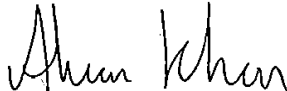


LONDON BOROUGH OF WALTHAM FOREST

Meeting / Date	Cabinet 7 July 2022	
Report Title	Epping Forest Special Area of Conservation Strategic Access Management and Mitigation Strategy	
Cabinet Portfolio	Councillor Ahsan Khan, Deputy Leader (Housing and Regeneration)	
Report Author/ Contact details	Ian Rae, Corporate Director – Regeneration, Planning & Delivery Ian.Rae@walthamforest.gov.uk	
Wards affected	All	
Public Access	Open	
Appendices	Appendix 1 – Epping Forest SAC SAMM Strategy - Partnership Agreement Appendix 2 - Equalities Screener	

1. SUMMARY

- 1.1 Epping Forest, the largest open space in London, is a designated Special Area of Conservation (SAC) and as such is afforded the highest level of protection under the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”).
- 1.2 It has been identified that increasing visitor numbers in the forest can cause “recreational disturbance”, which must be managed and mitigated through a *Strategic Access Management and Monitoring (SAMM) Strategy*. All new residential development in the *Zone of Influence (Zoi)* around the SAC is liable for a financial contribution towards delivering the SAMM Strategy.
- 1.3 In 2018, Natural England extended the Zoi around Epping Forest SAC to 6.2km, which encompasses the entirety of Waltham Forest as well as parts of Epping Forest District Council and the London boroughs of Enfield, Newham and Redbridge.
- 1.4 The Council put in place interim measures to address the above whilst a permanent way forward was explored. It has now been agreed that the

SAMM Strategy needs to be delivered in partnership with the other affected boroughs and the City of London Corporation (CoLC) (who both own the forest and manage it in their role as the Conservators of Epping Forest). A partnership agreement (Appendix 1) has been prepared to establish governance arrangements, agree the SAMMS payment tariff to be applied, set the financial apportionments between the boroughs, and establish the payment arrangements and how the money will be spent

- 1.5 The Council fully accept the importance of the SAMM Strategy and the need for new residential development in the borough to contribute to its delivery in order to protect the unique value of Epping Forest. This report therefore recommends that Waltham Forest enters into the SAMM partnership agreement. However, the Council recognises the need for the apportionment of the total cost of the SAMM Strategy between the partnership authorities to be based on the most up to date evidence available. The evidence used to inform the emerging SAMM Strategy has to date been based on visitor surveys undertaken in 2017 and 2019. This report proposes that the Council enters into the partnership agreement subject to this evidence being reviewed and the agreement updated immediately.

2. RECOMMENDATIONS

- 2.1 Cabinet is recommended to:
 - 2.1.1 Approve the entering into and signing of the SAMMS partnership agreement appended to this report at Appendix 1, subject to an immediate review of charges and cost apportionment between the partner authorities;
 - 2.1.2 Delegate authority to the Corporate Director – Regeneration, Planning and Delivery in consultation with the Portfolio Lead Member for Housing and Regeneration and the Strategic Director for Finance and Governance to approve any amendments to the partnership agreement.
 - 2.1.3 Delegate authority to the Corporate Director – Regeneration, Planning and Delivery in consultation with the Portfolio Lead Member for Housing and Regeneration to manage and report on the immediate review of the partnership agreement, and regular ongoing reviews thereafter, and to secure appropriate resulting amendments.

3. PROPOSALS

Background

- 3.1 Under the Habitats Regulations, the Council has a duty to ensure that its plans and projects will not adversely impact the condition and integrity of Epping Forest SAC either alone or in combination with those of its neighbouring boroughs. Regulation 63 provides that local authorities must make an “appropriate assessment” as to whether a development is likely to have a significant impact on the SAC, complete a full

assessment in the event that a significant impact is found to be likely and only grant permission if mitigation measures are secured that result in the development not adversely affecting the integrity of the SAC.

