

Decision by Portfolio Holder



Report reference: PLS-003-2020/21
Date of report: 4 December 2020

**Epping Forest
District Council**

- Portfolio:** Planning and Sustainability – Councillor N Bedford
- Author:** Alison Blom-Cooper (Ext 4066) Democratic Services: J Leither
- Subject:** Adoption of the Interim Air Pollution Mitigation Strategy
- Decision:**
- (1) That the Interim Air Pollution Mitigation Strategy (see attached) on Epping Forest Special Area of Conservation is agreed as a material planning consideration in the determination of planning applications and permitted development rights proposals; submitted to the Local Plan Inspector and used to inform the Council's update to the Habitats Regulations Assessment and;
 - (2) To note the evidence to support the development of the Interim Mitigation Strategy (Appendix 1) to this report and;
 - (3) To note the guidance note for applicants on the site specific assessment processes in relation to the effects of development on atmospheric pollution (Appendix 2) and;
 - (4) To note the standard Section 106 template that will be used when determining planning proposals which are required to make a financial contribution to the Interim Air Pollution Mitigation Strategy or Interim Recreational Pressure Strategy approved by Cabinet in October 2018 (Appendix 3) and;
 - (5) To note how the Council will process those applications that have been held in abeyance pending the adoption of the Interim Air Pollution Mitigation Strategy set out in paragraph 8 of this report.

ADVISORY NOTICE:

***A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.***

I have read and approve/do not approve (delete as appropriate) the above decision:

Comments/further action required:

Signed: Cllr N Bedford

Date: 11-Dec-20

<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i>	<i>Dispensation granted by Standards Committee:</i> Yes/No or n/a
Office use only: Call-in period begins: 14-Dec-20	Expiry of Call-in period: 18-Dec-20

After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY

Reason for decision:

To comply with the Council’s general obligations as a competent authority under the Species and Habitats Regulations 2017 (as amended) [Regulation 9(1)] and to support the Examination of the Council’s emerging Local Plan.

Options considered and rejected:

Not to develop and adopt an Approach to Managing the Effects of Air Pollution 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 in traffic (based on Annual Average Daily Traffic levels) on roads in the EFSAC or within 200m of the SAC. 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.

Background Report:

1. Special Areas of Conservation are internationally important nature conservation sites within the UK. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) provides the regulatory framework against which plans and projects, including the Council’s Local Plan, and individual planning applications, need to be assessed. In addition the National Planning Policy Framework (NPPF), affords such sites the highest levels of protection in the hierarchy of sites designated to protect important features of the natural environment.
2. The legislation sets out that where a land use plan, either alone or in combination, is likely to have a significant effect on an internationally important 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.
3. 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 Habitats Regulations, 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.
4. Following the report to Cabinet on 20 July 2020 setting out the Approach to Managing

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the Effects of Air Pollution and the potential mitigation measures needed this report seeks agreement following consultation with Natural England and the Conservators of Epping Forest to adopt the Interim Air Pollution Mitigation Strategy to managing and mitigating the effects of new development on the Epping Forest SAC in relation to air quality.

5. As a result of the consultation, Natural England has now confirmed that if the measures identified in the Interim Air Pollution Mitigation Strategy are secured through appropriate policy wording within the emerging Local Plan to provide the necessary link between the Habitat Regulations Assessment and the mitigation they consider that it could provide a sound strategy for the purposes of avoiding and mitigating air quality impacts on Epping Forest SAC that result from plan led development (see letter of 10 December 2020 appended to this report). The Council will be proposing Main Modifications to Policies DM 2 and DM 22 to the Inspector to address this matter and will be finalising the HRA to take account of the latest evidence. Pending the adoption of the Local Plan the Council can adopt the strategy on an Interim basis to support the Local Plan HRA process and facilitate the determination of planning applications which have the potential to have an adverse effect on the integrity of the Epping Forest SAC in relation to atmospheric pollution without mitigation. The Strategy has been developed in response to the findings of the evidence base developed to support the Mitigation Strategy and the emerging Habitat Regulations Assessment. The following documents are attached to this report (Appendix 1) and will be made available on the Council's local plan examination website.
 - The Technical Note – Air Quality Assessment Modelling Methodology for 2020 HRA (AECOM: 20 August 2020) explains the methodology undertaken and:
 - EFSAC Summary Air Quality Modelling Results (AECOM 8 September 2020) sets out the results used to inform the development of the interim strategy and the emerging HRA
 - Letter from Natural England dated 10 December 2020

