

## **Report to the Cabinet**

**Report reference: C-013-2020-21**

**Date of Meeting: 20 July 2020**



**Epping Forest  
District Council**

**Portfolio: Planning and Sustainability - Cllr. N Bedford**

**Subject: Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation**

**Responsible Officer: Alison Blom-Cooper (01992 564066)**

**Democratic Services: Adrian Hendry (01992 564246)**

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### **Recommendations/Decisions Required:**

- (1) That the Approach to Managing the Effects of Air Pollution (see Appendix 1) on the Epping Forest Special Area of Conservation (as amended taking account of any comments received prior to Cabinet) is agreed for the purposes of formal consultation with Natural England and the Conservators;**
- (2) That any necessary and appropriate changes arising from that consultation and any data and targets arising from the finalisation of the current air quality modelling work will be incorporated into the Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation;**
- (3) That the adoption of the Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation is delegated to the Portfolio Holder for Planning and Sustainability, submitted to the Local Plan Inspector examining the Council's emerging Local Plan and used to inform the Council's updated Habitats Regulations Assessment for the emerging Local Plan; and**
- (4) That upon adoption the Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation will be a material consideration in the determination of planning applications and permitted development rights proposals within the Epping Forest District Council administrative area.**

### **Executive Summary:**

Special Areas of Conservation are internationally important nature conservation sites within the UK. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) provides the regulatory framework against which plans and projects, including the Council's Local Plan, and individual planning applications, need to be assessed. In addition the National Planning Policy Framework (NPPF), affords such sites the highest

levels of protection in the hierarchy of sites designated to protect important features of the natural environment.

The legislation sets out that where a land use plan, either alone or in combination, is likely to have a significant effect on an internationally important site, the plan-making authority must undertake a Habitats Regulations Assessment (HRA). This applies to Local Plans produced by local authorities, in addition to Neighbourhood Plans produced by local communities. Such plans set out a broad quantum of development growth. HRA work must therefore consider the overall impacts of such growth – in combination with neighbouring authorities – and where there are any likely significant effects, adverse effects on the integrity of the site must be ruled out.

A significant proportion, and the most integrated part, of the SAC lies within the Epping Forest District Council administrative area. The remainder lies within the London Boroughs of Waltham Forest and Redbridge (the latter of which accommodates a very small proportion of the SAC). As such, EFDC, as a Competent Authority under the Habitats Regulations, is required to ensure that planning application decisions comply with those Regulations and do not result in adverse effects on the integrity of the Epping Forest SAC.

This report sets out the proposed approach to managing and mitigating the effects of new development on the Epping Forest SAC in relation to air quality.

#### **Reasons for Proposed Decision:**

To comply with the Council's general obligations as a competent authority under the Species and Habitats Regulations 2017 (as amended) [Regulation 9(1)] and to support the Examination of the Council's Local Plan Submission Version.

#### **Other Options for Action:**

Not to develop and adopt an Approach to Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation as a material consideration in the determination of planning applications and permitted development rights schemes which result in a net increase in traffic (based on Annual Average Daily Traffic levels) on roads within 200m of the SAC. This would prevent the Council, as local planning authority, from positively determining such proposals, where appropriate, as advised by Natural England, as the responsible statutory body, in its letter of 15 June 2018 (attached as Appendix 2). In addition it would mean that the Local Plan may not be seen as deliverable at examination and therefore would not be found sound.

#### **Background:**

1. In February 2017 the Council entered into a Memorandum of Understanding (MoU) for 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation' with Harlow, East Hertfordshire and Uttlesford District Councils, Essex and Hertfordshire County Councils, Natural England

and the City of London Corporation as Conservators of Epping Forest. The purpose of the MoU is to ensure that the parties named, work in partnership to fulfil the following requirements:

- i. to collect and analyse data and evidence related to the impacts of proposed development and growth under the Local Plans to provide sufficient and robust evidence on which to base a strategy for the protection of Epping Forest SAC;
- ii. to commit to prepare a joint strategy, based on relevant available data and evidence and to an agreed timetable; and
- iii. that the joint strategy will address both the requirement to avoid, or effectively mitigate, adverse impacts on the integrity of the SAC from Local Plan-led development and the requirement to prevent deterioration of the SAC features.

2 Policy DM 2 of the Local Plan Submission Version (LPSV) sets out the approach to considering development proposals in respect of their Likely Significant Effect on both the Epping Forest SAC and the Lee Valley Ramsar, and Policy DM 22 of the LPSV provides the approach with respect to Air Quality considerations, including on the Epping Forest SAC. The Strategy has been developed in response to the Memorandum of Understanding, to support the implementation of Policy DM 2 and Policy DM 22 and in order to comply with the Council's general obligations as a competent authority under the Species and Habitats Regulations 2017 (as amended) [Regulation 9(1)].

