

**Report to District Development
Management Committee**



**Epping Forest
District Council**

**Report Reference: EPF/0287/18
EPF/1471/19**

Date of meeting: 7 July 2021

**Address: 51 High Road, Loughton, G10 4JE
113 Church Hill, Loughton, IG10 1QR**

Subject: Release of planning permissions previously agreed by Committee, following recommendations to GRANT permission subject to planning conditions, contributions or mitigation measures in respect of recreational visitor pressure and air quality impacts within the Epping Forest Special Area of Conservation (EFSAC).

Responsible Officer: Cuma Ahmet: (01992 564000 (extn.2158))

Democratic Services: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) To note the content of the report and agree for relevant officers to release the above planning applications in accordance with the recommendations previously reported to committee on 26 April 2021 (see previous report and recommendations appended).**

Report:

Summary Background

This report has been brought back to DDMC for decision following the conclusion of consultations with the Council's legal advisor and air pollution experts (AECOM) in relation to the SAC (held in abeyance) cases indicated above.

The release of the two abovementioned applications was deferred with a request for further clarity and confirmation on the following points:

- i. Whether the respective proximity and size of development are key determinants of the impact on the health of the EFSAC;**

ii. Whether additional mitigations are necessary for new developments that are nearest to the EFSAC; and

iii. Whether officers can provide absolute ‘certainty’ and/or guarantee that no adverse harm would be caused to the EFSAC.

The following section addresses each point in order to provide the confidence for Members that each case has been robustly assessed and all relevant mitigation measures currently available have been secured.

Matters for consideration

Each point is considered below in light of the advice received from our expert advisors.

Point 1: Whether the respective proximity and size of development are key determinants of the impact on the health of the EFSAC.

AECOM has advised that both proximity, size and ‘journey to work information’ are all (equally) important determining factors in terms of considering the effects of new developments on the EFSAC.

Notwithstanding however, the baseline approach to determining the effects of air pollution on the Forest from new development is to properly understand the number of vehicles (and types of journeys made) that are likely to be added to the road network. This is commonly referred to as the Average Annual Daily Traffic (AADT) and is upon which the effects of air pollution have been modelled by the Council’s expert consultants. The assessment of air pollution in this way provides the technical evidence base which in turn has informed the adopted IAPMS.

Members will acknowledge that the Interim Air Pollution Mitigation Strategy (IAPMS) is a district-wide (or strategic) approach to mitigating the harm on the Forest through various recommended measures and in principle therefore is intended to capture all new developments coming forward until 2030.

Therefore, the proximity and scale of new developments are not the primary determinants of considering the degree of harm to the Forest. Instead, the methodology is based on understanding the relative contribution of AADT to the road network from which mitigation can be appropriately applied to ensure that adverse harm can be avoided on both a project and cumulative levels. AECOM has indicated as an example that in practice a larger development located in North Weald Bassett may have a greater effect on the EFSAC than smaller development in Loughton despite being more distant from it.

Point 2: Whether additional mitigations are necessary for new developments that are nearest to the EFSAC.

In both cases concerned, the respective applicants have committed to providing electric car charging facilities for future occupiers; the provision of high-speed broadband connectivity to enable home-working and the relevant financial contributions towards the implementation and continued monitoring of the mitigation measures outlined in Appendices 3 and 4 of the adopted IAPMS.

Officers have acknowledged that Members have requested that officers explore the potential for securing a permanent requirement for each development to provide ULEVs (Ultra Low Emission Vehicles) from the point of occupation. This question is considered further in context of:

- i. The current measures set out in the adopted IAPMS; and
- ii. The legal and practical implications to enable this, e.g. enforceability.

The adopted IAPMS sets out a range of mitigation measures (Appendix 3) that will assist the Council in reducing the adverse effects of new development on the Forest. One of those key measures is to ensure all new developments given planning permission make operational provision for Electric Car Charging Points (EVCPs) for use prior to occupation. AECOM has advised officers, in both instances, by indicating that given the relatively low contribution of each development in terms of traffic on the wider network, it is unlikely that imposing a strict requirement for ULEV would achieve any net/real benefit to the health of the Forest.

In terms of the legal and practical implications of providing and maintaining permanent provision of ULEVs, Members will be aware that there are clear guidelines in both the National Planning Guidance and National Planning Policy Framework regarding the use of S106 Agreements and planning conditions. In these instances, officers consider that a permanent and enforceable requirement for ULEV on each site would not fully comply with the aforementioned guidance and/or current legal provisions.

