

Epping Forest District Council
Planning Policy Briefing Note (October 2021)

1. Introduction

- 1.1. This briefing note has been produced by the Planning Policy team to ensure that a consistent approach is taken to the provision of planning policy advice for the District, particularly in relation to the Epping Forest District Local Plan Submission Version ("LPSV"), which was published on 18 December 2017 and the Main Modifications to the LPSV published for consultation between 15 July and 23 September 2021. The primary purpose of this note is to inform the development management process and to assist Development Management officers, Councillors, applicants, and planning agents. Other Council officers involved in the development management process may also find the note helpful (e.g., Housing, Contaminated Land, Landscaping etc).

2. National Planning Policy Framework and the Presumption in Favour of Sustainable Development

- 2.1. By section 70(2) of the Town and Country Planning Act 1990 (TCPA 1990), when dealing with an application for planning permission, the Council must have regard to the provisions of the adopted development plan, so far as material to the application; and any other material considerations. By section 38(6) of the Planning and Compulsory Purchase Act (PCPA 2004) the Council must determine planning applications in accordance with the adopted Development Plan for the District, unless material considerations indicate otherwise.
- 2.2. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions and paragraph 11 states 'plans and decisions should apply a presumption in favour of sustainable development. For decision making this means:
- c) approving development proposals that accord with an up-to-date development plan without delay;
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'

3. **The Epping Forest District Local Plan (1998) and Alterations (2006)**

3.1. At present, the statutory development plan for the District is comprised of:

- The saved policies in the adopted Local Plan (adopted 1998) and Alterations (adopted 2006), available at <https://www.efdclocalplan.org/local-plan/adopted-local-plan/> (please note that Policies GB14A, H1A and ST3 have now been deleted).
- The Essex and Southend-on-Sea Waste Plan (adopted 2017) available at <https://www.southend.gov.uk/development-plan-documents/essex-southend-waste-local-plan>
- The Essex Minerals Local Plan (adopted 2014), available at <https://www.essex.gov.uk/minerals-waste-planning-policy/minerals-local-plan>
- Moreton, Bobbingworth and the Lavers Neighbourhood Plan available at: <https://www.eppingforestdc.gov.uk/planning-and-building/planning-policy/neighbourhood-planning/moreton-bobbingworth-and-the-lavers-parish-council-neighbourhood-plan/>

3.2. In accordance with paragraph 219 of the NPPF, "existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)" to saved policies in the adopted Local Plan (1998) and Alterations (2006).

4. **The Epping Forest District Local Plan Submission Version (2017)**

4.1. On 14 December 2017, at an Extraordinary Full Council meeting, Members approved the LPSV for publication under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) ("the 2012 Regulations") and for submission to the Secretary of State for independent examination under section 20 of the PCPA 2004.

4.2. The LPSV comprises a series of up-to-date strategic and development management policies for the District, together with site allocations. It sets out the strategy for meeting the District's objectively assessed needs for housing, employment and infrastructure from 2011 up to 2033. The LPSV is based on up-to-date evidence and the results of the previous Local Plan consultations undertaken in 2010/11, 2012, and 2016. Once adopted, as modified through the examination process, the Plan will form part of the statutory development plan for the District and will replace the saved policies of the adopted Local Plan (1998) and Alterations (2006).

