

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

1. Executive Summary

- 1.1 The London Borough of Redbridge is one of three Competent Authorities under the Conservation of Habitats and Species Regulations 2017 which have a duty to ensure that planning application decisions comply with those Regulations and do not result in adverse effects on the integrity of the Epping Forest SAC.
- 1.2 Because Redbridge falls within the recreational Zone of Influence for Epping Forest, it is obliged to contribute financially towards the Strategic Access Management Measures (SAMMs), delivered by the City of London Conservators of Epping Forest, to mitigate the harmful impact of visitors upon Epping Forest Special Area of Conservation (SAC). Currently, for SAMMs measures, an interim rate is being applied at Redbridge which requires developers to pay a cash in lieu contribution of £30 per dwelling and an administration fee secured via S106 agreement if their developments fall within the Zone of Influence boundary. This was agreed in an interim strategy.
- 1.3 Following an updated mitigation strategy, a Joint Working Group composed of relevant Local Authorities, Natural England and City of London Conservators, have developed new governance arrangements and a new payment tariff has been proposed where Redbridge will apply an increased rate of £255.84 per new dwelling (which is subject to change and the administration fee).

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. Background and Proposals

- 3.1 Epping Forest is a designated Site of Special Scientific Interest (SSSI) and a portion is designated as a Special Area of Conservation (SAC). SACs are internationally important areas given special protection under the EU's Habitats Directive (92/43/EEC) which is transposed into UK law by the Habitats and Conservation of Species Regulations 2017.
- 3.2 Epping Forest SAC lies within Epping Forest District Council, the London Borough of Waltham Forest, and the London Borough of Redbridge administrative areas. These three local authorities have a duty, as a Competent Authority under the Conservation of Habitats and Species Regulations 2017, to ensure that planning application decisions comply with those Regulations and do not result in adverse effects on the integrity of the Epping Forest SAC
- 3.3 Local Authorities falling within the recreational Zone of Influence are required to collect financial planning obligations for SAMMs and SANGs measures to mitigate the harmful impacts by visitors to Epping Forest SAC. They are also required to identify and develop SANG sites to encourage visitors away from Epping Forest.
- 3.4 At Redbridge, developers pay a cash in lieu contribution for SAMMs and SANGs measures if their new development falls within the 6.2km Zone of Influence (ZOI) from Epping Forest SAC. Developments within 3km of the zone are currently obliged to pay £30 per dwelling for SAMMs measures. An administration fee of £90 is also applied. These costs are based on the interim strategy. For major development applications, SAMMs contributions may be secured through S106 agreements. 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 fee is added to the S106 Monitoring Fee to cover the cost of monitoring and reporting on delivery of that Section 106 obligation.
- 3.5 The money is held at LBR but should be paid to the City of London Conservators of Epping Forest to offset the use and mitigate the impact of the forest from additional visitors as part of an interim SAMMs Strategy. The interim strategy costs, as outlined in Table 1, have been reviewed.
- 3.6 There is currently no formal governance structure, spend or monitoring arrangements in place for SAC payments for SAMMs or SANGs.
- 3.7 Redbridge is also required to identify SANGs sites and projects in the borough to ease the recreational pressure at Epping Forest from Redbridge visitors. The aim is to divert visitors towards using parks and green spaces within our boundary. Large scale developments (over 100 units) falling within the ZOI needs to provide a package of SANGs measures which can include improving access and facilities to our open spaces, green infrastructure and SANGs sites. This is funded through S106 SANGs contributions from developers.

Visitor Survey and Natural England involvement

- 3.8 A visitor survey at Epping Forest was conducted in 2019 which found that 10.72% of the visitors were from the London Borough of Redbridge, 52.28% from Epping Forest District Council and 37.00% from the London Borough of Waltham Forest.
- 3.9 Interim apportionment costs at this time were assigned and for Redbridge this totalled £277,982. The rate applied per unit was and is still £30 per unit within the 3km ZOI.
- 3.10 Following continued discussions with Natural England and relevant parties, new modelling has been conducted. Accounting for the predicted increases in population from planned new housing in Redbridge, the percentage additional pressure from visitors to Epping Forest now rises to 12.10% (this percentage is subject to change).
- 3.11 The apportionment of costs for in perpetuity (80 years) for Redbridge could mean that our total contribution towards SAMMs is £3.22m which would roughly equate to a charge of £255.84 per unit within the whole 0-6.2km zone. This figure is subject to change as housing estimates are updated and costing are further interrogated and is likely to increase. The administration fee of £90 will continue to be applied but may be subject to change following future review.

