

## **EPPING FOREST LOCAL PLAN EXAMINATION IN PUBLIC**

# **MAIN MODIFICATIONS CONSULTATION RESPONSE**

**ON BEHALF OF MARTIN GRANT HOMES, PERSIMMON HOMES &  
TAYLOR WIMPEY (STAKEHOLDER ID: 19LAD0107)**

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
PLANNING AND COMPULSORY PURCHASE ACT 2004**



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## **1.0 INTRODUCTION**

- 1.1 This Main Modifications consultation response is prepared by Pegasus Group on behalf of Martin Grant Homes, Persimmon Homes and Taylor Wimpey, who are promoting land at West of Katherine's within the Water Lane Area Allocation (Policy SP 5.2).
- 1.2 Comments have been submitted to all previous stages of the Local Plan process in relation to this emerging allocation and we attended the Examination Hearings.
- 1.3 The comments submitted in relation to the Main Modifications consultation are a continuation of these previous comments and have been sorted using the Main Modifications reference numbers in the Inspectors published schedule.
- 1.4 We have commissioned specialist ecologists, Ecology Solutions, to review the supporting evidence base documents to the Local Plan. These reviews are summarised in these detailed comments and appended to this report in Appendices 1 and 2.

## 2.0 COMMENTS ON MAIN MODIFICATIONS

### MM 18

#### **New paragraph after 2.117**

- 2.1 MM18 includes reference to key elements of sustainable transport measures to be available when the Garden Communities are first occupied. There is no explanation as to what these key elements will be and this needs to be clarified as part of the policy. It may not be possible due to phasing, land ownership and viability issues to provide the complete sustainable transport measures for the whole site upon first occupation. There needs to be flexibility built into the policy and an understanding of phasing for each Garden Community. It is acknowledged that it is important to ensure that within each phase there is sufficient sustainable transport provision so that unsustainable habits are not established. However, there needs to be an understanding from the Council that it is unlikely that the complete sustainable transport corridor within the site as shown on the proposals map will be available from first occupation. A combination of elements such as improved public transport links, electrical bicycle hire hubs and car sharing initiatives will be key in the initial phases of the development which then can be enhanced by the provision of other measures as the development progresses. The provision of the STC is linked to a number of wider elements outside of the control of each Garden Community and therefore this may be delayed beyond first occupation.

- 2.2 *Changes required: Clarification required in relation to key elements of sustainable infrastructure and that full extent and completion of STC is not required in the initial phases of development.*

#### **New paragraph after 2.118**

- 2.3 We have previously commented on the HGGT IDP during the various iterations of the plan-making process. The most recent comments submitted related to the Partial IDP Update (July 2021). Our concerns remain and are further

detailed in this submission under **MM105-106**. Clarification is needed as to which IDP schedule (including phasing of costs) is to apply to the modelling. The schedule that formed part of the partial IDP update in July 2021 is different to the September 2020 version which is attached to the Main Modifications consultation and both versions are significantly different and have differing conclusions and costs associated to the Water Lane allocation.

2.4 As noted in MM18, the IDP is a live document to be updated regularly to ensure it reflects current infrastructure requirements. However, there is concern that these updates will not be consulted on and new material can be introduced which does not form part of the Examined Local Plan. Our response to the Partial IDP Update highlighted a number of discrepancies in the costs schedule but these have not been addressed by the LPA.

2.5 *Changes required: Clarification is required in relation to the costs used in the modelling to justify the IDP and Viability Assessment. A high-level assessment is only appropriate at this stage and additional detailed cost issues and flexibility should be allowed at the planning application stage.*

## **MM 19**

### **New point after (xviii)**

2.6 MM19 refers to changes to Policy SP4 and adds new criterion to include the need for a heritage statement which is fully supported. A further new criterion relates to ensuring that key transport interventions are provided as prerequisites of development being occupied. As stated previously under the MM18 comments there is no explanation as to what these key elements will be and this needs to be clarified as part of the policy. It may not be possible due to phasing, land ownership and viability issues to provide the complete sustainable transport measures for the whole site upon first occupation. Flexible wording is required in this policy to allow for phasing of the Garden Communities.

- 2.7 *Changes required: Clarification required in relation to key elements of key infrastructure and that full extent and completion of STC is not required in the initial phases of development.*

## **MM 21**

### **Part G Water Lane (iii)**

- 2.8 The changes outlined in MM21 revises Policy SP5 where it relates to the Water Lane allocation. Criterion (iii) refers specifically to SANG provision at Water Lane allocation as set out in Mitigation Strategy for the Epping Forest Special Area of Conservation (SAC). The Green Infrastructure Strategy (GIS), which has been adopted by the Council (ED124A-G/EB159A-G), sets out that the West Katherines site is located outside of the Zone of Influence (ZoI) for the SAC and therefore does not need to provide for SANG. It refers to a requirement of 13ha of SANG to be provided directly in relation to the West Sumners part of the allocation. A map on page 112 of the GIS shows an indicative area of SANG within the West Sumners site and none within the West Katherines site. We made representations during the earlier stages of the Local Plan which highlighted that the West Katherines site is not within the ZoI and the provision of SANG is not required within the site. This position is supported by the adopted GIS and therefore the Policy wording needs to be clearer to clarify that the SANG provision as set out in Policy SP5 relates only to the West Sumners site and not the whole allocation.
- 2.9 Specialist ecological advice has been sought in relation to this matter on behalf of the development consortium and is appended to these representations (Appendix 1 and 2). It is concluded that the position of the EFDC HRA and of Natural England is that recreational effects are not likely to arise in relation to Lee Valley SPA / Ramsar site or Wormley Hoddesdon park Woods SAC as a result of the Water Lane allocation. Part of the allocation is within the Zone of Influence for Epping Forest SAC (West Sumners), and in line with the adopted strategy that part will need to bring forward SANG to mitigate likely significant effects. The West Katherines site will be subject to a separate planning

application and is thus a separate project under the Habitats Regulations. It is wholly outside the ZoI, and therefore in line with the strategy is not required to include SANG within its boundaries.

2.10 EFDC makes reference to 'futureproofing' and the vague notion that the ZoI may be extended at some unspecified point in the future. Case law requires that Habitats Regulations Assessments are made in light of the best available scientific knowledge in the field at the time of the assessment, not unspecified future scenarios. The best available knowledge available at the time of writing has resulted in the 6.2km ZoI, which does not cover the West Katherine's site. Hence, there is no requirement for it to provide SANG.

2.11 *Changes required: Add specific wording to reflect the GIS: Clarification that SANG to be provided within the West Sumners site only*

## MM40

### New Paragraph following 3.91

2.12 MM40 relates to changes to the supporting text to Policy T1 to better describe the HGGT Sustainable corridors and provides reference to STC Map 2.x (plan reference number to be confirmed at a later stage) which safeguards land for the STC and states that developments are to be national leaders in sustainable movement. This additional detail of the STC is useful, however, additional clarification is needed as to the requirements for this STC and an understanding of the complexities of delivering a route which crosses multiple sites and land ownership which may impact the delivery of such a concept.

2.13 *Changes required: clarification is needed as to the requirements for this STC and an understanding of the complexities of delivering a route which crosses multiple sites and land ownership which may impact the delivery of such a concept.*

## **MM42**

### **Paragraph 3.95**

- 2.14 This modification allows for the direct reference to land needed for the provision of the STC. This is supported as it is fundamental that land is available to ensure the comprehensive delivery of the full STC route. As noted in our earlier comments, the STC route relies on numerous land owners and developers of the Garden Communities can only bring forward the part of the STC within their site. In order for the full STC route to become established it is important to ensure that land is made available and can come forward as part of the delivery process. It is suggested that reference is included to the LPA using their compulsory purchase powers to purchase land as set out in Map 2.xx to ensure the STC can be fully delivered. There is an emphasis in other parts of the Plan that the sustainable transport provision is to form part of the initial stages of site delivery (MM18 & MM19). Therefore, it is important to ensure that land is available and comes forward for the provision of the STC outside of the Garden Communities.

*Changes required: Reference should be included to using relevant Compulsory Purchase Orders to ensure land is available to ensure the full extent of the STC can be delivered.*

## **MM46**

### **Footnote 1**

- 2.15 MM46 relates to detailed changes to DM2 to deal with the Air Quality and impact on the Special Protection Area (SPA) site. There is reference made to the Zone of Influence as set out in the HRA and how this may change as recreational pressure from development increases during the plan period. The evidence for the HRA relating to visitor pressure of the Epping Forest SAC, states that the visitor surveys recorded none from Harlow. While it is reasonable to consider futureproofing of development, this must be on the



basis of justifiable evidence and what is likely to occur, not on mere possibilities. As set out in the detailed ecology note in Appendix 1, the justification for the 6.2km ZoI is largely on the basis of visitors from the south of the SAC, and evidence shows negligible interest from Harlow. This must be taken into consideration as part of the assessment of likely significant effects arising from the West Katherines scheme. Case law requires that Habitats Regulations Assessments are made in light of the best available scientific knowledge in the field at the time of the assessment, not unspecified future scenarios.

