

<b>Committee(s):</b> Epping Forest and Commons	<b>Date(s):</b> 10 03 2020
<b>Subject:</b> Epping Forest SAC Mitigation Strategy progress (SEF 11/20)	<b>Public</b>
<b>Report of:</b> Director of Open Spaces	<b>For Decision</b>
<b>Report author:</b> Jeremy Dagley – Head of Conservation, Epping Forest	

### **Summary**

This report follows from the earlier one to your Committee in November 2019 and seeks approval to send a further three letters to the competent local authorities for the Epping Forest Special Area of Conservation. The letters seek to make clear the City Corporation's position regarding protection of the SAC encourages the competent authorities to achieve an effective Epping Forest Special Area of Conservation Mitigation Strategy in time for local plan adoptions or reviews.

### **Recommendation(s)**

Members are asked to:

- approve the text of the three letters at **Appendices 3, 4 and 5** of this report for circulation to the relevant Local Planning Authorities;
- approve your officers' active participation in the Epping Forest SAC Mitigation Strategy Oversight Group, chaired by Epping Forest District Council, that has now been re-started to bring together the competent authorities for SAC planning issues.

## Main Report

### Background

1. This report provides an update on progress towards an Epping Forest Special Area of Conservation (EFSAC) Mitigation Strategy that is required by the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) in respect of local plans and local authority development planning decisions. This report follows on from a more detailed report to your Committee in November 2019 (SEF47/19) (see *Background Papers* below), which should be read in conjunction with this report.
2. The Habitats Regulations (see paragraph 27 *Negotiations with the European Union* below) set out the ways in which local authorities, as *competent authorities* (as defined by the Habitat Regulations), must work together to protect the *Favourable Conservation Status* of sites of international importance, such as Special Areas of Conservation (SACs).
3. The EFSAC covers two thirds of the Forest's acreage across London and Essex, straddling the boundaries of the local planning authorities of Epping Forest District (EFDC) and the London Boroughs of Redbridge (LBR) and Waltham Forest (LBWF).
4. In order to understand the impacts, and develop policies to avoid or mitigate adverse effects, on the EFSAC the competent authorities are required to undertake Habitat Regulations Assessments (HRAs). The HRA for the EFDC Local Plan, for example, has identified the following adverse effects of proposed local plan projects on the EFSAC:
  - increased air pollution from traffic and homes;
  - increased impacts of urbanisation;
  - increased recreational pressure.
5. The Epping Forest Visitor Survey 2017 (EFVS 2017) confirmed a Zone of Influence (Zoi), for 75% of recreational visits to the EFSAC, of 6.2km. This EFSAC Zoi is important as it requires local authorities to develop policies related to recreational pressures on the Forest that arise from increased housing within this zone. The Zoi stretches across additional local authorities including the London Boroughs of Newham, Haringey and Enfield, the Borough of Broxbourne and Harlow District Council.
6. These competent authorities are also required to provide policies to prevent significant adverse impacts of nitrogenous air pollution on the EFSAC that might arise from their plans and projects.
7. In 2018, an *interim* EFSAC Mitigation Strategy was published that covered proposals to mitigate recreational impacts on the Forest. A meeting of an EFSAC Mitigation Oversight Group of the competent authorities and Natural England was convened to agree this interim strategy. It was approved by EFDC Cabinet in October 2018.

8. Since then there have been no further developments of the Strategy. A full strategy, however, is required to be adopted by all relevant competent authorities to cover two additional, critically-important aspects. The first is to provide a mechanism for the avoidance of adverse recreation impacts on the Forest through the provision of a network of Sustainable Alternative Natural Greenspaces or SANGs. The second is to provide effective mitigation proposals that would prevent further adverse impacts of nitrogenous air pollution on the Forest's vegetation from increased road traffic and housing.
9. The concerns of your Committee about a lack of progress towards a full Strategy, the absence of governance to oversee this work, the lack of coordination between the competent authorities and the lack of costs undertakings led to your Committee's approval of two letters that were sent from the Chairman to the competent authorities on 28<sup>th</sup> November 2019.

