

Committee(s)	Dated:
Epping Forest and Commons – For decision	20 11 2017
Subject: Proposed introduction of an Epping Forest Land Banking Policy (SEF 38/17)	Public
Report of: Director of Open Spaces & Heritage	For Decision
Report author: Paul Thomson. Superintendent of Epping Forest	

Summary

This report is necessary to address continued requests from the four Local Highway Authorities, whose jurisdictions coincide with Epping Forest, for the further dedication of protected Epping Forest Land for Highway purposes to implement highway improvement; public safety; road widening and public realm schemes.

Members have raised concerns over the increasing demand for Forest Land both in terms of the aggregate loss and consequent 'creeping urbanisation' of the Forest boundaries. A new policy approach of formal land banking is proposed challenging Local Authorities to each identify discrete parcels of compensatory land adjacent to Epping Forest. These parcels could be transferred in advance or held while future agreed highway dedications are banked by the Local Authority on Trust until the equivalent of the full parcel size is attained, prompting the transfer of the full parcel to the City of London Corporation to hold in trust as compensatory Forest Land.

Recommendation(s)

Members are asked to:

- Provide authority to explore opportunities with local authorities for the introduction of a land-banking scheme for current and future requests for the dedication of Forest Land to public highway, seeking further authority from your Committee once the feasibility of initiating such a scheme has been established.
- Instruct the Comptroller and City Solicitor to support the drafting of an appropriate agreement to enable the potential transfer of land parcels to the City.

Main Report

Background

1. Epping Forest was saved for public benefit by the City of London Corporation in response to the growing development pressure from a burgeoning Victorian London.
2. The Epping Forest Acts 1878 and 1880 charged the City Corporation with powers to manage and regulate Epping Forest. Amongst the City Corporation's statutory duties is an outright obligation under section 7(1.) to 'prevent, resist and abate all future inclosures, encroachments and buildings, and all attempts to inclose, encroach, or build on any part thereof'.
3. Conversely, section 33(1.)(iv.) of the Acts provides a power 'To maintain and make roads, footpaths and ways, and to dedicate roads to the public, subject to the law of highways ...'.
4. Since 1878, the City Corporation has exercised these section 33 powers to build new roads such as Forest Glade, Leytonstone in 1896 and Hatch Lane, Chingford in 1971; construct or widen footpaths such as Rangers Road in 1929; to dedicate land to early Town Planning Schemes such as Loughton (1925) and Chingford (1928); and to provide land for major road improvements such as the construction of the Whipps Cross Road Tramway in 1923 and Whipps Cross Roundabout in 1939.
5. The majority of these schemes have been formally dedicated as Highway Land, which extends to the first two spits (spadesful) of depth, beyond which the land remains as Forest Land. Dedications have historically been made on an inconsistent basis and include agreements which provide for the acceptance of compensatory payments, exchanges for other parcels of land adjoining the Forest and simple dedication without charge in recognition of the wider public good. This uneven approach has seen both an aggregate loss of Forest Land and the 'creeping urbanisation' of some Forest boundaries with surrounding developed land.
6. Under the Epping Forest Transport Strategy (2008), agreed in partnership with Essex County Council, a concerted attempt has been made to return lost Highways Dedicated Land to Forest Land through Highways Act (1980) Traffic Restriction Orders on Queens Green, Fairmead and Lodge Roads which will be eventually closed by Stopping Up Orders. Elsewhere more recent improvements such as the Manor Road, High Beach Pillow Mounds Car Park and Lindsey Street/Palmers Hill, Epping Green improvements have been predicated on broad compensatory exchanges between Highway and Forest Land.
7. Reports to the Epping Forest Land Registration Steering Group have recognised that the failure by Highway Authorities to formally register Epping Forest Land in Highway Dedication Schemes has led to the loss of land to encroachment and the unnecessary concession of prescriptive rights. A recent case at Alders Avenue, Woodford Green has seen the London Borough of Waltham Forest

subsequently sell Forest Land in a Highway Dedication scheme to a Housing Association for Residential Development.

8. The use of wayleaves, rather than formal highways dedications, to record the provision of highways infrastructure has been an administrative convenience for the City Corporation and Highway Authorities since the 1960s. However, unless a highway was being 'stopped up', it would be exceedingly difficult for the City Corporation to withdraw from a wayleave agreement and oblige the removal of publically funded and publically beneficial highways infrastructure. Your Committee has recently recognised the importance of placing all future highway surfacing requests on dedications rather than wayleaves.

Current Position

9. There are increasing development pressures under the proposed local plans with the number of residences within 5km of the Epping Forest SAC boundary set to rise in the next 8 years by 6.5% to around 407,000. To put this in context, this is a greater residential population surrounding the Forest than either the Thames Basin Heaths or the Dorset Heaths face. In these two internationally-important areas considerable efforts have been made by the respective local authorities to mitigate the impacts of new development (see histogram in Figure 1 below).