- 2.16 The best available knowledge available at the time of writing has resulted in the 6.2km ZoI, which does not cover the West Katherines site. Hence, there is no requirement for it to provide SANG. The adopted GIS shows West Katherines located outside of the ZoI and states that the 13ha of SANG to be provided relates to the development provision of West Summers only. It is important to ensure that the wording of this footnote does not allow for onerous changes over the plan period which may revise the ZoI without proper consultation with all parties.

*Changes required: remove reference to changing the ZoI during the plan period*

## **MM47**

### **Part B**

- 2.17 MM47 proposes additional changes to Policy DM2 to reflect the proposed Air Pollution Mitigation Strategy and the Green Infrastructure Strategy. Part B has been specially amended to reference the Green Infrastructure Strategy. This is welcomed as the GIS sets out clear indications for the development of the Garden Communities and the provision of SANG. It is considered that the conclusions of the GIS and the requirements for SANG in the West Summers part of the Water Lane allocation should be clearly set out in the wording of

Policy SP5 as set out in our comments in relation to MM21.

- 2.18 *Changes required: the conclusions of the GIS and the requirements for SANG in the West Summers part of the Water Lane allocation should be clearly set out in the wording of Policy SP5 as set out in our comments in relation to MM21.*

## **MMs 105-106**

- 2.19 MMs 105-106 relate to changes to Policy D1 and refer to the Infrastructure Development Plan (IDP) and the need for developments to contribute to infrastructure items as set out in IDP. Comments have been submitted to the Inspector and Epping Forest Council during the consultation stages of the Local Plan relating specifically to the IDP and the Strategic Viability Assessment. The most recent comments were submitted to the Partial Update Of the IDP in July 2021. However, significant concerns and outstanding matters still remain. We have attempted to discuss these directly with the LPA to try to overcome these detailed matters.
- 2.20 In the first instance, clarification is needed as to which IDP schedule (including phasing of costs) is to apply to the modelling. The schedule that formed part of the partial IDP update in July 2021 is different to the September 2020 version which is attached to the Main Modifications consultation and both versions are very different and have differing conclusions and costs associated to the Water Lane allocation. No justification is provided as to how these infrastructure costs have been calculated and these costs appear to change depending on which schedule is used. It is unclear as to the basis of the various total cost estimates and how these have been derived. It is necessary for the LPA to provide detailed justification for these cost estimates in order for these to be reviewed for accuracy.
- 2.21 As part of this, it is necessary for the LPA to provide justification as to the percentage contribution from the West Katherine's site and again, how has this been derived. In order to fully assess the IDP, it is necessary for the project team to review this information and the justification of the proportion of costs.

- 2.22 The proposed programming of contributions needs to be a part of this review and a full understanding of how this programme has been established. It is worth noting that the contributions profile has a commencement date of 2018 and therefore needs updating and appropriate adjustments made. The Local Plan runs from 2017 to 2031 and therefore there is a possible mismatch of timings and contributions exacerbated by the delay to the Local Plan and the likely commencements on site. This needs to be reviewed and updated accordingly
- 2.23 As noted in MM18, the IDP is a live document to be updated regularly to ensure it reflects current infrastructure requirements. However, there is concern that these updates will not be consulted on and can introduce new material which does not form part of the Examined Local Plan. Our response to the Partial IDP Update highlighted a number of discrepancies in the costs schedule but these have not been addressed by the LPA.
- 2.24 There was a discussion during the Hearings regarding the status of the viability evidence in relation to paragraph 57 of the 2019 Framework and whether these new stricter requirements will apply. The Local Plan is being examined in accordance with the 2012 Framework due to the timing of its submission (pre-January 2019). The Inspector's letter following the Examination Hearings commented on this in paragraphs 9-11 and concurred that it is not necessary for soundness to modify the Epping Forest Local Plan with the specific intention of invoking paragraph 57 of the 2019 Framework. Therefore, the Local Plan and the associated evidence base documents, including the viability assessment and IDP should be considered against the 2012 Framework.
- 2.25 It would appear that the LPA is attempting to ensure that the stricter guidance applies to viability assessments (para 57) even though not all the essential information is available to the Council and stakeholders at this time. The main change between the 2019 Framework from the 2012 Framework is a shift of viability testing from the development management stage to the plan-making stage. Due to the significant omissions in the viability costings and the lack of information available at this stage, it is not possible to confirm all aspects of viability at the plan-making stage and the more detailed assessment should be

undertaken at the planning application stage.

2.26 The concerns relating to the IDP as set out in our comments to the Partial Update in July 2021 can be summarised as follows:

1. The IDP uses August 2020 BCIS figures which have increased significantly in the period and a new August 2021 update is available and should be used to ensure development costs are up to date.
2. No allowance has been made for Building Regulations Part F/Part L 2023 costs or 2025 Future Homes noting that Building Regulations compliance alone is considered “low quality” in the Sustainability checklist.
3. Site infrastructure costs including highways, utilities, drainage, landscaping are ignored in the modelling. This is explained in terms of “site-specific costs” being reflected in the Benchmark Land Value – however, these are not site-specific (e.g. electricity pylons) but apply to all strategic sites and therefore should be subject to a separate allowance.

2.27 It is important that these concerns are addressed at this stage or at least an acknowledgement that there will be an ability to re-assess these costings and their impacts during the planning application stage when further information is available.

2.28 Whilst we support the provision of initial viability documents to assist in the process, these need to be correct and use realistic assumptions in order to provide a useful reference. The detailed comments we have provided need to be taken into consideration and relevant adjustments made to the modelling.

2.29 We consider that the key infrastructure necessary to achieve the Garden Town growth is deliverable, however, it is necessary to be more explicit in the Local Plan and supporting evidence base documents as to the flexibility needed to

the provision of affordable housing and the apportioned infrastructure costs to ensure the viability of the Garden Town sites.

2.30 It is also noted that additional costs have been attributed to the West Katherines scheme as part of the Air Pollution Mitigation Strategy (£232 per dwelling totalling £3,433,610). The rationale of why this development needs to contribute to this strategy when it is outside of the Zone of Influence for the SAC is set out on in detail in Appendix 1 and 2. Notwithstanding the rationale, it is unclear if these additional costs have been taken into consideration as part of the IDP at this stage.

2.31 *Changes required: Clarification is required in relation to the costs used in the modelling to justify the IDP and Viability Assessment. A high-level assessment is only appropriate at this stage and additional detailed cost issues and flexibility should be allowed at the planning application stage.*

## **MM112**

2.32 MM112 sets out the requirements for an early review of the Local Plan. The Council needs to complete a review of the Local Plan policies and publish its conclusions at least every five years.

2.33 Conclusions from the first review will be published no later than five years from the adoption date of the Plan (anticipated to be 2027). It is likely that the review will conclude that certain policies are out of date due to the reliance on outdated demographic data and that the Plan was examined using the now superseded 2012 Framework.

2.34 This early review is supported and welcomed to ensure the continued certainty of the Local Plan and the Garden Community allocations.

### 3.0 ADDITIONAL EVIDENCE BASE DOCUMENTS

- 3.1 We submit comments in relation to the Green Infrastructure Strategy (EB159A-G) and the Air Pollution Mitigation Strategy (EB212). These detailed comments are attached in Appendix 2 and have been summarised below.

#### **Green Infrastructure Strategy**

- 3.2 This note concludes that the GIS states that the West Katherines site is wholly outside the Zone of Influence and therefore no need for SANG arises. This is a point that we have consistently stated throughout the Local Plan process and one which we fully support. The plan on page 112 of the GIS shows the SANG entirely within the West Sumners site. Therefore, it should be made clear within the text of the document and within Policy SP5 (MM21) that the SANG is to be wholly delivered within West Sumners and not provision is required within West Katherines.
- 3.3 The appended note (Appendix 2) also provides advice on Biodiversity Net Gain (BNG) and how the West Katherines site will be better placed to provide a greater BNG than would be the case if it has to facilitate SANG due to Natural England's current position on SANG and BNG.

#### **Air Pollution Mitigation Strategy**

- 3.4 The note in Appendix 2 sets out in detail our concerns regarding the Air Pollution Mitigation Strategy in relation to the West Katherines Site.
- 3.5 Of particular concern is Section 7 which relates to how the strategy is to be funded. Paragraph 7.1, states that strategy should be "*funded through the payment of financial contributions from all relevant development proposals*". The West Katherines site is currently subject to the tariff since it is part of The Garden Communities, but this is simply a collective term for these developments in the District. What is important is the likely effect of

development at the West Katherines site on Epping Forest SAC and therefore the need for any planning proposal coming forward at the site to contribute to the council's strategic approach.