### **Current Position**

10. The Chairman's letters of 28<sup>th</sup> November received responses from Broxbourne Borough Council in December 2019 and from EFDC in February this year. These are attached as **Appendices 1 and 2** respectively. The response from EFDC was subsequently discussed with EFDC Members in February at the most recent of the twice-yearly liaison meetings at The Warren Offices.
11. A second Visitor Survey (EFVS2019), commissioned by EFDC in consultation with your officers, was circulated to competent authorities by EFDC early in 2020 seeking comments. This EFVS2019 produced a larger Zol than the EFVS2017, of between 6.36km and 6.81km. Competent authorities and Natural England are proposing that the lower figure of 6.36km should provide the updated Zol boundary and this is to be confirmed by agreement with the consultancy which produced the report.
12. EFDC also produced a draft Green & Blue Infrastructure Strategy (G&BIS) in late February and asked for "high-level" responses within 2 weeks, by 2<sup>nd</sup> March. However, the extensive appendices for this G&BIS were not provided by EFDC before its own deadline and as a result there are many gaps in the strategy, including detail on the important matter of SANGs and Epping Forest SAC mitigation through avoidance of recreational pressure by deployment of SANGs (see paragraph 8 above). EFDC is promising a full public consultation in May, after local elections. Your officers have provided a high-level response as requested with Chairman's approval and await further details from EFDC.
13. Following a duty-to-cooperate meeting with your officers in December, LBWF convened a meeting of London competent authorities on 11<sup>th</sup> February, including a representative of the Greater London Authority (GLA),
14. This meeting was followed on 24<sup>th</sup> February, by the second meeting of the EFSAC Mitigation Oversight Group, the first since 25<sup>th</sup> July 2018. This

meeting was previewed in Cllr Philip's letter of 5<sup>th</sup> February (Appendix 2) and seems to have been prompted by the offer of governance by The Conservators contained in the Chairman's letter to EFDC of 28<sup>th</sup> November. The Group was convened and chaired by EFDC officers and it was agreed that this would now become the forum for all the competent authorities, Natural England and your officers to oversee the development of the mitigation strategy.

15. The offer of governance made by your Committee for the Mitigation Strategy, therefore, does not seem to be required at this point although in the proposed letters (see *Proposals* below) this offer is repeated to ensure that there are no further reasons for the current impetus in the mitigation discussions to be lost.

### **Proposals**

16. In the light of the continuing limited progress towards an EFSAC Mitigation Strategy, but in recognition of some of the very recent developments with governance and exchanges of information, it is proposed that further letters are sent by your Chairman to the competent authorities, including the GLA and Essex County Council (ECC).
17. It is proposed to send out three letters so as to allow specific responses to EFDC and Broxbourne (see **Appendices 3 and 4** respectively), as well as a more general letter to the other competent authorities involved in EFSAC mitigation (**Appendix 5**).

### **Options**

18. **Option 1:** no further action to be taken at this stage leaving it until EFDC and other competent authorities develop further proposals for mitigation and provide updated HRAs for review. **This option is not recommended.**
19. **Option 2:** the three letters appended to this report (**Appendices 3, 4 and 5**) should be sent to the respective competent authorities as a follow up to the responses received and the developing governance arrangements. These letters aim to maintain the impetus for proper governance of the EFSAC Mitigation Strategy and to encourage the development of avoidance measures (e.g. SANGs) at a strategic level, involving both GLA and ECC. **This option is recommended.**

### **Corporate & Strategic Implications**

20. The recommendations of this report support the Corporate Plan with particular reference to the following aims:
  - a. **Contribute to a flourishing society**
    - i. People enjoy good health and wellbeing
    - ii. Communities are cohesive and have the facilities they need.
  - b. **Shape Outstanding Environments**
    - i. We inspire enterprise, excellence, creativity and collaboration

- ii. We have clean air, land and water and a thriving and sustainable natural environment
- iii. Our spaces are secure, resilient and well maintained.

