

Report to the Council

Date: 06 March 2023

Subject: Adoption of Epping Forest District Local Plan 2011-2033

Responsible Officer: Nigel Richardson

Portfolio Holder: Councillor Bedford

Recommendations/ Decisions Required:

The Council is recommended to:

- 1) Note the content of the Inspector's Report on the Examination of the Epping Forest District Local Plan 2011–2033 alongside the appended Schedule of Main Modifications (Appendix A and B to this report) and his conclusion that the Epping Forest District Local Plan 2011–2033 provides an appropriate basis for the planning of the District provided that a number of Main Modifications are made to it.
- 2) Adopt the Epping Forest District Local Plan 2011-2033 submitted to the Secretary of State for examination as amended by the Main Modifications and Additional Modifications (as identified in Appendix B and Appendix C to this report) as the statutory development plan for Epping Forest District (in accordance with Section 23 (3) of the Planning and Compulsory Purchase Act 2004 (as amended)) and use the Epping Forest District Local Plan 2011-2033 as the basis for planning decisions across the District (together with 'made' neighbourhood development plans where relevant).
- 3) Note that on adoption of the Epping Forest District Local Plan 2011–2033 and following the end of the six-week period for legal challenge that the following Development Plan Documents and associated Proposals Maps are revoked and should not be used for decision-making:
 - a) Those policies of the Epping Forest District Local Plan adopted January 1998 that had not previously been replaced; and
 - b) Epping Forest District Local Plan Alterations adopted July 2006.
- 4) Delegate to the Director of Planning, in consultation with the Portfolio Holder for Place, authorisation to make changes to text, graphics and layout of the Plan of a minor or inconsequential nature or in order to ensure consistency

with the Main Modifications and Additional Modifications Schedules attached at Appendix B and C to this report, as considered appropriate and necessary prior to the publication of the final version of the adopted Epping Forest District Local Plan 2011-2033 and associated Policies Map in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

Executive Summary:

Before a Local Plan can be formally adopted by a Council as the statutory development plan for the District it must be examined by a Government-appointed Inspector. The Epping Forest District Local Plan Submission Version (LPSV) was submitted to Government in September 2018 for examination. Following examination hearings in 2019, consultation upon specific changes to the Plan, known as Main Modifications, in 2021 and consultation on further Main Modifications to the Plan in 2022, the Planning Inspector has issued his Final Report (together with a Schedule of Main Modifications) on the soundness and legal compliance of the Epping Forest District Local Plan 2011-2033 on 09 February 2023.

With the incorporation of all Main Modifications as set out in the Appendix to the Inspector's Final Report (attached as Appendix B), the Inspector concludes that the Epping Forest District Local Plan 2011–2033 is sound and legally compliant. This enables the Council, with the inclusion of all the recommended Main Modifications, to adopt the Local Plan.

Reasons for Proposed Decision:

Local Planning Authorities (LPAs) are required by legislation to develop local plans, and Government has stated that LPAs should have an up-to-date local plan in place by the end of 2023. The Epping Forest District Local Plan 2011–2033 (the Local Plan) has been found 'sound' following independent examination subject to a number of Main Modifications. The Local Plan forms part of the Council's Statutory Policy Framework and supports the delivery of the Council's Corporate Plan 2023–2027 and other Council strategies and initiatives. The spatial strategy and housing requirement established through the Local Plan accords with the approach agreed by way of Memorandums of Understanding entered into by the Council through the 'Duty to Cooperate'.

The adoption of the Local Plan would provide the Council with an up-to-date and therefore robust planning policy framework for decision-making purposes based on local evidence, which has been developed within the local context of the District and with the involvement of residents, businesses, community groups and other key stakeholders. It also establishes, amongst other things, a locally derived housing requirement (based on a stepped housing trajectory) against which the five-year supply of housing for the District and the Government's Housing Delivery Test will be assessed. Currently both the Council's five-year housing land supply position and its performance in relation to the Government's Housing Delivery Test are assessed

against the figures derived from the Government's Standard Methodology, a figure that is significantly higher than the housing requirement identified in the Local Plan.