- 4.3. In accordance with Members' decision, the LPSV was published for a six-week period between 18 December 2017 and 29 January 2018 to allow any person to make representations to the Council about the LPSV under Regulation 20 the 2012 Regulations ("Regulation 20 representations").
- 4.4. The primary purpose of the Regulation 19 publication period is to allow interested persons to make Regulation 20 representations about the soundness, legal compliance of the LPSV, and whether the Council has complied with the duty to cooperate under section 33A of the PCPA 2004 in its preparation. This reflects the purpose of the independent examination which is to determine, in respect of the LPSV, whether it satisfies the requirements of legal compliance; whether it is sound; and whether the Council has complied with the Duty to Co-operate under section 33A of the of the PCPA 2004, in its preparation.
- 4.5. Copies of all duly made Regulation 20 representations were sent to the Secretary of State when the LPSV was submitted for independent examination under section 20 of the PCPA 2004 in September 2018. Under section 20(6) of the 2004 Act, any person who makes representations seeking to change the LPSV must (if s/he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination. Regulation 23 of 2012 Regulations, the Local Plan Inspector appointed to the examine the LPSV must consider all duly made Regulation 20 Representations before making a recommendation concerning the adoption of the LPSV.
- 4.6. The Examination Hearing Sessions took place between February 2019 and June 2019. Following the conclusions of those hearings, the Inspector issued her post examination advice on 2nd August 2019 (ED98) which identifies Actions and Main Modifications to the LPSV that are required to address issues of soundness and / or legal compliance. The Main Modifications are put forward without prejudice to the Inspector's final conclusions on the plan. It is important to note that the Inspector states in her note dated 25th November 2019, 'my advice covers all the "misgivings" I had at the close of the hearings. Subject to the implications of the additional work you are undertaking, and to future consultation on the Main Modifications (MMs), neither further work nor MMs are required in respect of matters I have not covered'.
- 4.7. Since the publication of the Inspector's advice, the Council has undertaken further work to address the 39 actions identified by the Inspector. The conclusions of this work have led to the proposed Main Modifications to the LPSV together with the preparation of additional supporting documents associated with the Main Modifications. The draft Main Modifications proposed for the Local Plan are in the light of the Inspector's comments which set out the changes that would be needed in order to make the LPSV sound.
- 4.8. The Main Modifications to the LPSV were published for consultation as a statutory part of the Local Plan Examination Process on the 15th July 2021. The consultation period ran until 5pm on 23rd September 2021. The Schedule of

Proposed Modifications together with the supporting documents are available at: <https://www.efdclocalplan.org/local-plan/consultation-on-main-modifications/>.

- 4.9. Representations submitted through the consultation will be submitted to the Inspector to assist her deliberations of the Plan. The Inspector will review and consider all the responses received to the consultation prior to preparing her Final Report, which will include the Main Modifications the Inspector considers are necessary in order to make the Local Plan sound. This report will be considered in due course by Full Council.
- 4.10. It is important to note that, until it is adopted by the Council under section 23 of the PCPA 2004, the LPSV does not form part of the statutory development plan for the District.
- 4.11. However, in accordance with paragraph 48 of the NPPF, when taking planning decisions, the Council may give weight to relevant policies in the LPSV "according to:
 - the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
 - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."
- 4.12. Notably, when approving the LPSV for publication and submission to the Secretary of State for independent examination, at the Extraordinary Full Council meeting on 14 December 2017 Members resolved that:
 - "(i) That the Local Plan Submission Version 2017 be endorsed as a material consideration to be used in the determination of planning applications and enforcement decisions to be given appropriate weight in accordance with paragraph 216 of the National Planning Policy Framework."
- 4.13. Accordingly, when dealing with applications for planning permission this means that Development Management Officers and Councillors must continue to determine applications in accordance with the adopted Local Plan (1998) and Alterations (2006), unless material consideration indicate otherwise. In all cases, officers and Members must have regard to the LPSV and its supporting justification, so far as material to the decision, and assess whether the proposal under consideration accords with the LPSV as a material consideration. The documents comprising the Local Plan evidence base are available at: <https://www.efdclocalplan.org/local-plan/consultation-on-main-modifications/>

4.14. However, a further consideration must be made. The Inspector issued her post examination advice on 2nd August 2019 (ED98) which identifies Main Modifications to the LPSV that are required to address issues of soundness and / or legal compliance and the consultation on the Main Modifications closed on 23rd September 2021. Where the Inspector's initial advice on 2nd August 2019 (ED98) contains no reference to specific actions or Main Modifications required in respect of LPSV policies which are relevant to the consideration of the planning application, the District's emerging Local Plan is positioned at the end of the spectrum that would afford it the greatest weight in terms of material considerations. The emerging Local Plan can therefore be given substantial weight in the assessment of development applications where there are no unresolved objections, issues of soundness or legal compliance.

5. **Approach to Managing the Effects of Air Pollution and the potential mitigation measures**

5.1. The Epping Forest Interim Air Pollution Mitigation Strategy: Managing the Effects of Air Pollution on the Epping Forest Special Area of Conservation can be found at: [EB212-Final-Interim-APM-Strategy-for-EFSAC-101220.pdf](https://efdclocalplan.org/EB212-Final-Interim-APM-Strategy-for-EFSAC-101220.pdf) (efdclocalplan.org). Natural England advised on 10 December 2020 that the strategy contained measures that would manage and mitigate the effects of new development on the Epping Forest SAC in relation to air quality if the measures identified in the Interim Air Pollution Mitigation Strategy are secured through appropriate policy wording within the emerging Local Plan. This will provide the necessary link with the Habitat Regulations Assessment.