21. And supports the Open Spaces Business Plan as follows:

**a. Open Spaces and historic sites are thriving and accessible.**

- i. Our open spaces, heritage and cultural assets are protected, conserved and enhanced
- ii. London has clean air and mitigates flood risk and climate change

## Implications

22. **Financial:** In addition to considerable officer time required to respond to the various local plans, the costs of representations has totalled £55,000 to date over the last two financial years. This cost of representation should be seen in the context of the duration of the various local plans over more than 15 years and the level of mitigation work required across and around the whole Forest. Further representations will be required during the new financial year for the forthcoming London Borough of Waltham Forest Local Plan Regulation 19 consultation and the conclusion of the Epping Forest District Council's review of its Local Plan Habitats Regulation Assessment (HRA).
23. The funding and administration of any Epping Forest SAC Mitigation Strategy Oversight Group (SAC Mitigation Oversight Group), which has now been set up and is to be chaired by Epping Forest District Council, is likely to require the local authorities to provide joint contributions. These are yet to be agreed and a further update will be provided to your Committee after the April meeting of the SAC Mitigation Oversight Group.
24. **Legal:** in liaison with the Comptroller & City Solicitor, advice has been sought from the legal counsel that represented the City Corporation, as Conservators, at the EFDC Local Plan Hearings this year. Counsel was involved in drafting the two letters sent in 28<sup>th</sup> November by the Chairman and to which the letters at Appendices 1 and 2 are the responses received to date. No further legal advice from Counsel has been sought in the preparation of the letters at Appendices 3 to 5.
25. **Property:** The local plans for the various local authorities set out how and where land and property will be used within their boundaries for the next 15 or more years. It is important to the City Corporation's stewardship of the Forest to ensure a balanced view is taken regarding both the protection of the Forest and opportunities to best utilise land and property either required for operational purposes or surplus to operational efficiency.
26. **Charity:** Epping Forest is a registered charity (number 232990). Charity Law obliges Members to ensure that the decisions they take in relation to the Charity must be taken in the best interests of the Charity.

27. **Negotiations with the European Union:** The main influence of EU law on plan-making in the UK relates to the Environmental Assessment of Plans and Programmes Regulations 2004 (the 'SEA Regulations') and the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna & Flora, which is incorporated into UK law as the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'). The application of the Habitat Regulations is guided by all existing case law and judgements from the Court of Justice of the European Union (CJEU) and will also be consequent on the terms reached with the EU as part of the continuing negotiations.

28. However, Epping Forest is also protected, as part of a network of sites, by the Bern Convention 1979 (The Convention on the Conservation of European Wildlife and Natural Habitats (1979) - Council of Europe), a binding international legal instrument to which the UK government is a signatory.

## **Conclusion**

29. There has been some progress towards re-starting the development of the EFSAC Mitigation Strategy since the Chairman's letters of 28<sup>th</sup> November were sent to the competent local planning authorities. During this time meetings have been convened by the competent authorities, with your officers in attendance, and an outline governance structure has been agreed.

30. The recreational Zol has also been reviewed by a new Visitor Survey and this has demonstrated that the Zol should be made larger. Progress on other aspects of the EFSAC Mitigation Strategy is awaited and it is hoped the new governance approach will see new proposals put forward for the protection of the Forest. However, in the interim it is considered important for responses to be sent to the competent authorities by your Committee to encourage continued progress and sharper focus on the key elements of the Strategy.

## **Appendices**

- **Appendix 1** – Letter of reply from Cllr Keith Brown, Cabinet Member for Planning & Regeneration, Broxbourne Borough Council
- **Appendix 2** – Letter of reply from Cllr John Philip, Planning Portfolio Holder, Epping Forest District Council
- **Appendix 3** – Draft letter to Epping Forest District Council in response to Planning Portfolio Holder
- **Appendix 4** – Draft letter to Broxbourne Borough Council in response to Cabinet Member for Planning & Regeneration
- **Appendix 5** – Draft letter to all relevant local planning authorities in relation to governance and costs undertakings for emerging Epping Forest SAC Mitigation Strategy

## **Background papers**

- SEF47/19 Report to Epping Forest & Commons Committee (18<sup>th</sup> Nov 2019):  
*Epping Forest SAC Mitigation Strategy progress and governance*
- SEF34/19 Report to Epping Forest & Commons Committee (9<sup>th</sup> Sept 2019):  
*Epping Forest District Council: Examination of the District Local Plan, 2011-2033*
- SEF31/19 Report to Epping Forest & Commons Committee (9<sup>th</sup> Sept 2019):  
*City of London Corporation response to the London Borough of Waltham Forest 'Shaping the Borough Draft Local Plan 2020 – 2035 consultation document*

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