

# **EPPING FOREST SPECIAL AREA OF CONSERVATION**

## **EFDC POSITION STATEMENT – OCTOBER 2019**

### **Introduction**

1. This position statement has been issued by Epping Forest District Council to provide information about the Epping Forest Special Area of Conservation ("EFSAC") and the statutory controls that prohibit development proposals that may adversely affect the internationally important habitats and species within Epping Forest. Further details about the EFSAC and the statutory controls are provided in the Annex attached to this statement.
2. At present the Council is not able to issue planning permission for new development that may adversely affect the integrity of the EFSAC, which is known as a European site, having regard to the reasons for its designation and the site's conservation objectives.
3. The Council continues to work actively to resolve the current situation that has restricted housing and economic development coming forward since 2018.
4. Unfortunately, a significant programme of highly specialised technical work is required to be undertaken to identify and secure a satisfactory resolution to the current situation, which is not entirely within the Council's control.
5. The Council cannot act unilaterally in this matter because it would be unlawful to do so. When deciding whether planning permission should be granted, the Council is legally obliged to consult Natural England on all development proposals that are likely, either alone or in combination with other plans and projects, to have a significant effect on the EFSAC having regard to the reasons for its designation and its conservation objectives.
6. The Council cannot ignore advice received from Natural England ("NE") and, since early 2018, NE has maintained an objection to the Epping Forest District Local Plan (2011-2033) – Submission Version, December 2017 ("LPSV"), as have the Conservators of Epping Forest ("the Conservators"). The LPSV is currently subject to independent examination by a planning inspector ("the Local Plan Inspector"), who held a series of public hearings between February and June 2019.
7. The comprehensive Habitats Regulations Assessment of the LPSV, dated January 2019 ("the 2019 HRA"), prepared by AECOM on behalf of the Council, has not persuaded NE and the Conservators that the development proposed in the LPSV, with mitigation, would not adversely affect the integrity of the EFSAC. The Local Plan Inspector has provided the Council with written advice following completion of the hearings directing the Council to undertake additional HRA work to address the objections made by NE and Conservators.
8. Consequently, at present the Council cannot lawfully grant planning permission for development contrary to Natural England's current advice. This is not about assigning blame. The Council and Natural England must work together to identify a satisfactory solution and are committed to doing so. As these matters involve highly technical and scientific considerations, compiling the evidence required to address the concerns expressed by Natural England and the Conservators has taken many months and further work is now required to address the Local Plan Inspector's advice.

## Background

9. Since 2017, the Council has been working with NE, the Conservators and neighbouring local planning authorities to address this issue. The Council has also raised the issue with the Ministry of Housing, Communities and Local Government ("MHCLG") and have engaged with Government officials regularly since Natural England objected to the LPSV in early 2018.
10. In response to NE's objection, the Council commissioned the 2019 HRA, which is published on the Council's Local Plan Examination website.<sup>1</sup> The 2019 HRA includes an appropriate assessment of the LPSV's implications on the EFSAC. The assessment identified two environmental impact pathways from the development proposed in the LPSV, namely: (i) atmospheric pollution from vehicle emissions ("atmospheric pollution"); and physical disturbance caused by increased recreational and urbanisation ("recreational pressure"),
11. For both impact pathways, the 2019 HRA Appropriate Assessment concluded that, with mitigation, the Plan either alone or in combination with other plans or projects would not adversely affect the integrity of the SAC.
12. However, following their review of the 2019 HRA, Natural England maintained their objection to the Local Plan, citing a number of specific concerns about the HRA, which were considered at the Local Plan Examination hearing on 21 May 2019. With the assistance of its expert consultants and professional advisors, the Council robustly defended the LPSV and the 2019 HRA at the examination hearings.
13. Following completion of the examination hearings, in a letter dated 2 August 2019,<sup>2</sup> the Local Plan Inspector provided the Council with advice concerning the changes to the Plan required to remedy issues of soundness in the form of Main Modifications ("MMs"). The Inspector's conclusion at this stage is that further MMs are required and that in some cases, additional work will need to be done by the Council to establish their precise form.
14. In her post-hearing advice, the Inspector noted the conclusion in the 2019 HRA that, with mitigation, the LPSV would not adversely affect the integrity of the SAC and said:

*"13. However, in their written representations and at the hearing itself, both Natural England and the Conservators of Epping Forest (the Conservators) strongly challenged the robustness of the HRA in terms of its methodology and conclusions. Given the uniqueness of the Forest, its high-risk status and the professed engagement between these key representors and the Council, the dispute at this stage seems most unfortunate. Nevertheless, I cannot conclude beyond reasonable scientific doubt (as the parties all agree that I must) that the Plan will not adversely affect the integrity of the SAC until steps have been taken towards resolving it."* (emphasis added)

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<sup>1</sup> [EB209 Habitats Regulations Assessment, AECOM January 2019](#)

<sup>2</sup> [ED98 Inspector's Advice After Hearings, 2 August 2019](#)

15. The Local Plan Inspector has identified a number of actions which she considers necessary for the Council to take to remedy the areas of concern with the 2019 HRA arising from the objections maintained by NE and the Conservators. Since receiving the Inspector's advice, the Council has been working with its professional advisors and NE to identify the most appropriate way forward. The Council's proposals are contained in its response to the Inspector dated 11 October 2019, which is also available on the Local Plan Examination website.<sup>3</sup>

