigwell Nurseries, Chigwell for residential development. An allocation for residential development reflects the evidence prepared to support the LP. The site is an ideally located brownfield site that can provide a highly sustainable form of development for new residents, within walking distance of the tube station, high street, schools and other local services. It is able to deliver mitigation to secure improvements to biodiversity, a defensible Green Belt boundary and attractive landscape enhancements.
40. However, we consider that the evidence prepared for the larger site should be reviewed and the LP amended to reflect the submitted site and not the limited release identified in the LP as Chig.R5. A number of the conclusions in the earlier SSR, and the 2018 SSR are considered to be inconsistent and do not reflect the actual character and facts of the site's condition and location. The SSR has not been updated appropriately with reference to earlier submissions, otherwise clear errors and irregularities within it would not still be present.
41. With these points addressed, we consider it highly likely that the 2018 SSR would have concluded that the submitted site is suitable, available and deliverable for a sustainable form of development. These matters should be addressed in order for the Plan to be considered Justified by the evidence, in accordance with National Policy, and Positively Prepared.
42. We seek important amendments to the Plan in order to address the matters identified. Critical evidence which seeks to provide the justification for the selection or rejection of sites has, albeit belatedly, been published and it is acknowledged that those who responded to the consultation on the LP have been invited to supplement their representations. Nevertheless, we remain concerned that the action taken by the Council to seek to cure defects in the plan-making process is not yet sufficient to ensure a sound and legally compliant Local Plan (particularly in relation to decision-makers opportunity to consider key information, and in respect of the SA/SEA). There remains opportunity for such issues to be addressed, and we urge the Council to take action to ensure the Local Plan is sound and legally compliant.
43. On review of Appendix B of the Site Selection Report 2017, it is clear that evidence submitted to the Council in respect of the suitability of sites SR-0478A and SR0478B has not been given due consideration.
44. The rejection of the sites is not justified, and is not supported by any robust, site-specific evidence. In respect of some concerns raised on the suitability of the sites, the Site Selection Report 2018 is factually incorrect.
45. Conversely, robust, site-specific evidence has been provided to the Council which confirms that the site is deliverable, achievable and available; and that concerns expressed in respect of the allocation of the site in terms of Green Belt and agricultural land are misplaced.
46. The rejection of the wider site is particularly disconcerting as, as per our representation on the LP, the proposed new Local Plan does not currently allocate sufficient land for housing across the District, to ensure the Local Plan is sound.
47. In order to ensure the Local Plan evidence base is robust, the Council is urged to revisit its assessment of sites SR0478A and SR0478B to ensure it is factually correct and that evidence submitted is given due consideration. Following necessary revisions to the Site Selection Report, the Local Plan will require updating to ensure that it is justified and can be sound.



Associate Planner
Strutt & Parker