

LOCAL DEVELOPMENT FRAMEWORK EXAMINATION MEDWAY COUNCIL

Date: 21 June 2013

Mr Brian McCutcheon
Planning Policy & Design Manager
Medway Council
Gun Wharf
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Kent ME4 4TR

Dear Mr McCutcheon,

Re: Medway Core Strategy

1. Background

1.1. The Medway Core Strategy (CS) was submitted for Examination on 2 February 2012. The CS includes a strategic allocation (Policy CS33) for a new freestanding settlement at Lodge Hill on the Hoo Peninsula. Hearings were held between 12 - 20 June 2012. On Thursday June 14 the topic for discussion was the Lodge Hill Strategic Allocation. At the hearing the RSPB sought to introduce new evidence, specifically the Provisional 2012 British Trust for Ornithology (BTO) nightingale survey information for Lodge Hill¹. The Council did not seek to resist the introduction of this evidence, and I accepted it on the grounds that it was not available before my deadline for the submission of Examination statements, and that it was clearly relevant to my consideration of the Lodge Hill Strategic Allocation. I indicated that I would seek Natural England's (NE) views on this new information and allow comments on their response from interested parties. I therefore wrote to NE enclosing the evidence submitted to the Examination by the RSPB². NE responded by letter dated 9 July 2012³. In summary, NE indicated that it would consider notification of the proposed Lodge Hill development area as a SSSI and that the importance of the nightingale population and the likely extent of impact place a very substantial question over the soundness of the Lodge Hill allocation. The letter also indicated that NE were involved in discussions between Medway Council and Land Securities regarding ways in which the residual impact of the development could be reduced. I invited comments on NE's letter by 24 July 2012⁴. The Council's response⁵ indicated that it did not consider that the letter from NE provided evidence to support or justify any change to the policies in the

¹ EX15

² EX19

³ EX20

⁴ Responses received are at EX23 – EX28

⁵ EX28 and EX29

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CS, and that the Examination should be concluded in the normal manner. At paragraph 9.6, the Council's letter sets out further steps that could be taken if I did not agree with that position. For the reasons set out in my letter to the Council of 27 July 2012⁶, I indicated that I would suspend the examination to allow the further work proposed to be undertaken, and asked the Council to produce a detailed assessment of the work that should be undertaken together with a timetable for completion of the work and public consultation. My letter further advised that a review of the Sustainability appraisal should be undertaken. By letter dated 14 September 2012⁷, and having regard to the Council's expected timetable for undertaking further work and my own work commitments, I suspended the examination until January 2013.

- 1.2. In January 2013, the Council provided a position statement⁸ and accompanying information relating to the work undertaken. I responded to the Council⁹ indicating that I would hold a further hearing session once the process of reviewing the SA/SEA had been completed. This hearing took place on 22 and 23 May 2013, with closing submissions invited in writing¹⁰ according to a specified timetable. At the close of the hearings I indicated that I was not in a position to provide a date for the Council to receive the fact check version of my report, but that I would write to the Council by 21 June 2013. In the afternoon of 23 May I undertook an accompanied site visit to Lodge Hill.

2. Policy context

2.1. *South East Plan*

- 2.1.1. At the time the CS was submitted the South East Plan (SEP) remained part of the development plan. Paragraph 19.5 of the SEP listed major regeneration sites and included: *within the Medway urban area at riverside sites and to the north on Ministry of Defence land at Chattenden*. Although this was part of the supporting text, rather than policy, this gave a significant level of support to the Lodge Hill allocation and whilst the SEP remained part of the development plan it could have been argued that, without the Lodge Hill allocation, the Medway CS would not have been in conformity with the SEP.

2.2. *National Planning Policy Framework (the Framework)*

⁶ EX31

⁷ EX39

⁸ EX79

⁹ EX80

¹⁰ M5(CS/FH)-MC; M5(CS/FH)-04; M5(CS/FH)-24; M5(CS/FH)-37; M5(CS/FH)-44; M5(CS/FH)-40; M5(CS/FH)-54; M5(CS/FH)-43; M5(CS/FH)-65

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2.2.1. Paragraph 152 of the Framework indicates that, in preparing Local Plans, local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible, compensatory measures may be appropriate.

2.2.2. Paragraph 117 of the Framework indicates that planning policies should minimise impacts on biodiversity through specified actions, including identifying and mapping components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity..... Paragraph 118 indicates that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying specified principles. These principles include: proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest....should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest.....

2.2.3. Read as a whole, the policies in the Framework do not impose an absolute prohibition on development on a SSSI, but it is generally accepted by all parties at the hearing that the Framework requires an avoid – mitigate – compensate approach.

