

Committee(s): Epping Forest and Commons	Date(s): 18 11 2019
Subject: Epping Forest SAC Mitigation Strategy progress and governance (SEF 47/19)	Public
Report of: Director of Open Spaces	For Decision
Report author: Jeremy Dagley – Head of Conservation, Epping Forest	

Summary

This report outlines proposals to encourage further progress towards the adoption of a full Mitigation Strategy for Epping Forest Special Area of Conservation (SAC) and the need to facilitate improved joint working between local planning authorities responsible for the protection of the SAC. It seeks approval for two letters to be sent out to the relevant local authorities to raise these concerns with them. The first letter makes an offer to these authorities, and Natural England, that your officers should convene and chair an inaugural meeting of a SAC Mitigation Strategy Steering Group to kick-start the process of developing the full strategy. The second letter addresses concerns about the Epping Forest District Local Plan. It both reiterates and clarifies the City's position, as Conservators of Epping Forest, about the need for avoidance measures to be considered more strategically across the SAC Zone of Influence, particularly through a Sustainable Alternative Natural Greenspaces (SANGs) Strategy.

Recommendation(s)

Members are asked to:

- approve the text of the two letters at **Appendices 1 and 2** of this report for circulation to the relevant Local Planning Authorities;
- approve the convening and chairing of an inaugural SAC Mitigation Strategy Steering Group by your officers, with any future administrative costs and meeting arrangements to be the subject of a future report for approval;
- approve the copying of the letter to EFDC at **Appendix 2** to the Planning Inspector and Natural England.

Main Report

Background

1. The Habitats Regulations 2017 (see paragraph 27 *Exiting the European Union* below) set out the ways in which local authorities must work together to protect the favourable conservation status of sites of international importance, such as Special Areas of Conservation (SACs). The Epping Forest Special Area of Conservation (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 and the London Boroughs of Redbridge and Waltham Forest. In addition, the Visitor Survey 2017 confirmed a Zone of Influence (Zoi), for 75% of recreational visits to the EFSAC, of 6.2km. This SAC Zoi stretches across additional local authorities including the London Boroughs of Newham and Enfield, the Borough of Broxbourne and Harlow District Council.
2. The local plans for all these authorities, therefore, are likely to impact significantly upon the conservation and favourable condition of Epping Forest SAC, as well as the wider Forest area. In order to identify any likely significant effects on the SAC, each local plan is required to have a Habitats Regulation Assessment (HRA) carried out. Natural England is the statutory adviser on SAC protection and a statutory consultee on any HRA produced by an authority.
3. A Mitigation hierarchy should be utilised to ensure that the EFSAC is not subject to an overall negative impact. The sequential steps in the hierarchy are avoidance; minimisation; rehabilitation and restoration and lastly offset measures undertaken to compensate for any residual impacts. The proposed EFSAC Mitigation Strategy will address not only with the identified adverse impacts of each plan, but also the effects of the plans in combination. All the Local Planning Authorities are seeking to utilise lowest common denominator offset measures, rather than preferred avoidance; minimisation; rehabilitation and restoration approaches.
4. Epping Forest District Council (EFDC), whose boundary includes 64% of Epping Forest, submitted its Local Plan to the Secretary of State on 21 September 2018 and it was subsequently examined in the first half of 2019. Harlow District Council's Plan is still at examination stage. The London Borough of Waltham Forest (LBWF) has recently completed a public consultation on its Regulation 18 Local Plan proposals with your Committee approving a 23-page response to this consultation in September (see *Background Papers* below). Over 30% of LBWF's green spaces are provided by Epping Forest.
5. London Borough of Enfield is also at consultation stage with its Plan, while the London Boroughs of Redbridge and Newham and the Borough of Broxbourne in Hertfordshire have each completed their plans.

6. As an example of the likely adverse impacts on the Forest's conservation, the level of housing close to the Forest needs to be considered. EFDC's local plan includes the allocation of 11,400 new homes, of which nearly 4,378 units are currently allocated within 3km of the EFSAC boundaries and over 6,000 of the 11,400 are within 5km. In addition, the LBWF plan, the area of which lies almost entirely within 3km of the Forest boundaries, envisages the building of 27,000 new homes by 2035. Just over 5km from the Forest boundaries the London Borough of Enfield is intending to develop a residential area at Meridian Water for over 10,000 new homes, the first quarter of which might be built in the next 5 years.
7. The HRA for the EFDC Local Plan identified that this new housing, the traffic generated by it, as well as the proposed industrial development to accompany the increasing local populations, would act in combination to adversely affect the EFSAC in three ways, which would need to be addressed by a full Mitigation Strategy:
 - increased air pollution from traffic and homes;
 - increased impacts of urbanisation;
 - increased recreational pressure from increases in visitors.

Current Position

8. Your officers submitted on-site mitigation proposals, to help offset the expected increased recreational pressure on EFSAC, to a meeting of 11 local authorities and Natural England convened by EFDC in July 2018. These proposals, supported by Natural England in principle, currently form the core of an *interim* EFSAC Mitigation Strategy, which was adopted by EFDC in October 2018. However, no other local authority has yet formally adopted this *interim* Strategy.
9. Moreover, there have been no further meetings of all of the relevant competent authorities to progress with this *interim* document and no further proposals have been forthcoming from other parties. Of particular concern is the lack of progress on other mitigation, including avoidance measures. To move from an *interim* to full Mitigation Strategy, as required by the Habitats Regulations 2017, detailed mitigation for off-site measures and measures to avoid and/or combat air pollution and urbanisation need to be developed and to be scrutinised by Natural England.
10. Furthermore, the lack of any meetings has meant that a governance mechanism has not yet been devised to collect, allocate and manage funding to enact any of the proposals. Your officers have put time and resources into refining, and beginning to more closely define, the on-site proposals with the assistance of Land Use Consultants (LUC). However, no cost undertakings have yet been given by local authorities towards developing these mitigation proposals further and to assist the completion of this work for the whole SAC.
11. In September, EFDC commissioned a second Visitor Survey of Epping Forest in order to gain more information about visiting patterns at a different time of

year from the 2017 study and to answer concerns expressed by the London local authorities about the robustness of the Zol in more urban areas around the EFSAC. The results of this survey are expected to be analysed by the consultants during November 2019. These data may help further refine the on-site proposals referred to above.

