

Cabinet Meeting Date 8th March 2022	Classification Public
From The Cabinet Member for Planning and Planning Enforcement to the Cabinet	
Overview Committee 7 th March 2022	Title of Report Supplementary Information to Item 9 to Epping Forest Special Area of Conservation (SAC) planning obligations governance arrangements for Strategic Access Management Measures (SAMMs)

1. Executive Summary

- 1.1 The purpose of this supplementary information document is to update Members that Partner Authorities (Local Authorities) will have no financial liability for any shortfall/deficit for their SAMMs Contributions to Epping Forest SAC projects.

2. Recommendations

The Cabinet Member/Cabinet is recommended to:-

- 2.1 Approve the proposed SAMMs governance arrangements and new payment tariff.
- 2.2 Delegate authority to the Head of Planning and Building Control in consultation with the Cabinet Member for Planning and Planning Enforcement to approve future amendments to the governance arrangements and payment tariff.

THE DECISIONS PROPOSED IN THE RECOMMENDATIONS TO THIS REPORT MAY BE CALLED IN

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3. Clarification from Natural England on shortfall in SAMMs payments

- 3.1 Natural England have clarified there is no financial liability for Partner Authorities (including London Borough of Redbridge) for any shortfall/deficit for the SAMM Contribution.
- 3.2 Liability is only applicable when Partner Authorities are not pursuing payment from developers. This is not applicable to the London Borough of Redbridge as the Planning Service currently requires and obtains SAMMs payments from qualifying new developments. The Planning Service will continue to seek SAMMs payments in line with the new tariff.
- 3.3 The reference to the shortfall in payments in Paragraphs 3.24 and 7.4 from the *Epping Forest Special Area of Conservation (SAC) planning obligations governance arrangements for Strategic Access Management Measures (SAMMs)* Cabinet report, is no longer applicable.

4. Fairness Implications, including Equality and Diversity

- 4.1 In summary, section 149 of the 2010 Act requires the Council, when exercising its functions, to have 'due regard' to the need to:
 - a) Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act (which includes conduct prohibited under section 29);
 - b) Advance equality of opportunity between people who share a relevant protected characteristic and those who don't share it;
 - c) Foster good relations between people who share a relevant protected characteristic and those who do not (which involves having due regard, in particular, to the need to tackle prejudice and promote understanding).
- 4.2 Under the PSED the relevant protected characteristics are:
 - Age
 - Disability
 - Gender Reassignment
 - Pregnancy & Maternity
 - Race
 - Religion
 - Sex
 - Sexual Orientation
- 4.3 In respect of the first aim only i.e. reducing discrimination, the protected characteristic of marriage and civil partnership is also relevant.
- 4.4 Having due regard to the need to 'advance equality of opportunity' between those who share a protected characteristic and those who do not includes having due regard, in particular, to the needs to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons who share a protected characteristic where those needs are different from the needs of persons who do not share that characteristic;
- Encourage those who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

4.5 Further, section 149 provides that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

4.6 Compliance with the duties in section 149 may involve treating some persons more favourably than others, but that is not to be taken as permitting conduct that would otherwise be prohibited under the Act (which includes breach of an equality clause or rule, or of a non-discrimination rule).

4.7 An EQIA screening (Appendix A) has found that the impacts are neutral to those with protected characteristics.

5. Staffing Implications

5.1 There are no staffing implications.

6. Child Friendly Implications

6.1 There are no negative implications for these proposals to lives of children in the borough as the SAMMs measures are designed to mitigate the impacts of visitors to Epping Forest. Continued securing of planning obligations for SANGs measures will led to improvements of SANGs sites in the borough which children may use for recreation and will positively impact their health and wellbeing.

7. Financial Implications

7.1 The proposed new SAMMs tariff increases developers' financial contribution from £30 per new dwelling within the 3km Zone of Influence to £255.84 within the 6.2km Zone of Influence per new dwelling. The tariff will increase due to inflation and will also reflect the changes in the costs of the SAMMs programme.

7.2 An administrative fee of £90 (which is retained by the council) will continue to be applied but may be reviewed in the future.

7.3 For major development applications, the SAMMs contribution may be included in the Heads of Terms of a Section 106 agreement. A monitoring administration fee is applied which should be 5% of the chargeable amount of the Epping Forest SAC,

or £90, whichever is higher. This administration is added to the S106 Monitoring Fee to cover the cost of monitoring and reporting on delivery of that Section 106 obligation.

7.4 Currently the SAMMs and SANGs contributions falls upon developers.

8. Legal Implications

- 8.1 Local Planning Authorities (LPAs) has a duty to comply with their responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'). Pursuant to Regulation 7 of the Habitats Regulations, a local authority is a competent authority and must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Habitats Directive and the new Wild Birds Directive. LPAs have the duty, by virtue of being defined as 'competent authorities' under the Habitats Regulations, to ensure that planning application decisions comply with the Habitats Regulations. If the requirements of the Habitats Regulations are not met and impacts on Habitats sites are not mitigated, then development must not be permitted.
- 8.2 Regulations 20 of the 2017 Regulations states that the appropriate nature conservation body may, for the purposes specified in paragraph (2), make an agreement (a "management agreement") with a person who has an interest in land about the management or use of the land.
- 8.3 Regulations 27 of the Habitats Regulations gives LAs power to make special nature conservation order after consultation with the appropriate nature conservation body, in respect of any land within a European site an order (a "special nature conservation order"). The order shall specify operations (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to the appropriate authority to be of a kind which, if carried out in certain circumstances or in a particular manner, would be likely to destroy or damage protected features.
- 8.4 In carrying out its assessment, where a Habitats site could be affected by a plan, such as a Local Plan, or any project, such as a new hospital, housing or retail development, then a Habitats Regulations Assessment (HRA) screening must be undertaken and any necessary mitigation are to be implemented to reduce any possible likely significant effect either alone or in-combination on the Habitats site.
- 8.5 LAs in their supplementary planning document (SPD) can implement the mitigation that is necessary to protect wildlife in their habitats from increased visitor pressure associated with new residential development in combination with other plans and projects, and how this mitigation will be funded. The current Planning Obligations SPD section 12.1 for the Strategic Access Management Measures contribution allows for amendment of the tariff figure as it is subject to change and therefore the developers and stakeholders should be informed of this

in advance of the change and the SPD to be amended accordingly to reflect the changes of the contribution from £30 per unit to £255.84. The proposed arrangements at recommendation 2.1 of this report is permitted under the Habitats Regulations.

- 8.6 The SPD applies to new residential dwellings that will be built in the Zone of Influence (Zoi) of the Habitats sites. The Zoi identifies the distance within which new residents are likely to travel to the Habitats sites for recreation and can be calculated by ranking the distances travelled by visitors to the Conservation Habitats based on their home town postcode data.

BACKGROUND PAPERS

Appendix A: EQIA Screening

Appendix B: Final Draft Epping Forest Governance Agreement with SAMMs mitigation measures