

Chigwell Neighbourhood Plan 2018 - 2033

Notes following Exploratory Meeting

Prepared by

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The Objectives for the Exploratory Meeting

1. As you will be aware, I have been appointed to carry out the examination of the Chigwell Neighbourhood Plan. On 5th September 2018, I held an exploratory meeting at the offices of Chigwell Parish Council. This which was attended by planning officers from Epping Forest District Council, as well as the Chairman of the Parish Council's Neighbourhood Plan Steering Group and its planning consultant, Mr Neil Homer. A number of members of the public were in attendance to observe the proceedings. At the start of the meeting, I informed those present, that I had in the past had professional dealings with both Mr Homer and Ms Blom-Cooper, but I did not feel that this in any way prejudiced or affected my ability to conduct this examination. However, I felt it to be important in the interest of openness and transparency to put that information into the public domain.
2. I had previously circulated an agenda and this was the basis of the mornings discussions.
3. The exploratory meeting was to centre on two main area of fundamental concerns that I had identified. Firstly, I needed to be satisfied that the obligations regarding the screening of the neighbourhood plan, under the Habitat Regulations had been properly carried out and whether there were any implications arising, as a result of the European Court judgement, dated 11th April 2018, in the case *People Over Wind and Peter Sweetman v Coillte Teoranta*, for the way the submitted screening deals, with mitigation measures. I also needed to test how appropriate it was for the neighbourhood plan itself, to rely upon mitigation measures contained within the still draft Epping Forest Local Plan.
4. My second fundamental concern related to the proposed residential development at Rolls Park and whether the SEA had looked at reasonable alternatives to its allocation, particularly in terms of its development being the primary means of funding the proposed Community Hub. I particularly wished to discuss whether the proposed payment to the Parish Council of a financial contribution would meet the tests of set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I also wanted to have a discussion as to whether the test of *very special circumstances* could relate to the making of development plan policy within the Green Belt, rather than being a test of a planning application for inappropriate development in the Green Belt.

The Implications of the Habitat Regulations

5. It quickly emerged that there was a degree of confusion as to the status of the Habitat Regulation Assessment(HRA) and the Chigwell Neighbourhood Plan. I have been sent a copy of the document that is described on the Council's website, as the Habitat Regulation Assessment, which is in fact a document entitled Chigwell Neighbourhood Plan: HRA Screening Report,

dated 14th February 2018, produced by Environmental Gain Ltd for Chigwell Parish Council. That advanced a conclusion that the policies in the neighbourhood plan will not have a significant effect on the Epping Forest Special Area for Conservation (SAC).

6. Under the terms of the Paragraphs 105 and 106 of The Conservation of Habitats and Species Regulation 2017, it is the Local Planning Authority (LPA) to determine whether an appropriate assessment is required. The LPA, as the Competent Authority, can ask the Qualifying Body for information to help make that determination. It transpired that it did seek the views of Natural England on the Environmental Gain report dated February 2018 and a response was received on 24th April 2018. However, notwithstanding that response, the outcome from my questions, is that the LPA has, not to date, explicitly made a determination that an HRA is required or not required.
7. The essence of Natural England's response to the submitted screening report is that the neighbourhood plan cannot rely upon mitigation measures in the draft Local Plan to address recreational and air pollution impacts arising from development in the plan area upon the Epping Forest SAC. It became apparent that it had held that view for some time. The response challenged the screening out of sites, which could have an adverse impact on the SAC through recreational pressures and Natural England do not agreed that currently a 4km buffer can be used to screen out development on air quality grounds. They do not agree that the impact of the plan in conjunction with the draft Epping Forest Local Plan will not have a likely significant effect on the SAC. They therefore concluded, in their letter, that in accordance with Schedule 2 of the Neighbourhood Planning (General) Regulations 2012 that the neighbourhood plan cannot be made as there is a likelihood that there will be significant effect on Epping Forest either alone or in conjunction with other plans and projects enabling plan cannot be ruled out. On behalf of the District Council, Mr Coleman confirmed verbally that he concurred with the conclusions set out in Natural England's letter. Mr Homer said that this was the first occasion when the LPA had made that position explicitly clear.
8. The Parish Council side disagreed with the position being taken by Natural England and argued that there were precedents to neighbourhood plan being made, where there is an emerging neighbourhood plan. It argued that the regional case officers at Natural England was taking a contrary position to that taken by the organisation in other areas. I heard that the LPA had attempted to arrange a round table discussion between the Parish Council, itself as the LPA and Natural England, but I heard that the offer of the meeting was rejected by the Parish Council.
9. I pressed the LPA on the question as to whether a screening opinion had been issued and it was confirmed that a screening report had not been prepared. The reasons had not been articulated but I came to the view that as the Parish Council had already been submitted the plan on 8th March 2018 with the Environmental Gain Ltd.'s Screening Report, that the matter as

viewed by the Council was in effect being left to me as examiner to deliberate on the question as to whether the plan met its legal requirements. This would be consistent with the statement made by the Parish Council in paragraph 5.12 of the Basic Conditions Statement, that it considers that it has complied with its HRA requirements, that having sent the Environmental Gain report to Natural England and the final draft of the Plan, in February 2018 “it can submit the Neighbourhood Plan for examination and leave the matter for the examiner to consider.” What that ignores is the LPA’s formal role in screening neighbourhood plans under the Habitat Regulations.

