

**Waltham Forest Local Plan (LP1) 'Shaping the Borough'
Examination**

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Ms S Parsons
Assistant Director
Waltham Forest Borough Council

SENT BY EMAIL

5 May 2022

Dear Ms Parsons,

Waltham Forest Local Plan Part 1 Examination

1. We are writing to explain our initial findings and to outline options for the progress of the Examination following the March 2022 hearing sessions into the soundness and legal compliance of the Waltham Forest Local Plan Part 1 (2020–2035) (the Plan). We would like to thank the Council's team and all other participants for their hard work and constructive contributions over the six days. At the final hearing session on 24 March 2022, we indicated that we needed to consider some of the more complex matters discussed during the hearing sessions.
2. Firstly, we have no specific concerns in respect of the statutory requirements arising from the Duty to Cooperate. The reasoning for this conclusion will be set out in our final report on the Examination of the Plan, depending how the Council chooses to progress the Examination based on the options set out at the end of this letter.
3. However, based on all the evidence that we have read, and on discussion at the hearing sessions, we have significant concerns in relation to the legal compliance and soundness of certain other aspects of the Plan.
4. Based on the level of progress that has been made with mitigation measures and applying the precautionary principle, we are unable to conclude that the Plan would not result in adverse effects on the integrity of the Epping Forest Special Area of Conservation (SAC),

having particular regard to the impact of recreation pressure and air pollution.

5. We have also outlined a number of points on the Sustainability Appraisal below, but in summary, there is insufficient evidence to enable us to conclude that reasonable alternatives to the Plan's housing requirement and the Spatial and Growth Strategy set out in Chapter 4 have been assessed and that these key components of the Plan are justified.
6. Many main modifications (MMs) were discussed during the hearing sessions, including those in the Schedule of Proposed Changes (LPE5), in the Council's hearing statements and those proposed by other participants or by us. The Council is already drawing up a schedule of the MMs which were discussed at the hearing sessions, together with other actions identified at the sessions. Those MMs are not repeated here. Further MMs will be required in addition to those discussed at the hearing sessions and more work needs to be undertaken by the Council in addition to the items on the Follow Up Lists.
7. We acknowledge the considerable work involved in progressing the Plan to this point and the importance of having an up-to-date Local Plan in place. Therefore, we have put forward four options for the Council to consider at the end of this letter.
8. We emphasise that the Examination is not yet complete and the points in this letter are made without prejudice to our final conclusions on the legal compliance and soundness of the Plan overall, which will be set out in our final report. We are not inviting comments from the Council or anyone else on the matters raised in this letter, except where we have indicated the need for a further response from the Council.

Scale of Housing Growth and Housing Delivery

9. The Plan's housing requirement of 27,000 dwellings over the Plan period, (1,800 dwellings per year) seeks to meet assessed needs in full and this is consistent with the National Planning Policy Framework's aims to meet the housing needs of present and future generations and to boost the supply of housing. The Borough's housing target in Table 4.1 of the London Plan (2021) is 12,640 or 1,264 dwellings per year over the ten year period 2019/20 to 2028/29.

