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Chairman and Members of the
Development Management
Committee

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Date: 22 February 2022

cc. All other recipients of the
Development Management
Committee agenda

Dear Councillor,

DEVELOPMENT MANAGEMENT COMMITTEE - 22 FEBRUARY 2022

Please find attached an Appendix A, which relates to the Screening and
Appropriate Assessment under the Habitat Regulations 2017
(Pages 3 - 10)

Yours faithfully

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MEETING : DEVELOPMENT MANAGEMENT COMMITTEE
VENUE : COUNCIL CHAMBER, WALLFIELDS, HERTFORD
DATE : TUESDAY 22 FEBRUARY 2022
TIME : 5.30 PM

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Appendix A: Update

Screening and Appropriate Assessment under the Habitat Regulations 2017

1. Introduction

- 1.1 This paper has been prepared to provide an update following the receipt of advice from Natural England relating to the Habitats Regulations Assessment (“HRA”) for the Gilston Area and Crossings Development. This paper should be read in conjunction with the full HRA at Appendix A to the Committee Report.
- 1.2 Following earlier consultation with Natural England, including their response to consultation in an email of 21st December 2021, the HRA/Appropriate Assessment (“AA”) was updated to reflect comments of Natural England. Having already provided informal advice to Officers through the preparation of the HRA, the final comments of Natural England have focussed primarily on air quality impacts of the Villages 1-6 outline application and the Crossings alone and in combination with other plans and projects including the Villages 1-7 outline application, the Village 7 outline application and other planned development within the Harlow and Gilston Garden Town (“HGGT”). In this regard, the HRA/AA concluded that there will be no adverse impact on the integrity of Epping Forest Special Area of Conservation (“SAC”) as a consequence of the development alone or in combination with other relevant development.
- 1.3 Natural England responded to consultation in respect of the HRA on 10 February 2022 and they welcomed the revised approach in the amended Appropriate Assessment (AA) in that likely significant effects due to potential air quality impacts upon Epping Forest SAC are no longer screened out at Stage 1 and are taken through to AA. Natural England also stated that:
 - i. Natural England accepts that it cannot reasonably require any further analysis of available relevant evidence in order to fully rule out any remaining doubts about the conclusions reached in your amended AA.
 - ii. Natural England agrees that the Interim Air Pollution Mitigation Strategy for Epping Forest SAC (2020), could in principle deliver the air quality mitigation required to allow an in combination adverse effect upon Epping Forest SAC to be ruled out.
 - iii. Natural England accepts that there is no additional mitigation that could be readily secured through this development which would have an equivalent benefit.

iv. Natural England have advised that it recognises that the growth in Epping Forest District between 2014 and 2033 is the primary source of ammonia and NOx emissions on the Epping Forest Special Area of Conservation and Natural England takes the view that in this case it is “not inappropriate for the competent authority to conclude that responsibility for mitigating air quality impacts on Epping Forest SAC should fall on Epping Forest District Council and developments within that district”.

- 1.4 Notwithstanding the conclusions above, the Natural England response points to NE guidance (NEA001) Advising Competent Authorities on Road Traffic and HRA (June 2018) paragraphs 5.25 to 5.28 which relates to scenarios where there is already an exceedance of relevant air quality benchmarks. The inference of this signposting is that the Councils should ensure consideration has been given to the question of whether further emissions from a Development will undermine Conservation Objectives that are to ‘restore the concentrations and deposition of air pollutants to within benchmarks’.
- 1.5 Paragraph 5.25 of Natural England’s guidance notes that “Where the conservation objectives are to ‘restore the concentrations and deposition of air pollutants to within benchmarks’ (i.e. where the relevant benchmarks such as Critical Loads/Levels are already exceeded) they will be undermined by any proposals for which there is credible evidence that further emissions will compromise the ability of other national or local measures and initiatives to reduce background levels”.
- 1.6 Paragraph 5.26 notes that an exceedance alone is insufficient to determine the acceptability or otherwise of a project. But because exceedance will represent a threat to the condition and integrity of a site, the guidance notes that hypothetically it could be argued that any increase above a currently exceeded state compromises the extent to which improvements from other initiatives will deliver the restoration aims of the conservation objectives, as additional pollution could slow the rate at which progress is made towards meeting the relevant air quality benchmarks.
- 1.7 Natural England’s guidance goes on to provide practical advice for how this issue should be approached by the competent authority and states at paragraph 5.28:

