

Notification of Call-In of Portfolio Holder Decision under Paragraphs 45- 52 of Article 6 (Overview & Scrutiny) of the Constitution.

This form must be signed and completed and the original returned to the Proper Officer in person no later than the fifth working day following the publication of the decision to be called-in.

Decision to be called-in: Adoption of Epping Forest SAC Interim air quality mitigation strategy

Decision reference: PLS-003

Planning and sustainability PFH

Reasons for call in:

The proposed mitigation is insufficient and thus probably unlawful. As far as we can see, the Holohan judgment implies that it is insufficient to have identified a suitable mitigation strategy (in this case a Clean Air Zone) unless the competent authority (in this case, EFDC) can be sure that the mitigation will be carried out. The proposed mitigation strategy also makes no reference to the amelioration of damage done to the wellbeing of the SAC by particulates.

In this case, the CAZ would be part of the revised draft Local Plan, and we are not at the stage where that has been agreed, or the relevant modifications have even been publicly consulted on. There is no assurance at all that a CAZ would be approved by third parties, such as highways authorities, the Environment Agency or HM Government. It cannot be implemented by EFDC alone. Unless the Plan is eventually adopted with the CAZ within it, then the CAZ cannot have any weight in the decision-making process.

There cannot be a legitimate consultation if the competent authority has already made up its mind on the subject of the consultation. The strategy would allow EFDC to issue irrevocable planning permissions on the basis of a mitigation that might well be struck out during the examination of MMs by the independent inspector.

Section 23 of the Planning and Compulsory Purchase Act 2004 is clear that the only way to make changes to a submitted Local Plan is through the main modifications process which allows MMs to be made if they are necessary to make the plan sound/legally compliant.

Once the MMs (including the strategy, whether in modified or unmodified form) have been added to the plan by the Inspector following the regulatory stages of consultation and potentially additional examination hearings it is possible the Strategy might possibly form material consideration in the determination of planning applications, but it would be an abuse of process to do so before that stage.

Since planning decisions must be taken in accordance with the approved Plan, and any such decisions to be taken in winter 2021 would not be plan-led, because the interim strategy is a decision taken by a single portfolio holder, not part of an examined local plan, in our opinion any such consent would be unlawful.

The Natural England letter dated 10 December appended to the report does not approve an interim arrangement, or even mention one; it says “*Natural England has reviewed the Interim Strategy as referenced above. We confirm that if it is secured through appropriate policy wording within the Plan to provide the necessary link between the HRA conclusions and mitigation relied upon we consider that it would provide a sound strategy for the purposes of avoiding and mitigating air quality impacts on Epping Forest SAC that result from plan led development.*”

At present we do not have the necessary “*appropriate policy wording within the Plan*”, nor any assurance that such could be devised. Additionally, Natural England are clear that this arrangement would only apply to ‘plan-led development’ (i.e. the allocations within the emerging plan) rather than speculative or ad hoc planning applications.

A wider total exclusion zone for all new development within a reasonable distance (say, half a mile) of the SAC is required, because much more damage to it will be caused by emissions by vehicles based near its borders and because damage will be caused not as a result of journeys by road vehicles, including that by gas and oil domestic boilers, and non-road plant and machinery, including that used for construction activities.

We have not been supplied with what EFDC sent to Natural England on 7 December, which renders the report incomplete and prevents Cllrs from properly examining the nature of the agreement.

The decision is likely to be additionally defective, and without sufficient time to take full expert and legal advice, there may be additional reasons to call it in

Members requesting call-in (3 members of the Overview and Scrutiny Committee or 5 other members)

Members Name:

C C POND

D J WIXLEY

C P POND

S J NEVILLE

D PLUMMER

S A HEAP

H B KAUFFMAN

Lead member: C C POND