

Report to the Cabinet

Report reference: C-035-2015/16
Date of Meeting: 8 October 2015



Portfolio: Planning Policy

Subject: Epping Upland Neighbourhood Area Designation

Responsible Officer: Luke Waterston (01992 564166)

Democratic Services: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) To agree that the Neighbourhood Area application from Epping Upland Parish Council for the designation of the whole Parish as a Neighbourhood Planning Area should exclude an area in the north of the Parish shown on the map at appendix 2 for the following reasons:

- (a) a number of strategic cross boundary matters have been identified which include, but are not limited to, Green Belt review, cross district boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure;**
- (b) the matters identified in (a) above are not within the remit of a Neighbourhood Plan to address;**
- (c) a comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) are allocated for development in local plans for those three Districts; and**
- (d) the proposed area to be excluded from the Neighbourhood Area designation is defined by existing physical and administrative boundaries, and does not cover an area of high existing population.**

Executive Summary:

An application for the designation of a Neighbourhood Area for the purposes of the preparation of a Neighbourhood Plan was received from Epping Upland Parish Council (EUPC) on 4 August 2015. Once received, local planning authorities (LPAs) are required to publicise the application.

The Neighbourhood Planning (General) Regulations 2012 (as amended) prescribe timescales for the consultation, and determination of neighbourhood area applications. Once publicised, LPAs are required to determine the application within no more than 8 weeks, including consulting on the application for no less than 4 weeks.

Accordingly, the consultation period on EUPC's application started on 17 August 2015, the consultation period ran from 17 August 2015 until 14 September 2015. Therefore, in order to meet the 8 weeks deadline EFDC must determine the application by 12 October.

The location of Epping Upland Parish, immediately adjacent to Harlow's administrative boundary, and the possibility of strategic cross-boundary growth via the Local Plans of Epping Forest, Harlow and East Hertfordshire District Councils, has caused EFDC officers to consider the desirability of designating the whole of the Parish as a Neighbourhood Area for neighbourhood planning purposes, at this stage in the preparation of the District Local Plan.

In assessing the alternatives available, EFDC officers have sought legal advice from Counsel specialising in planning law. Having considered that legal advice, officers confirm that the District Council has a broad discretion in determining whether, in the particular circumstances relevant to this application, it is desirable to designate the entire area identified in the application.

Officers recommended that the north eastern extension of Epping Upland Parish, covering an area of land **that follows the Parish boundary with Nazeing Parish Council along the Epping Road (B181) and Roydon Parish Council to the north of Richmond's Farm and then following the Parish / District boundary with Harlow District to the point where it meets Epping Long Green, (easting 544028.389; northing 206044.974), south west following the public right of way running through Epping Long Green to where it meets Epping Road (easting 543687.220; northing 205800.888),** should be excluded from the Neighbourhood Area Designation (see attached map at appendix 2).

Reasons for Proposed Decision:

In summary, the reasons for recommending that the Council designate an area smaller than the entire Epping Upland Parish are that, having regard to the location of the Parish on the District boundary with Harlow, there are a number of strategic and cross-boundary issues that must properly be considered under the Council's Duty to Cooperate. It is not within the remit of the neighbourhood planning process to address and deliver matters including, but not limited to, Green Belt review, cross-boundary agreement of housing and job growth figures, and the planning and delivery of key strategic infrastructure.

Other Options for Action:

- (i) To designate the whole of Epping Upland Parish area as a Neighbourhood Area.
- (ii) To designate alternative areas of the Parish, as per part g. of Appendix 1.

Report:

1. Neighbourhood planning was introduced as part of the Localism Act 2011. It enables town/parish councils and neighbourhood forums to actively participate in plan making by preparing a Neighbourhood Development Plan (NDP). Once a NDP has been independently examined, approved by way of a local referendum and subsequently 'made' by the local planning authority (LPA), it will form part of the statutory development plan. As such, planning decisions must be taken in accordance with the NDP as part of the development plan. NDPs can include housing and employment land allocations, policies and design statements; they can be as simple or as complicated as the town/parish council choose. Crucially, the NDP must be in general conformity with national planning policy and practice guidance as well as the strategic policies of the LPA's Local Plan.