- 3.2 As a result of emerging plans for growth and the declining state of the Forest, Natural England issued interim advice in 2018 to relevant local authorities, directing that any residential development within the extended Zol (6.2km) is likely to have a significant effect on the forest and therefore planning permission can only be granted where appropriate mitigation measures are in place. In the case of Waltham Forest, the extended Zol covers the entire borough.
- 3.3 Consequently, an *Interim Strategy* was agreed by the affected boroughs and Natural England. In the case of Waltham Forest this was to secure from developers a financial contribution of £100 per new home for developments of 10 new homes or over, to pay for measures set out in the interim SAMM Strategy to ensure that access to the Forest SAC is managed and mitigated.
- 3.4 Following agreement to the *Interim Strategy*, and to provide the basis for the cost - based approach now proposed, the Conservators of Epping Forest commissioned Land Use Consultants (LUC) to undertake a more in-depth review of the projects and programmes needed to ensure that there would be no adverse effect on the Epping Forest SAC in relation to recreational pressures arising from new residential development. The projects and programmes initially identified a need for some £63 million to be invested in the Epping Forest SAC based on an 'in-perpetuity' basis of 125 years.
- 3.5 The projects and programmes were rigorously assessed by both the local authorities and Natural England to ensure that it can be demonstrated that such measures can be attributed as being necessary to mitigate the effects of qualifying development. This process has resulted in a significant refinement of the projects and programmes identified in the LUC Report and that the 'in-perpetuity' period used should be for 80 years. The consequence of this is that the initial cost of the measures indicated by the LUC report has been reduced to £24.8 million. This is the SAMM Strategy that the partnership agreement seeks to implement.
- 3.6 For clarification, the recent approval of the planning application for the delivery of 1,500 new homes alongside the new Whipps Cross hospital includes a Section 106 contribution of £4m of SAMM measures outside of the SAMM Partnership agreement. Given the proximity of the Whipps Cross site to the SAC, this sum was required by Natural England and the City of London Corporation as a bespoke mitigation package, secured specifically against the impact of the regeneration of the wider site to deliver new homes, open spaces and shops, cafes and community facilities, in habitats terms. It will not be offset against the SAMM partnership agreement. Officers will monitor and review this bespoke Whipps Cross SAMM package to ensure that it is delivered as

agreed, and there is no duplication of SAMM charges when subsequent detailed applications for the site are submitted

- 3.7 The full SAMM Strategy, as set out in Schedule 1 of the Partnership Agreement at Appendix 1 of this report, would represent a significant uplift in the overall costs of the measures needed to mitigate the effects of qualifying development when compared with those identified in the *Interim Strategy* - which originally equated to £100 per new dwelling. There are a number of reasons for this. Firstly, the *Interim Strategy* did not take into account the need to ensure that the measures would be delivered over the lifetime of the development i.e., that they would be delivered 'in-perpetuity.' Secondly, the Strategy now includes additional 'people' resources through the provision of three 'Ambassadors' to work with both visitors and local communities to raise awareness of the issues facing Epping Forest and to ensure that their behaviours and activities are 'Forest Friendly.' The cost of project managing the implementation of the projects and programmes and the provision of necessary monitoring information has also been included. The need for these posts to be provided 'in-perpetuity' has had a significant impact on the overall costs over and above those identified in the *Interim Strategy*. Thirdly, the assessment of physical assets that will need to be maintained on a cyclical basis and investment needed at the three visitor 'hubs' has been more rigorously assessed.
- 3.8 Officers are satisfied that the measures and costs set out in the SAMM Strategy, subject to a review and updating of the evidence to determine the apportionment of costs amongst partner authorities. In this context, the Strategy should be a material consideration in the determination of planning and development related applications.

SAMM Strategy Costs

- 3.9 The total cost of the proposed SAMM Strategy is £24,817,469, as detailed in Schedule 2 of the partnership agreement. This sum is to be met through SAMM contributions from the five local authorities within 6.2km of the SAC who each contribute more than 2% of visitor numbers to the Forest. The current proportion of the cost allocated to Waltham Forest derives from the pre-Covid number of visitors from the borough to the SAC. *Footprint Ecology* were commissioned to carry out a Visitor Survey in 2017, and again in 2019. The 2019 *Footprint Ecology* visitor survey was used to calculate the number of responses that came from each borough/district. Out of the 595 responses, 208 (35%) were from Waltham Forest postcodes. The number of visitors from each borough/district was divided by the current population to calculate the visitor pressure per head from the existing population and adjusted using Office for National Statistics (ONS) 2020 household size figures and household projections. The visitor pressure figure was multiplied by additional population forecasts and expressed as a percentage.

- 3.10 Waltham Forest generates a significant portion of visitors to the SAC owing to the proximity of key “honey pot” destinations such as Leyton Flats and Chingford Plain within easy walking distance of centres such as Leytonstone and Chingford respectively.
- 3.11 However, the Council is concerned that the visitor surveys used to reach these conclusions are both out-of-date (particularly as they were carried out pre Covid) and based on a relatively small sample size. There are also concerns about the way in which planned housing growth has been expressed across the partnership authorities. For these reasons, although the Council fully supports the need to fund the SAMM Strategy, an immediate review of this evidence base and the methodology for apportionment is required to ensure that it is fair and transparent.
- 3.12 It should also be noted that the partnership agreement requires five yearly visitor surveys to be undertaken. Officers will also interrogate these future surveys to ensure that apportionment remains proportionate, and the methodology by which it is calculated remains fair and transparent.
- 3.13 For information, the current proposed cost apportionment for Waltham Forest, when set against the Local Plan housing target of 27,000 new homes over the 15-year plan period, equates to a tariff of £627 per new home. The impact of this apportionment on Local Plan viability has been tested with the Council’s consultants at the recent Examination in Public and it has been concluded that contributions at this level would not have a negative impact on the delivery of new housing, jobs and infrastructure. This figure is subject to change not only as a result of the immediate review, but also as housing estimates are updated and costings are further interrogated in the light of further visitor surveys at 5 yearly intervals.