10. The London Plan makes clear that where Boroughs seek higher rates of housing delivery than their London Plan target, additional evidence should be available to demonstrate that this can be achieved. The Greater London Authority's Regulation 19 stage letter of 14 December 2020 states that the Mayor requires further evidence of the deliverability of the Plan's housing requirement.
11. Given that the Plan does not include site allocations, it is essential that the evidence provided clearly demonstrates that the housing requirement above the London Plan target, together with its spatial distribution, are justified and deliverable.
12. The Plan puts forward a 'step up' in delivery from 1,264 dwellings in 2023/24, to 1,770 in 2024/25 and 2,276 dwellings for each of the five years from 2025/26 to 2029/30. This represents a significant increase on the average of 1,000 dwellings per year that has been achieved from 2016 – 2021, notwithstanding the recent delivery figure for 2020/21 of 1,285 dwellings. Again, this emphasises the need to demonstrate with clear evidence that this level of development can be achieved over the longer term.
13. The Council relies to some extent on the Growth Capacity Study (GCS) (EB6.2) to inform its housing land supply position over the Plan period. It contains a wide range of potential delivery figures from 1,194 to 1,562 dwellings per year if opportunities for intensification are secured. However, none of the detailed site assessments and spreadsheets that underpin the GCS have been submitted to the Examination. As submitted, the GCS does not provide robust and reliable evidence of housing supply.
14. Similarly, the Housing Position Statement (HPS) (LPE9) which was submitted in response to our Preliminary Matters letter does not contain details about site capacities and the assumptions informing the Council's trajectory nor does it include the spreadsheet behind the trajectory summary in the HPS, which, as discussed at the Matter 3 hearing session, requires updating. Additionally, evidence from the hearing sessions indicates that the Council has not carried out recent consultation with site promoters regarding the likely delivery and capacity of key sites, in some cases not since the GCS was finalised in 2018.
15. Another source of intended supply is key sites proposed for allocation through Local Plan Part 2 (LP2). Aside from the uncertainties associated with sites yet to be examined and allocated, and not before us in the current Examination, there are also uncertainties due to the lack of evidence in relation to these sites as reliable sources of supply in support of the Plan's housing requirement.

16. Overall and based on the evidence before us, the Plan's housing requirement is not justified. We recognise that this conclusion has significant implications for the Plan's strategy which the Council may wish to consider further, but as a minimum, main modifications to Policies 2, 4 and 12 and consequential modifications throughout the Plan will be necessary to reduce the housing requirement so that it is in general conformity with the London Plan and the ten year target set out in Table 4.1. The HPS will also require updating as outlined at the end of this letter.

Five Year Housing Land Supply

17. Discussions at the Matter 3 hearing session resulted in considerable uncertainty about the likely number and timing of housing completions assumed for the various proposed site allocations that the Council considers deliverable for the purposes of calculating the five year housing land supply, as included in Appendix II of the HPS. Furthermore, very limited evidence has been provided to support the deliverability and anticipated completions of sites included in Appendix I or Appendix II of the HPS.
18. The HPS is 6 months old and is insufficient, including when read in conjunction with the submitted GCS, to enable us to conclude that there would be a five year supply of deliverable sites on adoption of the Plan, and a reasonable prospect of the continuation of the necessary level of supply over the lifetime of the Plan.
19. However, the extent of the work necessary to deal with the five year housing land supply position will be determined by the option chosen by the Council for the progress of the Examination. We have therefore addressed the further work that may be required on this issue in conjunction with the options set out at the end of this letter.

Habitats Regulations Assessment

20. The Habitats Regulations Assessment (April 2021) (KD5) (HRA) assesses the potential impacts of the Plan on the Epping Forest SAC, the Lee Valley Special Protection Area and RAMSAR and the Wormley - Hoddesdon Park Woods SAC.
21. It concludes that the Plan would be likely to have a significant effect upon the integrity of the Epping Forest SAC in respect of both atmospheric pollution and disturbance from recreation. The conclusion of the Appropriate Assessment (AA) that the Plan would not result in adverse effects on the integrity of the SAC alone or in combination with other plans and projects arising from these pathways is dependent on a number of mitigation measures,

including the Strategic Monitoring and Management Strategy (SAMMs), the Suitable Alternative Natural Greenspace Strategy (SANGS Strategy) and the Air Quality Mitigation Strategy (AQMS).

22. In its Matter 1 hearing statement, Natural England indicates that it needs to see finalised versions of these documents and that in addition, MMs to Policy 83 would be necessary to reduce the threshold at which developer contributions towards mitigation would be sought, from 100 dwellings to 1 dwelling.
23. The revised versions of the HRA (LPE23.1), HRA Addendum (LPE23.2), AQMS (LPE23.3) and the draft SANGS Strategy (LPE23.4) were not available in advance of the Matter 1 hearing session which covered compliance with the Habitats Regulations. Whilst these have since been added to the Examination website, there has not been an opportunity for interested parties to view and comment on them as part of the hearing sessions. Therefore, a further hearing session would be necessary to do this.