5.2. The Interim Air Pollution Mitigation Strategy has now been adopted by the Council. As agreed by Full Council on 8 February 2021 the Council hereby declares that:

(i) it will determine planning applications only on the basis of the law, including the National Planning Policy Framework (NPPF) and other National Planning Guidance, the 1998 Local Plan, and the latest iteration of the new Local Plan;

(ii) that the Cabinet Member for Planning and Sustainability will form a cross party Portfolio Holder Advisory Group in no more than 1 month from the date of this resolution; and

(iii) the Group is formed to support the Portfolio Holder in the delivery of the Interim Air Pollution Mitigation Strategy and provide oversight of the work of the Technical Stakeholder Group. This could include working with officers to identify where further initiatives not identified in the APMS could be brought forward to advance Air Quality Improvements with the objective of removing the need to introduce a Clean Air Zone (CAZ). Alongside the acceleration and enhancement of mitigation measures the Portfolio Holder Advisory Group will provide democratic oversight of the development of any CAZ scheme prior to its

consideration through the Council's formal decision-making processes and public consultation on it in the event that future air quality monitoring and modelling continues to demonstrate that, even after the acceleration and enhancement mitigation measures, a CAZ is required.

- 5.3. The Council has proposed Main Modifications to Policies DM 2, DM 22 and D 8 to reflect the updated position on air quality and recreational pressure which have formed part of the Main Modifications Consultation, alongside an updated HRA to take account of the latest evidence.
- 5.4. Officers are in the process of reviewing all of the undetermined applications in terms of policy and other material planning considerations and the Council is releasing decisions on applications which have been held in abeyance in accordance with the following sequence:
 - a) Applications with a Committee resolution to grant permission;
 - b) Allocated or designated sites that comply with the ambitions of the emerging Local Plan;
 - c) All other applications in order of validation date

6. **Green Infrastructure Strategy**

- 6.1. The Council's emerging Local Plan sets out policies in relation to the provision and enhancement of Green and Blue Infrastructure, the protection of the District's ecological assets and achieving high quality design. To support these policies and address the requirement to provide suitable avoidance or mitigation measures to manage any potential impacts of growth on protected sites, including the Epping Forest Special Area of Conservation (SAC), the Council has developed a Green Infrastructure Strategy.
- 6.2. The responsibility for the development of an approach to avoid or mitigate any harm to the Epping Forest SAC arising from recreational pressure lies with the Council as the competent authority. On 18 October 2018 the Cabinet agreed an interim approach to managing recreational pressure on the Epping Forest SAC to mitigate any adverse effects on its integrity as a result of recreational pressures arising from new residential development. The interim approach incorporated Strategic Access Management and Monitoring (SAMM) measures. Other measures are also required to ensure that a comprehensive approach is taken by the Council in order to demonstrate that planned growth within the District will not have an adverse effect on the integrity of the Epping Forest SAC. This includes the provision of Suitable Alternative Natural Green Space (SANG) as part of a number of proposed strategic sites, together with the identification of Infrastructure Enhancement Projects, focused in the Debden, Loughton, Buckhurst Hill and Theydon Bois areas of the District in order to encourage residents to use alternative places for recreation. Appendix 1 – Interim Mitigation Strategy for Epping Forest Special Area of Conservation

Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation is available at: [EB134-Interim-Approach-to-Managing-Recreational-Pressure-on-the-Epping-Forest-Special-Area-of-Conservation-Oct-2018.pdf \(efdclocalplan.org\)](https://www.efdclocalplan.org/EB134-Interim-Approach-to-Managing-Recreational-Pressure-on-the-Epping-Forest-Special-Area-of-Conservation-Oct-2018.pdf)

- 6.3. The Green Infrastructure Strategy takes an integrated approach to the design and delivery of green and blue infrastructure provision in the District. The Strategy provides clear evidence that the necessary SANG can be delivered over the Plan period, including proposals for SANG required in the first five years of the Plan. The Strategy will ensure that high quality Green and Blue Infrastructure, including the provision of Suitable Alternative Natural Green Space (SANG) and Infrastructure Enhancement Projects, is delivered alongside the growth proposed in the District as part of the emerging Local Plan.
- 6.4. On 20th April 2021, Cabinet agreed the Green Infrastructure Strategy as a material planning consideration for the preparation of Strategic Masterplans, Concept Frameworks, pre-application advice, assessing planning applications and any other development management and implementation related purposes within the District; for submission to the Local Plan Inspector; and used to inform the Council's update to the Habitats Regulations Assessment to support the emerging Local Plan, subject to review with the Woodland Trust.
- 6.5. The documents are available at: <https://www.efdclocalplan.org/local-plan/consultation-on-main-modifications/>

