

Report to the Cabinet

Report reference: C-043-2019/20

Date of Meeting: 11 April 2019



**Epping Forest
District Council**

Subject: Approach to Managing the Effects of Air Quality on the Epping Forest Special Area of Conservation

Responsible Officer: Alison Blom-Cooper (01992 564066)

Democratic Services: Adrian Hendry (01992 564246)

Recommendations/Decisions Required:

- (1) That the adoption of an Approach to Managing the Effects of Air Quality on the Epping Forest Special Area of Conservation, to include indicative costs for the monitoring and monitoring of Air Quality within the Epping Forest Special Area of Conservation is delegated to the Portfolio Holder for Planning.**
- (2) That upon adoption the Approach to Managing the Effects of Air Quality on the Epping Forest Special Area of Conservation is adopted as a material consideration in the determination of planning applications and permitted development right proposals within the Epping Forest District Council administrative area.**

Executive Summary:

Special Areas of Conservation are within the top-tier of nature conservation sites within the UK. European legislation, which is transposed into the domestic Conservation of Habitats and Species Regulations 2018 (the Habitats Regulations), and also stipulated within the National Planning Policy Framework (NPPF), affords European sites the highest levels of protection in the hierarchy of sites designated to protect important features of the natural environment.

The legislation sets out that where a land use plan, either alone or in combination, is likely to have a significant effect on a European site, the plan-making authority must undertake a Habitats Regulations Assessment (HRA). This applies to Local Plans produced by local authorities, in addition to Neighbourhood Plans produced by local communities. Such plans set out a broad quantum of development growth. HRA work must therefore consider the overall impacts of such growth – in combination with neighbouring authorities – and where there are any likely significant effects, adverse effects on the integrity of the site must be ruled out.

A significant proportion, and the most integrated part, of the SAC lies within the Epping Forest District Council administrative area. The remainder lies within the London Boroughs of Waltham Forest and Redbridge (the latter of which accommodates a very small proportion of the SAC). As such, EFDC, as a Competent Authority under the Conservation of Habitats and Species Regulations 2018, is required to ensure that planning application decisions

comply with those Regulations and do not result in adverse effects on the integrity of the Epping Forest SAC.

This report sets out the proposed approach to managing and mitigating the effects of new development on the Epping Forest SAC in relation to air quality.

Reasons for Proposed Decision:

To comply with the Council's general obligations as a competent authority under the Habitats Directive [article 6(3)] and the Species and Habitats Regulations 2018 [Regulation 9(1)] and to support the Examination of the Council's Local Plan Submission Version.

Other Options for Action:

Not to develop and adopt an Approach to Managing the Effects of Air Quality on the Epping Forest Special Area of Conservation as a material consideration in the determination of planning applications and permitted development rights schemes which result in a net increase traffic (based on Annual Average Daily Traffic levels). This would prevent the Council, as local planning authority, from positively determining such proposals, where appropriate, as advised by Natural England, as the responsible statutory body, in its letter of 15 June 2018 (attached as Appendix 2). In addition it would mean that the Local Plan may not be seen as deliverable at examination and therefore not be found sound.

Background:

1. In February 2017 the Council entered into a Memorandum of Understanding (MoU) for 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation' with Harlow, East Hertfordshire and Uttlesford District Councils, Essex and Hertfordshire County Councils, Natural England and the City of London Corporation as Conservators of Epping Forest. The purpose of the MoU is to ensure that the parties named, work in partnership to fulfil the following requirements:

- i. to collect and analyse data and evidence related to the impacts of proposed development and growth under the Local Plans to provide sufficient and robust evidence on which to base a strategy for the protection of Epping Forest SAC;
- ii. to commit to prepare a joint strategy, based on relevant available data and evidence and to an agreed timetable; and
- iii. that the joint strategy will address both the requirement to avoid, or effectively mitigate, adverse impacts on the integrity of the SAC from Local Plan-led development and the requirement to prevent deterioration of the SAC features.

2 As Members are aware the Mitigation Strategy for the Epping Forest SAC will comprise two elements as follows:

- (a) Addressing recreational impacts; and
- (b) Addressing the air quality impacts.

The approach to the mitigation of recreational pressures, by way of access management projects, is set out in the Interim Approach to Managing Recreational Pressure agreed by Cabinet on 18 October 2018 and adopted by the Council. The projects, proposals and costs set out in the Interim Approach were provided by the Conservators of Epping Forest (as the Forest's custodians) and have been supported by Natural England (as confirmed in their letter dated 1 October 2018). This includes the proposition that opportunities for SANG provision will be investigated further, recognising that such provision is already being sought as part of the masterplanning of some strategic site allocations in the LPSV. This investigation may include recognition of existing Natural Green Space, which could be effective in absorbing additional visitors if supported by appropriate investment. Further work is being undertaken to finalise the strategy and it is anticipated that this will be completed by December 2019. The final strategy will be determined by the completion and analysis of a further Visitor Survey to be undertaken during Summer 2019 followed by any necessary review of the projects set out in the current Interim Approach. This will then need to be agreed by key stakeholders, including Natural England and the Conservators of Epping Forest.

3. Policy DM 2 of the Local Plan Submission Version 2017 (LPSV) sets out the approach to considering development proposals in respect of their likely significant effect on both the Epping Forest SAC and the Lee Valley Ramsar, and Policy DM 22 of the LPSV provides the approach with respect to Air Quality considerations, including on the Epping Forest SAC. The proposed approach is being developed in response to the Memorandum of Understanding, to support the implementation of Policy DM 2 and Policy DM 22 and in order to comply with the Council's general obligations as a competent authority under the Habitats Directive [article 6(3)] and the Species and Habitats Regulations 2018 [Regulation 9(1)].

