Council Agenda

Webcast Meeting

Epping Forest District Council

NOTICE OF COUNCIL MEETING

You are hereby summoned to a meeting of the EPPING FOREST DISTRICT COUNCIL to be held in the VIRTUAL MEETING ON ZOOM at 7.00 pm on Monday, 8 February 2021 for the purpose of transacting the business set out in the agenda.

Georgina Blakemore
Chief Executive

Democratic Services Officer: Gary Woodhall Tel: (01992) 564243
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WEBCASTING NOTICE (VIRTUAL)

Please note: this meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this webcast will be retained in accordance with the Council's published policy.

Therefore by participating in this virtual meeting, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. If members of the public do not wish to have their image captured they should ensure that their video setting throughout the virtual meeting is turned off and set to audio only.

In the event that technical difficulties interrupt the virtual meeting, that cannot be overcome, the Chairman may need to adjourn the meeting.

If you have any queries regarding this, please contact the Corporate Communications Manager on 01992 564039.

BUSINESS

1. WEBCASTING INTRODUCTION

This virtual meeting is to be webcast. Members are reminded of the need to unmute before speaking.

The Team Manager - Democratic & Electoral Services will read the following announcement:

"The Chairman would like to remind everyone present that this meeting will be broadcast live to the internet (or filmed) and will be capable of repeated viewing (or another use by such third parties). Thereby by participating in this virtual meeting, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes. If members of the public do not wish to have their image captured they should ensure that their video setting throughout the virtual meeting is turned off and set to audio only.

Please also be aware that if technical difficulties interrupt the meeting that cannot be overcome, the Chairman may need to adjourn the meeting."

2. DECLARATIONS OF INTEREST

(Monitoring Officer) To declare interests in any item on the agenda.

3. MOTIONS (Pages 5 - 12)

To consider any motions, notice of which has been given under the Council's rules of procedure.

(a) Epping Forest District Council

Proposed by: Councillor Chris Pond

Seconded by: Councillor Stephen Murray
Councillor Jon Whitehouse
Councillor Stephen Neville
Councillor Michael Owen

"The Council hereby declares that:

(i) it will determine planning applications only on the basis of the law, including the National Planning Policy Framework (NPPF) and other National Planning Guidance, the 1998 Local Plan, and the latest iteration of the new Local Plan, incorporating provisions which have been approved after consultation with the public and examination by the Inspector; and

(ii) the Interim Air Quality Strategy December 2020, and any prospect of a Clean Air Zone (CAZ) made under it, unless and until it has been approved and so incorporated by her, together with evidence the CAZ can be implemented prior to the erection and completion of any new housing, cannot carry any material planning weight and should be treated as wholly null and void."

4. EXCLUSION OF PUBLIC AND PRESS

Exclusion
(Team Manager – Democratic & Electoral Services) To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Background Papers
(Team Manager – Democratic & Electoral Services) Article 17 of the Constitution (Access to Information) define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

(a) disclose any facts or matters on which the report or an important part of the report is based; and

(b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information and in respect of executive reports, the advice of any political advisor.

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

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Report to the Council

Date: 8 February 2021

Subject: Motion to Full Council on the Interim Air Pollution Mitigation Strategy

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Recommending:

(1) That the information in this report be considered as part of the debate on the motion.

Summary

The motion relates to a policy matter related to planning. The impact of the motion, if approved, would be to directly prevent the issue of certain planning decisions.

The Council can only grant Planning Applications that comply with the Habitat Regulations.

The Interim Air Pollution Mitigation Strategy, as adopted, enables the Council to properly approve any planning application that it can demonstrate will have no adverse effect on Epping Forest Special Area of Conservation. This means the Council meets the requirements of the Habitat Regulations.