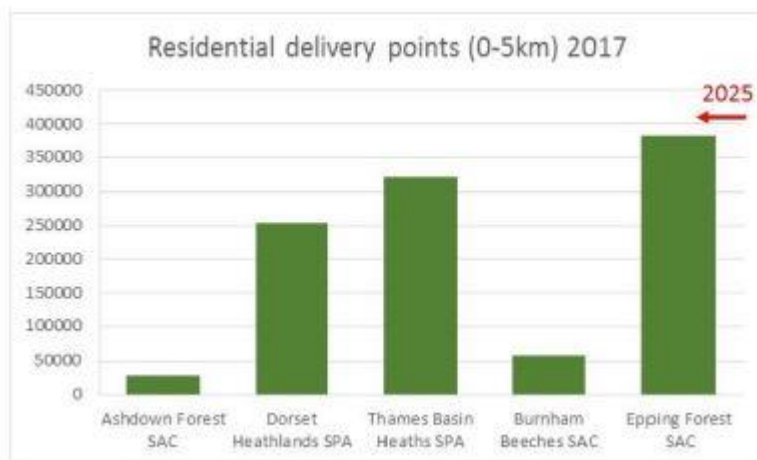


Figure 1: a histogram showing the current number of houses within 5km of five different internationally-protected areas and (arrowed in red) the number predicted for 2025 within 5km of Epping Forest

10. This translates approximately to 3,121 extra houses each year across all the authorities with areas within 5km of the Forest, although the distributions of housing won't follow the pattern estimated in Table 1 below exactly. As a result there will be accelerating demands for highways infrastructure all around the Forest, from bus-stops to turning lanes to wider carriageways.

Levels of housing around Epping Forest SAC

Table 1: Estimates of annual housing growth anticipated for local authorities and estimates (based on the proportion of the local authority area within 5km of Epping Forest SAC) of growth for the 5km buffer. Links relate to relevant local authority sites or documents where anticipated growth figures extracted.

Authority	Distance bands the authority spans covered	houses per annum anticipated	% of local authority area within 5km	houses adjusted
Enfield London Borough	1-13km	2300	4.8	111
Redbridge London Borough	1-8km	1233	39.9	492
Waltham Forest London Borough	1-5km	862	40.2	346
Epping Forest District	1-20km	518	32.6	169
Newham London Borough	2-10km	2500	15.1	377
Hackney London Borough	4-10km	1496	39	583
Haringey London Borough	4-13km	1600	64.3	1028
Broxbourne District (B)	4-13km	419	3.5	15
Total		10928		3,121

11. Current proposals for new traffic improvement schemes include, revisions to provide road widening at the Bell Common High Road (B1393) junction with Theydon Road; road widening to accept a pedestrian refuge island at Honey Lane; a possible remodelling of the Wakes Arms A121/A104/B172/B1393 roundabout; and new bus shelters at Epping Road (B181) opposite St Margaret's Hospital and at Gilbert's Slade, Woodford New Road, all of which would require the highway dedication and the loss of additional Forest Land.

Options

12. There are four options available to your Committee:

- a. Continue with the current process of ad hoc dedications of Forest Land to Highway Land resulting in the continuing erosion of Forest Land. Such an approach will not address the continued loss of Forest Land. **This option is not recommended.**
- b. Pursue an approach used by previous Committees to attribute a monetary value to the loss of Forest Land and charge Highway Authorities accordingly. While the sale of Forest Land would provide a welcome new stream of income, the disposal of Forest Land would be contrary to sections 7(1.) and 7(2.) of the Epping Forest Acts 1878 and 1880. **This option is not recommended.**
- c. Seek compensatory land from Highways Authorities equivalent to the land take request from within each improvement scheme. While such local negotiation has some merit and a strong degree of equity, many schemes

will not have adequate supplies of compensatory land of sufficient quality to enable such an exchange. **This option is not recommended.**

- d. Introduce a policy of land banking where the City Corporation and the relevant Highway Authority identify a strategically important land parcel of benefit to the City Corporation which is transferred to the City once a cumulative equivalent area of land is dedicated to Highway Land, most probably through a series of highway dedications. **This option is recommended.**