“In practice, where a site is already exceeding a relevant benchmark, the extent to which additional increments from plans and projects would undermine a conservation objective to ‘restore’ will involve further consideration of whether there is credible evidence that the emissions represent a real risk that the ability of other national or local measures and initiatives to otherwise reduce background levels will be compromised in a meaningful manner. This is a judgement to be taken by the competent authority which should be informed by, amongst others,

the extent to which any declining national trends in air pollution or strategic work to tackle emissions affecting the site more locally might otherwise lead to improvements, the rate at which such improvements are anticipated to be delivered, any credible evidence on the extent of the impacts of a plan or project and whether those impacts can properly be considered temporary and reversible.”

- 1.8 The retardation, or delay, of improvements in terms of air quality is acknowledged in the HRA (paragraph 6.2.23).

“The results of the air quality modelling demonstrate that the Development proposals on their own do not exceed 1% the critical levels for NO_x, NH₃ and nitrogen deposition. The results of the in-combination air quality modelling indicate that, with or without the proposed Development, that part of Epping Forest SAC which could be affected by increased traffic flows along the M25 is predicted to experience a reduction in NO_x concentrations and nitrogen deposition. However, Ammonia concentrations are predicted to increase in line with growth with or without the Development. In relation to these pollutants, the net effect of the proposed Development would be a retardation of the overall trajectory of air quality improvement. The magnitude of this effect is predicted to be miniscule and effectively imperceptible; in all cases, the process contribution falls short of the applicable 1% critical load or level threshold.”

- 1.9 The HRA concludes, and Natural England do not disagree, that the magnitude of the effect of the Development in terms of retardation are imperceptible and no adverse effects on the integrity of the Epping Forest SAC will occur.
- 1.10 However, Natural England advise that because in their view the Epping Forest Air Pollution Mitigation Strategy (“APMS”) prepared in support of the Epping Forest Local Plan is not yet secured and therefore is considered by Natural England to be uncertain, that the Councils seek legal advice. It is understood that Natural England’s position is that until the Epping Forest Local Plan has been adopted that the APMS will be considered by Natural England to be “unsecured”. This point is relevant to the predicted levels of improvement in the future air quality for the Epping Forest SAC through the APMS and other measures and the question of whether the imperceptible level of retardation by the Development (in combination with other developments) on future improvements will undermine the ability of the APMS and other national and local measures to reduce background levels.
- 1.11 Due to the assessed imperceptible level of impact of the Development (both alone and in-combination), the Councils as competent authorities remain satisfied that there will be no impact on integrity and that the data and overall conclusions contained within the HRA annexed to the report are robust. The Councils also

consider that the Gilston Area Village 1-6 and Crossings Development does not rely upon the adoption of the Epping Forest Local Plan and the Councils are satisfied that there is no credible evidence that the emissions represent a real risk such that the ability of other national or local measures and initiatives to otherwise reduce background levels will be compromised in a meaningful manner. Natural England has also not suggested there is credible evidence that the Development will compromise such measures and has instead stated in its consultation response to the applications that:

"...all other plans and projects make a negligible contribution to the in combination effect.... it would not be inappropriate to conclude that responsibility for mitigating air quality impacts on Epping Forest SAC should fall on Epping Forest District Council and developments within that district."