The Council has worked hard to develop a Strategy that meets the requirements of the Habitat Regulations and Natural England has advised that it considers the Interim Strategy would provide a sound basis for avoiding or mitigating the air quality impacts that result from plan led development. Natural England will only confirm that the Interim Air Pollution Mitigation Strategy meets the requirements if it includes reference to a Clean Air Zone. It should be noted that there is already a range of other mitigation measures in the Strategy which are sufficient to mitigate the impacts of growth up to at least 2025.

Adoption of this Interim Air Pollution Mitigation Strategy allows for the immediate release of withheld planning decisions. The specialist legal advice received by the Council is that once the Interim Strategy has been adopted there is no legal reason why the Council must wait for the examination of the emerging Local Plan before it can release withheld planning decisions.

In the face of this specialist advice, a decision by the Council to delay the release of planning decisions once the Interim Mitigation Strategy has been adopted places the Council at significant risk of legal challenge by delayed applicants and runs the risk of significant awards of costs against the Council.

It is important to note that any development, including that proposed in the emerging Local Plan, or any future Local Plan, can only be permitted if it properly

complies with the Habitat Regulations and this will require an Air Pollution Mitigation Strategy to be adopted that addresses the issues associated with the Forest.

If the Council is unable to find a form of Air Pollution Mitigation Strategy that meets the requirements of the Habitat Regulations and which is also acceptable to the Council, then the Council will not be able grant planning permission for development in the District or for the emerging Local Plan to be found sound.

Failure to agree and adopt the emerging Local Plan may mean the Council starting the process over again and the following consequences;

- Failure to meet the Government's deadline for an adopted Local Plan by 2023
- Having to accommodate significantly higher housing numbers (20,996 instead of 11,400)
- The risk of Planning by Appeal for the foreseeable future
- The significant risk of the Council having its planning powers removed by the Government (as happened in South Oxfordshire) and potentially handed to the County Council,
- Considerable costs from restarting the Plan making process.

To avoid these potential risks, the Council must confirm the Interim Air Pollution Mitigation Strategy so that it can proceed to issue planning decisions at the earliest opportunity and move the emerging Local Plan to Main Modifications consultation stage and then adoption.

Background

1. In June 2018, Natural England provided advice to Epping Forest District Council regarding the determination of planning applications and their impact in respect of air pollution on the Epping Forest Special Area of Conservation (EFSAC). The Council as the competent body is required to ensure the flora and fauna within the Forest is conserved so that those areas that currently meet acceptable pollution levels are maintained and those areas where pollution levels are too high are reduced down to acceptable levels. The practical application of the advice has meant that the Council has not been able to issue planning permission for new development that may adversely affect the integrity of the EFSAC until satisfactory air pollution mitigation measures were agreed.

2. A number of important features of the EFSAC can be affected by air pollution. Vehicles are a key contributor. Consequently, where a proposed development would result in a net increase in Annual Average Daily Traffic (AADT) on roads within 200m of the EFSAC (regardless of how small the increase), the Council has not been able to grant planning permission unless sufficient mitigation measures are in place. The Council, Natural England and other partners have worked proactively to resolve the current situation, with a strong focus on reducing the impact of traffic pollution in order to lift the restriction on development schemes coming forward since 2018.

3. At the local plan hearing session on 21 May 2019, the Inspector considered the Habitats Regulations Assessment dated January 2019. In her advice note of 2 August 2019 (EB98) *the Inspector advised that she could not conclude beyond reasonable*

scientific doubt that the emerging Plan would not adversely affect the integrity of the EFSAC until further steps had been taken.

4. Since then, the Council has worked with Natural England and the Conservators of Epping Forest to agree a methodology to undertake additional work. This is set out in the technical note published in February 2020 (ED105). Further traffic and air quality modelling has been completed and reassessed in order to develop an Air Pollution Mitigation Strategy. This included the testing of scenarios with and without the Clean Air Zone. The evidence available has concluded that a Clean Air Zone would be required in 2025. It is recognised that the evidence used is, necessarily, point in time whilst the actual position is dynamic, as events such as the Pandemic have proved. A working draft Mitigation Strategy (the Strategy) was agreed by Cabinet on 20 July 2020. At that meeting the Cabinet agreed that following further consultation with Natural England, to delegate to the Portfolio Holder the adoption of the final strategy. The Cabinet further agreed that the Strategy when adopted should be used to inform an updated Habitats Regulations Assessment for the emerging Local Plan and it should be a material consideration in the determination of planning applications and permitted development rights proposals within the Epping Forest District.