SANGS Strategy

24. A broad framework for the SANGS Strategy was submitted in August 2021 as part of the Habitats Regulations Topic Paper (LPE4) which was prepared in response to our Preliminary Matters letter (LPE0). It is clear that a considerable amount of work has been undertaken by the Council since July 2021, in liaison with both Natural England and the City of London Conservators of Epping Forest. However, no updated version of the SANGS Strategy was available prior to the start of the hearing sessions.
25. In this context, discussion at the Matter 1 hearing session on 15 March 2022, at which Natural England and the City of London Conservators of Epping Forest were both present, focussed on the progress that had been made with the SANGS Strategy. At that hearing session, Natural England confirmed that the most recent document had only been recently received and that they still had concerns about the capacity of some of the identified sites and their quality.
26. Under Policy 83 as proposed to be modified, all new residential development likely to have a significant effect on the integrity of the Epping Forest SAC would be required to contribute to the delivery of the SANGS Strategy which seeks bespoke on site or strategic off site SANGS. In the absence of a further developed Strategy, and due to the site allocations being in LP2, there is no clear evidence to demonstrate that SANGS of a suitable quality and in an appropriate

location would be delivered to mitigate the effect of recreational disturbance from housing development proposed in the Plan.

27. The Council indicates in its Matter 1 hearing statement that Policies 83 and 84 (The Lee Valley Regional Park) will trigger the need for project level HRA when planning applications are submitted, as has been the case for the redevelopment of Whipps Cross Hospital. However, this is not sufficient to enable us to conclude at a Plan level that, in combination with other plans and projects, the Plan will not adversely affect the integrity of the Epping Forest SAC arising from the impact of recreation pressure.
28. In order to address these matters of legal compliance, it would be necessary for the Council to liaise with Natural England, the Conservators of Epping Forest and other organisations as necessary with the aim of revising the draft SANGS Strategy to provide further clarification of the capacity, quality and deliverability of the proposed SANGS sites, and to confirm whether any additional sites would be needed. Overall, further work is required, including consultation and further discussion at another hearing session if necessary. This work would need to take into account any changes to the scale of housing growth arising from our comments above.

Air Quality Mitigation Strategy (AQMS)

29. Appendix 4 of the HRA (KD5) contains the Air Quality Study which predicts that in 2021, traffic generated by development proposed in the Plan will exceed 1% of the critical load for NH₃ (ammonia) at a number of receptor locations. In 2031 and 2041, the 1% threshold will be exceeded at all locations. The Study concludes that exceedance of the 1% Critical Loads for NH₃ concentrations and acid deposition could have a direct or indirect effect on the qualifying habitats within the Epping Forest SAC.
30. Paragraph 10.4 of the HRA concludes that with the AQMS mitigation measures in place, the Plan would not result in adverse effects on the integrity of Epping Forest SAC from air pollution. However, the Council's Matter 1 hearing statement confirms that in July 2021, Natural England identified the need for significant changes to the technical data and inputs to the modelling in the Air Quality Study. As requested by Natural England, the HRA Addendum (LPE23.2) seeks to demonstrate how NEA001 guidance has been followed in the HRA of the Plan. However, that updated document was not available in advance of the hearing sessions and has not been subject to public consultation.