Overall, officers consider the mitigations secured for each of the developments noted are sufficient and robust ways of reducing adverse harm on the Forest.

Point 3: Whether officers can provide absolute ‘certainty’ and/or guarantee that no adverse harm would be caused to the EFSAC.

Members will note that the Habitat Regulations (2017) requires that as the ‘Competent Authority’ (EFDC in this case) must be satisfied that the potential effects of a plan or project itself, and in combination with other plans and projects, will not adversely affect the integrity of the European Site (EFSAC in this case) before releasing planning permission.

The courts have recognised that ‘absolute certainty’ of preventing harm to the integrity of European designated sites under the Regulations is unattainable. The crucial test set by case law is instead to ensure that ‘no reasonable scientific doubt remains’.

Officers are advised that the mitigation measures in the adopted IAPMS will inevitably have a degree of uncertainty within them as the Council cannot force applicants to convert to ULEVs for example. This is the reason for why a monitoring framework has been included in the adopted IAPMS so that it is able to better track the progress towards the complete, precise and definitive air quality and vehicle fleet change targets being prescribed. Potentially, in the event that these identified targets for reducing air pollution is not met (at any given stage) then the issue of planning permissions may need to cease until the targets are met.

Overall, officers consider that the mitigation measures to be secured would prevent adverse harm on the integrity of the Forest.

Conclusion

Members are asked to note the content of the report, and to agree to the recommendations set out above before the release of the planning permissions.

ORIGINAL DDMC REPORT

Report References: See Appendix A For Comprehensive List

Addresses: See Appendix A For Comprehensive List

Subject: Release of planning permissions previously agreed by Committee, following recommendations to GRANT permission subject to planning conditions, contributions or mitigation measures in respect of recreational visitor pressure and air quality impacts within the Epping Forest Special Area of Conservation (EFSAC).

Responsible Officer: Cuma Ahmet: (01992 564000 (extn.2158))

Committee Secretary: Gary Woodhall (01992 564470)

Recommendation:

It is recommended that the Committee Members note the content of the report and:

- **Agree for relevant officers to continue to progress the completion of S106 agreements for all planning applications indicated in Appendix A of this report as previously reported to Committee;**
- **Agree for relevant officers to finalise all Appropriate Assessments (in accordance with the requirements of Regulation 63 the Conservation of Habitats and Species Regulations 2017 (As Amended) for each planning application indicated in Appendix A of this report and only to grant planning permissions as previously agreed by Committee where the outcome of that assessment is concluded to be that there is no adverse effect on the integrity of the EFSAC; and**
- **Agree for relevant officers to add and/or amend any planning conditions or S106 planning obligations in respect of securing necessary measures to mitigate air pollution impacts on the EFSAC, in accordance with the previous resolution(s) to grant planning permission for the development on the sites indicated in Appendix A.**

Report:

Summary Background

Members will be aware that the Council adopted an Interim Air Pollution Mitigation Strategy in February 2021 and an Interim Strategy for Managing Recreational Visitor Pressures' in October 2018, both which will form the basis for addressing the negative impacts on the Epping Forest Special Area of Conservation (EFSAC) as a result of new residential and commercial development proposals coming forward.

This (new) combined approach to assessing impacts on the EFSAC will also apply to dealing with those previous planning applications that were held in abeyance from being determined until the

above measures were agreed, and which officers are currently working through to enable their release at the earliest possible opportunity where it can be concluded that there is no adverse effect on the integrity of the EFSAC.

Accordingly, to deal with the back log in the most efficient and equitable way, a process has had to be implemented (referred to formally as the EFSAC Protocol) (LINK). In essence, the protocol sets out the sequence in which each planning application will be released. Together with the publication of the protocol, all applicants (through their agents) were also notified of this new process for dealing with their respective applications.

Matters for consideration

The first sequence of planning applications to be released in accordance with the published protocol are decisions previously made by the District Development Management Committee (DDMC) or one of the Area Planning Committees. These cases are set out in Appendix A of this report and includes links to the formal published minutes for Members.

To enable the release of planning permissions for each of the cases noted, in accordance with the previous Committee resolution(s), officers have identified additional administrative actions that will need to be completed first. They are as follows:

- 1. Continue to progress S106 Agreements where the original 6-month deadline for completion of the agreement from the Committee decision has now expired;**
- 2. Complete Appropriate Assessments under Regulation 63 the Conservation of Habitats and Species Regulations 2017 (As Amended); and**
- 3. Complete amendments to/or including new planning conditions and/or S106 planning obligations that ensure appropriate mitigations have been secured.**

It is pointed out to Members that the planning merits of the applications are not being reconsidered, but Members are in effect being asked to agree to delegate powers to relevant officers to carry out the abovementioned actions in accordance with the extant resolution to grant planning permission. The plans and approved details previously considered in each case by Committee remains unchanged. The grant of any permission is dependent on the conclusion being reached that there would be no adverse effect on the integrity of the EFSAC.