5. Following the report to Cabinet on 20 July 2020 and consultation with Natural England a Portfolio Holder Report was published on 11 December 2020. It sought to:

a. approve the adoption of the Interim Air Pollution Mitigation Strategy,
b. be used as a material planning consideration in the determination of planning applications and permitted development rights proposals,
c. to be submitted to the Local Plan Inspector; and
d. be used to inform the Council's update to the Habitats Regulations Assessment

6. The report was subsequently called in and considered by the Overview and Scrutiny Committee on 7 January 2021. The Committee voted for option (h) (i) to confirm the Portfolio Holder decision, which may then be implemented immediately, that is that the Interim Air Pollution Mitigation Strategy could be adopted (see https://www.efdclocalplan.org/wp-content/uploads/2021/01/EB154-Adoption-of-the-Interim-Air-Pollution-Mit-Strategy-v2.pdf). The Interim Air Pollution Mitigation Strategy can be found by following this link and it includes a long list of potential mitigating actions.

The Interim Air Pollution Mitigation Strategy

7. As the 'competent' authority under UK legislation, Epping Forest District Council is responsible for ensuring any air pollution impacts on the Epping Forest arising from growth are mitigated.

8. The Habitats Regulations places a legal duty on the Council that it must carry out an Appropriate Assessment on any plan or project likely to have a significant effect on internationally important ecological assets, either alone, or in combination with other plans and projects. So, this duty applies in respect of the emerging Local Plan but also in respect of individual planning applications where those might affect the EFSAC. The Interim Air Pollution Mitigation Strategy has been developed in order to meet the

requirements of the Habitats Regulations to allow both current applications to be determined and development allocated in the emerging Local Plan to be delivered.

9. The evidence base demonstrates that the effects of the emerging Local Plan development on air quality on the Forest will require mitigation measures to be implemented. A number of mitigation measures were tested including encouraging the conversion of petrol cars to ultra-low emission vehicles (ULEVs) in order to increase the proportion of ULEVs within the vehicle fleet using roads in close proximity to the EFSAC to constitute 4-5% by 2025 (and 12-15% by 2033) and a Clean Air Zone.

10. A number of measures are set out in the Interim Air Pollution Strategy to support the conversion of petrol cars to ULEVs and to reduce car journeys. These include:

- the requirement for all new developments with parking spaces to provide access to electric vehicle charging points,
- signposting to vehicle scrappage and other schemes to incentivise the purchase of electric vehicles,
- initiatives to support walking, cycling and increased public transport use
- initiatives to support home working.

11. The Council is required to undertake a review of its Local Plan every five years and the first review needs to be completed within five years of its adoption. To support the review a planned approach to air quality monitoring is proposed to assess the progress on improvements to air quality across the EFSAC. It is therefore proposed to have permanent air quality monitoring in place to provide information which takes account of different seasons and changes in traffic levels across the year; and to repeat the on-site monitoring of Ammonia and NO2 using the same sites and methodology as that undertaken for the air quality monitoring between May 2018 and February 2019. This is proposed to commence in May 2024.

12. Traffic monitoring will also be undertaken in May 2024 to assess whether there have been any changes in predicted traffic growth and queue lengths, whether there have been any changes to the distribution of that traffic across different parts of the road network in close proximity to the EFSAC, and provide an up-to-date understanding of the composition of the vehicle fleet mix. The most up to date evidence currently available to the Council based on site specific monitoring shows that the implementation of a Clean Air Zone from 2025 will be required to address the impacts of the proposed development in the local plan on air quality in the Forest. However these monitoring activities will provide up to date information to give an early indication of progress towards the achievement of an increase in ULEVs, the health of the relevant parts of the EFSAC, and confirm the final design of any Clean Air Zone if the evidence continues to demonstrate that it is still required.