Governance

- 3.14 Under the *Interim Strategy*, there were no formal arrangements for the disbursement of collected contributions to the CoLC. To this end, under the leadership of Natural England, officers from contributing boroughs formed a Technical Oversight Group (TOG) to develop governance arrangements.
- 3.15 Governance arrangements have been developed collaboratively between the relevant local authorities and CoLC as the body responsible for the delivery of the projects and programmes for which financial contributions have been secured, and each party to the agreement has carried out their own legal review of the partnership agreement. In summary the partnership agreement provides that:
- CoLC will be the delivery body who will run the day-to-day operation of the project and will be responsible for the programme of investment and implementing the mitigation measures.
 - A Technical Oversight Group (TOG) will be set up that CoLC will report to, it will be chaired by Natural England and include

representatives from each authority. It will ensure the delivery of the SAMM Strategy by CoLC; approve the programme of investment; publish, monitor and update the SAMM Strategy; work with CoLC to agree a programme of implementation and monitor implementation and facilitate liaison and information sharing between the partners;

- The authorities will pay their collected contributions to CoLC every six months and each partner will provide TOG with statements of contributions received;
- Each partner is responsible for monitoring contributions received and forecasting future contributions;
- The SAMM contribution will be agreed and set in March of each year and will be brought into effect on 1 April each year; and
- Contributions can be invested in the short-term where spend is profiled for later in the SAMM Strategy delivery programme

3.16 Developers will pay the SAMM contribution when they commence their development, rather than on the grant of planning permission. Clause 6.2.3.7 of the partnership agreement provides that where there is a shortfall/deficit as a result of the non-collection of a contribution then the Council will have to make good the shortfall but this will only arise if the Council has not used reasonable endeavours to pursue the non-payment from the developer.

SAMM Strategy Programme of Works

3.17 The proposed measures have been reviewed by the relevant local authorities and by Natural England. This has ensured that the measures identified are those necessary to mitigate the effects of *future residential development* on the Epping Forest SAC. As such they do not seek to address existing issues or include measures that are the responsibility of the landowner. The measures are compliant with the Habitats Regulations and accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010, paragraph 57 of the National Planning Policy Framework 2021 and provide a comprehensive approach to mitigating the effects of future development. There are three key strands as follows:

- a site-wide approach to maintain surfaced and unsurfaced tracks and paths; provision of enhancements to wayfinding and interpretation and the on-going monitoring of ecological conditions and visitor usage;
- managing increased use of the three 'visitor hubs' (High Beach, Chingford Plain and Leyton Flats). Their facilities act as 'attractors' and place focused pressure on these parts of the Forest;
- on-going visitor engagement activities to help raise awareness of the issues facing the Forest, to encourage 'Forest-friendly'

behaviours (through on-site engagement with visitors and with local resident user groups) and to manage the use of ‘access pressure points’ by encouraging people to use different routes at times when some routes may temporarily be more vulnerable to over-use.

- 3.18 The Strategy also includes Project Manager support for the oversight of the Strategy’s implementation. This includes regular reporting back to the local authorities to ensure that monies collected are being spent in accordance with the agreed Strategy. The day-to-day management of this post will be undertaken by CoLC and will be funded from the SAMM contributions so that there is no cost-burden for the CoLC, recognising that this role is necessary to ensure the proper oversight of the implementation of the Strategy on behalf of the local authorities.
- 3.19 Account has been taken of the need to ensure that these measures continue to be provided over the longer-term. This reflects the fact that new homes are considered to result in additional visitors on an on-going basis. Consequently, the financial contributions being secured include an ‘in-perpetuity’ factor to ensure that the on-going management and maintenance of the measures is taken into account and is based on an 80 year period. This is considered to appropriately reflect the lifespan of the relevant developments.