It is noted that Government has recently consulted on proposed revisions to the National Planning Policy Framework (NPPF). Should Government adopt the proposed revisions in relation to assessing five-year housing land supply then the Council would be able to rely on the assessment of its five-year housing land supply as per the housing trajectory published alongside the further Main Modifications consultation for a period of five years from adoption of the Plan, rather than having to use the Standard Methodology figure which is significantly higher.

Alternative Options:

The Council formally invited the Inspector to recommend Main Modifications to the Local Plan, if necessary, to make the Local Plan sound. The Council can only adopt the Local Plan having incorporated all of the Main Modifications recommended by the Inspector. It cannot choose to incorporate some Main Modifications and not others. Given that no further adjustments to the Local Plan can be made at this stage, the only alternative option would be for the Council to withdraw the Local Plan and commence the plan-making process again. This would have significant financial, resource and reputational implications. Such an approach would also impact on the ability, for example, to deliver the affordable homes needed in the District, achieve the Council's economic ambitions for the District and respond proactively to the climate emergency.

To not adopt the Local Plan would leave the Council without an up-to-date planning policy framework tailored to local circumstances and would leave it vulnerable to 'planning by appeal' as it would not be possible to demonstrate a five-year supply of housing land when assessed against the Standard Methodology calculation for housing need for the District. As such, it is likely that the District would be faced with speculative planning applications determined within the context of the NPPF's 'presumption in favour of sustainable development'.

If the Council were to commence the plan-making process again there would be a number of implications. For example, the starting point in determining the District's housing requirement would be the Government's Standard Methodology figure for the District of some 963 homes per annum (based on 2021/22 figures). This compares to a housing requirement in the examined Plan of 518 dwellings per year over the Plan period.

It is noted that the Government's consultation on the NPPF proposes a number of changes, including to Chapter 13 in relation to 'Protecting Green Belt Land' as follows:

"Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Green Belt boundaries are not required to be reviewed and altered if this

would be the only means of meeting the objectively assessed need for housing over the plan period.

Officers are of the view that this insertion is a clarification rather than the introduction of a new approach as there has never been a requirement placed on LPAs to review or alter Green Belt boundaries for such purposes. Importantly the spatial strategy for the Local Plan adopts the approach of maximising the opportunity to accommodate its housing requirement on brownfield sites and on land within its towns and villages that lie outside of the Green Belt. The Council then had to demonstrate 'exceptional circumstances' in order to alter the Green Belt boundary in a number of locations through the Local Plan.

Consequently, officers are of the view that there would be no benefits to be achieved by not adopting the Local Plan in accordance with the recommendations of the Local Plan Inspector.

Report:

In line with the NPPF, LPAs must prepare a Local Plan, which sets planning policies in a local authority area. In accordance with the Planning and Compulsory Purchase Act 2004 (the Act), the Town and Country Planning (Local Planning (England) Regulations 2012 (as amended)) (the Regulations) and the NPPF, Local Plans must be positively prepared, justified, effective and consistent with national policy (the 'tests of soundness').

On 14 December 2017, at an Extraordinary meeting of the Council Members approved the Epping Forest District Local Plan Submission Version 2017 (LPSV) for publication under Regulation 19 of the Regulations and for submission to the Secretary of State for independent examination under section 20 of the Regulations. At the same meeting Members also resolved that the LPSV be endorsed as a material consideration in the determination of planning applications and enforcement decisions and for it to be given appropriate weight in accordance with paragraph 216 of the NPPF.

The Local Plan forms part of the Council's Statutory Policy Framework. It provides the spatial planning policies for the District through which new homes (including affordable homes) and employment land, will be delivered and how. The Local Plan includes policies which will be used to assess planning applications and other related development proposals, to ensure that new development is sustainable, well designed, supported by the required infrastructure, and provides for the future needs of the District.

Before a Local Plan can be formally adopted by the Council as the statutory development plan for the District, it must be examined by an independent Inspector appointed by the Secretary of State whose job it is to determine whether 1) the Local Plan has been prepared in compliance with the legal requirements set out in the Act and the 2012 Regulations and 2) that the policies and proposals in the Local Plan comply with the 'tests of soundness' as set out in the NPPF. In the case of the

Council's Local Plan the 'tests' of soundness' were assessed against the NPPF 2012 in accordance with transitional arrangements in place at the time of the publication and submission of the Local Plan.