13. There seems to be some misunderstanding in the motion that there is a requirement to undertake the work to provide further evidence that any Clean Air Zone can be implemented prior to the erection and completion of any new housing at all. **That is wrong** as the Strategy contains, as already noted, a range of other mitigation measures and there is sufficient mitigation in the strategy to mitigate the impacts of growth up to 2025.

Legal position

The legal position is that:

14. In relation to any planning application that is to be determined the legal obligations under the Habitats Regulations will continue to apply, and thus it will only be possible for the Council to grant planning permission where it is satisfied that it has complied with the obligations in those Regulations.

15. The Interim Air Pollution Mitigation Strategy as adopted would be a material planning consideration in the determination of any such planning applications.

16. But the Strategy does not, and cannot, as the motion appears to suggest in itself in some way override the Council's legal obligations under the Habitats Regulations, rather it is if adopted a matter that is material to the Council's consideration of whether there is compliance with those obligations.

17. There is no legal reason why adopting the Interim Air Pollution Mitigation Strategy as a material consideration in planning decisions has to await the completion of the examination of the emerging Local Plan. The motion does not explain on what basis this is considered to be required.

18. It should be noted by way of an example that the Council adopted the interim approach to managing recreational pressure on the EFSAC. This was agreed back in October 2018 https://www.efdclocalplan.org/wp-content/uploads/2020/01/EB143.pdf. This was in advance of the adoption of the emerging Local Plan and has been a material consideration in the determination of planning applications since then. The legal principles are the same in that context as they are here.

19. Natural England have consistently advised as set out in their Hearing statement 19STAT0027 (https://www.efdclocalplan.org/wp-content/uploads/2019/04/19STAT0027-Natural-England-Matter-1.5-HRA-.pdf) submitted to the Local Plan Inspector "that there needs to be a policy commitment to having the Air Quality Mitigation Strategy in place by the time the local plan is adopted".

Consequences of not implementing the Interim Air Pollution Mitigation Strategy as adopted

20. The Council will continue to be unable to determine the planning applications currently held in abeyance without the adoption of an agreed Air Pollution Mitigation Strategy and *Natural England will reinstate their objection to the emerging Plan.* It needs to be made clear that the inclusion of a Clean Air Zone from 2025 (subject to the review of up to date evidence in 2024/25) is an integral part of the Interim Air Pollution Mitigation Strategy as agreed with Natural England. On 10 December 2020 Natural England confirmed that they were content with the Interim Strategy subject to it, within the emerging Local Plan context, being secured through appropriate policy wording. The decision of the Portfolio Holder affirmed by the Overview and Scrutiny Committee included the submission of the Interim Strategy to the Local Plan Inspector. The consequences of not doing this will mean that the Council will not be able to progress to the adoption of the emerging Local Plan.

21. If as a result the Plan had to be withdrawn and the Council were to start the development of a new Plan this would mean that the housing requirement identified in the emerging Local Plan of 11,400 homes (or 518 per annum) would be replaced by the number in accordance with the standard methodology 2020 and would require 953 homes per annum or 20,966 over the Plan period.

22. The Ministry of Housing, Communities and Local Government published the 2020 Housing Delivery Test results on the 19 January 2021. The Housing Delivery Test is an annual measurement of housing delivery measured over a three year period. For those authorities without an adopted plan the required figures for delivery use the standard methodology numbers. In order to take account of the implications of the Covid-19 pandemic March 2020 has been removed from the figures to slightly reduce the required delivery rates. The figures for Epping Forest District Council (set out in the table below) show a total requirement over the period from 2017-2020 as 2,468 against a delivery rate of 1,213 or 49%. Once the Local Plan is adopted the delivery will be assessed against the housing requirement in the plan of 518. This would put the requirement at 1511 and the Council at 80% delivery. As required by the National Planning Policy Framework any authority which measures under 75% of their housing delivery target for the three preceding years will be subject to the presumption in favour of sustainable development.