- 3.6 It is clear that the site is out with the ZoI for Epping Forest SAC, and on this basis the scheme is not required to provide SANG. If that point is accepted, as it should be, then it is not clear how a different logic is being applied to the mitigation of air quality effects.
- 3.7 The scheme will be bringing forward a series of measures on-plot to encourage more sustainable transport in line with various planning policies, and of course contributing to local transport initiatives, but despite repeated references to the evidence base, the strategy is far from clear on the rationale for requiring the West Katherines site to contribute yet more funds to support the strategic approach. With reference to the best available evidence – that supporting Natural England's ZoI for the SAC, the scheme for the West Katherines site would appear not to be a relevant development proposal, to use the language of the strategy, and therefore would not be required to make further financial contributions over and above the already very significant commitments on site and in the locality. In the event that this position can be justified, further detail on the calculation of the tariff is required.

## **Appendix 1:**

Review of Obligations under the Conservation of Habitats and Species Regulations 2017 -  
Ecology Solutions (December 2020)



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## LAND AT WEST HARLOW, ESSEX

### REVIEW OF OBLIGATIONS UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

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#### INTRODUCTION

##### *Background*

1. Ecology Solutions was commissioned by the consortium to review the position of the Local Planning Authority (Epping Forest District Council) with respect to the approach to European designated sites, and specifically the need to provide Suitable Accessible Natural Greenspace (SANG) as part of the scheme.
2. The site, known as West Katherines, is outwith the Zone of Influence (Zoi) for Epping Forest Special Area of Conservation (SAC), but the wider Local Plan allocation of which it is part, Water Lane, partly falls within the Zoi. It is the view of EFDC that SANG is therefore required by the West Katherines site, notwithstanding its distance from the SAC. Moreover, reference has been made to other European designated sites in the locality, namely Wormley-Hoddesdonpark Woods SAC and Lea Valley Special Protection Area (SPA), and the potential for adverse effects upon them. It is understood that EFDC has suggested a SANG quantum of 8ha per 1000 new population.
3. It is understood that a joint masterplan for the whole Water Lane allocation is being progressed with all landowners and developers, but separate planning applications will be submitted.

##### *Site Characteristics*

4. The site is located to the west of the town of Harlow, Essex. It is bounded to the south by Water Lane, to the west by the B181 Epping Road, and to the north and east by open countryside and existing residential development respectively. Old House Lane is broadly central to the site, providing access to the various horticultural nurseries that characterise this area.
5. The site contains a large number of buildings, including residential houses and other structures. A large proportion of these are greenhouses associated with the horticultural nurseries. There is a mosaic of habitats across the site including multiple waterbodies, woodlands, arable land, grassland and standard trees.

*Purpose of this Note*

6. The purpose of this note is to review EFDC's HRA and position, the position of Natural England and the implications for the site, whether EFDC's current position is the correct one, and hence the consortium's obligations. Reference is made to the legislation and to relevant precedents.

**DOCUMENT REVIEW**

7. This section of considers the relevant sections of the documents reviewed and their relevance to the EFDC position.

*Habitats Regulations Assessment of Epping Forest District Council Local Plan (January 2019)*

8. Paragraphs 1.10 to 1.11 of the Habitats Regulations Assessment (HRA) identifies the relevant European sites as follows:

**1.10 There are three European sites that lie partly within Epping Forest District:**

- Epping Forest SAC;
- Lee Valley SPA; and
- Lee Valley Ramsar site.

**1.11 Outside the District, the following site also requires consideration because there is potential for impacts stemming from the Local Plan to create significant effects even though the site lies outside the authority boundary:**

- Wormley-Hoddesdonpark Woods SAC located 2.2km west of the District.

9. Table 4 sets out the Screening Assessment of Submission Local Plan Policies. The relevant sections of Policy SP 5 Garden Town Strategic Allocations are reproduced below.

**SP 5.2 Water Lane Area**

**Approximately 2,100 homes; 0.5ha for up to 5 traveller pitches**

**B** As well as the delivery of new homes sites SP5.1 – SP5.3 will also be expected to make provision for appropriate small-scale employment, retail and community uses in accordance with other policies within the Plan. The Garden Town Communities must be planned and delivered as high quality, integrated, sustainable and distinctive developments supported by necessary infrastructure, services and facilities.

**C.** Infrastructure requirements must be delivered at a rate and scale to meet the needs that arise from the proposed development, in accordance with the Infrastructure Delivery Plan. Development identified in this policy will be expected to make a contribution proportionate to its scale and impact for the delivery of improvements to Junction 7 and other strategic requirements..

**D.** Development proposals in relation to sites SP 5.1-5.3 will be required to be in general conformity with a Strategic Masterplan endorsed by the Council.

**E** Development proposals for the Garden Town Communities (and where applicable Strategic Masterplans) must reflect and demonstrate that the Place Shaping and Garden Town principles set out in policies SP 3 and SP 4 have been adhered to

**G** Water Lane Area: Land allocated in the Water Lane Area (SP 5.2) will be brought forward on a phased basis for a comprehensive high quality development to include:

- (i) at least 2,100 homes up to 2033;
- (ii) 0.5 hectares for up to 5 traveller pitches;

(iii) strategic 'green infrastructure' comprising natural / semi natural open space, walking and cycling routes, flood mitigation and wildlife space and a Green Belt defensible boundaries as indicated on the map;  
 (iv) a local centre;  
 (v) A two-form entry primary school;  
 (vi) Contributions towards new secondary school provision within the Garden Town;  
 (vii) Early years facilities;  
 (viii) The provision of appropriate community and health facilities;  
 (ix) Highway and transport improvements including works to Water Lane / A1169 roundabout; A1025/Abercrombie Way signals and traffic calming along the A1169 Southern Way Corridor;  
 (x) Satisfactory water supply and waste water network infrastructure for occupants; and  
 (xi) Bus services and direct pedestrian and cycle links between housing and the facilities that serve them.

10. Though it refers to strategic open space, the policy notably does not specify that SANG would need to be provided across all schemes. That would of course not preclude the need for it in particular circumstances, but clearly at the time of drafting the policy EFDC did not envisage that all allocations would require SANG: some would and some would not, depending on their particular circumstances.

11. Table 4 sets out the likely significant effects of Policy SP 5:

**The closest of these sites is 5.5km from Epping Forest SAC (SP 5.1), 6.3km from Wormley-Hoddesdonpark Woods SAC (SP 5.2), and 2.9 km from Lee Valley SPA and Ramsar site (SP 5.2).**

**Full screening of the Site Allocations can be found in Table 5, Table 6 and Table 7. Potential impact pathways present include:**

- **Recreational Pressure**
- **Atmospheric Pollution**
- **Water Abstraction**
- **Water Quality.**

**Locations are illustrated on Figures 3A to 4B.**

12. Under the heading *Likely Significant Effects of Site Allocations*, paragraph 4.6 states that:

**For Residential and Traveller Site Allocations, impacts relating to recreational pressure in combination have been screened out for Allocations located more than 6.2 km from Epping Forest SAC, 7 km from Worley-Hoddesdonpark Woods SAC and 6 km from Lee Valley SPA and Ramsar site. The reasoning for these distances is discussed in Chapter 5.**

13. Table 5 is the Screening Assessment of Residential Site Allocations. For the Water Lane Area, it states that it is 5.8km from Epping Forest SAC' 2.9km from Lee Valley SPA/ Ramsar site, 6.3 km from Wormley Hoddesdonpark Woods SAC. This refers to the whole allocation and does not distinguish between the two parcels. Likely Significant Effects are defined as follows:

**In-combination effect of recreational pressure and urbanisation upon Epping Forest SAC.**

**In-combination effect of recreational pressure upon Lee Valley SPA / Ramsar site**  
**In-combination recreational pressure for Wormley Hoddesdonpark Woods SAC.**

14. Chapter 5 considers Recreational Pressure and Urbanisation. Paragraph 5.1. notes that Policy SP 5 Garden Town Communities was “*deemed to pose a risk of likely significant effects upon the Lee Valley SPA and Ramsar site, Wormley-Hoddesdonpark Woods SAC and Epping Forest SAC internationally designated sites as a result of increased recreational pressure including urbanisation effects*”, and are therefore considered further in the chapter.