An Independent Inspector was appointed to examine the LPSV in 2018. On 8 February 2019, in line with resolution 2 (f) at the Extraordinary meeting of the Council on 14 December 2017, the Council wrote to the Inspector requesting that they recommend such modifications to the submitted Local Plan as may be necessary to make the Plan sound and legally compliant, in accordance with section 20(7C) of the 2004 Act.

Examination hearing sessions were held between February and June 2019, following which the then Inspector published her initial advice to the Council (in August 2019). The Inspector identified a number of areas where the Council needed to undertake further work and where a number of changes were required to the submitted Local Plan to remedy issues of soundness in the form of Main Modifications. After undertaking a substantial amount of additional work (including in relation to the effects of the Local Plan on the Epping Forest Special Area of Conservation), Main Modifications to the LPSV were consulted on between 15 July 2021 and 23 September 2021. The Main Modifications were accompanied by the 2021 Habitats Regulations Assessment and an addendum to the Sustainability Appraisal Report 2017. Alongside these documents the Council published a Schedule of Additional Modifications, these being minor changes which did not materially affect the Policies of the Local Plan.

The Council was notified in April 2022 that a new Inspector had been appointed to complete the examination of the Local Plan. After consideration of all the relevant documentation relating to the examination of the Plan to that point, including responses to the Main Modifications consultation, the Inspector notified the Council on 23 May 2022 that further changes were required to the LPSV and therefore to the Main Modifications consulted on in 2021 in order to meet the tests of soundness as set out in the NPPF.

The Inspector provided a note to the Council dated 16 June 2022, which set out a number of actions for it to undertake. This included that a new schedule of Main Modifications be prepared and consulted upon. The outcome of this process was a consultation on further Main Modifications to the Plan which ran for six weeks from 28 October to 09 December 2022. The Schedule of Main Modifications clearly differentiated between the Main Modifications consulted upon in 2021 (which were in black text) and the proposed further Main Modifications which were in red text. Only the further Main Modifications were the subject of consultation at this stage. Consistent with the Main Modifications consultation in the Summer of 2021 the revised Schedule of Main Modifications was accompanied by a 2022 Habitats Regulations Assessment, an addendum to the Sustainability Appraisal Report 2017 and a Schedule of Additional Modifications. The Additional Modifications were published alongside the further Main Modifications but were not subject to examination or consultation as they do not materially affect the policies and are not required to make the Local Plan sound and capable of adoption.

Having considered the responses to the consultation on the further Main Modifications, the Inspector issued his report to the Council on 09 February 2023. The Inspector's report concludes that, subject to the incorporation of the Main Modifications attached as an appendix to his report, the Epping Forest District Local Plan 2011–2033 meets the legal requirements and soundness tests and therefore the Council can proceed to formal adoption. The Inspector's report is attached at Appendix A to this report and the accompanying Schedule of Main Modifications at Appendix B.

The Draft Final Version of the Epping Forest District Local Plan 2011-2033 Parts One and Two (Part Two comprising what had previously been Appendix 6 of the LPSV) and the Policies Map are attached to this report at Appendix D, E and F respectively. These documents incorporate all of the Main Modifications recommended by the Inspector together with Additional Modifications that the Council considers are required. It should be noted for clarity that all references to paragraphs, tables, Parts within Policies etc in the Main Modifications and the Additional Modifications Schedules relate to the LPSV as submitted in 2018. In some cases the referencing will have altered in the Draft Final Version of the Plan that is attached to this report as a result of the roll-out of all modifications. The Plan documents and mapping attached at Appendix D, E and F to this report are subject to final review and therefore this report requests that the Director of Planning, in consultation with the Portfolio Holder for Place, be authorised to make changes to text, graphics and layout of a minor or inconsequential nature or in order to ensure consistency with the Main Modifications and Additional Modifications Schedules attached at Appendix B and C to this report, as considered appropriate and necessary prior to the publication of the final version of the adopted Epping Forest District Local Plan 2011-2033 and Policies Map.