A short summary of each matter above is set out below.

Progressing S106 Agreements

Five of the planning applications (see below) contained in the list in Appendix A were subject to a requirement to complete a S106 Agreement within a 6-month period of the Committee's decision. Given that the Council was unable to progress making formal decisions until suitable measures were adopted for mitigating the effects of new development on the EFSAC, the stated deadlines could not be achieved.

Accordingly, it is requested that Members agree for officers to progress the completion of the respective S106 Agreements in each relevant/affected case to allow for planning permission to be released as soon as possible.

Relevant cases affected:

EPF/0287/18: 51 High Road Loughton.
EPF/0601/18: Land between 32a and 33 Downlands, Waltham Abbey.
EPF/0826/18: 48 Russell Road, Buckhurst Hill.
EPF/0854/18: Maycroft, Epping Road, Roydon.
EPF/2732/18: Villa Nursery, Reeves Lane, Roydon.

Appropriate Assessments

Under Regulation 63(1)(a) and (b) of the Conservation of Habitats and Species Regulations 2017 (As Amended), the Council as 'Competent Authority' must make an Appropriate Assessment of the implications of the development for the EFSAC in view of its conservation objectives as a European site. In conjunction with carrying out an Appropriate Assessment, the Council must consult Natural England, as the appropriate nature conservation body, and have regard to any representations made by Natural England about the project within such reasonable time as the Council specifies. The law requires that following an appropriate assessment planning permission may only be granted where it is concluded that there would be no adverse effect on the integrity of a protected site.

The Council consulted Natural England in all of the cases noted in Appendix A for a period of 21 days. An update on the position of Natural England will be provided at the meeting.

Amendments to/or including new planning conditions and/or S106 planning obligations

Upon concluding an Appropriate Assessment for each case in Appendix A, officers consider that it is prudent to ensure that all necessary mitigation measures have been secured properly before the release of planning permissions. The necessary measures required are to be determined on a case-by-case basis and are in addition to the financial contributions that are already being sought towards mitigating the impacts on air quality.

The necessary measures identified and to be considered in each case including their full wording are as follows:

1. Reworded version of planning condition to provide electric vehicle charging as previously agreed by the Committee.

For clarity, the reworded condition below will be imposed on all cases that propose onsite parking.

Details and location of the parking spaces (including garages) equipped with active and/or passive EVCP must be submitted prior to works commencing on site, including details which shall demonstrate that the development will deliver active EVCPs from occupation. The details shall include:

- **Location of active and passive charging infrastructure;**
- **Specification of charging equipment; and**
- **Operation/management strategy.**

The council will expect that a management plan for the charging points is set out clearly. This will address:

- **Which parking bays will have active and/or passive charging provision, including disabled parking bays;**
- **How charging point usage will be charged amongst users;**

- The process and the triggers for identifying when additional passive charging points will become activated; and
- Electricity supply availability.

The electricity supply should be already confirmed by the Network Provider so that the supply does not need to be upgraded at a later date. The development shall be completed in accordance with the approved details and retained in perpetuity. Prior to occupation, the applicant shall submit confirmation that the agreed active charging points are operational.

Reason: To comply with core policy CP 1 of the adopted Epping Forest District Local Plan (2008); including policies SP 1 and T 1 of the Epping Forest District Local Plan Submission Version (2017).

2. Providing access to high-speed broadband.

This new condition will be included in each case indicated in Appendix A.

Prior to the commencement of development, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway, unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the development contributes to supporting improved digital connectivity throughout the District and supports the wider aims and objectives for reducing car-led air pollution, improving the health and wellbeing of residents and visitors including the EFSAC, in accordance with core policy CP 1 of the adopted Epping Forest District Local Plan (2008); including policies SP 1, D 5, DM 2, DM 9, DM 10 and DM 22 of the Epping Forest District Local Plan Submission Version (2017).

Initial communications with applicants/agent to date confirm that the abovementioned necessary measures are not being opposed.

Conclusion

Members are asked to note the content of the report, and to agree to the recommendations set out above before the release of the planning permissions.