10. The principal issue is that it is not for the Parish Council to determine whether the plan will have an impact on the SPA, it is for the LPA, the Competent Authority to make that determination, having consulted Natural England. It appears that there have been extensive discussions between the parties over the last few years and Natural England has been consistent in its response. The Parish Council had placed reliance upon the draft Local Plan’s HRA but that itself has not been tested at examination and the neighbourhood plan relies on the specific mitigation measures in the emerging Local Plan to conclude that it will not have a significant impact on the SPA.
11. The matter regarding mitigations being taken into consideration is a further complicating factor. There was unanimity at the meeting that the Sweetman ruling was a “game changer”. The judgement had been issued after the plan had been submitted and it was beyond doubt that any screening as to whether an Appropriate Assessment should be prepared, could no longer rely on mitigation measures. The Parish Council accepted that the plan could not progress, as per its original submission.
12. There were two options discussed- firstly that the Parish Council could prepare an Appropriate Assessment and if there are any adverse impacts, it could put forward its own mitigation measures, irrespective of what is in the emerging Local Plan. The other option put forward by Mr Homer would be for the plan to have its only housing allocation deleted i.e. to drop the Rolls Park proposal. Cllr Alvin said that he would need to seek Parish Council approval before formally being able to agree to make that offer. I pointed out that it was within my remit to make recommendations that policies be deleted and it was open for the LPA to “screen” the revised plan prior to any referendum or the making of the plan, if that was what I was to recommend.

Rolls Park

13. The discussion then turned to the issue of Rolls Park. The Parish Council described the site assessment work that was undertaken in selecting that site and I requested a copy of that assessment (which I have now received). It appeared that the offer from the land owner to make a sizeable contribution to the funding of the proposed Community Hub was looked at as “a once in a lifetime opportunity”, which constituted a case of very special circumstances

to allocate land for a housing development of between 30 and 40 houses land inside the Green Belt. There was then a discussion on whether a neighbourhood plan should be promoting inappropriate development under the guise of *very special circumstances* or whether that was the test of any planning application promoting inappropriate development and that the test of planning making was whether there were *exceptional circumstances* that justified removing the land from the Green Belt. It was accepted that the appropriate vehicle for changing green belt boundaries was the Local Plan.

14. The discussion touched on whether other sites could have been looked at as a means of funding the Community Hub – whether under the call for sites other more appropriate sites could be suggested. However, it was pointed out by the Parish Council that any sites which were being considered for removal from the Green Belt then had an enhanced “hope value” which would then mean that capturing the uplift in value could not be realised, which in turn could provide funding for the Community Hub.
15. The discussion then looked at whether a decision maker could use the argument of a proposed planning obligation providing for the payment of the substantial financial sum to the Parish Council, as a reason to grant planning permission, having regard to the three legal tests set out in Regulation 122 of the CIL Regs. The Qualifying Body clearly felt that it did, as this was the sole reason Green Belt land was being allocated for residential development and the LPA was firmly of the view that such a contribution was in effect “trying to buy a planning application” and that the likely scale of the contribution was not related to the impact of the development.

Options for the Examination

16. In winding up the session, I speculated as to what options were available to me
 - a) One option was that I could recommend the plan for referendum unamended. This option could be discounted based on the agreed implications of Sweetman.
 - b) I could recommend that the Rolls Park allocation be deleted and then request that the plan be screened under the HRA with the presumption that the plan without a residential allocation would then not have an impact on the SAC.
 - c) Thirdly I could send the plan back to carry out its own Habitat Regulation Assessment which did not rely upon any Local Plan mitigation.
 - d) I could recommend that the plan should not go to referendum.

My Current Conclusions

17. Since the exploratory meeting, I have reflected carefully on the way forward. If the matter was solely a question of the HRA, I could have made a recommendation to delete the Rolls Park policy as it will have some adverse impact on the SPA in conjunction with the emerging local plan proposals. However, that is not the sole determinant. I have concluded that Policy CHG2 fails the basic condition test with regard to compliance with Secretary of State policy and also conflicts with strategic policy of the adopted Local Plan.
18. Furthermore, whilst the exploratory meeting was concentrating on procedural matters, my examination must look at the plan in its entirety and make a recommendation whether the plan as a whole, meets basic conditions. Having now made my site visit and have now examined the plan in much more detail, and assessed the policies for conformity with existing development plans as well as emerging policy (which is not the basis of assessing compliance with the development plan but is relevant to the assessment of whether the plan delivers sustainable development), I have reached a firm conclusion that a large number of the 12 policies, individually do not meet the basic conditions. It is not appropriate for me in this note to expand further because I will be setting them out fully in my examination report, which will look at each policy individually as well as looking at the plan as a whole.
19. I have therefore concluded that there will be no value in proposing to delay the examination further or to require parties to incur additional expense, if the outcome of the examination were to be the same. I do not believe that a hearing would benefit my examination. I know that this outcome will be a disappointment to the Parish Council and the Neighbourhood Plan team who have clearly invested a lot of time and effort into this plan, but I am clear as to my conclusions that the plan should not proceed to referendum. I did consider whether recommending the radical deletion of all the policies that did not pass basic conditions but I have concluded that the plan would not be recognisable from the plan that the community has developed.
20. I will be completing my full report in the coming weeks, but I felt it appropriate for all parties to be aware of my intentions, following the exploratory meeting.

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Independent Examiner of the Chigwell Neighbourhood Plan

John Slater Planning Ltd

3rd October 2018