Site-specific assessment process

6. Where proposals are brought forward that differ in land use or quantum from those allocated in the emerging local plan there will be a need to undertake an assessment of each site against the modelling used to inform the Habitats Regulations Assessment to confirm if there are additional adverse effects over and above those addressed through the Interim APMS. Of specific importance in this regard is the number of vehicle trips associated with each site expected to use roads within the EFSAC or within 200metres of the EFSAC. The Council has prepared a guidance note to set out the process for reviewing and assessing potential impacts in order to help applicants. This is attached at Appendix 2 and will be available on the Council's website.
7. The note identifies the triggers for when such an assessment will be necessary, and the information required to be provided by applicants to enable the Council to undertake an appropriate analysis in accordance with the requirements of the Habitats Regulations. Applicants are strongly encouraged to complete these assessments early in the process, and ideally through the Council's pre-application service. This will help the Council to assess applications, in consultation with Natural England and determine them efficiently and effectively and in particular to identify where additional mitigation may be required over and above that identified in the Interim APMS.

Process for dealing with applications held in abeyance including S106 template

8. The Council currently has around 150 SAC related cases which have been held in abeyance pending the agreement of a mitigation strategy. The proposed sequence for releasing decisions will be as follows:
 - Applications with a Committee resolution to grant permission;
 - Allocated or designated sites that comply with the ambitions of the emerging Local Plan;
 - All other applications in order of validation date.
9. Officers will be reviewing all of the undetermined applications in terms of policy and other material planning considerations, so there may be some refusals in addition to approvals being issued. We are presently making an assessment of the number of applications that are likely to be referred to a committee for decision, and we will engage with Democratic Services to arrange additional committee meetings between January and the end of March 2021 as required in order to ensure we clear the backlog as soon as possible.
10. To support this process the Council has developed a standard S106 template to secure contributions to mitigate the impact of the development on air pollution in accordance with the Interim Strategy. The template will also be used to secure contributions to the interim approach to managing recreational pressures and a sum payable to the Council towards monitoring compliance with the obligations in the S106. A copy of the template is attached as Appendix 3.

Next steps

11. As set out in paragraph 5, the Interim Air Pollution Mitigation Strategy will be used to inform the proposed Main Modifications to relevant policies in the emerging Plan and to update the Habitats Regulations Assessment to be submitted to the Inspector. There is ongoing work including discussions with Natural England and the Conservators with regard to the recreational pressure impact of proposed development which will be addressed through the Green Infrastructure Strategy which was recently the subject of consultation and is due to be considered by Cabinet on 11 February 2021 and will also be used to inform the Habitats Regulation Assessment.

Resource Implications:

The Interim Air Pollution Mitigation Strategy includes a requirement for contributions towards the costs of undertaking air quality monitoring, work towards the implementation of a Clean Air Zone and a number of interventions across the period of the Local Plan. These have been or will be taken into account in the Infrastructure Delivery Plan prepared to support the emerging plan. In addition the Council has recently appointed to two posts: a Sustainable Transport Officer and a Climate Change Officer who will provide a key element of the officer resource needed to take the Approach forward.

Legal and Governance Implications:

The emerging Local Plan, the Interim Air Pollution Mitigation Strategy and the level of contributions likely to be sought have been developed in accordance with Government Policy (NPPF) and Planning and Environmental Law.

Safer, Cleaner and Greener Implications:

The emerging 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 Air Pollution Mitigation Strategy and contributions being sought would contribute to these objectives and those established by the Council following the declaration of a Climate Emergency.

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 Interim Air Pollution Mitigation Strategy for the Epping Forest Special Area of Conservation has been developed with on-going engagement with Natural England and the City of London Corporation (as Conservators of Epping Forest) in particular.

Background Papers:

Report to Cabinet on 20 July 2020 (EB150): Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation (C-013-2020/21).
Report to Cabinet on 18 July 2018 (EB143): Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation (C-014-2018/19)
Epping Forest District Local Plan Submission Version December 2017.
Habitats Regulations Assessment of Epping Forest District Council Local Plan January 2019
Letter from Natural England dated 15 June 2018.
Inspector's Advice Letter dated 2 August 2019 (ED98)
Letter from Natural England dated 10 December 2020

Impact Assessments:

N/A.

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 that the Council will be unable to adopt the emerging Local Plan. Notwithstanding this the Council, as local planning authority, is currently being 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 is having an adverse effect on the Council's five year housing land supply position, its performance against the government's Housing Delivery Test and has resulted in the Council having to defend planning appeals which would otherwise be unnecessary. In addition it is resulting in an impact on the economy of the District, and in particular Small and Medium Sized Enterprises.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an appendix to the report.

Key Decision Reference (Y/N): N/A.