

Committee(s):	Date(s):
Epping Forest & Commons	20 05 2019
Subject: Epping Forest District Council Local Plan – Examination in Public – Matters 1 & 16 Legal Compliance/Epping Forest protection (SEF 19/19)	Public
Report of: Colin Buttery, Director of Open Spaces	For Decision
Report Author: Jeremy Dagley – Head of Conservation, Epping Forest	

Summary

Epping Forest District Council (EFDC), whose boundary includes 64% of Epping Forest, submitted its Local Plan to the Secretary of State on 21st September 2018. Hearings at an Examination-in-Public (EiP) have been held since February in which your officers have been delegated to participate on various Matters raised by the Inspector. In May there are several Hearings, one of which covers the protection of Epping Forest under the Local Plan policies and, in particular, the issue of the Plan's legal compliance with the Habitat Regulations, which protect the Forest's Special Area of Conservation (SAC).

The issue if legal compliance is addressed by a new version of a Habitats Regulations Assessment (HRA), which we had sought from EFDC because of the inadequacies of the first HRA. However, it is the City Corporation's view that the new version of the HRA still does not meet the legal requirements of the Habitat Regulations. In addition, although the Local Plan policies towards the protection of the Forest have been amended since the EiP began, they do not yet provide the security for the Forest as a whole. This report seeks your Committee's approval for the representations on these issues made on behalf of the Conservators.

Recommendation(s)

Members are asked:

- Approve the representations, as summarised in this report, and set out in full in Appendices 1 and 2 to this report;
- Maintain the delegation to the Town Clerk, in consultation with the Chairman and Deputy Chairman, to continue to work with the District Council and other local authorities to create a full and effective Mitigation Strategy, including consideration of off-site measures on the Buffer Lands and other sites;
- Require that your Committee receives a report on the outcome of the Examination-in-Public and the Inspector's findings and main modifications;

- Require that your Committee receives a report on the proposed full Mitigation Strategy for your approval.

Background

1. Epping Forest District Council (EFDC), whose boundary includes 64% of Epping Forest, published its Local Plan, under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012), in mid-December 2017. It sought representations from the public and other bodies, under Regulation 20, over a 6-week period that concluded on 29 January 2018.
2. The Local Plan addresses the next phase of the District's development for the 15 years to 2033, including the allocation of 11,400 new homes, of which nearly 4,378 units are currently allocated within 3km of the Forest's boundaries and the majority, over 6,000, are within 5km.
3. In the development of this submission version Local Plan the Council, along with three other local authorities, signed a Memorandum of Understanding (MoU) in 2016 with The Conservators and Natural England to ensure the protection of Epping Forest Special Area of Conservation (SAC) from any adverse impacts resulting from the Local Plan proposals (see *Background Papers* below).
4. In line with the MoU, the Regulation 20 response on behalf of The Conservators was made by the Town Clerk under delegated authority, in consultation with the Chairman and Deputy Chairman, on 29 January 2018. This was reported to your Committee in March 2018 (see *Background Papers* below). The Conservators' response letter concluded that the Local Plan, as published under Regulation 19, was 'unsound' because it is not consistent with national legislation, including The Conservation of Habitats & Species Regulations 2017 (The Habitats Regulations 2017) and was not considered 'justified' or 'sustainable'.
5. The protection of the SAC is determined by the Habitats Regulations 2017. The Local Plan needs to comply with these regulations and to do so the Local Plan must ensure that it has an accompanying Habitats Regulations Assessment (HRA). If the HRA concludes that there may be *likely significant effects* on the SAC as a result of the Plan, then a more detailed Appropriate Assessment (AA) must be carried out as part of the HRA.
6. The first iteration of the HRA in 2017 accompanying the Regulation 19 submission version of the Local Plan, to which you responded in January 2018, did not include an AA. This was one of the reasons that your Regulation 20 response (as above – Jan 2018) concluded that the Plan could be considered 'unsound'.
7. Following the appointment of a Local Plans Inspector by the Government's Planning Inspectorate, the Local Plan Submission Version has been subject to scrutiny by the Inspector and she has raised a series of Matters, Issues and Questions (MIQs). She has invited EFDC to respond to these MIQs and has also sought representations from all other parties who submitted so-called Regulation 20 responses to the Local Plan in January 2018.