Importance of adopting the Local Plan

The importance of ensuring the Council has an up-to-date adopted Local Plan cannot be understated. The adoption of the Local Plan will help support the achievement of a number of the Council's ambitions as set out in the Council's Corporate Plan 2023–2027 and in particular that development within the District is planned, and in ensuring that infrastructure supports growth (part of the 'Stronger Place' ambition). It also has a key role to play in supporting the implementation of the Council's Housing Strategy and Climate Change Action Plan. The existing Local Plan is significantly out of date and therefore is limited in how it can support the Council's ambitions as set out in the Corporate Plan 2023-2027. This is primarily as a result of the weight attributed to the 'presumption in favour of sustainable development' as set out in the NPPF 2021 (the relevant version as it relates to decision-making) under paragraph 11 (d) which states that *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:*

(i). the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed;
or

(ii). any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

In these circumstances the ability for the Council to control and influence matters which are rightly covered in the Local Plan is significantly reduced. The Epping Forest District Local Plan 2011-2033 has been developed with the involvement of a significant number of important stakeholders including residents, businesses and key partners. It is based on a comprehensive suite of evidence reflecting the local circumstances, characteristics and issues relevant to the District. As well as supporting the development of the Local Plan, this evidence base adds valuable context and guidance and, in some cases, detailed requirements relevant to the Council’s decision-making role. An up-to-date Local Plan enables decisions to be considered against the most relevant Local Policy Framework, with an expectation that decisions would be required to comply with the policies in the Local Plan as a whole. Whilst seeking to support and achieve sustainable development, the ability for the Council to shape and influence planning decisions is significantly enhanced with an up-to-date Local Plan. This is because planning law¹ requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

Councillors may also wish to be aware of the fact that a Levelling-up and Regeneration Bill is currently before Parliament which has relevance to the planning system. In addition, a recent consultation has taken place on changes to the NPPF to support the implementation of the Bill in order to “put the foundations in place for delivering this by creating a genuinely plan-led system with a stronger voice for communities”. The Bill, if passed in its current form, makes several changes to strengthen the role of local plans, so that decisions on applications are more genuinely plan-led. It specifically states that:

“Local plans will be given more weight when making decisions on applications, so that there must be strong reasons to override the plan.”

To incentivise plan production further and ensure that newly produced plans are not undermined, the Government has indicated its intention to remove the requirement for authorities to maintain a rolling five-year supply of deliverable land for housing, where their plan is up-to-date. This is intended to reduce instances of ‘speculative development’ and ‘planning by appeal’, so long as plans are kept up-to-date. These proposed changes and the enhanced emphasis on decisions being in accordance with up-to-date plans are significant, particularly in respect of the implications for authorities where an up to Local Plan is **not** in place.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Next Steps

Following a positive resolution by the Council, there are a number of formal steps that need to be taken. This includes the publication of a Local Plan Adoption Statement, a Sustainability Appraisal (incorporating Strategic Environmental Assessment) Post Adoption Statement, a Habitats Regulations Assessment Post Adoption Statement and making the adopted Plan available for inspection. Following this, the adopted Plan is then subject to a legal challenge period of six weeks, when the Plan could be challenged through an application to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004. The grounds for such a challenge will be set out in the Adoption Statement and are that (a) the document is not within the appropriate power and/or (b) a procedural requirement has not been complied with.

Background Papers

The Council's Local Plan Examination Website contains all of the evidence base and examination documents and reflects the full journey of the development of the Local Plan from the initial consultation and engagement on Issues and Options through to its submission, examination hearings, post hearings work and the two Main Modifications consultations - www.efdclocalplan.org.

Resource Implications

The Local Plan has been prepared within agreed budgets. There is no specific budget identified for the development of a new Local Plan should this Local Plan not be adopted. In addition, there would be financial and staff resource implications in relation to defending planning appeals arising from speculative development proposals should the Local Plan not be adopted.

It should also be noted that the 2023/24 Budget considered by the Council on 28 February 2023, included the assumed adoption of the Local Plan in readiness for the financial year ahead; it is a key enabler to a number of development sites within the District which would support income streams of the Council in due course. Budgeted income streams from planning applications are also dependent on a formally adopted Local Plan.

Legal and Governance Implications

Planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the most recent version published in 2021) place Local Plans at the heart of the planning system, such that it is essential that they are in place and kept up-to-date. The NPPF expects local plans to set out a vision and a framework for the future development of the area, addressing the needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment. Failure to have an up-to-date and adopted Local Plan by the end of 2023 could place the Council at risk of Government intervention.