Lee Valley SPA / Ramsar site

15. The following paragraphs are relevant to Lee Valley SPA / Ramsar site:

**5.5 The following SSSI's are components of the SPA/ Ramsar site:**

- Turnford & Cheshunt Pits SSSI straddles the boundary between Epping Forest District and Broxbourne and lies 300m from the settlement of Waltham Abbey. Most of the site is owned by the Lee Valley Regional Park Authority and is managed as a Country Park (River Lee Country Park).
- Rye Meads SSSI is located approximately 70 metres north of Epping Forest District and 2.6km from the nearest significant village within that district (Lower Nazeing, with a population c. 4,500). The site is a Nature Reserve and is owned by Thames Water and the RSPB who manage the site with Herts and Middlesex Wildlife Trust.
- Amwell Quarry SSSI is located 2.5km north west of the District boundary. The site is a National Nature Reserve. It is owned and managed by Herts and Middlesex Wildlife Trust.

5.6 The Local Plan allocates a total of 3,178 dwellings between 1.1km and 2.9km from the SPA/Ramsar site on 16 development sites at Waltham Abbey, Roydon (near Harlow) and Nazeing. It does not allocate any dwellings closer to the SPA/Ramsar site than 1.1km and 2,203 of the dwellings (69% of the total) are located over 2.5km from the SPA. The majority of these (66% of the total) are the sites that comprise the SP 5.2 Water Lane Area (2,100 dwellings) located 2.9km from the Rye Meads part of the SPA/Ramsar site at its closest. Moreover, visiting Rye Meads from the Roydon area is more convoluted than suggested by a simple measure of ‘as the crow flies’ due to the intervening railway line and River Stort and the existence of a toll on Rye Road [some 50p, considered to be a deterrent to casual visitors]. As such, the toll-free route requires one to drive north onto the A414, west along the A414 and then south into Hoddesdon to reach the reserve.

5.7 There are several reasons why this analysis considers that recreational pressure effects on this site from development in Epping Forest District are unlikely to result in adverse effects on integrity even ‘in combination’:

- Amwell Quarry SSSI (Amwell Nature Reserve) and Rye Meads SSSI (Rye Meads Nature Reserve) are both laid out in considerable detail with a network of hides (ten at Rye Meads, three at Amwell) and clearly marked footpaths/boardwalks with screening vegetation that are specifically laid out and designed to route people away from the sensitive areas and minimise disturbance while at the same time accommodating high numbers of visitors. Additionally, no dogs are allowed (except registered assistance dogs) and the wet and marshy/open water nature of the habitats on site inherently limits off-track recreational activity, rendering it difficult to accomplish and unappealing. For these reasons it is considered that the vulnerability of Amwell Nature Reserve and Rye Meads Nature Reserve to the potential adverse effects of recreational activity that can affect other less well-managed sites is very low. In Turnford and Cheshunt Pits SSSI, recreational activity is similarly regulated through zoning of water bodies. The majority of the site is already managed in accordance with agreed management plans in which nature conservation is a high or sole priority.

- Two of the three faunal species for which the SPA and Ramsar site are designated – gadwall and shoveler – are not inherently highly sensitive to disturbance and are readily able to adapt (habituate) to the presence of shore-based human recreational activities without being flushed (as opposed to water-based activities which are potentially highly disturbing).
  - Turnford & Cheshunt Pits is located within the Lee Valley Country Park, which is part of the Lee Valley Regional Park. In their response to the Regulation 18 Draft Epping Forest Local Plan the Lee Valley Regional Park Authority did not raise any concerns regarding future recreational pressure on the SPA from growth in Epping Forest District.
  - The closest allocated housing sites in Epping Forest Local Plan (SR-0099 (WAL.R2) providing 316 dwellings and SR-0541 (WAL.R5) providing 67 dwellings) are more than 1km from the closest part of the SPA/Ramsar site (Turnford & Cheshunt Pits SSSI) and considerably further than that from other parts. Various investigations into the habits of recreational visitors to nationally and internationally important wildlife sites have found that the majority of dog walkers and casual walkers are generally disinclined to walk very far to visit sites for recreation. For example, in one of the most thorough studies visitor surveys were conducted at the Thames Basin Heaths Special Protection Area. The study found that the average distance between the visitor's home postcode and Thames Basin Heaths SPA when arriving by foot was 0.8 km, with 75% of foot-based visitors living within a 0.9 km straight line distance from the visitor survey point. Other surveys show a similar broad pattern, since there is a natural limit as to how far most people are prepared to walk to visit a particular countryside site, even when it is large and appealing. The Thames Basin Heaths is also extensively visited by people travelling by car, who typically live 5km from the SPA. However, that site has an abundance of parking whereas parking in the vicinity of Rye Meads, Turnford & Cheshunt Pits and Amwell Quarry will naturally restrict the number of car-based visitors at any time and, unlike Epping Forest SAC, informal roadside verge parking is very limited.
16. The findings of the HRA in this respect are considered to be very persuasive. The section concludes at paragraph 5.9 that there would be no likely significant effects arising from recreational on Lee Valley SPA / Ramsar site, albeit while noting at paragraph 5.8 the text of Policy DM 2, to the effect that *"[n]ew residential development likely to have a significant effect, either alone or in combination with other development in these areas, will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects"*.
17. Notwithstanding reference to the policy, given the points made in the HRA it is not considered likely that the West Katherines development would contribute to a significant in-combination effect as a result of increased recreational pressure.

#### Wormley-Hoddesdonpark Woods SAC

18. The following paragraphs of the HRA are relevant to the assessment of effects on Wormley-Hoddesdonpark Woods SAC:

**5.10** The site is a large, attractive area of ancient woodland with extensive public access and close to large urban centres. The majority of the woods in the complex are in sympathetic ownership, with no direct threat (Wormley Hoddesdonpark Wood, for example, is managed by The Woodland Trust). No visitor survey data that identifies the recreational catchment could be sourced for Wormley-Hoddesdonpark Woods. However, data does exist for other large woodland European sites, such as Ashdown Forest and Epping Forest SAC. These indicate that core visitor catchments (i.e. the zone within which the majority (c. 75%) of regular, frequent visitors are concentrated) tend to lie between c. 5km (Epping

Forest) and 6-7km (Ashdown Forest) from the site. If the more precautionary figure of 7km is used for Wormley Hoddesdonpark Woods in the absence of bespoke visitor data for this site, the zone would include some small villages in the north-west of Epping Forest District (such as Nazeing, Lower Nazeing and Bumbles Green), but none of the larger settlements.

5.11 Natural England's Site Improvement Plan (SIP) indicates that the site is heavily used by the public for recreational purposes. However, it also indicates that recreational activity is generally well-managed. Sensitive management of access points and routes by the site's main owners has been largely successful in mitigating the potential adverse effects of this high level of use. As such, general recreational pressure is not indicated in the Site Improvement Plan as a current or future obstacle to achieving or maintaining favourable conservation status and preserving the integrity of the SAC.

5.12 Recreation is actively promoted on this site and most recreation is concentrated on well-established paths. Most of the complex is covered by a High Forest Zone Plan (Hertfordshire County Council 1996) which sets out a framework for woodland management across the whole area. It aims to restore a varied age structure and natural stand types through sustainable forestry.

5.14 Based on the issues identified in the Site Improvement Plan and the fact that concerns about recreational pressure on this site have not been flagged by Natural England during the preparation of the Local Plan and its HRA, which commenced in 2012, there is no basis to conclude that such an increase would result in a likely significant effect on the SAC.

19. The conclusion is then that the allocations are not likely to have a significant effect on the SAC through increased recreational pressure.
20. It is therefore the case that the more recent suggestions that the development at West Katherines could have an adverse effect on these two sites is not borne out by the detailed review of the evidence completed as part of EFDC's own HRA.
21. In its response to *Matter 1 Issue 5: Have the requirements of the Conservation of Habitats and Species Regulations 2017 been met?*, Natural England conclude as follows at paragraph 1.5 :

**Natural England agrees with the conclusions of the HRA in relation to the Lee Valley SPA and Wormley- Hoddesdon Park Woods SAC in relation to water quantity, air pollution and recreational pressure impacts.**

22. The apparent current position of EFDC would therefore appear to be contrary to Natural England's position on the likely significant effects on these two sites.

#### Epping Forest SAC

23. The following paragraphs from the HRA are relevant to the consideration of effects on Epping Forest SAC as a result of the development at West Katherines (emphasis added):

5.17 Epping Forest SAC receives a great many visits per year (estimated at over 4 million) and discussions with the City of London Corporation have identified long-standing concerns about increasing recreational use of the Forest resulting in damage to its interest features. A programme of detailed formal visitor surveys has been undertaken and has identified that 75% of visitors to Epping Forest SAC arise from within approximately 6km (6.2km) of the site. This is relevant because the 75th percentile is often used to define the core recreational catchment of a European

site. However, within that 6.2km zone visitors are not evenly spread; the vast majority of Essex-resident visitors live within 3km of the SAC with few living further afield. For example, only 3 visitor postcodes recorded in the visitor survey were between 3km and 6.2km of the SAC in Epping Forest District; almost all visitors resident in Epping Forest District (irrespective of visit frequency or activity) lived within 3km of the SAC. The 6.2km distance appears to be influenced particularly by residents to the south of the SAC in north London who are dispersed over a wider area. Nonetheless, Epping Forest District Council is using 6.2km as a definition of the core catchment of Epping Forest SAC for purposes of determining mitigation.