- 1.12 The APMS is principally designed to address the impacts of, and to accommodate the growth from, the emerging Epping Forest Local Plan on the Epping Forest SAC (in combination with other plans and projects) and there will only be an imperceptible impact from the Development.
- 1.13 However, for completeness, this update explores the nature of the APMS in more detail and has considered in further detail whether the retardation to the overall trajectory of air quality improvement will undermine the ability of local or national mitigation measures designed to improve air quality in the Epping Forest SAC.
- 1.14 The Epping Forest Air Pollution Mitigation Strategy has been prepared as part of the Epping Forest Local Plan ("EFLP") Examination in Public in order to ensure that the Local Plan (in combination with other plans and projects) can demonstrate that there will be no adverse effect on the integrity of the Epping Forest SAC. The HRA undertaken on the proposed Main Modifications to the Local Plan including the APMS concludes that with the proposed Mitigation Strategy and Local Plan Policies there will be no adverse effect on the integrity of the Epping Forest SAC. Natural England was consulted during the preparation of the APMS and in its response to the Local Plan Main Modifications Consultation states *"The Epping Forest District Council Air Pollution Mitigation Strategy (APMS) has now been adopted. Natural England remain satisfied that, in principle, the measures to be delivered reflect those identified as necessary in the Council's HRA of the Local Plan to avoid an adverse effect to the integrity of the Epping Forest SAC."* The Inspector is in the process of finalising her Report to the Council and it is anticipated that the Local Plan and EFAPMS will be adopted in Spring 2022. Following the receipt of the Inspector's Report, if there is a change to the EFLP development strategy the APMS will be updated accordingly.
- 1.15 Following the adoption of the APMS by Epping Forest District Council (January 2021), a Portfolio Holder Advisory Group has been established to implement and

monitor the effectiveness of the Strategy and there is a strong policy framework in place in the emerging Local Plan to support the measures set out in it. Despite the fact that the EFLP has not yet been adopted, Epping Forest District Council has been successfully applying the APMS to applications within the District and relying on this for site specific Appropriate Assessments under the Habitat Regulations, including windfall development, with conditions being imposed that require site-specific modelling and mitigation where necessary. The APMS has also been supported in a number of appeal decisions by Inspectors where Appropriate Assessments have been undertaken by an Applicant which has relied in part on the APMS¹.

1.16 The measures in the Strategy include:

- The introduction of a Clean Air Zone in September 2025 (essentially a road user charging scheme which financially penalises polluting vehicles)
- Increasing the percentage of the vehicle fleet that constitutes ultra-low emission vehicles to 12-15% of vehicles using the routes in the SAC by 2033 (with incremental targets in 2025, 2029 and 2033)
- Provision of Electric Vehicle Charging Points
- Awareness Raising Campaign
- Right-hand turn ban at junction off A121 (Honey Lane) into Forest side
- Site-specific initiatives to support species and veteran tree resilience
- Initiatives to support walking, cycling and increased public transport use
- HGV Route Management Strategies
- Provision of Digital Communications Infrastructure
- Trialling new technologies
- Monitoring and review
- Wider activities being undertaken or proposed to be undertaken by the Council

1.17 Of these measures, the most significant is the implementation of a Clean Air Zone. This is the measure which is most likely to have a wider than local impact given that it will affect all journeys travelling through the Forest, not just local traffic. For example, Officers in Epping Forest District Council have advised Officers that the implementation of the London Low Emission Zone (March 2021) and London Ultra-Low Emission Zone (October 2021) have already started to have a beneficial impact in Epping Forest District through increased requests for electric vehicle charging points in private properties and public spaces, primarily from taxis and fleets that regularly travel between Epping and London. This demonstrates the beneficial impacts of clean air zone programmes in incentivising the change to low emission vehicles.