Table 1: Interim costs and proposed costs in perpetuity for all contributing Local Authorities or signatory Local Authorities (figures are subject to change)

Local Authority	Interim Apportionment/ %	Interim Total Financial Apportionment/ £	Interim Financial rate per unit/ £ per unit	Revised Proposed Apportionment in perpetuity / %	Revised Proposed Total Financial Apportionment in perpetuity/ £	Proposed rate per unit in perpetuity/ £per unit
LB Redbridge	10.72	277,982	30.00	12.51	3,104,665.38	255.84
Epping Forest DC	52.28	1,355,679	352.00	15.66	3,886,415.65	1,334.69
LB Waltham Forest	37.00	959,452	100.00	68.13	16,908,141.66	681.61
LB Newham	0	0	0	1.18	292,846.13	44.81
LB Enfield	0	0	0	2.52	625,400.22	45.40

- 3.12 The Epping Forest Conservators have proposed several SAMMs projects in their EFSAC Mitigation Strategy to be funded by the contributions being collected by the Local Authorities. These include physical improvements, signage, visitor surveys, engagement campaigns and forest-wide ambassadors (rangers). The City of London Corporation will be responsible for the daily operation of the SAMMs projects.
- 3.13 The costs of the SAMMs EFSAC mitigation strategy have increased to £26.7m to account for 80 years in perpetuity costs, which means that Redbridge will have to pay more in accordance with their visitor share proportion.
- 3.14 The increased costs are due to the mitigation measures being covered for in perpetuity. Proposals are for a payment tariff which could be either be a single flat rate across 0-6.2km (£255.84) or a hybrid tariff so dwellings within the 3km zone pay a higher tariff (£1,983.41) than between 3 - 6.2km. These costings are specifically for Redbridge, the other Local Authorities pay different rates in accordance with their apportionment.
- 3.15 The tariff is split across the boroughs depending on the proportion of recreational pressure from visitors (from the 2019 visitor survey and future visitors from new residential developments) and forecasted housing figures. The forecasted housing figures are used as a proxy indicator for the number of future visitors as well as potential financial planning obligations income. The tariff costs are expected to increase annually and will be agreed by all parties.

Governance Arrangements

- 3.16 The following Local Authorities are working together with Natural England to develop, agree and implement formal a strategic solution with governance arrangements and procedures for expenditure and monitoring for SAMMs only: Epping Forest District Council, London Borough of Waltham Forest, London Borough of Redbridge, London Borough of Newham, London Borough of Enfield, and City of London Conservators of Epping Forest. These local authorities contribute financially towards the SAMMs measures because they either fall within the ZOI of Epping Forest SAC; are the Competent Authority under the Conservation of Habitats and Species Regulations 2017; and were identified via the visitor survey as contributing to the majority of visitor pressures.
- 3.17 There are other parties involved in earlier discussions (and may be possibly become future signatories to the agreement) because they fall within the ZOI but were not identified in the visitor pressure survey so do not need to financially contribute towards the SAMMs measures. Those parties are: Harlow District Council, East Hertfordshire District Council, Uttlesford District Council, Broxbourne Borough Council, Brentwood Borough Council, London Borough of Hackney, London Borough of Haringey, London Borough of Tower Hamlets, London Borough of Barking and Dagenham, London Legacy Development Corporation, Lee Valley Regional Park, Essex County Council and the Greater London Authority.
- 3.18 Redbridge, the other Local Authorities as named in paragraph 3.16 and the City of London Corporation will form a Partnership. All parties will agree to the allocation for SAMMs contributions.

- 3.19 The City of London Corporation will be the delivery body for the SAMMs projects and will report to the proposed Technical Oversight Group.
- 3.20 Redbridge will be a member of the proposed Technical Oversight Group which will be chaired by Natural England. The Technical Oversight Group shall be responsible for the delivery of the project outcomes and will keep the project plan, and progress towards meeting it, under review.
- 3.21 A quorum of 3 voting parties will be required for the meetings and Redbridge must be present along with Epping Forest District Council and London Borough of Waltham Forest for any decision- making.

Further Implications for Redbridge

- 3.22 The burden for paying the SAMMs and SANGs contributions falls upon developers. This adds another financial pressure on developers and may affect viability of developments again.
- 3.23 The Council is subject to presumption in favour of sustainable development as it cannot show a 5-year housing land supply and has failed its housing delivery test. There is a significant need for new housing in the borough which will have to be met by new developments.
- 3.24 If sufficient funds cannot be raised for the SAMMS and SANGs mitigation measures by developers, then the Local Authority will have to bear the shortfall costs to accord with the Habitats Regulations.

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. If sufficient funds cannot be raised for the SAMMS and SANGs mitigation measures by developers, then the Local Authority will have to bear the shortfall costs to accord with the Habitats Regulations.

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 Conservations 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