Proposals

13. A Land Banking is proposed to your Committee. Land Banking is the practice of aggregating parcels of land for a future specified use. In this instance Local Authorities would be encouraged to identify discrete parcels of compensatory land adjacent to Epping Forest against which agreed future highway dedications can then be banked on trust with the Local Authority. A suitable parcel could then be transferred in anticipation of dedications, or aggregated until the cumulative equivalent of the full parcel size is attained, triggering transfer of the full parcel to the City of London Corporation to hold in trust as replacement Forest Land. This would ensure that the net loss of Forest Land to Highway Dedication Schemes is arrested, encouraging the implementation of a 'steady state' model to Forest Land provision. As each complete parcel is transferred a new parcel of land would be mutually agreed.
14. Land Banking provides the City Corporation with the opportunity to identify the most strategically important land parcels adjacent to Epping Forest which will allow the City Corporation to continue to deliver its role around the protection of a consistent Forest Landscape within Essex and East London. Such an approach would rely on the revision of the current strategic Policy on the Acquisition of Land (2002) which has traditionally ignored smaller land parcels which are capable of supporting a land banking approach.
15. Initial discussions with the four Highway Authorities are already underway on options for developing compensatory land bank.
 - a. The London Borough of Waltham Forest which is already returning 1851m² land at the Whipps Cross Roundabout site as a wildflower meadow has proposed a proportion of the common boundary between Epping Forest and the 32 acres of Mallinson Park Wood.
 - b. The London Borough of Redbridge is yet to propose a suitable compensatory Land Bank area. The City Corporation has suggested the x acre Aldersbrook Wood site adjacent to Wanstead Park.
 - c. The small area of Manor Flats in the London Borough of Newham provides little scope for compensatory exchanges and represents a small drawback to any universal compensatory land scheme.
 - d. Initial soundings with Essex County Council indicate a possible barrier to developing a land banking scheme. As a two tier authority the County Council has little in the way of landholdings in the area and would need to

persuade either the District or Parish Council's to provide compensatory land to support any traffic improvement schemes. Essex County Council holds a number of highway dedication schemes that have not been realised and these could be surrendered as compensatory land, though there is a strong argument that such schemes should be returned to the Forest as a matter of course. Strategically, the City Corporation could request the release of Town and District Council land in the Bolt Cellar Lane corridor adjacent to the City Corporations Millennium Green landholding at Swaines Green

16. The City Corporation has always sought to avoid conceding the principle of Compulsory Purchase Orders which are available to Highways Authorities to realise traffic improvement schemes. The provision of compensatory land in exchange of national traffic schemes for the Green Man roundabout and M11 Relief Road has prevented the overall loss of Forest Land and underpins the principle being articulated for a land banking scheme.

Corporate & Strategic Implications

17. This proposal reflects the City Together Strategy Theme 'A World Class City which protects, promotes and enhances our environment'.
18. The development of a land banking policy reflects the Open Spaces Department's Strategic Aim to 'Adopt sustainable working practices, promote the variety of life and protect the Open Spaces for the enjoyment of future generations'.

Implications

19. **Legal** – The power to acquire additional Forest Land under section 33.(1.)(xxvi.) of the Epping Forest Act 1878 is specifically limited to lands adjoining the Forest, or reputed to have been formerly part of the waste lands thereof.
20. Any agreement must ensure that the City is not bound to agree future highway dedication requests, even if a land bank has been transferred "in lieu" of future dedications. Each request would need to be considered on a case-by-case basis.
21. While section 14 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 specifically allows for the transfer of Public Open Space between Local Authorities some Local Authority Public Open Spaces may be inalienable being dedicated under the Open Spaces Act 1906 or through individual restrictive covenants.
22. **Financial** – The land banking scheme is intended to be cost neutral, in that compensatory land would be managed at a broadly similar cost to existing land that is being dedicated to become the responsibility of the relevant Highways Authority. It is acknowledged that the transferring authority will enjoy an overall

saving where public open space is transferred to the City Corporation and this could be addressed where appropriate by a commuted sum. There may be additional costs where larger parcels of land are transferred in anticipation of further dedications or where a highways maintenance regime such as verge cutting is lost. These additional costs would need to be balanced alongside the policies ambition of arresting the overall loss of Forest Land.

23. **Property** - The principle of land banking appears reasonable, but care is needed in selecting any potential parcels of open space that could eventually be transferred to the City Corporation to ensure land is free from impediment, unencumbered and uncontaminated. It should be borne in mind that the status of any land could be satisfactory at the point of setting up a scheme, but may become compromised at a future date before a transfer takes place, therefore suitable provisions should be considered as a safeguard. Land transfer should ideally come without any associated infrastructure or superstructure that could add to the maintenance or management burden.

Conclusion

24. A new policy approach of Land Banking is recommended to your Committee to ensure the net loss of Forest Land to Highway Schemes is arrested and encourages the implementation of a 'steady state' model to the overall Epping Forest landholding. Land Banking will allow the City Corporation to identify the most strategically important land parcels adjacent and available to Epping Forest which will allow the City Corporation to continue to deliver its role around the protection of a Forest Landscape within East London and Essex.

Appendices

- None

Paul Thomson

Superintendent of Epping Forest

T: 020 8 1010

E: paul.thomson@cityoflondon.gov.uk