

Report to Overview and Scrutiny Committee



SCRUTINY

Date of meeting: 31 March 2022

Portfolio: Planning and Sustainability (Cllr N Bedford)



Subject: Epping Forest Special Area of Conservation Strategic Access Management and Monitoring Strategy and Governance Arrangements

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Recommendations/Decisions Required:

The Committee is asked to comment and make recommendations on the adoption of a Partnership Agreement for the delivery of Strategic Access Management and Monitoring (SAMM) Strategy for the Epping Forest Special Area of Conservation for consideration by Cabinet at its meeting on 11 April 2022. The Agreement comprises:

- **Governance Arrangements;**
- **Strategic Access Management and Monitoring Strategy; and**
- **Approach to apportionment of SAMM Strategy costs to the relevant competent authorities.**

The Committee is asked to comment and make recommendations on the approach to securing financial contributions from qualifying development within the District to deliver the SAMM Strategy for consideration by Cabinet at its meeting on 11 April 2022.

Executive Summary:

1. The Epping Forest contains land which is subject to international protection for its biodiversity value by way of its designation as a Special Area of Conservation (SAC). The Council has a legal duty as a 'competent authority' under the Habitats Regulations to protect internationally important sites, such as the Epping Forest SAC, from the effects of development. This can be best achieved using measures put in place at the Local Plan level.
2. This report specifically concerns the potential impact of residential development on the Epping Forest SAC in relation to additional visitors using the Forest for recreational purposes.
3. The Partnership Agreement presented replaces the 'Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation' adopted by the Council in October 2018. The Agreement has been jointly developed by the Council with other competent authorities, Natural England and the Corporation of London as Delivery Body. The document outlines the updated Site Access Management and Monitoring (SAMM) Strategy for the Epping Forest and the Governance Arrangements to ensure that financial contributions that have been / will be collected from development are spent in accordance with the purposes for which they have been secured and that proper monitoring of spending is put in place. Further, it outlines the robust approach to apportioning the SAMM Strategy costs to individual local authorities, based upon the likely increase in visitor pressure from each local authority as a result of development through respective Local Plans.

4. Finally, this report also sets out how Epping Forest District Council will secure funding from development in its administrative area in order to meet the SAMM Strategy costs apportioned to the local authority area.
5. The Partnership Agreement and the approach to securing financial contributions within the District will be presented to Cabinet on 11 April 2022 for decision. As the report outlines, the Conservators of Epping Forest and the London Borough of Redbridge have approved the Partnership Agreement via their respective Committees and other neighbouring competent authorities are similarly progressing reports through their Committee processes.

Report:

6. The Epping Forest contains land which is subject to international protection for its biodiversity value by way of its designation as a Special Area of Conservation (SAC). The SAC designation relates primarily for its value in respect of beech trees and wet and dry heaths and for its population of stag beetle. The site forms a critical part of the biodiversity assets and green and blue infrastructure of the District. As an internationally important site it is afforded the highest level of protection due to its habitats and species that are vulnerable or rare within an international context.
7. The Council, as the competent authority, has a duty to ensure that plans and projects which it has a responsibility for consenting will not have an adverse effect on integrity of the SAC. This includes by interfering with the restoration of such sites to favourable conservation status within the context of their conservation objectives. Where development plans or projects will have an adverse effect on the integrity of these sites, either alone or in combination with other plans and projects, the Council must assess the implications of such effects, and secure any avoidance or mitigation measures necessary to prevent an adverse effect on the integrity of the site.
8. The Council has a legal duty as a 'competent authority' under the Habitats Regulations to protect internationally important sites, such as the Epping Forest SAC, from the effects of development. This can be best achieved using measures put in place at the Local Plan level so that development projects have clarity on where they can develop and what measures may be necessary to incorporate into a development proposal or addressed through off-site measures including through either direct provision or by securing financial contributions towards their implementation. Strategic approaches to site mitigation often include, for example, access management strategies, habitat management, provision of new alternative natural greenspace for recreation, and sustainable transport choices and other air pollution management interventions.
9. The Epping Forest is experiencing considerable pressure on its habitats from visitors living within the District as well as from outside it. In addition, atmospheric pollution is having an adverse effect on parts of its ecosystems. Atmospheric pollution originates from a wide variety of sources including traffic, power generation, industry, commercial and domestic boilers and from agriculture, most of which is located some distance from the Forest itself. These have resulted in large areas of the Forest being described as having an 'unfavourable conservation status.'
10. The potential impact of development on the Epping Forest SAC in relation to visitor pressure arises primarily from residential development creating additional visitors using the Forest for recreational purposes. These additional recreational pressures can have an adverse effect on its sensitive ecosystems.
11. The Council recognises that additional residential development within parts of the District is likely to give rise to further visitor pressure on the Forest that needs to be either avoided or mitigated. These parts of the District are defined by a 'Zone of Influence' which has been established using evidence from visitor surveys in 2017 and