5.19 There are sixty sites listed in Table 9: 58 housing sites and 2 gypsy & traveller sites. Of these, 49 sites are located within 3km of the SAC, the zone within which almost all current EFDC-resident visitors recorded in the survey were located. Ten of these sites (EPP.R1 (West), LOU.R17, LOU.R18, LOU.R6, LOU.R7, LOU.R8, BUCK.R1, BUCK.R2, BUCK.R3, THYB.R3) are located very close to the SAC (within 400m). Since Epping Forest SAC is already known to be under pressure from high levels of recreation, additional recreational activity resulting from new residential development within 3km of the SAC in Epping Forest District would result in an adverse effect 'in combination' with growth in adjacent authorities (notably the London Boroughs of Waltham Forest and Redbridge, which are also core centres of SAC visitor origin) without mitigation. This would arise through recreational pressure itself and through the interlinked impact pathway of urbanisation (e.g. littering and fly tipping).

5.20 The remaining eleven sites are located between 3km and 6.2km from the SAC. These are CHIG.R1, CHIG.R2, CHIG.R4, SP5.1 (Latton Priory), SP5.2 (Water Lane Area), THOR.R1, NWB.R3 (North Weald Bassett), THOR.R2, RUR.T3, WAL.T1 and COOP.R1. Of these, three large sites (SP5.1, SP5.2 and NWB.R3) will be responsible for delivering a total of 3,878 dwellings between them, or 69% of the 4,196 dwellings to be delivered in the 3km to 6.2km zone. The visitor survey indicates that few current visitors to the SAC derive from the 3km to 6.2km zone. However, the delivery of three large sites totalling almost 4,000 dwellings could result in changes to the patterns of activity and potentially result in a greater proportion of visitors to the SAC deriving from the 3km to 6.2km zone. For this reason a 6.2km zone of influence is being used to define the core recreational and urbanisation catchment of the SAC.

5.21 Epping Forest District Council has already committed to work with partners to produce a strategic mitigation strategy for Epping Forest SAC. Since that commitment was made governance arrangements have been put in place and this commitment has been reflected in Local Plan policy. The first step in development of this strategy, through undertaking an updated visitor survey of the SAC has been completed and EFDC's Cabinet approved an interim mitigation strategy on 18th October 2018 as a material consideration in the determination of planning applications. The interim strategy will be replaced by the long-term mitigation strategy during the course of 2019 (as the full mitigation strategy is to be informed by further visitor survey which is due to be undertaken in early Summer 2019). In reviewing the interim mitigation strategy Natural England commented in a letter to the Council dated 1st October 2018 that 'This interim proposal provides a solid base on which to further develop the final Mitigation Strategy...'

5.22 The analysis provided above concerning the relative distribution of visitor origins within Epping Forest District and the associated distribution of new housing development indicates that a two-tier approach to the 6.2km core catchment would be appropriate:

- To adopt a 3km inner zone where all net new dwellings make a financial contribution to access management in the SAC, this is currently £352 per dwelling and is based upon the cost of delivering the interventions in the Interim Mitigation Strategy. Residential care home schemes will be assessed on a case by case basis to determine whether they need to make the above contribution, dependent upon the nature and level of care being provided

and the likely level of independence of occupiers. The tariff (and interventions) will be reviewed as the long-term Mitigation Strategy is developed; and

- Require the four large sites situated within 3km and 6.2km of the SAC (SP5.1 Latton Priory, SP5.2 Water Lane Area, EPP.R1/EPP.R2 South of Epping and NWB.R3 North Weald Bassett) deliver (or contribute to delivering) large areas of nearby accessible natural greenspace with a view to making these development sites as recreationally self-sufficient as possible. This is on the basis that they could change current patterns of visitor origin for the SAC and by capturing them the vast majority of new housing in this outer zone would be addressed.

24. As noted in relation to paragraph 5.17 above, EFDC is already adopting an ultra-precautionary approach in applying the 6.2km Zone of Influence, when the visitor survey data shows that this is much more applicable to visitors to the south of the SAC. While the Water Lane allocation as a whole is just within the 6.2km Zol, the West Katherines site is separate and outside of the Zol. While paragraph 5.22 refers to possible future changes in behaviour, there is no evidence to suggest that new residents would be significantly more likely to travel to the SAC than existing residents.

*Epping Forest District Local Plan Examination Hearings Homework Note 31*

*Matter 1: Legal Compliance*

*Issue 5: Have the Requirements of the Conservation of Habitats and Species Regulations 2017 Been Met?*

*HW31 - Update on Strategic SANGS Provision*

25. Excerpts from the Homework Note relevant to this review are reproduced below (emphasis added).

**2. In response to the Inspector's specific requests, this note identifies:**

- (a) The strategic allocations (proposing 400+ homes) within the LPSV that require SANGS provision to be made on-site as part of the required Masterplanning process, or delivered off-site by way of a financial contribution; and**
- (b) The extent to which those strategic allocations are located within the Zone of Influence ("ZOI") for the EFSAC and the current position regarding SANGS provision for each of those strategic allocations.**

**6. In this respect, the 'Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation' (EB134) ("the Interim Approach") sets out the approach to strategic SANGS provision (at paragraphs 27 to 30, on pages 13 to 14), which the Council will follow pending the adoption of the Local Plan:**

[Excerpts from this document are considered separately below.]

**EFSAC 3km - 6.2km "Outer Zone"**

**15. The following LPSV strategic allocations are partly located within the current EFSAC**

**"Outer Zone":**

**Garden Town Communities**

- (a) SP 5.1 Latton Priory (~1,050 homes);**
- (b) SP 5.2 Water Lane (~2,100 homes)**

**16. As the inset plans above show, for each of these strategic allocations, only part of the designated area lies within the EFSAC 6.2km Zone of Influence. Nevertheless, as the Interim Approach (EB134) confirms, the Council expects the provision of on-site SANGS to support the total number of new homes proposed to be delivered on**



each site, in order to 'futureproof' development and protect the integrity of EFSAC from the risk of adverse environment impact from increased recreational pressure.

17. In the circumstances, the Council considers this approach to be necessary and reasonable, as the EFSAC Zones of Influence will be reviewed periodically, having regard to the best evidence available at the time, including the results of future Epping Forest visitor surveys. As such, the LPSV properly takes account of the possibility that Natural England may extend the current 6.2km ZOI during the Plan period. In that event, without appropriate futureproofing, additional diversionary recreational measures would need to be secured before planning permission could be granted for the homes proposed on these three strategic sites.

18. The principle of delivering appropriate on-site provision of Suitable Alternative Natural Green Space as an integral component of the Masterplanning process has been agreed by the promoters of each of these strategic allocations, as evidenced by the following Statements of Common Ground:

(c) ED27: Statement of Common Ground Water Lane Site SP5.2, 'Ecology' at pages 5 to 6);

*Epping Forest Local Plan Submission Version  
Statement of Common Ground  
Water Lane (Site) Policy SP 5.2  
February 2019*

26. Noting that it applies to the Water Lane allocation as a whole and not to the West Katherines site individually, the relevant extracts from the Statement of Common Ground are as follows (emphasis added):

**Ecology:**

Limited priority habitats are on the Site and all parties agree that these are not a constraint on the overall delivery of the site. The intended public open space, Suitable Alternative Natural Green Space (SANGS), green infrastructure and landscaping and retention of trees will all ensure the opportunities for biodiversity and movement of species are retained and enhanced.

Part of the Water Lane allocation site is located 5.75km from the Epping Forest Special Area of Conservation (SAC), which is identified primarily for its habitat value in respect of beech trees and wet and dry heaths. The Site will include greenspaces to meet the recreational needs of future residents of Water Lane and an appropriate level of SANGs will be needed to reduce visitor and recreational pressure from Epping Forest Special Area of Conservation (SAC) arising from those parts of the development within the Zone of Influence.

Only part of the proposed Garden Town Communities within Epping Forest District falls within the Zone of Influence however a strategic approach is to be taken to maximise the opportunities that exist to provide sufficient meaningful areas of open space with the necessary attributes to attract new residents, and some existing residents, to use that space.

Opportunities exist to ensure that the Site meets its leisure and recreational needs and give rise to a reduced pressure on the Epping Forest SAC. The Habitat Regulations Assessment (2019) sets out the requirements for developments and the Strategic Masterplan will seek to comply with these requirements.