31. The absence of a finalised approach to air quality modelling, let alone a detailed Mitigation Strategy, is a significant shortcoming at this stage of the Examination. In addition, the AQMS concludes that a 30% reduction in petrol/diesel vehicle trips at identified receptor points needs to be achieved by 2030 in order to avoid any adverse effects on the Epping Forest SAC.
32. A number of the measures incorporated within the AQMS are already being implemented within the Borough such as the expansion of the Ultra Low Emissions Zone and Low Traffic Neighbourhoods and others are supported by the Plan, including Policy 62 to support a shift towards active and sustainable transport modes and securing car free development through Policy 68. However, there is considerable uncertainty about the likelihood of achieving the 30% reduction in petrol/diesel vehicle trips upon which the conclusions of the Air Quality Study and AQMS depend.
33. Therefore, we propose the following actions to address legal compliance with the Habitats Regulations:
 1. Update the latest version of the Air Quality Study in accordance with Natural England's requirements.
 2. Liaise with Natural England, the Conservators of Epping Forest and other organisations as necessary to finalise the AQMS in response to any updated modelling.
34. The overall impact of planned development on the integrity of the SAC is also closely related to the scale of housing growth proposed. Therefore, both items of work would need to take into account any changes to the Plan's housing requirement and location of growth in Policy 4. Further consultation and a hearing session would be likely to be necessary in view of the technical nature of this issue.

Sustainability Appraisal/Strategic Environmental Assessment

35. The Environmental Assessment of Plans and Programmes Regulations (2004) require Sustainability Appraisals to identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives. The Sustainability Appraisal (KD4.1-KD4.7) sets out key sustainability issues (KD4.2 p6), based upon which the Council considered that an increase in housing and employment provision was justified, and that there were no reasonable alternatives to that.
36. The Sustainability Appraisal assesses the Plan's Spatial and Growth Strategy and one alternative option of continuing the Council's

adopted Core Strategy 2012 approach. No other reasonable alternative levels or distribution of growth that might have fulfilled the Plan's strategic objectives, including the objectives of increasing housing and employment provision, have been appraised. For example, the London Plan ten-year housing target for Waltham Forest to 2029 could be the basis of a reasonable alternative level of housing growth, but it has not been appraised, and there is no explanation of why it was not considered to be a reasonable alternative. This is also different to the approach taken to employment, whereby the employment land requirement is based on the Greater London Authority's jobs growth forecasts.

37. Overall, priority appears to have been given to the housing and employment objectives, leaving the other sustainability objectives attracting significantly lesser weight without clear explanation. We are therefore unable to conclude that the proposed level of housing growth is justified.
38. At the Matter 1 hearing session, there was also discussion about whether reasonable alternatives for any of the other policies in the Plan had been considered. For example, no reasonable alternatives to the thresholds in Policy 83 (The Epping Forest and the Epping Forest Special Area of Conservation) have been considered.
39. The Council must satisfy itself that the Sustainability Appraisal is legally compliant with the requirements of Strategic Environmental Assessment. We are also examining the Plan against NPPF paragraph 35(b) which requires the Plan to represent an appropriate strategy, taking into account the reasonable alternatives. In the light of our comments above about the scale of housing growth, the London Plan's housing target for the Borough should be assessed against the sustainability objectives. This work could be conducted as part of the Examination, but would need to be subject to public consultation and an additional hearing session is likely to be necessary.

Flood Risk/Sequential Test

40. The Level 1 Strategic Flood Risk Assessment (EB9.1) identifies that a considerable proportion of the Borough is at risk of flooding, both now and taking account of climate change, including from rivers, surface water, and groundwater sources. No sequential test has been submitted, and we have not been made aware of any evidence to indicate that a sequential test has been applied to inform and justify the Plan's spatial distribution of growth. Whilst the Plan does not contain site allocations, Policies 4 to 11 set the strategic direction and, with Figure 4.1, clearly identify the Strategic Locations and the focused Site Opportunity Locations where the substantial proportion of the Borough's growth would be directed.

41. A basic comparison of areas identified in flood zones 2 and 3 on Figure 18.1 with Figure 4.1 indicates a significant degree of overlap between these flood zones and some Strategic Locations and Site Opportunity Locations, including in the southwest of the Borough and the general area of the North Circular Strategic Location. The Level 1 Strategic Flood Risk Assessment indicates that the sequential test should be applied across the Borough, with the area of search being areas at little or no risk of flooding.
42. Unless there is any strong evidence to indicate otherwise, steering growth to Strategic Locations and Site Opportunity Locations that fall wholly or partly within these flood zones does not appear to be justified in terms of sequential test requirements. A sequential test could be completed through the course of the Examination in the event it is to proceed. However, it is possible that this may indicate a different capacity or spatial distribution for strategic growth. A further hearing session is likely to be necessary.