2019. The current 'Zone of Influence' is 6.2km but this may change over the course of the Local Plan period as a result of future visitor surveys that are scheduled to be undertaken as part of the Monitoring Framework for the Forest. In order to protect the vulnerable habitats within the Forest the Council will secure the provision or enhancement of alternative spaces and corridors that can relieve the recreational pressure on the Forest. This will be achieved by increasing public access to land that is not in the Forest and enhancing the character of existing open spaces and the links between open spaces. These approaches are intended to improve access for walkers, dog walkers, cyclists and horse riders to recreational spaces other than the Forest as well as provide for additional space for wildlife and plant species. In order to achieve this objective the Council has adopted a Green Infrastructure Strategy which provides the District wide framework for providing new areas of Suitable Alternative Natural Greenspace (SANG) related to a number of the Strategic Masterplan areas together with identified opportunities to provide an alternative recreational offer to the Forest, including through enhancements to existing open spaces. These measures will be implemented by developers of relevant sites or through securing financial contributions for the implementation of measures by the Council and its partners.

12. The Council does, however, recognise that there are no mechanisms for preventing new residents from using the Forest and that there is therefore a need to address this by working with the Conservators of Epping Forest to implement SAMM measures within the Forest itself. The Council adopted an 'Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation' (the Interim Approach) in October 2018 which identified a range of measures to be implemented and monitoring activities to be undertaken over the course of the period of the Council's emerging Local Plan. The Interim Approach also identified the level of financial contributions that would be secured from relevant residential developments within the 'Zone of Influence.'
13. The Conservators of Epping Forest presented the Partnership Agreement for the delivery of SAMM for the Epping Forest SAC for approval at the Epping Forest & Commons Committee on 17 January 2022. The London Borough of Redbridge approved the Partnership Agreement and its local tariff at its Cabinet meeting on 08 March 2022. Other neighbouring competent authorities are taking the Partnership Agreement through their respective Committee processes on a similar timescale to that of Epping Forest District Council.

Governance Arrangements

14. In order to be able to spend the financial contributions that have been, or will be, secured from qualifying development, there is a need to put in place appropriate Governance arrangements to ensure that there is proper legal and fiscal oversight. This is to ensure that monies are spent in accordance with the purposes for which they have been secured and that proper monitoring of spending is put in place. To this end a Technical Oversight Group (TOG) of officers, chaired by Natural England, has been established to collaboratively develop these Governance Arrangements. The TOG has, in parallel, worked together to update the Interim Approach for mitigating the impacts of development arising within the Zone of Influence on the Epping Forest SAC (see paragraphs 16–20 below). The Group comprises officer representation from:

Epping Forest District Council
LB Waltham Forest
LB Redbridge
LB Enfield
LB Newham
Natural England
Conservators of Epping Forest

Officers from Harlow District Council, the London Legacy Development Corporation and Essex County Council also attend on a 'watching brief' only basis.

15. The Governance Arrangements set out in Chapter 2 of the Partnership Agreement (see Appendix 1 to this report) have been developed collaboratively between the relevant local authorities and the Conservators of Epping Forest as the body responsible for the delivery of the projects and programmes for which financial contributions have been secured. The Governance Arrangements have been legally reviewed by the parties to the agreement. Importantly, the Governance Arrangements do not create a financial liability for either the individual authorities or the Conservators if the assumed level of development does not come forward as anticipated. This is because the payment of contributions will be based on monies collected, which will occur on commencement of development, rather than on the grant of planning permission. It also makes provision for the short-term investment of monies that have been received but where spend is profiled for later in the SAMM delivery programme.