Housing Required/Delivered	2017-2018	2018-2019	2019-2020	Total Required/Delivered	2020 Measurement	Consequence
Required	667	937	864	2468	49%	Presumption
Delivered	564	426	223	1213		

23. Harm is already being caused to the Forest irrespective of the growth identified in the Local Plan. The Interim Air Pollution Mitigation Strategy will allow applications to come forward now and facilitate the delivery of the sites proposed for allocation in the Local Plan. This means there is less risk in terms of under delivery in future years and will facilitate a five year land supply such that the presumption in favour of sustainable development does not apply.

24. The application of the presumption is likely to lead to speculative planning applications and appeals and will make it more difficult for the Council to resist development on sites within the area. The Council will face more appeals and is likely to lose more appeals.

25. In March 2020, the Government set a deadline of December 2023 for all authorities to have up-to-date Local Plans in place. The Housing Minister wrote to the Council on 19 January 2021 to advise that it is critical that work should continue to progress Local Plans through to adoption by the end of 2023 to help ensure that the economy can rebound strongly from the COVID-19 emergency. The letter stated the Government is committed to working with the 10% of authorities, which includes Epping Forest District Council, without an adopted plan to get a plan in place as soon as possible and would be contacting those authorities where delays to plan making have occurred to discuss the reasons why this has happened and actions to be undertaken.

26. The Minister also advised that where necessary, the Ministry remain committed to using all powers available to Government in order to ensure that progress on plan making is maintained. The Secretary of State used his powers under S21 of the Planning and Compulsory Purchase Act 2004 in relation to the South Oxfordshire Local Plan to make a formal direction in March 2020 to ensure it continued to adoption and for senior council officers to report monthly to MHCLG officials on progress of the plan. The plan was adopted in December 2020 with a housing number of 30,000 homes.

Background papers

- Report to the Cabinet C-043-2019/20 11 April 2019: Approach to managing the effects of Air Quality on the Epping Forest SAC

https://www.efdclocalplan.org/wp-content/uploads/2019/04/EB142A-Approach-to-Managing-the-Effects-of-Air-Quality-on-the-Epping-Forest-Area-of-Conservation-EFDC-Cabinet-Report-11th-April-2019.pdf

- Updated Habitats Regulations Assessment of Epping Forest District Council Local Plan January 2019 (EB209) https://www.efdclocalplan.org/wp-content/uploads/2019/02/Epping-Forest-Local-Plan-HRA-2019_v3.pdf

- Letter from Natural England dated 15 June 2018

- Report to the Cabinet C-013-2020/21 20 July 2020: Approach to managing the effects of Air Pollution on the Epping Forest Special Area of Conservation (EB150)

https://www.efdclocalplan.org/wp-content/uploads/2020/08/EB150-Approach-to-Managing-the-Effects-of-Air-Pollution-on-EF-SAC-EFDC-Cabinet-Report-20th-July.pdf

- ED105 Epping Forest Special Area of Conservation Modelling Methodology Technical Note February 2020

https://www.efdclocalplan.org/wp-content/uploads/2020/03/ED105-Methodology-Review-Technical-Note-Epping-Forest-2020-FINAL.pdf

- EB154 Portfolio Holder Report PLS-003-2020/21 4 December 2020: Adoption of the Interim Air Pollution Mitigation Strategy

https://www.efdclocalplan.org/wp-content/uploads/2021/01/EB154-Adoption-of-the-Interim-Air-Pollution-Mit-Strategy-v2.pdf

- EB154B Air Quality Assessment Modelling Methodology for 2020 Technical Note – August 2020

https://www.efdclocalplan.org/wp-content/uploads/2021/01/EB154B-Air-Quality-Modelling-Methodology.pdf

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