2. On 9 February 2015 the Secretary of State made several amendments to the Neighbourhood Planning (General) Regulations 2012. These amendments relevant to the Council's consideration of the current application are set out in the Neighbourhood Planning (General) (Amendment) Regulations 2015, and may be summarised as follows:

- Where the proposed neighbourhood area shares the same boundaries as the parish, the Local Planning Authority (LPA) is required to consult on the application for a period of no less than 4 weeks. (Under the previous, 2012 Regulations the LPA was required to consult for a period of no less than 6 weeks).
- The amendments to the Regulations prescribe the date by which the (LPA) must determine applications for designation of a neighbourhood area. In the case of EUPC's application, EFDC must determine the application within 8 weeks from the date immediately following that on which the application was first publicised.

3. To date, in Epping Forest District eight applications for the designation of neighbourhood areas have been received from parish and town councils. Of the seven designated to date, six have included the whole parish identified in each application.

4. The seventh application was for the designation of a Neighbourhood Area covering the whole of North Weald Bassett Parish Council, which EFDC approved with the exclusion of an area to the west of the M11. This area was excluded for the following reasons:

- A number of strategic cross boundary matters were identified including, but not limited to Green Belt review, cross District boundary agreement of housing and job growth figures and planning and delivery of key strategic infrastructure. These matters are not within the remit of a neighbourhood plan.
- A comprehensive assessment of all of the possible sites around Harlow is needed to ensure that the most suitable site(s) (if any at all) are allocated for development and to ensure that any development takes account of wider interests beyond the parish.
- The area proposed for exclusion was defined by existing physical and administrative boundaries, and did not cover an area of high existing population.

The eighth application, submitted by Epping Upland Parish Council, is the subject of this report.

5. In a parished area a LPA is required to have regard to the desirability of designating the whole of the area of a parish or town council as a neighbourhood area (s. 61G(4) of TCPA 1990 refers). The LPA should take into account the parish or town council's statement explaining why the area applied for is considered appropriate to be designated as such. Whilst the LPA should aim to designate the area applied for, it can refuse to do so if it considers the area is not appropriate. Where it does so, the LPA must give reasons. Therefore, LPAs have some flexibility in determining whether it is desirable to designate the whole parish and subsequent case law supports this approach. In *R (Daws Hill Neighbourhood Forum) v Wycombe District Council, (2013)* the Court of Appeal confirmed that the LPA has a broad discretion as to the area which it considers appropriate to designate as a neighbourhood area and that, on the facts of the case, the LPA had not acted unlawfully by designating a smaller area than that which had been applied for. The key matter in that case was that the areas excluded from the designation contained two strategic development sites, (as allocated in the Core Strategy), and that the LPA did not consider it was desirable for these areas to be included as part of the Neighbourhood Area. Local Plan preparation for Epping Forest District is at a stage where it is not yet known whether and to what extent it will be necessary to include any strategic land allocations within the emerging Local Plan and, in the event that it is appropriate to include one or more strategic land allocations, their location.

6. It is clear that the 1990 Act (s.61G(5)) confers on the Council a broad discretion as to whether it is appropriate to designate the entire parish, or any part thereof, as a neighbourhood

area.

Criteria

7. In considering applications for designation of neighbourhood plans that may be made by parishes that include cross boundary or strategic matters, it is important to set out a clear structure for how such applications will be considered. At a meeting held on 13 April (2015 report C-078-2014/15 refers) the Cabinet agreed to apply a detailed set of criteria when determining the designation of a neighbourhood area. It was recognised that as the Local Plan process evolves and strategic site allocations are identified throughout the District, it would be necessary to consider all subsequent applications for the designation of neighbourhood areas against the same criteria.

8. As explained above the Council should ensure consistency with previous decisions it has made on designating neighbourhood areas. Application of the detailed criteria enables a consistent approach to be taken when considering applications for neighbourhood areas. This ensures that, prior to designation, any known and potential strategic and cross boundary matters that should rightfully be addressed by the District Council under the Duty to Cooperate are identified and assessed.

9. The Government's Planning Practice Guidance (PPG) identifies the types of considerations that should be taken into account in determining whether a proposed neighbourhood area is desirable.