All parties are exploring the options for providing appropriate SANGS across the Harlow and Gilston Garden Town at a level relevant to development on the allocation Site, along with the potential payment of an appropriate "financial contribution to access management and monitoring of visitors to the Epping Forest SAC".

**Subject to this, all parties agree that the potential granting of planning permission for new development at Water Lane is not likely to have a significant effect on the Epping Forest SAC (either alone or in combination with other plans or projects).**

27. While the principle of SANG delivery was agreed as part of the Statement of Common Ground, this was an acceptance of the general concept in line with the adopted strategy. There was no reference to the separation of the two sites under the Water Lane allocation, and it follows that it was not agreed that the SANG principle applies equally across both areas. Indeed, as the highlighted excerpt above demonstrates, a distinction was drawn between “*those parts of the development within the Zone of Influence*” that would need “*an appropriate level of SANGs*”, and those parts outwith the Zol, that would not.
28. EFDC has in their homework note relied heavily on the principle of ‘futureproofing’, which as considered below is not in line with the requirements of the Habitats Regulations and established case law.

*Interim Mitigation Strategy for Epping Forest Special Area of Conservation Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation*

29. Table 2 shows the percentage of visitors arising from each local authority administrative area. Paragraph 24 notes that 93% of visitors within the entire Zol actually live within 3km of the Epping Forest SAC boundary.
30. Table 2 shows that visitors from EFDC from 3-6.2km account for 0.74% of all visitors. Harlow District, to which the site is closely geographically related, accounted for 0% of visitors.
31. Paragraph 27 of the strategy considers the point on futureproofing development on the allocated sites through provision of SANG (emphasis added):

**27.It is important to recognise that there are several strategic sites that have been proposed for allocation within the Epping Forest District Local Plan Submission Version which lie within, or partly within the 6.2km Zone of Influence, namely the Garden Town Communities of Latton Priory and Water Lane, as well as at North Weald Bassett and south of Epping. All of these sites are currently on greenfield land such that visitors to the Epping Forest currently originating from these locations are either non-existent or minimal. However, the sites will individually and collectively result in a significant increase in residents. Without any on-site provision of strategic levels of Natural Green Space of an appropriate form these new communities are likely to add further to recreational pressures on the Forest. Consequently, as part of the Masterplanning of these sites there will be an expectation that Strategic Alternative Natural Greenspace will be an integral part of their design. Dependent on the scale and form of such Green Space there may be a need to secure some financial contribution towards the implementation of the above projects and associated activities. This is because the Green Space may not provide all of the attributes necessary to attract all users away from the Forest. It should be noted that the provision of Greenspace at Water Lane and Latton Priory in particular could also contribute to ‘futureproofing’ development in terms of recreational pressures on those areas of Epping Forest outside of the SAC that are designated as Sites of Special Scientific Interest (SSSIs), the Lee Valley Special Protection Area / Ramsar Sites and the Harlow Woods SSSI.**

32. The strategy suggests that the new communities are likely to add to further recreational pressure on Epping Forest SAC, but the evidence to support this

position is very limited. The Water Lane site is geographically close to Harlow, hardly a backwater village. The visitor surveys recorded none from Harlow. While it is reasonable to consider future-proofing of development, this must be on the basis of justifiable evidence and what is likely to occur, not on mere possibilities. It has been previously stated that the justification for the 6.2km ZOI is largely on the basis of visitors from the south, and evidence shows negligible interest from Harlow. This must be taken into consideration as part of the assessment of likely significant effects arising from the West Katherines scheme.

33. As has been previously noted, EFDC's HRA found no likely significant effect from recreation on Lee Valley SPA / Ramsar site, a position Natural England agreed. There is currently no adopted strategy for Harlow Woods SSSI, where the SSSI management units are in Favourable and Unfavourable Recovering condition, with the latter condition due to habitat management rather than visitor pressure. Notably this strategy makes no reference to Wormley Hoddesdonpark Woods SAC.

#### *Approach to Epping Forest SAC*

34. As considered above, the development at West Katherines is not likely to give rise to adverse recreational effects on Lee Valley SPA / Ramsar site or Wormley Hoddesdonpark Woods SAC. As noted in the Statement of Common Ground, part of the Water Lane allocation is within 5.75km of Epping Forest SAC. However, the two parcels of the allocation are to be brought forward separately as individual planning applications. For the purposes of the Habitats Regulations, therefore, they are separate projects. West Katherines is approximately 6.7km distant as-the-crow-flies. Each project must be subject to a separate assessment under the Habitats Regulations, as per regulation 63:

**63(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project, which:-**

**(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and**

**(b) is not directly connected with or necessary to the management of that site,**

**must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.**

**63(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.**

**63(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.**

**63(5) In the light of the conclusions of the assessment, and subject to regulation 64, the authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).**

**63(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be**

**carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.**

35. Regulation 63 of the Habitats Regulations therefore sets out a two-stage process. The first test is to determine whether the plan / project is likely to have a significant effect on the European site. The second test (if applicable) is to determine whether the plan / project will affect the integrity of the European site.
36. The establishment of the Zol at 6.2km has been on the basis of detailed surveys, but as previously described this is largely due to respondents to the south of the SAC. It is the case that the West Katherines site is outwith the Zol. If the allocation were separate there would be no suggestion that effects on Epping Forest SAC need to be considered. The fact that West Katherines is coupled to the wider allocation does not change the fact of its geographical location and the information that has informed the Epping Forest SAC strategy.
37. Arguably the seminal case in Habitats Regulations case law is that of *Waddenzee* (C-127/02) [2004]. Inter alia, the Judgment emphasised the requirement for the appropriate assessment to rely on objective scientific information (emphasis added):
 

**...an appropriate assessment...implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications...for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.**
38. That is necessarily the best scientific knowledge in the field *available at the time of the assessment*. As matters currently stand, the 6.2km Zol is the result of the best scientific knowledge in the field available at the time. It is on the basis of this knowledge that strategies must be formed and decisions must be taken. The West Katherines site is geographically separate to the remainder of the Water Lane allocation; it is outwith the Zol; it is to be subject to a separate planning application; it is to all practical purposes an entirely separate prospect. It is right that it be considered separately and, in line with the approved and prevailing strategy, it does not require SANG because it is not likely to contribute to increased recreational pressure on the basis of its location.
39. The idea of futureproofing has been raised, with the vague prospect that the Zol may be extended as some unspecified point in the future. There is currently no indication that this is likely to happen. Again, decisions must be made on the basis of the best information available at the time. To do otherwise would appear to be a misapplication of the precautionary principle, one that aims for a zero risk scenario. This is unrealistic, and not what is required by the regulations and case law.
40. There is, however, a counterargument, in that while it is not required currently by the Habitats Regulations, the applicant may wish to take a precautionary stance and adopt the approach advocated by EFDC, for Epping Forest SAC at least. This would give some certainty and guard against the possible future expansion of the Zol, though at consideration potential cost, with no indication that such an expansion is certain or even likely.

41. In summary, the position of the EFDC HRA and of Natural England is that recreational effects are not likely to arise in relation to Lee Valley SPA / Ramsar site or Wormley Hoddesdonpark Woods SAC as a result of the Water Lane allocation. Part of the allocation is within the Zone of Influence for Epping Forest SAC, and in line with the adopted strategy that part will need to bring forward SANG to mitigate likely significant effects. The West Katherines site will be subject to a separate planning application, and is thus a separate project under the Habitats Regulations. It is wholly outwith the Zol, and therefore in line with the strategy is not required to include SANG within its boundaries. EFDC make reference to 'futureproofing' and the vague notion that the Zol may be extended at some unspecified point in the future. Case law requires that Habitats Regulations Assessments are made in light of the best available scientific knowledge in the field at the time of the assessment, not unspecified future scenarios. The best available knowledge available at the time of writing has resulted in the 6.2km Zol, which does not cover the West Katherines site. Hence there is no requirement for it to provide SANG.

## **Appendix 2:**

Review of Epping Forest Local Plan Main Modifications Supporting Documents – Green  
Infrastructure and Air Pollution Mitigation Strategy - Ecology solutions  
(September 2021)

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## LAND AT WEST HARLOW, ESSEX

### **REVIEW OF EPPING FOREST LOCAL PLAN MAIN MODIFICATIONS SUPPORTING DOCUMENTS – GREEN INFRASTRUCTURE STRATEGY AND INTERIM AIR QUALITY ASSESSMENT**

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#### **INTRODUCTION**

##### *Background*

1. Epping Forest District Council (EFDC) is consulting on the Main Modifications of the Local Plan as well as supporting documents including the Green Infrastructure Strategy (GIS) and the Air Quality Assessment (AQA). Ecology Solutions has been commissioned by the consortium to review these documents and consider the extent to which they affect the proposed development of the site known as West Katherines. West Katherines forms the northern section of the Water Lane Allocation Area, which is completed by an area known as West Sumners in the south.
2. An earlier note, produced in December 2020, considered the obligations for the scheme under the Conservation of Habitats and Species Regulations 2017 (as amended), including the question of whether Suitable Accessible Natural Greenspace (SANG) was required within the site, principally to address effects on Epping Forest Special Area of Conservation (SAC), as well as other designated sites in the vicinity. In summary, it was set out that West Katherines was outwith the Zone of Influence (Zoi) for Epping Forest SAC and thus was not required to provide SANG.