Tall Buildings

43. Policy 57 (Tall and Taller Buildings) as submitted does not define tall and taller buildings, and the Plan does not clearly identify the areas of the Borough where tall buildings would be appropriate or set out appropriate building heights. Policy 57 is therefore not justified or effective. Furthermore, the Greater London Authority (GLA) has confirmed that the approach is not in general conformity with the London Plan.
44. The Council has worked with the GLA to develop MMs to the Plan to address soundness and conformity in this regard. This culminated in the submission of a Statement of Common Ground (LPE27) at a very late stage, meaning detailed consideration of its content at the hearing session on 23 March 2022 would have been procedurally unfair.
45. Moreover, the proposed MMs include significant modifications to Policy 57 and an additional policy for building heights, plus a new map identifying the specific areas of the Borough where the Council considers tall buildings would be appropriate. This represents a significant change, for which clear evidence and justification for the revised approach, including the selection of the areas suitable for tall buildings, will be required. In addition, the extent to which the revised approach to tall buildings affects the Plan's wider spatial and growth strategy, including the approach to character-led intensification and the density, capacity and deliverability of housing development, is unclear. Further work and public consultation will be necessary, and a further hearing session is also likely to be necessary.

Employment Land

46. Policy 26 of the submitted Plan is in conformity with the London Plan in seeking to protect the Blackhorse Lane Strategic Industrial Location (SIL) for industrial uses. However, the SoCG with the GLA now proposes that part of the site should be 're-configured' with sections of the site to be re-designated as a Locally Significant Industrial Site (LSIS) and part to be taken out of any industrial land designation.
47. At the hearing sessions, the Council indicated that the redesignation of part of the Blackhorse Lane SIL to LSIS would be implemented as part of LP2, including figures for the re-provision of the overall amount of floorspace and of SIL capacity, when these are finalised through the agreement of the masterplan. The Council indicated that the exact boundary would also be defined in LP2. However, the Council has proposed a main modification to change the designation of Cork Retail Park from Locally Significant Industrial Site (LSIS) to SIL to compensate for the loss of SIL capacity at Blackhorse Lane.
48. This Plan should set the strategic direction for the allocation of sites in LP2. Furthermore, the boundary of the Blackhorse Lane SIL is identified on the Policies Map. Our view is that any changes to the SIL designation should be implemented through this Plan, with the details of site requirements and arrangements for the re-provision of industrial space to be contained in LP2. Main modifications to Appendix 2 of the Plan and changes to Figure 9.1 and the Policies Map will be necessary. This would, again, need to be subject to public consultation and a further hearing session may also be necessary.

Progressing the Examination - Options

49. We propose four options for the Council to consider for the future progress of the Examination:
 1. Continue the Examination based on the submitted Plan's proposed housing requirement, evidence and approach. However, it is likely that we would conclude that the Plan is not legally compliant and unsound in respect of the issues set out above, as well as some other issues for which the need for MMs was discussed at the hearing sessions.
 2. Pause the Examination to enable the necessary additional evidence to provide justification for the submitted Plan's proposed housing requirement, before proceeding with the remainder of the Examination. The Council would need to

prepare a programme and time estimates for the work to be carried out and for necessary consultation. This option would also have implications for the remaining Examination timetable as further public consultation and hearing sessions would be necessary.

As part of this option, further work would be necessary to thoroughly update the Council's five year housing land supply position, including evidence to justify the deliverability of all key sites and the projected completion figures being relied upon. Further justification would also be required to show that the Plan would provide sufficient housing supply from year 6 onwards to be effective in meeting the Plan's housing requirement over the Plan period.