3 In order to develop the Strategy to mitigate any likely significant effects on the health of the Epping Forest Special Area of Conservation (SAC) from air pollution arising from new development work has been undertaken to:

- a) Update the Council's Habitats Regulations Assessment to support the Examination of the LPSV, to take account of recent European Court of Justice rulings on the interpretation of the Habitats Directive, including to respond to requests from Natural England, as the statutory body responsible for such matters, to review and update the Council's Epping Forest SAC specific air quality modelling work;
- b) Undertaken air quality monitoring across the Epping Forest SAC in collaboration with the Conservators of Epping Forest.
- c) Included policies within the Local Plan which will support the achievement of improvements to air quality over the period of the Local Plan.

4. The objective of the strategy is to provide a framework for providing reasonable certainty that there will be no adverse effects on the integrity of the Epping Forest SAC air quality over the course of the Plan period as a result of development, taken alone and in combination with other plans and projects.

5. The 'Approach' seeks to pull together the different elements of the planning policy framework contained in the LPSV, together with other activities undertaken by the Council in respect of its environmental protection responsibilities (including actions identified in relation to the Bell Common Air Quality Management Area and the Climate Emergency declaration). The Approach therefore provides 'added value' in terms of wider Council objectives and duties. These are supported by a number of specific measures ranging from the commitment to explore the development of, and if necessary the implementation of a Clean Air Zone, through to the application of planning conditions where appropriate, to secure, amongst other things, the provision of electric vehicle charging points and travel information packs for new occupiers of development. The 'Approach' also provides details relating to the need to undertake regular monitoring of air quality within the Epping Forest SAC through financial contributions from development and review points which will be used to assess progress and trigger the implementation of measures such as a Clean Air Zone. It should be noted that the framework to inform all of these matters is already provided for in published EFDC documents. The benefit of the Approach will be to provide all of the information needed to support the objective set out in paragraph 5 above in one place. In addition a number of the elements proposed to be contained within the 'Approach' would support the achievement of reducing the need to use the private car, which is a key component to support the delivery of development proposed in the LPSV.

6. It should be noted that Epping Forest District Council (EFDC) has been advised by Natural England that it is currently unable to issue any planning permissions for development resulting in a net increase in Annual Average Daily Traffic movements. The 'Approach', if supported by Natural England, will provide the mechanism by which the Council will be in a position to begin to issue planning permissions which are acceptable in all other terms.

#### **Resource Implications:**

The Approach includes a requirement for contributions towards the costs of undertaking air quality monitoring and a number of interventions across the period of the Local Plan. These have been or will be taken into account in the Infrastructure Delivery Plan prepared to support the LPSV. In addition the Council has recently appointed to two posts: a Sustainable Transport Officer and a Climate Change Officer who will be joining the Council shortly and will provide a key element of the officer resource needed to take the Approach forward.

#### **Legal and Governance Implications:**

The Local Plan, the 'Approach' and the level of contributions likely to be sought have been, or will be, developed in accordance with Government Policy (NPPF) and Planning and Environmental Law.

#### **Safer, Cleaner, and Greener Implications:**

The Local Plan contains a policy designed to promote the notion of making good places to live, work and visit. This will include safer by design principles, sustainable development, the provision of alternatives to the car, energy efficiency and environmental considerations as well as quality green infrastructure. The 'Approach' and contributions being sought would contribute to these objectives and those established by the Council following the declaration of a Climate Emergency.

**Consultation Undertaken:**

The Local Plan has been developed in partnership with other Local Authorities under the Duty to Co-operate, Local Stakeholders and in consultation with residents. The Approach to Managing Air Pollution Effects on the Epping Forest Special Area of Conservation itself has been developed with on-going engagement with Natural England and the City of London Corporation (as Conservators of Epping Forest) in particular.

**Background Papers:**

Memorandum of Understanding 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation'. February 2017.

Epping Forest District Local Plan Submission Version December 2017.

Habitats Regulations Assessment of Epping Forest District Council Local Plan January 2019

Letter from Natural England dated 15 June 2018.

Inspector's Advice Letter dated 2 August 2019 (ED98)

**Risk Management:**

If the Council does not demonstrate that it is taking a pro-active approach to developing and implementing an approach to managing the effects of air quality arising from development on the Epping Forest Special Area of Conservation there is a risk that the Council will be unable to adopt the emerging Local Plan. Notwithstanding this the Council, as local planning authority, is currently being prevented from determining planning applications and permitted development right prior approval schemes which result in a net increase in Annual Average Daily Traffic flows. This is having an adverse effect on the Council's five year housing land supply position, its performance against the government's Housing Delivery Test and has resulted in the Council having to defend planning appeals which would otherwise be unnecessary. In addition it is resulting in an impact on the economy of the District, and in particular Small and Medium Sized Enterprises.