Updated SAMM Strategy

16. In adopting the Interim Strategy in 2018 the Council committed to continue to work with neighbouring authorities, the Conservators of Epping Forest and Natural England to update and refine these projects and programmes and the approach to securing financial contributions over the course of the Local Plan period.

17. To this end, the Conservators commissioned Land Use Consultants (LUC) to undertake a more in-depth review of the projects and programmes needed to ensure that there would be no adverse effect on the Epping Forest SAC in relation to recreational pressures arising from new development. This detailed report, dated September 2020, was considered by the City of London Corporation's Epping Forest and Commons Committee in November 2020. Members of the Epping Forest and Commons Committee approved the costed proposals in Appendix 1, Table 3 and Appendix 2 and that these be presented to all competent authorities as a basis for SAMM funding in their respective Local Plans through an updated, full Epping Forest SAC Mitigation Strategy and that officers report back on any proposed modifications to the proposals requested by the competent authorities (including 'in perpetuity' calculations) for consideration and approval. The projects and programmes identified a need for some £63 million to be invested in the Epping Forest SAC based on an 'in-perpetuity' basis of 125 years.

18. The projects and programmes contained within the SAMM Strategy have been rigorously assessed by both the competent authorities and Natural England to ensure that it can be demonstrated that such measures can be attributed as being necessary to mitigate the effects of qualifying development. In addition, whilst the competent authorities considered that the use of an 'in-perpetuity' period was justified that basing this on a 125-year period was not. The purpose of the assessment was to ensure that any financial contributions sought would be in accordance with the tests set out at Paragraph 56 of the National Planning Policy Framework and the Community Infrastructure Levy Regulations in that such contributions are:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

This review has resulted in a significant refinement of the projects and programmes that were identified in the LUC Report that are deemed as being necessary to mitigate the effects of qualifying development and that the 'in-perpetuity' period used should be for 80 years. The consequence of this is that the initial cost of the measures indicated by the LUC report of some £63 million has reduced to some £24.8 million within the SAMM Strategy that is the subject of this report.

19. The SAMM Strategy that is proposed to be adopted does, however, result in a significant uplift in the overall costs of the measures needed to mitigate the effects of qualifying development from those identified in the Interim Approach. There are a

number of reasons for this. Firstly, the Interim Strategy did not take into account the need to ensure that the measures would be delivered over the lifetime of the development i.e. that they would be delivered ‘in-perpetuity’. Secondly, the Strategy now includes additional ‘people’ resources through the provision of three ‘Ambassadors’ to work with both visitors and local communities to raise awareness of the issues facing the Epping Forest and to work with visitors can do to ensure that their behaviours and activities are ‘Forest Friendly.’ The cost of project managing the implementation of the projects and programmes and the provision of necessary monitoring information has also been included. The need for these posts to be provided ‘in-perpetuity’ has had a significant impact on the overall costs over and above those identified in the Interim Strategy. Thirdly, the assessment of physical assets that will need to be maintained on a cyclical basis and investment needed at the three visitor ‘hubs’ has been more rigorously assessed.

20. Officers are satisfied that the measures and costs outlined in the SAMM Strategy as set out in Schedule 1 of the Partnership Agreement at Appendix 1 are necessary and proportionate and that the Strategy be adopted as a material consideration in the determination of planning and development related applications.