### **The current position**

16. In respect of the recreational pressure impact pathway, the Council's Cabinet adopted an interim mitigation strategy (agreed with NE) on 18 October 2018. The Local Plan Inspector has advised that this strategy, kept under review, together with a Strategic Alternative Natural Greenspace strategy will address the recreational impact of development on the EFSAC. This interim strategy requires the payment of a financial contribution, secured via a s106 planning obligation, of £352 for Strategic Access Management and Monitoring for each net additional dwelling within 0-3 km of the Epping Forest SAC. Further work is being undertaken to finalise the strategy and it is anticipated that this will be completed by December 2019, following a further Visitor Survey which is currently being undertaken.
17. As regards atmospheric pollution, currently there is no such agreed approach; however, the Council and other partner organisations continue to work together to devise an air quality mitigation strategy ("AQMS") that is acceptable to NE, taking account of the Local Plan Inspector's advice. In the absence of an approved AQMS, all proposals that result in net additional residential and / or employment development anywhere within the District must be subject to an Appropriate Assessment under the Habitats Regulations.
18. The programme of additional HRA work to address the Local Plan Inspector's advice is estimated to take approximately six months to complete. However, as the preparation of an AQMS forms part of that additional HRA work, the Council and NE will be striving to identify potential opportunities to address the backlog of undetermined planning applications. This work continues and it is not possible at this stage to predict whether that may be possible in the near future.
19. Recently, a planning inspector appointed by the Secretary of State dismissed an appeal against the Council's refusal to grant planning permission for a specialist housing development proposal on land at 13-15A Alderton Hill, Loughton. In his decision letter dated 4 October 2019,<sup>4</sup> the Inspector explained in detail (at paragraphs 30 to 57) why it is not possible to grant planning permission for development that may increase the number of vehicle movements in the vicinity of Epping Forest SAC for the time being.
20. Therefore, for the time being, the Council cannot lawfully grant planning permission for any development proposals within the District that may increase atmospheric pollution in the vicinity of Epping Forest. Taking account of the recent Alderton Hill appeal

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<sup>3</sup> [\[INSERT LINK\]](#)

<sup>4</sup> [EB128 Alderton Hill Appeal Letter](#)

decision, it is very doubtful that the Secretary of State, or his appointed planning inspectors, could grant planning permission on appeal.

21. The Council recognises that the current situation is deeply frustrating and is acutely aware of the number of planning applications that are affected by the unresolved Epping Forest SAC issue that continues to delay much needed development in the District. Councillors and Officers are exploring every avenue in an attempt to resolve this issue as soon as possible. This includes actively engaging with government in an attempt to reduce the substantial backlog of planning applications awaiting determination.
22. The Council will continue to update this position statement in response to any relevant change in circumstances, and in any event will be reviewed in December 2019.

15 October 2019

## **Epping Forest Special Area of Conservation - Annex**

1. Epping Forest is a large ancient wood-pasture with habitats of high nature conservation value including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. The semi-natural woodland is particularly extensive but the Forest plains are also a major feature and contain a variety of unimproved acid grasslands.
2. Epping Forest covers a large area of land within the District and much of the Forest is designated as a Special Area of Conservation ("SAC") under the EU Habitats Directive (92/43/EEC). Biodiversity features within, or associated with, a SAC enjoy a high level of protection under UK and EU Law. The provisions of the EU Habitats Directive are given effect in UK domestic law by the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations").
3. Under the Habitats Regulations, the Epping Forest SAC ("EFSAC") is classified as a 'European site' and, as the competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which is likely to have a significant effect on the SAC (either alone or in combination with other plans or projects), the Council must make an Appropriate Assessment of the implications of the plan or project for the SAC in view of that site's conservation objectives.
4. The requirement to make an Appropriate Assessment under Regulation 63 of the Habitats Regulations is a legal duty that obliges the Council to ensure that the internationally important natural habitats and/or species for which the EFSAC has been designated are guaranteed a high level of protection, by maintaining the integrity of the site is maintained.
5. The Council cannot make decisions in breach of its legal duties and it is not for this Council to comment on whether other competent authorities are meeting their legal obligations. However, it is very important to remember that that the vast majority of the EFSAC lies within the boundaries of Epping Forest District. Consequently, the onerous burden of the legal obligations under the Habitats Regulations falls most heavily on this Council.
6. This legal duty applies to the adoption of the Epping Forest District Local Plan (2011-2033) and to the determination of applications for planning permission proposing new housing and other forms of development in the District. It is important to note that the legal duty applies to development proposals that are likely, either alone or in combination with other development, to have a significant effect on the SAC.
7. For the purposes of assessment, as competent authority the Council must consult NE and have regard to any representations made by NE in response. The Council must, if it considers it appropriate, take the opinion of the general public, including any representations made by the Conservators.
8. Having regard to the conclusions of the Appropriate Assessment, as competent authority, the Council may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the Epping Forest SAC. In other words, the Council cannot adopt the EFDLP, or grant planning permission, unless it is certain that the plan or project will not adversely affect the integrity of the SAC.

9. In accordance with recent decisions of the Court of Justice of the European Union ("CJEU"), an Appropriate Assessment of the implications of a plan or project for a protected site entails, first, that, before that plan or project is approved, all aspects of that plan or project that might affect the conservation objectives of that site are identified. Second, such an assessment cannot be considered to be appropriate if it contains lacunae (i.e., omissions) and does not contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the plan or project on that site. Third, all aspects of the plan or project in question which may, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field (see e.g., *Holohan v An Bord Pleanála* (Case C-461/17))
10. Where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the Appropriate Assessment must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned (see *Holohan* (above)).