7. **Prematurity**

- 7.1. National Planning Policy Guidance (PPG) on Determining a Planning Application' (Reference ID: Paragraph: 014 Reference ID: 21b-014-20190315 states Paragraphs 48-50 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans, and the limited circumstances in which it may be justified to refuse an application on the basis that it is premature. The NPPF states 'However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances.
- 7.2. Paragraph 49 of the NPPF states 'such circumstances are likely to be limited to situations where:
 - (a) The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood plan; and

- (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area’.
- 7.3. Before deciding to refuse planning permission on grounds of prematurity, the Council must identify clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process and prejudice the delivery of emerging allocations.
- 7.4. Given the substantial and extensive up-to-date evidence and site selection work which underpins the housing allocations in the LPSV, it is very unlikely that the Council will support any proposals for development outside of settlement boundaries which are not part of the LPSV allocations, or which are not in accordance with the Local Plan Rural Exceptions policy with respect to housing, or which do not comply with national and local policies concerning Green Belt and brownfield land. Larger scale developments within settlement boundaries which come forward on sites which are not allocated will be assessed against national, adopted Local Plan, and LPSV policies; consideration will be given as to whether the proposal would in any way prejudice the implementation of site allocations within the LPSV.

8. **Local Plan Implementation**

- 8.1. The LPSV, as amended by the proposed Main Modifications, requires future developments in certain areas (as specified on the Policies Map) to be in general conformity with a Strategic Masterplan produced specifically for that area. These areas include:
- East of Harlow (part of the Harlow and Gilston Garden Communities);
 - Latton Priory (part of the Harlow and Gilston Garden Communities);
 - Water Lane Area (part of the Harlow and Gilston Garden Communities);
 - South Epping;
 - Waltham Abbey North;
 - North Weald Airfield
 - North Weald Bassett;
- 8.2. These Strategic Masterplans will provide a high-level overarching framework to ensure that planning and delivery of development and infrastructure is properly coordinated across the Masterplan Area. They will also ensure that development proposals are front-loaded and where possible accelerated.
- 8.3. The Council also requires more Design Codes to be produced for each of the areas in accordance with the principles set out in the respective Strategic

Masterplan. These Design Codes will set out detailed design standards and should be used to inform planning applications to be submitted for individual sites. The Design Code also ensures co-ordination between different land parcels within a Masterplan Area and provides a level of certainty to developers of the quality and character of adjacent development.

- 8.4. The LPSV also requires the production of Concept Framework Plans to be produced by the landowners/promoters of relevant allocated sites. These Concept Framework Plans are more 'light-touch' in comparison with Strategic Masterplans but still set out high-level development principles which will ensure that a comprehensive and cohesive approach is taken to the planning and delivery of development and infrastructure in the locality.

Quality Review Panel

- 8.5. The production of Strategic Masterplans, Concept Framework Plans, Design Codes, and where appropriate, other planning proposals should be considered and informed through review at key stages by the Council's Quality Review Panel. In general, the Council will expect schemes of more than 50 homes or 5,000 square metres of commercial/other floorspace to be informed by review. Other smaller schemes which are complex or contentious may also be appropriate for review.

9. Infrastructure Pooling

- 9.1. Since 6 April 2015, the requirements of Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 have been in effect. This limits the funding or provision for any one specific infrastructure project or type of infrastructure to a maximum of five separate planning obligations.
- 9.2. The IDP provides guidance as to how and when infrastructure requirements associated with development identified within the LPSV should be delivered. The Council is required to work with landowners, promoters, infrastructure providers and other local authorities to determine how infrastructure contributions will be sought and section 106 contribution pooled to provide the necessary infrastructure. Careful consideration therefore needs to be given in relation to the identification and definition of infrastructure projects in relation to future section 106 agreements.

10. Neighbourhood Planning

- 10.1. Neighbourhood Plans were introduced by the Government through the Localism Act 2011. Once they have successfully completed the preparation process and have been made, Neighbourhood plans will form part of the statutory development plan for the District. Applications for development within the relevant neighbourhood plan area must be determined on accordance with the neighbourhood plan, so far as it is material to the application.