Approach to apportionment across the local authorities

21. As well as developing the Governance Arrangements and the SAMM Strategy the TOG has worked together to develop an appropriate approach as to how the costs of delivering the SAMM Strategy should be apportioned to individual local authorities.
22. The financial costs of the Interim Approach amounted to £2,593,112 (based on 2018 costs) and the apportionment of those costs was as follows:

Epping Forest District Council £1,355,679 (52.28%)
 LB Waltham Forest 37.00% £959,452 (37.00%)
 LB Redbridge £277,982 (10.72%)

23. A significant amount of work has been undertaken since that time to ensure that the approach to apportioning the SAMM Strategy costs to the individual local authorities is robust, justified and proportionate. In doing so, regard has been had to approaches taken in other parts of England. This work has resulted in the development of a more refined approach to that used for the Interim Approach. In essence the approach now proposed is based on the percentage increase in visitor pressure likely to arise from each local authority area as a result of new development proposed for allocation through local plans. This is in contrast to the Interim Approach which was based on the percentage of visitors from each local authority area currently. As a result, the overall percentage of the total SAMM costs attributed to Epping Forest District has reduced from 52.28% to 15.66%. The proposed apportionment of costs per authority is set out in the table below:

Authority	% of pressure caused by new development	Apportionment (80 years)
EFDC	15.66%	£3,886,415.65
WF	68.13%	£16,908,141.66
Redbridge	12.51%	£3,104,665.38
Newham	1.18%	£292,846.13
Enfield	2.52%	£625,400.22
SAMM Programme Total:		£24,817,469.05

Approach to securing financial contributions within Epping Forest District

24. The overall apportionment of costs arising from the SAMM Strategy is a matter for all the relevant authorities to agree on (as per paragraphs 21-23). However, it is for individual local authorities to determine how they wish to secure funding from development in their administrative area. The rationale used by EFDC in the Interim Strategy was that financial contributions would only be sought from qualifying development within 3km of the Epping Forest SAC. This reflected the fact that the vast majority of all Epping Forest District visitors within the entire ZOI lived within 3km of the Epping Forest SAC boundary. The level of contribution sought by EFDC is currently £352 per dwelling.
25. There is a need to consider whether the current approach to securing financial contributions remains equitable. If the Council were to maintain the current approach of only seeking contributions from qualifying development within 3km of the Epping Forest SAC, the new rate would be £2058.48 per dwelling.
26. If contributions were sought from all development within the 6.2km Zone of Influence. This would provide a rate of £1286.47 per dwelling.
27. In considering which approach to take it will be important to acknowledge what other recreational mitigation/avoidance measures are being secured from development within the District. These costs are separate to the costs arising from the SAMM Strategy and will continue to be secured as set out below:

Within 3km of the Epping Forest SAC:

- £716 per dwelling is required from new residential development within the parishes of Buckhurst Hill/Loughton/Theydon Bois to contribute toward the implementation of the Roding Valley Recreation Ground/Public Rights of Way infrastructure enhancement projects.
- SANG at South Epping Masterplan Area.
- Contributions to mitigation measures within Lea Valley Park from Waltham Abbey North Masterplan Area.

Within 3-6km:

- Provision of SANG at Latton Priory, Water Lane and North Weald Bassett.

All development is also required to make contributions toward the implementation of the Air Pollution Mitigation Strategy.

28. In addition to the above considerations cognisance also needs to be given to the evidence provided by the 2017 and 2019 Epping Forest SAC Visitor Surveys. These surveys indicated that a minority of visitors arising from the Epping Forest District administrative area came from the area within 3-6.2km of the Epping Forest SAC. This is not unsurprising given the rural nature of large parts of Epping Forest District within this area. However, there are a number of sites/parts of sites proposed for allocation in the Council's emerging Local Plan that would fall within this area where visits to the Epping Forest SAC could not be discounted. Consequently, it is recommended that all qualifying development is required to contribute but that a 'tiered' approach is taken so that development that is closest to the Epping Forest SAC pays proportionately more than those further afield. A ratio of 90/10 would broadly reflect the current Visitor survey evidence and would result in a contribution of:

Within 3km: £3,497,774.09 = £1852.63 per dwelling

Within 3 - 6.2km: £388,641.57 = £343.02 per dwelling

29. Officers consider that the above approach is the most robust and proportionate having had regard to Paragraph 56 of the National Planning Policy Framework and the Community Infrastructure Levy Regulations and should be adopted by the Council. Officers recognise that this will be an additional financial burden for developments. However, it is important to recognise that the costs of each applicant having to develop their own site specific ('bespoke') solution would be likely to be more costly and it may well be difficult for them to be able to demonstrate that such measures would be effective and deliverable. In addition, the cost of avoidance and mitigation measures across England vary significantly depending on the nature of the internationally important site that is being protected and the measures needed. For example, the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy seeks a contribution of £122.30 (base date 2019). However, contributions required by Bracknell Forest Borough Council in relation to the Thames Basin Heaths Special Protection Area average some £6785 per dwelling (within a range) to provide for SAMP and SANG (the SANG component adopts a similar approach to the Council's Infrastructure Enhancement Project for the Roding Valley Recreation Ground). For larger sites that are required to provide bespoke i.e. site specific SANG (which is the same approach as the Council is proposing on a number of the Strategic Masterplan sites) the average cost per dwelling for SAMP measures is some £797 (based on 2021/2022 figures).

Reason for decision: To comply with the Council's legal duty as a 'competent authority' under the Habitats Regulations to protect internationally important sites, such as the Epping Forest SAC, from the effects of development. As outlined, this can be best achieved using strategic measures put in place at the Local Plan level. Natural England and the Conservators of Epping Forest both voiced their support for the progress made in finalising the approach to SAMP for Epping Forest in their representations on the Main Modifications to the Local Plan Inspector, although expressed concern that the approach needs to be finalised swiftly to enable the delivery of mitigation to commence. Adoption of the Partnership Agreement is therefore important to support the final stages of Examination of the Council's emerging Local Plan and to enable financial contributions to be paid to the accountable body for the SAMP delivery programme to commence.

Options considered and rejected: For Cabinet to decide not to adopt the Partnership Agreement for the delivery of SAMP measures for the Epping Forest SAC. This would mean that the Council would fail to comply with its legal duty under the Habitats Regulations and would be prevented from determining planning applications and applications for prior approval under permitted development which result in a net increase in residential units.

For Cabinet to decide on an alternative approach to secure funding to meet the SAMP Strategy costs apportioned to Epping Forest District.

Consultation undertaken: The Local Plan has been developed in partnership with other local authorities under the Duty to Co-operate, local stakeholders and in consultation with residents. The Partnership Agreement has been developed with Natural England, the City of London Corporation (as Conservators of Epping Forest) and relevant local authorities as set out in the body of the report. The Governance Arrangements have been legally reviewed by the parties to the Agreement.

Resource implications: As outlined within the report, the SAMP programme will be delivered through contributions from qualifying development. The Governance Arrangements do not create a financial liability for either the individual planning authorities or the Conservators if the assumed level of development does not come forward as anticipated. The Planning Policy Team, within existing resources, will continue to participate in the Technical Oversight Group as outlined within the Partnership Agreement.

Legal and Governance Implications: The Local Plan, the Partnership Agreement and the approach to securing financial contributions within the District have been developed in accordance with Government Policy (NPPF) and Planning and Environmental Law. The Governance Arrangements have been legally reviewed by the parties to the Agreement.

Safer, Cleaner, Greener Implications: The Local Plan contains policies designed to promote the notion of making good places to live, work and visit. This includes sustainable development, safer by design principles, the provision of alternatives to the car, energy efficiency, quality green infrastructure and environmental considerations. As outlined within Policy DM2, the SAMM Strategy (within the Partnership Agreement) is a key element of the Local Plan's strategic approach to ensuring that development has no adverse impact on the site integrity of the Epping Forest SAC.

Background Papers:

EB143/ Cabinet 18 October 2018/ Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation. See <https://www.efdclocalplan.org/wp-content/uploads/2020/01/EB143.pdf>

EB715/ Epping Forest Special Area of Conservation Visitor Survey March 2018. See <http://www.efdclocalplan.org/wp-content/uploads/2018/08/EB715-Epping-Forest-Visitor-Survey-Footprint-Ecology.pdf>

EB716/ Epping Forest Visitor Survey 2019. See <https://www.efdclocalplan.org/wp-content/uploads/2021/02/EB716-Epping-Forest-visitor-report-2019-030221.pdf>

Risk Management: Risks to the Council in not adopting the Partnership Agreement would be the failure to comply with the Council's legal duty under the Habitats Regulations and prevention from determining planning applications and applications for prior approval under permitted development.