8. A key issue raised by the Inspector has been on the *legal compliance* of the EFDC Plan. She raised this under Matter 1, Issue 5 of her MIQs in which she set out a series of questions concerning compliance with the Habitats Regulations. In addition, under her Matter 16, Issue 1 she raised a series of questions about the protection of Epping Forest SAC and also the wider Forest including the non-SAC areas. She has specifically asked whether Local Plan policies should address the protection of the Forest more holistically.

Current Position

9. Your officers have attended the Local Plan Hearings during February and March this year and made representations on a range of Matters, Issues and Questions (MIQs) that the Inspector has raised.
10. In relation to Epping Forest Special Area of Conservation (SAC) Matter 1 on Legal Compliance, which was due to be heard in February, the Inspector deferred the Hearing until 21st May in order to give participants time to respond to two new documents tabled late (on 29th January) by EFDC. The new documents were an updated Habitats Regulations Assessment (HRA), incorporating an entirely new section of Appropriate Assessment (AA) as required by the Habitat Regulations, and an additional Traffic Assessment Report by Essex County Council Highways.
11. Your officers, with the assistance of specialist consultants and legal Counsel, have prepared detailed representations to respond to these new reports and to modifications to Local Plan policies proposed in the interim period by EFDC.
12. This report, therefore, provides details of the proposed representations, on behalf of The Conservators, to the Local Plan Inspector on Matters 1 and 16 (Issues 5 and 1 respectively) (see Appendices 1 and 2). In the representations the Inspector's questions under each of these Matters and Issues are answered in turn, with detailed appendices provided in support. The appendices include detailed statements from the specialist consultants, whose advice has been taken in preparation of the representations.
13. The representations are entirely consistent with all previous representations and responses to EFDC, including our detailed response to the Local Plan Submission Version (Regulation 19) signed by the Chairman in January 2018.
14. On the matter of legal compliance (Matter 1, Issue 5) the summary position in the attached representations (Appendix 1) is that the EFDC Plan's HRA, including its new AA, still does not comply with the Habitats Regulations and therefore the Plan does not adequately protect Epping Forest SAC.
15. In relation to the protection of the Forest by Local Plan policies (namely Policy DM2), considered under the Inspector's Matter 16, Issue 1, the summary position of the representations (Appendix 2 of this report) is that Policy DM2 and its sub-policies still require substantial amendments to ensure that the Forest as

a whole is better protected. It is further suggested that a supplementary planning document is produced and agreed across other local authorities, including London Boroughs, to ensure the coordinated implementation of protective actions for the Forest.

Options

16. There are two options available to your Committee:

- a. **Option A** - to continue to make the representations as set out above and in Appendices 1 and 2 (attached) and to attend the Hearing on May 21st on Legal Compliance and the Epping Forest protection policy. **This option is recommended** and is consistent with the previous option approved by Committee in January 2019 (see *Background Reports* below, SEF 03/19) and all previous approved report on the EFD Local Plan.
- b. **Option B** - to withdraw the representations. **This option is not recommended** given the previous representations and the need to agree a **full** Mitigation Strategy with EFDC and other local authorities.

Proposals

17. It is proposed that Option A above is pursued so that officers, assisted by legal Counsel, attend and make representations at the Examination in Public to clarify and reinforce our representations and ensure improved safeguards for the Forest under the Plan.
18. In addition, as approved previously by your Committee (see *Background Papers* below), it is proposed that further work is done by your officers to develop ideas and promote proposals for off-site mitigation measures (SANGs), including the Buffer Lands, and to respond to any mitigation proposals on traffic and air pollution that may be put forward by EFDC or Essex County Council Highways.