- 10.2. To be made, a neighbourhood plan must be in general compliance with the adopted Local Plan for the District and be used positively to encourage sustainable development. Within Epping Forest District, there is one adopted Neighbourhood Plan at Moreton, Bobbingworth and the Lavers Neighbourhood Plan and currently ten neighbourhood plans being prepared by the respective town or parish council for the area. For further detail on the progress of individual neighbourhood plans, please visit the Neighbourhood Planning on the Council's website: <https://www.eppingforestdc.gov.uk/planning-and-building/planning-policy/neighbourhood-planning/>
- 10.3. In certain circumstances, an emerging neighbourhood plan may be a material consideration in the determination of a planning application. In accordance with section 70(2)(aza) of the TCPA 1990 "a post-examination draft neighbourhood development plan, so far as material to the application", Where section 70(2)(aza) applies, the Council must decide the weight to be accorded to relevant policies within an emerging neighbourhood plan, in accordance with paragraph 216 of the NPPF (see above at paragraph 4.8).
- 10.4. The Government has introduced changes as a response to the Covid Pandemic. Where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to the application (NPPG Neighbourhood Planning Paragraph: 107 Reference ID: 41-107-20200925).
- 10.5. The National Planning Policy Framework at paragraph 14 states that relevant policies for the supply of housing in a neighbourhood plan that has been made and is part of the statutory development plan, should not be deemed to be 'out-of-date' under paragraph 11d of the NPPF. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:
- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
 - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
 - c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74);

11. **First Homes**

- 11.1. First Homes are a specific kind of discounted market sale housing and should be considered to meet the definition of ‘affordable housing’ for planning purposes. Specifically, First Homes are discounted market sale units which:
- a) must be discounted by a minimum of 30% against the market value;
 - b) are sold to a person or persons meeting the First Homes eligibility criteria (see below);
 - c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,
 - d) after the discount has been applied, the first sale must be at a price no higher than £250,000 (or £420,000 in Greater London).
- 11.2. First Homes are the government’s preferred discounted market tenure and policies states that it should account for at least 25% of all affordable housing units delivered by developers through planning obligations.
- 11.3. As set out in the First Homes Written Ministerial Statement of 24 May 2021, local plans and neighbourhood plans that have reached advanced stages of preparation will benefit from transitional arrangements. Local plans and neighbourhood plans submitted for examination before 28 June 2021, or that have reached publication stage by 28 June 2021 and subsequently submitted for examination by 28 December 2021, will not be required to reflect the First Homes policy requirement. Paragraph: 001 Reference ID: 70-001-20210524
- 11.4. As the LPSV was submitted before the 28th June 2021, there is no planning policy requirement to ensure 25% affordable housing is secured through First Homes provision.

12. **Housing Strategy 2017 – 2022**

- 12.1. In 2017, the Council adopted its new Housing Strategy that includes a number of policies relating to the delivery of affordable housing. The main policies relating to the Local Plan are as follows:
- On developments which provide for 11 or more homes (or on land in excess of 1,000sqm gross floor space), the Council will generally seek up to 25% of the affordable homes as shared ownership homes (not as “starter homes”), to assist first time buyers to gain access to home ownership and to meet the National Planning Policy Framework’s requirement for the provision of affordable home ownership properties;

- In order for shared ownership homes to be affordable to as many people as possible, the Council will ensure that:
 - Initial equity sales to individual applicants for shared ownership properties are no less than 20% and no more than 75% of the open market value of the property;
 - For development appraisals undertaken by housing associations for the purchase or development of affordable housing, the assumption used for the average initial equity shares to be sold to applicants across all of the shared ownership properties on the development is no more than 35%, and is reflected in offers made to landowners and developers;
 - Shared owners are able to purchase additional equity shares (staircase) up to full 100% ownership, except for rural housing schemes for which a maximum of 80% equity can be purchased under current Homes and Communities Agency policy; and
 - The initial rent charged for the equity retained by the housing association is equivalent to no more than 2% of the value of the unsold equity per annum, with subsequent rent increases determined in accordance with the relevant housing association's rent setting policy;
- The Council will seek to ensure that housing associations and other providers charge affordable rents at no more than the level of the relevant Local Housing Allowance for the locality;
- The Council will ensure that developers comply with the Council's latest Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing and will robustly assess and validate Viability Appraisals submitted for developments where developers assert that it is not possible to meet the Council's affordable housing requirements, in order to ensure that as much affordable housing is obtained as viably possible.

12.2. A copy of the Housing Strategy 2017 – 2022, which provides further background to these policies can be found here:
<https://www.eppingforestdc.gov.uk/wp-content/uploads/2019/05/housing-strategy-2017-22.pdf>

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