4. OPTIONS & ALTERNATIVES CONSIDERED

- 4.1 Natural England is the “appropriate nature conservation body” for the purposes of the Habitats Regulations. This means that great weight must be given to its advice. Their advice that any residential development within the extended ZOI is likely to have a significant effect on Epping Forest and planning permission can only be granted where appropriate mitigation measures are in place. This advice can therefore not be ignored and these measures need to be provided. The ‘do nothing’ approach (relying on an outdated *Interim Strategy*) is not recommended as this would not provide the appropriate mitigation, and would leave planning permissions vulnerable to legal challenge from Natural England and others. Natural England is a statutory consultee to planning applications and their representations have to be afforded weight in decision making.
- 4.2 The ‘do nothing’ approach could also undermine the soundness of the emerging Local Plan at examination as the Council would be unable to demonstrate delivery of identified mitigation against stated *Likely Significant Effects* as identified in the Local Plan Habitat Regulations Assessment (HRA). As such the Council would be failing to act in its HRA role as a “competent authority”.
- 4.3 Working in partnership with the other signatory local authorities and CoLC is the preferred approach as set out in this report.

5 SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)

- 5.1 Acceptance of the partnership agreement will contribute to the aims and objectives of the Waltham Forest Local Plan which at Policy 83 sets out policy considerations in the protection of Epping Forest and how mitigations will be delivered through the Local Plan.

6 CONSULTATION

- 6.1 If approved, no consultation will be required for the Council to enter into the partnership agreement and introduce the new tariff which is in effect an updated version of an existing contribution.

7 IMPLICATIONS

7.1 Finance, Value for Money and Risk

- 7.1.1 The current proposed SAMM Strategy tariff would increase developers' financial contribution from £100 per new dwelling to £627 per new dwelling. The tariff will be reviewed annually and amended to reflect any changes in the costs of the SAMMs programme. However, Waltham Forest also require an immediate review of the apportionment of costs, based on updated and comprehensive visitor surveys and a transparent apportionment methodology.
- 7.1.2 There is also already a clause built into the agreement to secure new visitor surveys at five yearly intervals.
- 7.1.3 The proposed level of SAMM contribution has been tested by the Council's Local Plan viability consultants and they are satisfied that there will be no adverse impact on delivery of new homes, jobs and infrastructure.
- 7.1.4 The SAMMs contribution will be secured via Section 106 agreements. If sufficient funds cannot be raised for the SAMMS mitigation measures by developers, then the Local Authority will have to notify the Oversight Group, within a period of 12 months. Decisions, including any required revisions of projects, can then be made for the benefit and continuity of the overall mitigation project, and so that no particular partner, nor the CoLC, becomes financially liable.
- 7.1.5 The Council would transfer SAMM payments to CoLC. Since June 2018, the Council has collected £162,431.04 as part of the interim strategy, and this amount will be paid to CoLC via the mechanisms set out in the Partnership Agreement for investment in the agreed schemes.
- 7.1.6 The risk of non-collections of SAMMs contribution is minimal as there are robust processes in place to collect developer contributions.

7.2 Legal

- 7.2.1 Epping Forest is a designated Special Area of Conservation and is classified as a 'European Site' for the purposes of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations").

- 7.2.2 When considering a planning application Regulation 63 requires local planning authorities to make an appropriate assessment as to whether a development is likely to have a significant effect on a European site. If the answer is yes, then a full assessment must be undertaken, and planning permission should only be granted if appropriate mitigation measures are secured that ensure that the development would not adversely affect the integrity of the European Site.
- 7.2.3 Local planning authorities are required to attach “great weight” to advice given by Natural England in its capacity as “appropriate nature conservation body” for the purposes of the Habitats Regulations. On 20 September 2018 Natural England issued interim advice stating that any residential development within the extended zone of influence (ie. within 6.2km of Epping Forest SAC) is likely to have a significant effect on Epping Forest SAC and therefore has to be positively screened with a full assessment required and planning permission can only be granted where appropriate mitigation measures are in place to ensure that the integrity of the SAC is not adversely affected.
- 7.2.4 The boroughs affected by this have agreed to work collaboratively and in partnership with each other and the City of London as Conservators of Epping Forest to implement a strategy that will provide the requisite mitigation measures. The mitigation measures will be funded by contributions from developers applying the agreed tariff and each authority will transfer the contributions they receive to the City of London every 6 months. The agreement attached at Appendix 1 seeks to formalise the arrangements for the operation of the partnership and will be signed by all the relevant parties. The Council has the power under section 1 Localism Act 2011 to enter into the proposed partnership agreement.

7.3 Equalities and Diversity

- 7.3.1 An Equalities Assessment of the proposal has been carried out and is included at Appendix 2.
- 7.3.2 The Equality Assessment screener was carried out and determined that there no negative impacts on equality groups have been identified as a result of the proposed tariff or the SAMMs mitigation measures set out in the partnership agreement

7.4 Sustainability (including climate change, health, crime and disorder)

- 7.4.1 The contents of the partnership agreement is not considered to result in any sustainability impact.

7.5 Council Infrastructure

- 7.5.1 The proposal will be undertaken within existing resources

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)

None.