Corporate & Strategic Implications

19. **Legal** – an approved Counsel's advice has been sought in relation to the Matters of the EFDC Plan's Legal Compliance and policies on Forest protection. Counsel has assisted in formulating a legally appropriate response (Appendices 1 and 2 of this report) to the Inspector on these Matters. It is further proposed that Counsel attends the Hearing on May 21st to assist your officers in presenting the legal arguments contained in the attached representations.
20. **Financial** – the cost of legal and other consultants' advice currently standing at £54,866 is being met under Divisional local risk budgets, with a £7,000 contribution from the Directorate. Counsel's advice was procured by the City Solicitor under the approved procurement procedures.

21. **City of London Corporate Plan 2018 - 2023:** the protection of the internationally and nationally-important habitats of Epping Forest directly underscore the *third pillar* of the Corporate Plan, which is to “**shape outstanding environments**”. This *third pillar* of the Corporate Plan is measured by four outcomes. The protection and conservation of the outstanding environment of Epping Forest and its buffer lands contribute significantly to the achievement of two of these: firstly, *Outcome 11* “We have clean air, land and water and a thriving and sustainable natural environment” and secondly, *Outcome 12* “Our spaces are secure, resilient and well-maintained”.
22. **Open Spaces Department Business Plan 2016-19:** The Strategic Vision of this Business plan is to ‘Preserve and protect our world class green spaces for the benefit of our local communities and the environment.’ and one of the Department Objectives is to ‘Protect and conserve the ecology, biodiversity and heritage of our sites.’ In ensuring that The Conservators’ responses are represented at the Local Plan EiP, this report’s recommendations fully support this objective.
23. **Epping Forest Management Plan, Strategy and Business Plan:** the representations being made on the EFDC Local Plan reflect the objectives of the previous and forthcoming Epping Forest Management Plans. These priorities will reflect the biodiversity and heritage importance of the Epping Forest SAC as well as the need to protect the Forest landscape as an integral whole.

Conclusions

24. In response to the Inspector’s Matters Issues and Questions (MIQs), the conclusion of the representations on the updated Habitats Regulations Assessment is that it is still not legally compliant and that the proposed mitigation in the Local Plan policies would not be sufficient to prevent adverse impacts on the Epping Forest Special Area of Conservation. In addition, the Local Plan policy (Policy DM2), that specifically addresses the protection of the Forest, is still drawn too narrowly and does not protect the Forest as a whole landscape.
25. The representations provide detailed evidence to support the arguments about these deficiencies in the Local Plan and its HRA and they also contain proposed changes that could be made to ensure legal compliance and improved protection for the Forest.

Appendices

- **Appendix 1:** Representations of The Conservators of Epping Forest on the Inspector’s MIQs: Matter 1 Legal Compliance
- **Appendix 2:** Representations of The Conservators of Epping Forest on the Inspector’s MIQs: Matter 16 Local Plan Policies DM2 & DM22

Background Papers

- SEF 03/19 EF & C Committee Report: *Epping Forest District Council Local Plan – Examination in Public*. 14th January 2019
- SEF 23/18 EF&C Committee Report: *Proposals for the development of a Mitigation Strategy for the Epping Forest Special Area of Conservation*. 14th May 2018
- SEF 19/18 EF&C Committee Report: *Epping Forest District Council Local Plan – Regulation 19 Consultation, Update*. 12th March 2018
- SEF 12/18 EF&C Committee Report: *Epping Forest District Council – Local Plan – Publication under Regulation 19 of the Town & Country Planning (Local Planning) (England) Regulations 2012 – Request for Delegated Authority*. 15th January 2018
- SEF 30/16 EF&C Committee Report: *Epping Forest District Local Plan – proposed Memorandum of Understanding*. 4th July 2016

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