¹ APP/J1535/W/20/3258787 and APP/J1535/W/20/3263876

- 1.18 The Air Quality Transport Modelling undertaken by the Applicant that informs the HRA takes no account of more recent national policy changes such as the ban on the sale of petrol and diesel vehicles by 2030, the London Low Emission Zone, the London Ultra-Low Emission Zone, or of the proposed Air Pollution Mitigation Strategy accompanying the emerging Epping Forest Local Plan, which was prepared after the modelling was undertaken. Without these measures the modelling (which considers the Gilston Area and HGGT development cumulatively) demonstrates an improvement in pollutant emissions at the modelled SSSI component of the SAC (SSSI 105 – Epping Thicks), before the national and local mitigation strategies are accounted for and therefore it considers the worst case scenario with no mitigation in place. Albeit the critical loads/levels are still at exceedance as described in the full HRA.
- 1.19 Given that the modelling demonstrates that the Development alone and in combination with other plans and projects would have a negligible impact in air quality terms on the Epping Forest SAC, being that the contribution to critical loads for each pollutant is less than 1%, no further mitigation is required. The HRA demonstrates that the Development’s contribution to the levels of exceedance are so small as to be imperceptible by 2040, i.e. following the completion of the Development and other planned HGGT developments. Given that the total contribution by the completion of the Development by 2040 is imperceptible, the incremental increases over time in line with the growing development will likewise be imperceptible. The impact that such small contributions will make in terms of the retardation of achieving benchmark pollutant levels are also therefore imperceptible.
- 1.20 The modelling undertaken for the Epping Forest Local Plan HRA² demonstrates that the mitigation scenario (the introduction of the Clean Air Zone in 2025 and 30% of vehicles being electric vehicles (combined) by 2033) will bring NOx pollutants to within critical load benchmarks. However, total Nitrogen and Ammonia will remain above critical loads by 2033 in every scenario, albeit the mitigation scenario is the best performing. The modelling demonstrates that with planned growth in Epping Forest and surrounding areas the contribution of planned growth to critical loads and levels was also imperceptible (being less than 1%) and that this *“growth in the 2033 mitigated scenario does not materially interfere with the achievement of that target”*; that target being to restore concentrations and depositions of air pollutants to at or below critical load or level values given for the feature of the site³. By 2033 99% of the SAC would be below the critical level

² https://www.efdclocalplan.org/wp-content/uploads/2021/07/EB211A-Epping-Forest-Local-Plan-HRA-June-2021-final-for-issue_Optimized-1.pdf

³ Epping Forest District Local Plan 2021 HRA paragraph 6.21

of NOx under the mitigated scenarios compared to 85% in the 2017 baseline⁴. By 2033, 82% of the SAC would be below the critical level of ammonia compared to 81% in the 2017 baseline⁵. By 2033, 5% of the SAC would experience a net reduction in Nitrogen deposition rates compared to the 2017 baseline⁶.

- 1.21 The Clean Air Zone in Epping Forest will be implemented in September 2025 and public awareness campaigns and democratic reporting activities will be occurring in the lead up to its implementation, including a consultation exercise in January 2024 (Appendix 3 of the APMS). The Clean Air Zone will be in active preparation by the time the first homes in the Gilston Area are occupied, and will be implemented soon after. Based on the current expected housing delivery trajectory (as reported in the HRA), up to 200 homes at the Gilston Area (out of 10,000) will be complete by 2024/25, though it is anticipated that occupation will not commence until early 2025.
- 1.22 The Development will not undermine the adopted APMS which is designed to ensure that developments within the Epping Forest Local Plan (in combination with other plans and projects) will not have an adverse effect on the integrity of the Epping Forest SAC, nor conflict with the Conservation Objectives of restoring the concentrations and deposition of air pollutants to within benchmark levels.
- 1.23 It is the opinion of the Councils (as competent authorities) that the Development does not rely on the Epping Forest Local Plan being adopted as the in-combination effects of the Development is imperceptible in the absence of mitigation, and there is also no credible evidence that the emissions represent a real risk that the ability of national or local measures to reduce background levels of pollutants at Epping Forest SAC will be compromised in a meaningful manner.
- 1.24 In any event, this update note has considered the APMS for completeness. As noted above, the APMS is already being relied upon by Epping and Inspectors relating to Appropriate Assessments when consenting major developments within Epping Forest despite the Epping Forest District Local Plan not being adopted; there would only be a modest amount of development undertaken at the Gilston Area when key measures such as the Epping Forest Clean Air Zone are expected to be implemented and the Development will not compromise the adopted APMS or other national or local measures for reasons set out above.

⁴ Epping Forest District Local Plan 2021 HRA paragraph 6.21 (NOx)

⁵ Epping Forest District Local Plan 2021 HRA paragraph 6.32 (Ammonia)

⁶ Epping Forest District Local Plan 2021 HRA paragraph 6.57 (Nitrogen)

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