3. Reduce the Plan's housing requirement to 1264 dwellings per year, in line with the ten year target in the London Plan. Given the absence of supply in this Plan and the uncertainties discussed at the hearing sessions, establishing a five year supply would be a matter for LP2, since that Plan will bring forward an identified supply to make an assessment possible and realistic. Main modifications to Policies 2, 4 and 12 would be necessary to reduce the Plan's housing requirement, together with other consequential changes throughout the Plan.

The submitted Plan would, however, still need to set out an overall trajectory for the Plan period for which some more work is needed (see below), as well as the other items of work set out below. The outcome of the work could have implications for the Location of Growth in Policy 4, which could have further consequential implications for other aspects of the Plan and for the emerging LP2.

4. Withdraw the Plan and resubmit it for Examination when all the necessary supporting evidence, changes, and consultation have been completed. This option would also provide an opportunity to combine and consolidate the Plan with LP2 which, for example, is proposed to include site allocations that have been referred to in support of the strategic approach to growth and supply.

50. In summary, to address the legal compliance and soundness matters set out in this letter, the following tasks would be required irrespective of the option chosen by the Council:

1. Housing Delivery

- Update of the HPS trajectory, including updating completions, commitments, updated timescales for delivery and evidence of consultation with site promoters for key sites, in addition to the Follow Up items from Matter 3.
 - Depending on the option chosen, update the evidence of the five year housing land supply position over the Plan period.
2. Liaise with Natural England, the Conservators of Epping Forest and other organisations as necessary to revise the draft SANGS Strategy to provide further clarification of the capacity, quality and deliverability of the proposed sites, and to confirm whether any additional sites would be needed.
 3. Update the latest version of the Air Quality Study in accordance with Natural England's requirements and liaise with Natural England, the Conservators of Epping Forest and other organisations as necessary to finalise the AQMS in response to any updated modelling.
 4. Undertake further Sustainability Appraisal work to assess reasonable alternatives including the London Plan 10 year target.
 5. Undertake a strategic level, Borough-wide Sequential Flood Risk Test.
 6. Evidence and justify the proposed changes to the approach to Tall Buildings, including any effects on the strategic approach to housing growth and delivery. Also, evidence and justify the areas mapped and identified as appropriate for tall buildings.
 7. Main modifications to Appendix 2 and a change to the Policies Map and Figure 9.1 to deal with the changes to Blackhorse Lane SIL.
51. In terms of practicalities, additional work carried out as part of the Examination would require public consultation and it is likely that further hearing sessions would be required. In addition, the output of the additional work, and additional representations, could also mean that hearing sessions already undertaken would need to be repeated. This would all take considerable time and there would be cost implications for all parties involved.

52. The outcome of the further work is uncertain, and the process would be complex and lengthy. In addition, the output of that work as a whole could result in a different spatial and growth strategy compared with the submitted Plan and, as a result, a Plan that is different in some key respects from the one that has been subject to consultation at the Regulation 18 and 19 stages.
53. In the light of our findings, there is still a considerable amount of work to be done and a high level of uncertainty around the outcomes of that work, leading to a long and complex Examination. In our view, Option 4 is highly likely to represent the most prudent, pragmatic, time-efficient and cost-effective course of action for the Council in seeking to adopt a sound and legally compliant plan for the Borough as soon as possible.
54. We understand that this is not the position the Council would wish to be in, and we recognise that it will need some time to consider the options. It would be helpful to receive an indication of the Council's preferred option as soon as it is able to do so, together with the timescale necessary if the intention is to carry out the additional work to address the points outlined above.
55. Meanwhile, please let us know via the Programme Officer if there are any queries on the contents of this letter, or if we can assist with any further advice the Council may require.
56. Other parties should please note that at this stage we are not seeking the views of anyone other than the Council on any of the matters covered in this letter.

Yours sincerely

Catherine Jack and Sarah Housden

INSPECTORS