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Epping Forest Special Area of Conservation (SAC) – Interim Position Statement

I am informing to provide an overview of the current planning context in relation to Epping Forest Special Area of Conservation (SAC), and potential implications for the determination of planning applications and progression of Neighbourhood Plans within Epping Forest District. This follows the decision in the High Court (Wealden District Council vs Secretary of State for Communities and Local Government and Lewes District Council and South Downs National Park and Natural England, {2017} EWHC 351 (Admin)) as well as comments received from Natural England on the Submission Version Local Plan and emerging Neighbourhood Plans in the District.

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) and/or Site of Special Scientific Interest (SSSI). Biodiversity features within, or associated with, these designations enjoy a high level of protection under UK and EU Law and UK planning policy. Epping Forest SAC is considered a 'European Site', selected for its beech forest and stag beetle populations along with dry and wet heaths and covers a wide area, some of which is close to the built up areas of Loughton, Waltham Abbey, Chigwell and Epping. As a European Site an assessment, known as a Habitats Regulation Assessment (HRA), is required for any development plan or proposal to ascertain whether it will have a likely significant effect on the site.

The Council has a duty as the 'competent authority' under the Habitats Regulations to protect the Epping Forest SAC from the effects of development both alone and in combination. Two in combination issues in particular have been identified through the Epping Forest Local Plan process that could have a likely significant effect on Epping Forest SAC.

The first is as a result of increased visitors to the Forest arising from new development. The second is as a result of damage to the health of the flora including trees and potentially the heathland habitats from nitrogen deposition and ammonia. Both of these are primarily generated by vehicles. The effect is exacerbated when vehicles are queuing at junctions. Increased traffic levels which increase queuing lengths/times are a particular concern.

The Council is currently developing with partners (including Natural England and the Conservators of Epping Forest) a Mitigation Strategy to avoid/mitigate the above effects. The measures required have not yet been agreed but could include, access management strategies, habitat management, provision of new Natural Green Space and sustainable transport choices. The Council has agreed a [Memorandum of Understanding](#) with Natural England, the Conservators of Epping Forest, and other relevant local authorities, which provides further details of the background, and commits the respective authorities and organisations to working together to develop a Joint Strategy to address potential adverse impacts on the integrity of Epping Forest Special Area of Conservation (SAC), as required under the Habitats Regulations 2017. The Joint Strategy needs to be agreed and in place to address soundness issues raised

by Natural England and the Conservators of Epping Forest to the Submission Version Local Plan, and prior to the determination of planning applications arising from the Local Plan.

The Submission Version Local Plan includes the following policy requirement within Policy DM2:

All outline or detailed planning applications for new homes within the settlements of Loughton, Epping, Waltham Abbey, North Weald Bassett, Theydon Bois, Coopersale, Thornwood, Buckhurst Hill, Chigwell and Chigwell Row will be required to make a financial contribution to access management and monitoring of visitors to the Epping Forest SAC, in accordance with Visitor Survey Information which demonstrates this is needed.

Policy DM 22 of the Submission Version Local Plan requires:

larger proposals, or those that have potential to produce air pollution, to undertake an air quality assessment that identifies the potential impact of the development, together with, where appropriate, contributions towards air quality monitoring. Assessments shall identify mitigation that will address any deterioration in air quality as a result of the development, having taken into account other permitted developments, and these measures shall be incorporated into the development proposals. This will include an assessment of emissions (including from traffic generation) and calculation of the cost of the development to the environment. All assessments for air quality shall be undertaken by competent persons.

Unlike Policy DM 2 this policy applies to developments of all types (and all locations) as they all have the potential to result in increased traffic generation which would put further pressure on the roads through the Epping Forest.

The Council and partner organisations continue to make good progress in the production of the Joint Strategy. It is intended that an interim Strategy will be in place by early Summer, and that the full Strategy will be in place before the end of 2018. However, in the meantime before the Joint Strategy is in place and before the Epping Forest District Local Plan has been subject to Independent Examination, there are implications for the determination of planning applications in the District.

Development proposals may only be permitted if the Council is certain that granting planning permission will not result in adverse effects to the integrity of the European Site (Epping Forest SAC). The Council has a duty as the competent authority under the Habitats Regulations to protect the Epping Forest SAC from the effects of development.

In accordance with Policy DM2, planning applications for new homes (or potentially non-residential floorspace) within the settlements of Loughton, Epping, Waltham Abbey, North Weald Bassett, Theydon Bois, Coopersale, Thornwood, Buckhurst Hill, Chigwell and Chigwell Row must demonstrate that they will not have a significant effect on Epping Forest SAC (either alone or in combination with other plans or projects) and will need to make an appropriate financial contribution to access management and monitoring of visitors to the Epping Forest SAC.

However, Natural England has advised that additional mitigation measures might also be required and until such time as an agreed joint mitigation strategy is in place, the Council cannot secure an appropriate financial contribution. We therefore cannot grant planning permission unless the requirements of the Habitat Regulations have been fulfilled. The Council cannot assume that granting planning permission without a financial contribution will not result in adverse effects to the integrity of the European site.

Applicants therefore have two options for all existing and forthcoming applications:

The first option is to carry out a Habitats Regulation Assessment for such developments that will

enable the Competent Authority to meet its duty to protect the Epping Forest SAC, pursuant to the Habitats Regulations, through Appropriate Assessment. The HRA should provide evidence to enable the Council to conclude that granting permission will not result in adverse effects to the integrity of Epping Forest SAC following an Appropriate Assessment.

The second option for applicants is to agree to enter into a legal agreement to pay a financial contribution towards appropriate mitigation measures. As stated above, at the current time the Council is working with Natural England and other partner organisations in accordance with the Habitat Regulations in order to determine the required level of contribution; however this monetary figure has not yet been determined. The Council seeks to have an interim position by the summer. However, it should be noted that where the Council resolves to grant planning permission, it will not be possible to finalise the legal agreement and issue the decision notice until the interim mitigation strategy and the financial contributions to support the strategy have been agreed.

The Council recognises the need to significantly boost the supply of housing in the District, and recognises the potential difficulties posed by this advice. However, the Council must also carefully consider the Habitat Regulations in its role as competent authority in determining planning applications. The Council continues to work proactively to facilitate the delivery of housing in accordance with the emerging Local Plan.

I can assure you that the Council is working hard to address this issue, and ensure that the Joint Mitigation Strategy is agreed and put in place as soon as possible. However, in the meantime I ask for your patience and understanding as we work through these complex issues to support the Local Plan and ensure that development will be sustainable and adequately mitigated in the future in accordance with Habitat Regulations.

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