3. Notification of the SSSI

3.1. Chattenden Woods and Lodge Hill was notified as an SSSI on 13 March 2013. It is, in effect, an enlargement of the Chattenden Woods SSSI which was notified in 1984. The features of special interest for which the site is notified are: lowland ancient and long-established semi-natural woodland; unimproved grassland (MG5); and breeding nightingales. The notification of SSSIs under the Wildlife and Countryside Act is independent of the development plan process, and I have made it clear that it would be inappropriate for me to comment on NE's decision to notify the site or the underlying evidence which has led to that decision. Consultation on notification is currently underway and the notification must be confirmed (with or without modification) within nine months of the notification date, or it will cease to have effect. The duty placed on all public bodies by S.28(G) of the Wildlife and

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Countryside Act 1981 that reasonable steps, consistent with the proper exercise of the authority's functions, (should be taken) to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest, comes into force as soon as the site is notified.

4. Impact on the SSSI

- 4.1. Natural England advises that the development envisaged at Lodge Hill under Policy CS33 would damage a substantial proportion of the SSSI. It estimates that it is likely that 83% of the nightingales on the site would be lost. NE are not currently aware of any other sites with greater than 1% of the British population and the site is therefore particularly important for the population of nightingales.
- 4.2. At the hearing it was confirmed that it would not be feasible to amend the Lodge Hill Masterplan in order to preserve the MG5 grassland for which the site has been notified. NE advises that the grassland is not in favourable condition but could be restored to better condition and then sustained by traditional agricultural management.
- 4.3. In my view this scale of impact constitutes a significant adverse impact. It is therefore necessary, as the first step, to consider whether this can be avoided.

5. Can the adverse impact on the SSSI be avoided

- 5.1. The Council does not seek to argue that identified needs cannot be met elsewhere in the District. Its case is heavily dependent on the assertion that Lodge Hill is a unique opportunity to address the social and economic challenges that face Medway and that there is no realistic alternative to the proposal. In particular, the Council draws attention to its aspiration to substantially improve the performance of the local economy, in particular by nurturing higher value activities (CS paragraph 3.22 strategic objective 3). This objective is not, in itself, controversial. However, the Council asserts that the social and economic advantages of providing a new settlement in an appropriate location, and which has the attributes required to attract higher added value uses, cannot be achieved at alternative sites.
- 5.2. As a general proposition, a new settlement may offer good opportunities to provide sustainable development, but other spatial alternatives, such as the development of a range of sites, well-related to existing settlements, can also achieve the kind of sustainable development envisaged in the Framework. Much will depend on the particular circumstances of the area in question. The evidence base which accompanies the CS provides an analysis of the social and economic problems faced by Medway, as well as the history of initiatives

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for the Thames Gateway and the development of proposals at Lodge Hill. Paragraph 4.448 of the Issues and Options Report¹¹ gives the reasons why the Council has supported the Lodge Hill proposal and states, amongst other things: *By concentrating development on the scale proposed in a single location, there is an opportunity to fashion a development of real note and one with a full range of local services. This would be more difficult to achieve on urban extension sites where development would impact more significantly on existing communities and more than one location might be needed.* Paragraph 4.449, however, notes that are significant issues that must be addressed in relation to Lodge Hill including access, adverse impacts on the existing settlements on the Peninsula and ensuring that it contributes to the local environment. Paragraph 4.450 concludes that these issues can be satisfactorily addressed.

- 5.3. This approach can be contrasted with the analysis undertaken for the other strategic options through the Sustainability appraisal. For example, access/highway issues are identified as a potential problem in relation to all options but the Council was unable to provide any evidence that the scale of potential problems/mitigation had been addressed, other than in relation to the Lodge Hill proposal. The Council's conviction that that its aspirations for Medway can only be met through the promotion of a large scale development in a single location means that it has paid little attention to what are referred to as 'lesser options'¹².
- 5.4. The Council has also supported the Lodge Hill allocation as a means of addressing the social needs of existing communities across the Hoo Peninsula. However, the representations from local organisations including the Frindsbury and Wainscott Community Association and Hoo St Werburgh Parish Council express considerable reservations about the proposal.
- 5.5. One of the main reasons why the Lodge Hill proposal is supported by the Council relates to its view that a significant proportion of the site can be classed as previously developed land (CS paragraph 10.100). Various estimates of the amount of the site that can be classified as previously-developed land were put to me in evidence, ranging from 15% (RSPB) to 53% (verbal evidence of CBRE for Land Securities). On my site visit I saw that there is a scatter of permanent structures on the site and some fixed surface infrastructure such as metalled roads and the hard surfacing associated with the former barracks. I am, of course, aware that much of the site has been used for military training purposes, and has yet to be cleared of unexploded ordnance but those factors, by themselves, do not meet the Framework's definition of previously developed land. From what I saw, I formed the view that the proportion of

¹¹ MCO4

¹² EX83 paragraphs 4.19, 4.20

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the site that could be described as previously developed land is more likely to be towards the lower end of the range set out above. In any event, paragraph 111 of the Framework encourages the reuse of previously developed land, provided that it is not of high environmental value. Whatever the proportion of the site that is previously developed, the fact that it has been designated as a SSSI and is therefore of high environmental value means that its development does not benefit from any particular support from the Framework in this respect. Policy CS1 of the CS, which encourages the use of previously developed land, is not wholly compliant with the Framework, because it does not include the caveat regarding high environmental value. If this were modified to be fully compliant with the Framework, that should feed through to objective 7 of the Sustainability appraisal which seeks to maximise land use efficiency through appropriate use of previously developed land and buildings. Throughout the SA process Lodge Hill has received a very positive score in relation to this objective. I doubt that this is merited, bearing in mind my conclusions as to the extent of previously developed land across the site and its high environmental value. It is also accepted by the Council that the final SA would need to be corrected regarding the scoring of objective 16, avoiding the loss of best and most versatile agricultural land, because the provision of compensatory habitat may result in the loss of such land. Both these factors could affect the overall choice of the preferred option, albeit that the SA is not necessarily the determining factor in that choice.