The NPPF states that where the development plan is out of date permission should be granted for sustainable development unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits or other policies indicate otherwise. It is therefore important to proceed with the adoption of the Local Plan to ensure that the Council has an up-to-date statutory development plan in place which meets the requirements of national planning policy and which can be relied on by the Council as the decision-maker on planning applications and other development related activities. In doing so, the adopted Local Plan will replace the current Local Plan which comprises the policies within the Epping Forest District Local Plan adopted January 1998 that had not previously been replaced and the Epping Forest District Local Plan Alterations adopted July 2006.

The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 place certain provisions on the Local Planning Authority in complying with the plan-making process, which are also tested at examination. These include:

- a legal duty upon local authorities and other public bodies to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local Plan preparation, this is known as the 'Duty to Cooperate' on strategic matters of cross-boundary significance, which includes housing supply;
- provision for regulations relating to the preparation, publication and representations relating to a local plan and the independent examination;
- requirement for a local planning authority to carry out a Sustainability Appraisal of each of the proposals in a Local Plan and the consequence of reasonable alternatives, during its preparation and in addition prepare a report of the findings of the Sustainability Appraisal;
- requirement for a local planning authority to submit a plan for examination which it considers to be "sound" meaning that it is positively prepared, justified, effective and in accordance with national policy. The job of the Planning Inspector is to test that the Local Plan meets legal and procedural requirements and the above tests of soundness.
- provides that the Inspectors must, if asked to do so by the local planning authority, recommend modifications to the local plan that would satisfy the requirements mentioned in subsection 20(5)(a) to make it sound.

The appointed Planning Inspector is required to assess whether the Local Plan meets legal and procedural requirements and the above tests of soundness. The Inspector appointed to do so has confirmed that legal and procedural requirements have been met but that the Local Plan will require modifications to ensure that it is sound. These modifications were published for consultation in their own right, alongside an addendum to the Sustainability Appraisal (incorporating Strategic Environmental Assessment) 2017 and the Habitat Regulations Assessment 2022 which considers the impact of the Local Plan including the Main Modifications on

international wildlife sites. With the incorporation of the final Main Modifications the Plan has been found sound and the Council can proceed to the adoption of Epping Forest District Local Plan.

Consultation Undertaken

The Epping Forest District Local Plan 2011–2033 has been developed within the context of a significant amount of consultation and engagement including with local residents, businesses, community groups, statutory consultees and key stakeholders over a number of years. The approach to consultation and engagement has been undertaken in accordance with the Council’s adopted Statement of Community Involvement and the Town and Country Planning (Local Planning) (England) Regulations 2012.

Risk Management Implications

A summary of the risks associated with not adopting the Epping Forest District Local Plan 2011–2033 is set out in the body of the report. In addition, delay in the adoption of the Local Plan is identified within the Council’s Corporate Risk Register as follows:

“Deadline of December 2023 for all authorities to have up-to-date Local Plans in place. Delays in the adoption of the Local Plan (LP) and failure to meet the Housing Delivery Test will delay the implementation of the Local Plan Strategy and lead to the continuation of application of the presumption in favour of sustainable development.

Consequence:

Delays in granting consent for planned new homes, affordable housing, and jobs because of delays in implementing the spatial approach including strategic housing and employment sites.

- *Vulnerable to ad hoc planning applications and appeal decisions*
- *Loss of associated New Homes Bonus, Business Rates tax base growth and S106 monies to support key infrastructure projects.*
- *Reputational damage*

An annual housing requirement of 963 homes per year (2021/22) far more than the Local Plan annual average of 518 dwellings per year.”

Equality, Diversity and Human Rights implications

An Equalities Impact Assessment has been prepared for the Local Plan.

Appendices

Appendix A – Inspector’s Final Report on the Examination of the Epping Forest District Local Plan 2011–2033

Appendix B – Final Schedule of Main Modifications (Appendix to Inspector’s Final Report on the Examination of the Epping Forest District Local Plan 2011–2033)

Appendix C – Schedule of Additional Modifications
Appendix D – Part One of the Local Plan (Draft Final Version)
Appendix E- Part Two Local Plan (Draft Final Version)
Appendix F - Policies Map (Draft Final Version)