"The following could be considerations when deciding the boundaries of a neighbourhood area:

- o village or settlement boundaries, which could reflect areas of planned expansion*
- o the catchment area for walking to local services such as shops, primary schools, doctors' surgery, parks or other facilities*
- o the area where formal or informal networks of community based groups operate*
- o the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style*
- o whether the area forms all or part of a coherent estate either for businesses or residents*
- o whether the area is wholly or predominantly a business area*
- o whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway*
- o the natural setting or features in an area*
- o size of the population (living and working) in the area*

Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area; these have an average population of about 5,500 residents." (PPG ID 41-033-20140306)

Application by Epping Upland Parish Council

10. The Parish Council's application, received on 4 August 2015, was subsequently advertised with the period allowed for representations between 17 August and 14 September 2015. Three representations were received within the consultation period. The first from Epping Town Council advises that the Town Council has no objection to Epping Upland being designated as a Neighbourhood Area. The second is from Sellwood Planning, on behalf of the promoters of land to the west of Sumners (bounded in part by Water Lane and Epping Road, Tylers Cross, and partly within Epping Upland Parish and Harlow District). This representation did not raise an objection to the designation of the Parish as a neighbourhood area but stated that it was inappropriate to include their site, to the north of Parsloe Road, since it raises strategic issues more appropriately dealt with in the Local Plan. It also pointed out that a consistent approach should be taken when considering EUPC's application, and refers to the Cabinet's decision in respect to the North Weald Bassett Neighbourhood Area boundary (11

June 2015, item 7). The third representation from Harlow District Council states that the Council is concerned the designation of a Neighbourhood Area directly adjoining Harlow District may impact on the growth needed to meet Harlow and EFDC's future needs and that decisions should not be taken that would impede cooperation between the two authorities on cross boundary matters. It notes that there are several matters of cross boundary significance that have been identified between Harlow and Epping Forest District Councils, including but not limited to, establishment of housing and employment need figures, apportionment of growth needs across the SHMA/Functional Economic Area and identification and delivery of key strategic infrastructure. Harlow Council considers that until these matters are addressed by the Local Authorities, through the Duty to Cooperate, the designation of a Neighbourhood Plan Area on the periphery of Harlow is premature and further that such cross-boundary issues should not be dealt with in a Neighbourhood Plan. The representation states that there are a number of development interests and land promotions on the borders of Harlow, which are within, partly within or adjoin the proposed Neighbourhood Area and that until decisions on site allocations are reached it would again be premature to designate these areas as a Neighbourhood Plan Area. If EFDC is mindful to approve the application, Harlow Council recommends that the boundaries of the proposed Epping Upland Neighbourhood Plan Area be amended to remove areas which have been promoted on the periphery of Harlow.

11. In addition a representation from Buckhurst Hill Parish Council was received after the close of the consultation period stating that the Parish Council has no objections to the application.

12. The established criteria referred to above have been applied in respect of this proposed Neighbourhood Area designation and the resulting analysis is set out at Appendix 1. In this case it is clear there are a number of strategic and cross boundary issues that must be analysed, discussed and agreed at the district level. It is not within the remit of the neighbourhood planning process to deal with matters including the overall establishment of housing and job growth figures, strategic transport matters and green belt boundary review. Furthermore, the Duty to Cooperate requires that EFDC continues to work closely with neighbouring authorities and other key regulatory and infrastructure provision organisations, and at this level such matters are beyond the remit of the neighbourhood planning function.

13. In considering the most appropriate area to be designated, careful regard has also been had to the Government's Planning Policy Guidance and legal advice. Consequently, in accordance with section 61G(4) of the 1990 Act, it is not considered desirable to designate the whole of Epping Upland Parish area as a neighbourhood area. There are no clear parameters for how an amended designation should be formulated, but it would appear reasonable to ensure that any such revised designation is created on the basis of known factors. Therefore, for reasons set out in detail in Appendix 1, it is suggested that the following area of Epping Upland Parish should be excluded from the Neighbourhood Area Designation: an area of land that follows the Parish boundary with Nazeing Parish Council along the Epping Road (B181) and Roydon Parish Council to the north of Richmond's Farm and then the Parish / District boundary with Harlow District to where it meets Epping Long Green (easting 544028.389; northing 206044.974), then south west following the public right of way running through Epping Long Green to where it meets Epping Road (easting 543687.220; northing 205800.888).

14. Should the District Council as part of its Local Plan make any allocations in the area excluded from the Neighbourhood Plan Area, the Council would involve the Parish in the process and any subsequent masterplanning or Action Area Plan.