12. Following the Planning Inspector's interim guidance in August to the EFDC Local Plan hearings, EFDC made its response in October. In this response it sets out how it will produce an improved HRA which will look to address the shortcomings of the previous air pollution analyses. However, no further information is provided on off-site mitigation measures, such as Sustainable Alternative Natural Greenspaces (SANGs), and how these might be developed.
13. Furthermore, EFDC has not sought to consult your officers further on these matters at this stage and no proposals on how to move from an *interim* to full Mitigation Strategy have been provided in this response to the Inspector. Instead, EFDC has published a SAC Position Statement for potential developers to explain the delays in planning permissions being granted in the District in terms of the objections made by Natural England and The City Corporation, as Conservators of Epping Forest. In spite of these references to the role and actions of The Conservators, your officers were not consulted about this EFDC SAC Position Statement.
14. Following your representations on the LBWF Local Plan, LBWF has approached your officers looking to convene a Duty-to-Co-operate meeting to progress its plan. Your officers would raise the need for progress on the SAC Mitigation Strategy at any future meeting of this Duty-to-Co-operate group.

Proposals

15. To deal with the delay in progress with the development of a full Mitigation Strategy, and to provide a forum for the exchange of information about the actions of each of the parties involved, it is proposed that a letter be sent to all relevant local authorities from the City, as Conservators, offering to convene and chair an SAC Mitigation Strategy Steering Group. This group would also involve Natural England.
16. In this letter it is also proposed to seek costs undertakings to help with the development of the Strategy, including future Steering Group meetings, and the various on-site proposals that require further work (see also paragraph 23 *Financial Implications* below).
17. Such Steering Groups exist in various forms for other internationally important conservation sites where multiple local authorities are involved. A prominent and nearby example, recently set up, is the steering group covering the Essex Estuaries SAC and other multiple designations and sites. The Essex Coast Recreational disturbance Avoidance & Mitigation Strategy, or Essex RAMS, involves most Essex local authorities apart from Harlow and Epping Districts.

18. In addition to this letter, it is further proposed to send a separate, second letter to EFDC only, copied to the Inspector, to raise concerns and clarify our position in relation to the current lack of a coherent avoidance strategy to protect the Forest SAC, including through the deployment of SANGs. This letter also addresses concerns with the current EFDC SAC Position Statement (see Appendix 3) and proposes a joint statement with EFDC and Natural England.

Options

19. **Option 1:** no further action could be taken at this stage leaving it until EFDC and other local authorities develop their respective plans and HRAs further. This option is not recommended.

20. **Option 2:** the two letters appended (Appendices 1 and 2) to this report should be sent to the respective local authorities. These letters aim to start the process of joint working in order to try to develop the SAC Mitigation planning prior to any further local plan hearings, to share costs for this work and in the case of the second letter to clarify The Conservators' position on a key element of SAC mitigation. **This option is recommended.**

Corporate & Strategic Implications

21. 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.

22. 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

23. **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 two financial years. The high 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. The funding and administration of any Mitigation Strategy Steering Group would require the local authorities to provide joint contributions and this would need to be agreed at any inaugural meeting. A further report on likely administration costs would need to be submitted to your Committee.
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 has been involved in drafting the two letters appended to this report (**Appendices 1 and 2**) and has advised on the best course of action to deal with: i) the delay in developing a full mitigation strategy and ii) the issues raised by the EFDC SAC Position Statement (see **Appendix 3**) coupled with those raised by the Inspector's interim guidance on off-site mitigation measures (SANGs) and the interpretation of the SAC's Zone of Influence.
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. **Exiting 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 future influence of existing EU Directives and the Regulations may be affected by the EU and will also be consequent on the terms reached with the EU as part of Brexit negotiations and the future governments views on 'Retained EU law' contained within the EU (Withdrawal) Act 2018.
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. The local planning authorities around Epping Forest, and particularly within the visitor Zone of Influence, are important strategic partners for the City Corporation in protecting the Forest and its SAC. The development of a full Mitigation Strategy with these partners is now urgently required. Due to insufficient progress on the Strategy and concerns about the need for more joint working on EFSAC-related issues, it is proposed that two separate letters are sent out to the relevant local authorities covering these concerns and offering to convene and chair a new EFSAC Mitigation Strategy Steering Group.

Appendices

- **Appendix 1** – Draft letter to all relevant local planning authorities, as ‘competent authorities’ for the Emerging Epping Forest SAC Mitigation Strategy
- **Appendix 2** – Draft letter to Epping Forest District Council on the EFDC SAC Position Statement and Inspector’s Post-Hearing Advice

Background papers

- SEF34/19 Report to Epping Forest & Commons Committee (9th Sept 2019): *Epping Forest District Council: Examination of the District Local Plan, 2011-2033*
- SEF31/19 Report to Epping Forest & Commons Committee (9th 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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