##### *Site Characteristics*

3. The site is located to the west of the town of Harlow, Essex. It is bounded to the south by Water Lane, to the west by the B181 Epping Road, and to the north and east by open countryside and existing residential development respectively. Old House Lane is broadly central to the site, providing access to the various horticultural nurseries that characterise this area.
4. The site contains a large number of buildings, including residential houses and other structures. A large proportion of these are greenhouses associated with the horticultural nurseries. There is a mosaic of habitats across the site including multiple waterbodies, woodlands, arable land, grassland and standard trees.

*Purpose of this Note*

5. The purpose of this note is to review EFDC's GIS and AQA, and to have regard to the June 2021 Habitats Regulations Assessment (2021 HRA) and the Main Modifications to the Local Plan, where these are concerned with ecological issues.

**GREEN INFRASTRUCTURE STRATEGY**

6. Published in April 2021, the GIS is subdivided into a number of separate documents, provided as separate PDFs, each with a note for its intended readership. The sections and pages are numbered consecutively. These are as follows:

**0: PRIMER: INTRODUCING GREEN INFRASTRUCTURE (pp1-52)**

*Everyone should read this document before reading other parts of the Green Infrastructure Strategy*

**1: IMPLEMENTATION: ENHANCING OUR EXISTING NETWORK (pp53-73)**

*You should read this document after reading The Primer if you are:*

*A Local Resident / Community Group / Parish Council / Authority Officer with an interest in initiating or implementing green infrastructure projects*

**2: IMPLEMENTATION: LANDSCAPE LED DESIGN (pp74-104)**

*You should read this document after reading The Primer if you are:*

*A Developer / Designer / Authority Officer who is designing, assessing or delivering masterplans and developments with new green and blue spaces*

**3: IMPLEMENTATION: GREEN INFRASTRUCTURE IN STRATEGIC ALLOCATIONS (pp105-160)**

*You should read this document after reading The Primer if you are:*

*A Strategic Site Developer / Designer / Authority Officer / Policy Maker who is designing, assessing or delivering Green Infrastructure*

**4: IMPLEMENTATION: INFRASTRUCTURE ENHANCEMENT PROJECTS (pp161-177)**

*You should read this document after reading The Primer if you are:*

*Epping Forest District Council and their Partners who are delivering Green Infrastructure enhancements to the Buckhurst Hill, Loughton, Debden and Theydon Bois areas.*

7. An Appendices document (A, pp178-195) is also provided, covering Green Infrastructure in Planning (including Legislative and Policy Context, Legislative Framework and Regional Context), Resources and a Glossary.
8. Under the consultation numbering system, these documents are listed as EB159A to EB159G respectively.
9. Section 4 is concerned with the delivery of infrastructure projects and not directly relevant to the scheme at hand, while sections 0 to 2 contain more general guidance on the principles, design and delivery of green infrastructure.
10. The key section of the GIS as far as the West Katherine's site is concerned is section 3, which considers strategic allocations. These are defined in the Overview on p110 as follows:



- Latton Priory and Water Lane Garden Communities
- North Weald Bassett Masterplan Area
- Waltham Abbey North Masterplan Area
- South of Epping Masterplan Area

11. Together with West Sumners, West Katherines forms the Water Lane Garden Community. While these are one allocation, it is important to remember that they are very much separate sites and will be delivered as separate planning applications.
12. Section 1 on p111 provides a summary of requirements for the Water Lane allocation:

**Water Lane**

**Residential capacity: c. 2100 homes**

**GI provision: In accordance with emerging Local Plan policies SP4 and SP5**

**Indicative SANG size: 13ha (see page 123 for further information)**

**Preferred location: Integrated with the West Sumners site**

**Future proofing required? Yes**

13. Key characteristics of required Green Infrastructure are then set out:
  1. Connecting into the big landscape attractors including the Lea and Stort Valleys
    - Link to the Stort Valley Way and Lea Valley
    - Connect into Harlow's Green Wedges to provide direct links to Harlow Town Centre, the surrounding countryside and other greenspaces
  2. Access between existing and proposed communities and into the surrounding countryside
    - Achieving a network of greenspaces centred around safe walking and cycling connections
    - Connect new communities into the proposed Sustainable Travel Corridor (STC)
    - Develop local walks to connect communities with local Green Infrastructure assets including Nazeing Common
  3. Complimentary network of green open spaces tying together new and existing communities, including the provision of SANG
    - Complete strategic scale ecological corridor between Long Green Lane and Marks Wood (Ware)
    - Enhance habitats by improving management of local woodlands and grasslands, including Harlow and Latton Commons
    - Include natural play elements along routes and in greenspaces
    - Develop a complementary network of new spaces – using a balanced variety of greenspace typologies
  4. Activation and interpretation projects to engage a wider range of people with the countryside
    - Develop a network of interventions to increase understanding and appreciation for natural greenspace and encourage visitors
    - Provide initiatives to encourage social interaction between communities
    - Encourage community participation in greenspace through inclusion of productive landscapes.
14. These measures are not unexpected as far as green infrastructure strategies for major new developments are concerned. Reference is made to emerging Local

Plan policies SP4 and SP5, which are specifically concerned with delivery of the Garden Communities.

15. Page 115 notes the requirements of policy SP5 with regards to open space:

**There is a policy requirement to provide strategic 'green infrastructure' comprising natural/semi natural open space (including SANG), walking and cycling routes flood mitigation, wildlife space and urban agriculture.**

16. Existing landscape and ecology assets are summarised on pp116-117.
17. The illustrative plans on p112 show the position of the Garden Communities in relation to Harlow and existing green infrastructure. Significantly, the third of these shows the indicative location of SANG, with that for the Water Lane allocation all within the West Sumners site. This indicates that the council have accepted the position set out in our earlier note, that the West Katherine's site is not required to provide SANG since it is outwith the Zol of Epping Forest SAC. That is of course not to say that it is not required to provide open space for recreation in line with planning policy requirements, just that this need not be delivered to SANG prescriptions.
18. Further information on SANG is set out on p123 of the document, as follows (emphasis added):

**Water Lane Garden Community:**

**The Masterplan area provides for some 2,100 new homes. Based on the total number of homes proposed within the Masterplan area the provision of SANG would equate to 39.68 ha. However, the Masterplan area comprises two distinct areas for development, the larger of which (West Katherine's) is located some distance from the current 6.2km Zone of Influence and a significant proportion of the smaller site (West Sumners) is also outside of the Zone of Influence. Nevertheless, as with Latton Priory, the Council considers that there is a need to 'future-proof' the development and to minimise the potential for the site to contribute to any extension to the Zone of Influence. The Council is therefore seeking an element of SANG provision based on the total indicative residential capacity of the West Sumners site. Assuming a capacity of c. 700 dwellings the size of SANG required would be c. 13ha.**

**The Masterplan should also identify greenspace connections to the Green Wedge and to the west towards Epping Long Green. GI beyond the provision of the SANG will also need to be developed as part of the emerging masterplan.**

19. While the plan on p112 shows the SANG entirely within the West Sumners site, it is not completely clear from this text whether the council requires the SANG to be delivered wholly within that site. The council requires SANG to account for the residential capacity of the West Sumners site, and it should be clarified that the SANG is to be provided wholly within that site. The reference to 'future-proofing' and extension of the Zol appears to be at odds with the lower SANG requirement stated here, and more in line with the previous position, which was not supported by evidence and challenged in our earlier note. This point should be further clarified.
20. Similarly, it is noted that the proposed amendments to policy SP5 (MM21) do not accurately reflect this position, and so the wording here should also be clarified.
21. As a side point, it is notable that Natural England's current position on SANG is that it cannot be fully counted in the Biodiversity Net Gain assessment of a

scheme. Their position, which is still subject to debate, is that because it is required for SANG it cannot be counted again for BNG. Since habitat quality as such is not a SANG requirement, only form and function, their position is that one can provide a basic SANG that cannot be counted, but if one were to provide habitat benefits over and above the minimum required, then this uplift can be included in the assessment. As yet, this position has not been subject to full scrutiny and it remains to be seen whether case law will provide clarity. However, as things stand, the West Katherines site would be better placed to provide a greater BNG than would have been the case if it had to facilitate SANG.