Resource Implications:

Neighbourhood planning is supported by the Planning Policy team from within existing resources. Government funding is available at particular stages, and this is sought at the

appropriate times.

Legal and Governance Implications:

The Localism Act 2011 introduced neighbourhood planning and brought about changes to the Town and Country Planning Act 1990 (as amended). Relevant subordinate legislation is provided by Neighbourhood Planning (General) Regulations 2012 (as amended) and detailed policy and guidance is provided within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

Safer, Cleaner and Greener Implications:

The SCG Scrutiny Panel is required to keep under review the application of Strategic Environmental Assessment (SEA) as it applies to the preparation of the new Local Plan. The SEA is one of the key mechanisms by which alternative sites and policy options will be tested to determine which is the most appropriate to deliver the vision and objectives of the Local Plan.

Consultation Undertaken:

Representations were invited on the application for designation between 17 August 2015 and 5:00pm on 17 September 2015. To date, two representations have been received, as set out in the body of this Report.

Background Papers:

Epping Upland Parish Council application for designation of Neighbourhood Area – 4/8/2015
Representations received from Sellwood Planning – 1/9/2015; Epping Town Council – email dated 7/9/2015
61G(4) of the 1990 Act

Risk Management:

There are a number of potential risks associated with this decision, which could include the Council's decision on the designation of the neighbourhood area being challenged. Accordingly, Counsel's advice has been sought to ensure that a lawful approach is being taken.

(Appendix 1)
DESIGNATION OF NEIGHBOURHOOD AREAS

Area application received: **Epping Upland PARISH COUNCIL**
Assessment date: **15 September 2015**

Criterion	Response (Yes / No / N/A)	Justification
a. Does the application include the whole of a Parish area?	Yes	Application letter dated 17 July 2015 identifies that the Parish Council consider the area is appropriate for the following reasons: <ol style="list-style-type: none"> 1. The area defined is covered by Epping Upland Parish Council in its entirety 2. The area is recognised by the local community, EFDC and ECC as being the Parish of Epping Upland.
b. If only part of the Parish has been applied for, have appropriate reasons been supplied to justify this approach?	N/A	
c. If more than one Parish area is seeking designation as a neighbourhood area, have appropriate reasons been supplied to justify this approach?	N/A	
d. Does the Parish immediately adjoin the district boundary?	Yes	Epping Upland Parish immediately adjoins Harlow District Council area along part of its northern boundary. A distinct spur of land also extends to the north west, part of which borders Harlow District Council.
If yes, are there any known or potential matters covered by the Duty to Cooperate that cannot lawfully or reasonably be addressed via the Neighbourhood Plan process?	Yes	<p>The potential growth of Harlow, into land within Epping Forest District, has been mooted for more than decade. As a result of continuing changes to the national planning system, progress in terms of land allocations via Local Plans and an agreed method of delivery have been delayed.</p> <p>The Duty to Cooperate requires Local Planning Authorities to establish matters of cross boundary significance, and to reach consensus on how these matters should be addressed. A number of such matters have been identified between Harlow and Epping Forest District Councils. These include, but are not limited to, establishment of housing and employment</p>

	<p>need figures, apportionment of growth needs across the SHMA/Functional Economic Area, and identification and delivery of key strategic infrastructure. Clearly there are a number of key strategic matters that need to be addressed in taking forward the possible growth of Harlow, notwithstanding that at this stage; Epping Forest District Council has not yet determined whether such growth is the best way to meet the needs of the district as a whole.</p> <p>Further, there are a number of known development interests on the borders of Harlow, all of which are being actively promoted for inclusion in the Local Plan. As above, Epping Forest District Council has not yet determined which, if any, of these sites may be appropriate for allocation in the Local Plan. However, the matters which must be addressed in order to reach reasonable conclusions are complex and wide ranging. It is not considered reasonable that the Parish Council would be able to undertake this function. The consideration of such matters also includes areas that are not lawfully part of the remit of a neighbourhood development plan, for example a Green Belt Review.</p> <p>The potential allocation west of Sumners estate is an area where the issues of Green Belt Review, landscape sensitivity, flood risk, transport infrastructure and links to Harlow are of particular concern, and require a comprehensive approach to comparison and assessment across the broader Harlow area.</p> <p>A large site, Copped Hall Estate is located primarily within Epping Upland Parish, but also crosses the boundary with Harlow District. A discrete area of this site is located to the north of Gibbons Bush Farm and to the south of Hospital Wood, and is primarily within Harlow District. Gibbons Bush Farm, its access road, and the land immediately surrounding the farm effectively isolate the area from the rest of the site.</p> <p>This area is also subject to a range of potential constraints affecting parts of the site, including wildlife sites, areas of flood risk, listed buildings, Green Belt Review, landscape sensitivity, transport infrastructure and links to Harlow are of particular concern, and require a comprehensive approach to comparison and assessment across the broader Harlow area.</p>
--	--