4. During the Independent Examination of the Local Plan, the appointed Planning Inspector will require evidence to demonstrate that the Council is able to deliver the required levels of development set out in the Plan and provide for a five year supply of deliverable housing land against objectively assessed housing need targets. Otherwise, there is a risk that the Local Plan will not be found to be 'sound'. This approach will form part of that evidence.

5. In order to develop the Strategy to mitigate any likely significant effects on the health of the Epping Forest Special Area of Conservation (SAC) from air quality arising from new development further work has been undertaken to:

- a) Update the Council's Habitats Regulations Assessment to support the Examination of the LPSV, to take account of recent European Court of Justice rulings on the interpretation of the Habitats Directive, including to respond to requests from Natural England, as the statutory body responsible for such matters, to review and update the Council's Epping Forest SAC specific air quality modelling work;
- b) Undertaken air quality monitoring across the Epping Forest SAC in collaboration with the Conservators of Epping Forest; and
- c) Included policies within the Local Plan which will support the achievement of improvements to air quality over the period of the Local Plan.

6. The objective of the strategy is to provide a framework for providing reasonable certainty that there will be no adverse effects on the integrity of the Epping Forest SAC air quality over the course of the Plan period as a result of development, taken alone and in combination with other plans and projects.

7. The 'approach' will seek to pull together the different elements of the planning policy framework contained in the LPSV, together with other activities undertaken by the Council in respect of its environmental protection responsibilities (including actions identified in relation to the Bell Common Air Quality Management Area). These will be supported by a number of specific measures ranging from the application of planning conditions where appropriate, to secure, amongst other things, the provision of electric vehicle charging points, travel information packs for new occupiers of development, through to a commitment to develop a Sustainable Transport Strategy, to maximise opportunities for travelling by means other than the car. The 'approach' will also provide details relating to the need to secure on-going monitoring of air quality within the Epping Forest SAC through financial contributions from development. It should be noted that the framework to inform all of these matters is already provided for in published EFDC documents. The benefit of the approach will be to provide all of the information needed to support the objective as set out in paragraph 6 above in one place. In addition, a number of the elements proposed to be contained within the 'approach' would support the achievement of reducing the need to use the private car which is a key component to support the delivery of development proposed in the LPSV.

8. It should be noted that Epping Forest District Council (EFDC) has been advised by Natural England that it is currently unable to issue any planning permissions for development resulting in a net increase in Annual Average Daily Traffic movements. The Council is currently awaiting Natural England's response to the findings of the updated Habitats Regulations Assessment January 2019 with respect to its conclusions on air quality effects. It is anticipated that this response will be provided by the end of April 2019. It is therefore important that the Council is in a position to adopt the 'approach' as soon as possible after this date and, if at all possible, before the Local Plan Hearing Session scheduled for 21 May 2019. This session will be examining the Habitats Regulations Assessment in terms of its legal compliance, together with Policies DM 2 and DM 22 of the LPSV.

9. As the next meeting of Cabinet is not until 13 June 2019, and the content of the 'approach' will primarily be based on policies already agreed by the Council, in order to maintain progress and certainty on this matter, it is proposed that the adoption of the 'approach' be delegated to the Portfolio Holder for Planning.

Resource Implications:

The approach is proposed to include a requirement for contributions towards the costs of undertaking air quality monitoring across the period of the Local Plan. This will include the costs for collection of diffusion tubes. Consequently, there would be no cost burden to the Council in this regard. There would be a limited cost to the Council to develop a Sustainable Transport Strategy. This would build on work already undertaken by the Council and promoters of strategic sites within the LPSV and consequently it is considered that the likely

costs to the Council would be limited and there is sufficient provision in the 2019/20 budget to undertake this.

Legal and Governance Implications:

The Local Plan, the 'approach' and the level of contributions likely to be sought have been, or will be, developed in accordance with Government Policy (NPPF) and Planning and Environmental Law.

Safer, Cleaner, and Greener Implications:

The Local Plan contains a policy designed to promote the notion of making good places to live, work and visit. This will include safer by design principles, sustainable development, the provision of alternatives to the car, energy efficiency and environmental considerations as well as quality green infrastructure. The 'approach' and contributions being sought would contribute to these objectives.

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 Approach to Managing Air Quality Effects on the Epping Forest Special Area of Conservation itself is being developed with Natural England and the City of London Corporation (as Conservators of Epping Forest) in particular.

Background Papers:

Memorandum of Understanding 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation'. February 2017

Epping Forest District Local Plan Submission Version December 2017

Updated Habitats Regulations Assessment of Epping Forest District Council Local Plan January 2019

Letter from Natural England dated 15 June 2018

Risk Management:

If the Council does not demonstrate that it is taking a pro-active approach to developing and implementing an approach to managing the effects of air quality arising from development on the Epping Forest Special Area of Conservation there is a risk of being found unsound at Examination. Notwithstanding this the Council, as local planning authority, could be prevented from determining planning applications and permitted development right prior approval schemes which result in a net increase in Annual Average Daily Traffic flows. This would have an adverse effect on the Council's five year housing land supply position and how it will perform against the government's newly introduced Housing Delivery Test.