## AIR QUALITY ASSESSMENT

22. The AQA, formally *Epping Forest Interim Air Pollution Mitigation Strategy: Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation*, was published in December 2020. It is given document number EB212.
23. The purpose of the AQA is set out at paragraphs 1.3 to 1.6 (emphasis added):

**This Strategy has been developed to provide a strategic approach to mitigating the effects of development on the integrity of the Epping Forest SAC in relation to atmospheric pollution. It has been developed to support the implementation of policies contained within the emerging Local Plan and specifically policies DM2 and DM22. In doing so it reflects the evidence base (the evidence) developed to support the HRA process. This Strategy will therefore support the conclusion of the Local Plan HRA process and facilitate the determination of individual planning applications which have the potential to have an adverse effect on the integrity of the Epping Forest SAC in relation to atmospheric pollution without mitigation.**

It is clear from the evidence that without appropriate mitigation development proposed through the emerging Local Plan, in combination with other plans and projects, would have an adverse effect on the integrity of the Epping Forest SAC as a result of atmospheric pollution. A key contributor to that atmospheric pollution arises from vehicles.

The Epping Forest SAC is bisected by a number of roads which serve communities in Epping Forest District and beyond. We know, having undertaken detailed traffic modelling, that new development, primarily for housing and employment, will result in increases in traffic on those roads. This traffic modelling has been used to inform air quality modelling, the outputs of which show that over the period of the emerging Local Plan (covering the period up to 2033), if no mitigation measures are introduced, air pollution arising from vehicles will have further harmful effects on the health of the qualifying features within the Epping Forest SAC compared to a situation with no growth. It is important to recognise that whilst vehicles are a contributing factor, there are other activities that are also having an adverse impact on the ecological health of the Epping Forest SAC. Appendix 1 to this Strategy identifies a number of actions that the Council could take to reduce the contribution that these activities have on the Epping Forest SAC.

**This Strategy has been developed in response to the findings of the evidence base by setting out a suite of mitigation measures that are needed to address the effects of atmospheric pollution arising primarily from new development proposed to be brought forward within the District.** It is therefore an important part of the evidence base that supports the emerging Local Plan. The Strategy also sets out how these mitigation measures will be implemented and how the efficacy of those mitigation measures will be monitored and reviewed.

24. There is repeated reference throughout these paragraphs to the evidence base supporting the strategy, and the need to provide mitigation measures to address effects of atmospheric pollution arising from new development in the District on Epping Forest SAC. It is not disputed that atmospheric pollution is having an adverse effect on the SAC – the evidence of that is clear – but the key issue as far as the West Katherine's scheme is concerned is whether there is evidence that development of that site would have an adverse effect, to the extent that mitigation measures would be required. The need for mitigation of effects on European sites has been covered at some length in our previous note and is not reiterated here, save to say that the principles in play remain the same.
25. Paragraphs 3.6 and 3.7 of the strategy reiterates that mitigation measures are required for effects arising from the Local Plan, and sets out how these might be secured:

**The evidence demonstrates that the effects of Local Plan development on air quality on the Forest will require mitigation measures to be implemented. Some of the required measures will not only help to avoid adverse impacts of development on the Epping Forest SAC, but also support objectives including responding to the climate change crisis, managing the effects of growth on the highway network and supporting healthy lifestyles.**

**The measures contained within this Strategy will be secured through a number of mechanisms including:**

- the use of planning conditions and/or legal agreements to secure financial contributions for the implementation of off-site measures as part of the determination of planning and other development related applications;
- the development of strategic Masterplans; and
- strategic initiatives to be implemented by the Council and its partners.

26. Section 4 of the AQA sets out the relevant Planning Policy Framework on which the strategy is based. Policy DM 2 is concerned with Epping Forest SAC and the Lee Valley SPA, as considered at paragraph 4.3:

**Policy DM 2 sets out the Council's expectations that all relevant development proposals assist in the conservation and enhancement of the biodiversity, character, appearance and landscape setting of the Epping Forest SAC. It contains specific reference to a number of Strategies, including this Strategy, adopted by the Council as a material consideration in the determination of planning applications to ensure that any adverse effects on the integrity of the Epping Forest SAC are avoided. This is a main policy to which this Strategy is linked.**

27. Site-specific policies are considered are paragraphs 4.12 and 4.13 (emphasis added):

**The emerging Local Plan includes a number of site-specific policies which will support the management of, and improvements to, air quality. The site-specific policies vary depending on the scale of development proposed. The Garden Communities and 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.

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.

28. It is certainly the case that the larger strategic sites, including the Garden Communities of which the West Katherines site is part, have good scope to provide facilities and services to encourage alternatives to private car travel. The space available and the economies of scale provide opportunities that do not exist for smaller sites elsewhere in the District. What is also clear, however, is that these on-plot measures, which could be considered wider environmental and social benefits, would be delivered at no inconsiderable cost to the developer.
29. Section 5 sets out in some detail the measures the council believes are required by 2033. In summary, these measures are as follows:

#### **Provision of Electric Vehicle charging points**

- This is a requirement for development proposals and will be funded by individual developers.
- The measures will be secured through the imposition of planning conditions on individual planning permissions and implemented by site developers.

#### **Introduction of a Clean Air Zone:**

**Introducing a right-hand turn ban at the junction of the A121 (Honey Lane) into Forest Side**

**Site specific initiatives to support species and veteran tree resilience**

**Initiatives to support walking, cycling and increased public transport use**

**HGV Route Management Strategies**

#### **Provision of Digital Communications Infrastructure**

- This is a requirement for new development sites and will be funded by individual developers.

#### **Trialling new technologies**

- City Trees
- A road based pollution extraction system

30. Section 7 is concerned with the implication of the strategy. Ultimately this is the crux of the entire document, since it sets out how the whole approach will be funded, but it is very light on detail. Paragraph 7.1 (emphasis added):

**The approach to implementing the Strategy is summarised at Appendix 3 and costing information is summarised at Appendix 4. The Strategy requires the implementation of some measures which are strategic in nature rather than site**

specific. In addition there is a cost associated with undertaking the monitoring and comparative assessments. These elements will be delivered by the Council and its partners and will be funded through the payment of financial contributions from all relevant development proposals which are proposed to be approved under the Town and Country Planning Acts. The approach has been developed in accordance with Regulation 122 of the Community Infrastructure Regulations based on the relative contribution made by development proposed in the Council's emerging local plan (derived from the Council's evidence base to support the development of this Strategy) and viability considerations. The financial contributions to be secured are as follows:

**Residential Development:**

**The Garden Communities (GCs): £232 per dwelling.**

**North Weald Bassett Masterplan Area and South of Epping Masterplan Area: £641 per dwelling.**

**Smaller sites (including windfall sites) and the Waltham Abbey Masterplan Area: £335 per dwelling.**

31. As previously noted, The Garden Communities includes the West Katherines site, so this would be captured under the proposed £232 per dwelling tariff.
32. Appendix 4 sets out the costs of the strategy, including £60k required for the purchase of 2no City Trees. Total costs for the scheme are projected to be £3,433,610. Despite these costs being set out, it not clear how the figures for financial contributions set out at section 7 of the strategy-proper have been derived. Clarification is certainly required on this point.
33. However, the wider point is one recognised by paragraph 7.1, namely that the strategy should be "*funded through the payment of financial contributions from all relevant development proposals*". The West Katherines site is currently subject to the tariff since it is part of The Garden Communities, but this is simply a collective term for these developments in the District. What is important is the likely effect of development at the West Katherines site on Epping Forest SAC and therefore the need for any planning proposal coming forward at the site to contribute to the council's strategic approach.
34. It is clear that the site is outwith the 6.2 Zol for Epping Forest SAC, and on this basis the council appears to have accepted the argument made in our previous note, that the scheme is not required to provide SANG. If that point is accepted, as it should be, then it is not clear how a different logic is being applied to the mitigation of air quality effects.
35. As noted previously, the scheme will be bringing forward a series of measures on-plot to encourage more sustainable transport in line with various planning policies, and of course contributing to local transport initiatives, but despite repeated references to the evidence base, the strategy is far from clear on the rationale for requiring the West Katherines site to contribute yet more funds to support the strategic approach. With reference to the best available evidence – that supporting Natural England's 6.2 Zol for the SAC, the scheme for the West Katherines site would appear not to be a relevant development proposal, to use the language of the strategy, and therefore would not be required to make further financial contributions over and above the already very significant commitments on site and in the locality. In the event that this position can be justified, further detail on the calculation of the tariff is required.

36. While it refers to air quality effects, the 2021 Habitat Regulations Assessment provides no further clarity on these matters.

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