		<p>If a stage is reached in which the sites mentioned above are allocated for development purposes, there may then be an opportunity for the neighbourhood area to be altered. In the meantime, the District Council must continue to work closely with neighbouring authorities under the Duty to Cooperate, and in due course will seek to actively engage with the Parish Council on any emerging proposals.</p>
<p>e. Where the parish does not immediately adjoin the district boundary, are there any identified strategic matters for consideration by the Local Plan process, including those that may be covered by the Duty to Cooperate?</p>	N/A	<p>Epping Upland parish immediately adjoins the district boundary, question d. above refers.</p>
<p>f. Considering d. and e. above, does the presence of any identified issues indicate an amended area would be desirable?</p>	Yes	<p>It is not considered desirable to designate the whole of Epping Upland Parish as a neighbourhood area for reasons set out in d. above.</p> <p>It would be more appropriate if the area immediately adjoining the district boundary, encompassing potential development sites bordering Harlow were not subject to a neighbourhood area designation.</p>
<p>g. If it is desirable to designate an alternative area, what is the new area that is proposed? (Reflecting guidance provided by PPG section 41-033-20140306)</p>	Yes	<p>There are several alternatives available in considering the most appropriate and desirable area to be designated as a neighbourhood area. Counsel advice is clear that it is for the District Council to make such a determination, but that this must be fully justified. PPG guidance identifies that ward boundaries may provide an appropriate starting point.</p> <p>The area being considered for exclusion is in the north of Epping Upland Parish, covering an area of land that follows the Parish boundary with Nazeing Parish Council along the Epping Road (B181) and Roydon Parish Council to the north of Richmond's Farm and then following the Parish / District boundary with Harlow District to the point where it meets Epping Long Green, (easting 544028.389; northing 206044.974), south west following the public right of way running through Epping Long Green to where it meets Epping Road (easting 543687.220; northing 205800.888).</p>

--	--	--

CONCLUSION

In accordance with s. 61(G) of the Town and Country Planning Act 1990 (as amended) it is not considered desirable to designate the whole of Epping Upland Parish Council as a neighbourhood area.

The reasons for this are set out above, but in summary, this decision is recommended due to the location of the parish bordering Harlow District, and the associated strategic cross border planning matters which must be addressed.

A revised area is proposed as per the attached plan.

Due Regard Record

Name of policy or activity:

Determination of Neighbourhood Area designation for
Epping Upland Parish Council

What this record is for: By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

When do I use this record? Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

How do I use this record: When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	Summary of equality analysis
Ken Bean / Luke Waterston 15/09/2015	<ul style="list-style-type: none"> • The Cabinet report is seeking the designation of a neighbourhood area covering part of the Parish of Epping Upland. • Once commenced, the Neighbourhood Plan may have various equality implications for a number of different groups, both in terms of the level of engagement that is undertaken during its preparation and the impact that any policies may have on different sections of the local community. However it is the duty of the Parish Council to consider such issues during the preparation of the neighbourhood plan, and as such, the neighbourhood plan should be subject to equality analysis separately. • For reasons set out in the Cabinet Report, it is not considered

	<p>desirable to designate the whole of the Parish for Neighbourhood Plan purposes. In summary these reasons relate the District Council's proper assessment of matters to be addressed under the Duty to Cooperate in respect of the preparation of the Council's District Local Plan.</p> <ul style="list-style-type: none">• The area proposed to be excluded from the Neighbourhood Area is defined on the basis of administrative boundaries and existing physical features, and is done so to deliver effective and appropriate spatial planning for the area. No equality issues are identified.
--	--