6. Mitigation/compensation

6.1. *Nightingale*

6.1.1. I give significant weight to the conclusions of the BTO study that: it is 'theoretically feasible to create habitat that will be occupied by nightingales in lowland England' and that '**if the right conditions are satisfied** (my emphasis), there is greater probability of achieving success in Kent than in most parts of the Country'. The report specifies certain elements which would seem critical to any habitat creation plan. These include: that sites must be low altitude, contain areas of damp ground or open water or ditches adjacent to which woody development should develop; and that sites should ideally be in the vicinity of existing populations. An Executive Summary Report of investigations into opportunities for nightingale habitat creation¹³ identifies 16 sites and concludes that about 1000 ha of land could be considered as offering a 'high' certainty of deliverability. Unfortunately, this report was not made public until April 2013 although it is dated January 2013, and the Council's Position Statement of January 2013¹⁴ envisaged that it would be available

¹³ EX98

¹⁴ EX79

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'shortly'. Whatever the reason for the delay it means that the other participants at the hearing had a very limited time in which to consider the report. NE identified that two of the favoured sites, including the largest single site of 400ha at Cleve Hill, near Faversham, are within the scope of an Environment Agency adopted shoreline management plan. This brings a significant degree of doubt as to whether these sites could provide suitable habitat in the long term unless the site owner was prepared to take on responsibility for maintaining sea defences, which could be a very expensive undertaking. As Natural England note, these are just two of the options identified and it is likely that additional sites will be identified if the search is extended. That may be the case, but with additional time to consider the report, it may be that problems with other sites would be revealed. CBRE, for Land Securities, are keen to promote former military sites in Kent and Essex as potential sites for nightingale habitat. However, these sites are some considerable distance from Lodge Hill and there is no evidence before me that there are existing nightingale populations nearby, which is one of the criteria in the BTO report.

6.1.2. A further issue is the temporal lag between the loss of habitat at Lodge Hill and the provision of compensatory habitat. Natural England advise that they do not consider the risk arising from such a time lag to be grave provided measures are taken to minimise it. The Environment Bank report¹⁵ advises that 'temporary loss of habitat probably wouldn't lead to a permanent reduction in the breeding population, provided that a suitable source population persisted in the area and that compensatory habitat was close to it'. It is envisaged that development across the site would be phased to minimise this risk but none of the identified sites is particularly close to Lodge Hill, i.e. none are within Medway, let alone on the Hoo Peninsula.

6.1.3. Taking all factors into account I agree with Natural England's conclusion that habitat compensation for nightingale has a good chance of success, providing the sites chosen meet agreed criteria on design location and scale, but that it is not without risk.

6.2. Grassland

6.2.1. NE also advises that species rich grassland could be created and could benefit from translocation of material from the Lodge Hill site, although it is uncertain how similar that would be to the grassland that would be lost.

6.3. Conclusions

¹⁵ EX76

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6.3.1. I conclude that measures to mitigate/compensate for the loss of the SSSI have a reasonable prospect of success but there is a significant risk because of the uncertainties inherent in this approach rather than preservation in situ. Development of the site according to the timescale envisaged in the CS would lead to a net loss of biodiversity in the short term and, potentially, in the long term if the provision of new habitat is not successful in maintaining the nightingale population.

7. Overall conclusions

7.1. Paragraph 152 of the Framework advises that significant adverse impacts on any of the dimensions of sustainable development should be avoided by, wherever possible, pursuing alternative options. Development at Lodge Hill would have a significant adverse impact on the SSSI and the Framework's objective of halting the overall decline in biodiversity. For the reasons given above, I am not convinced that there are no reasonable alternatives to the proposed development at Lodge Hill. The Framework only requires mitigation and compensation measures to be considered where adverse impacts are unavoidable. However, in considering the balance to be struck between all the dimensions of sustainable development I am not persuaded that the social and economic benefits that would flow from development on this site would outweigh the harm to a site of national importance for biodiversity.

7.2. I can appreciate that, at the time the Council submitted the CS for Examination, the Lodge Hill proposal had the benefit of conformity with the SEP and that Natural England was content that potential impacts on the Chattenden Woods SSSI could be adequately mitigated, including through the use of buffer zones. However the revocation of the SEP and the notification of the allocation site as a SSSI are material changes in circumstances. I conclude that Policy CS33 is not consistent with national planning policy and is therefore unsound. Bearing in mind the importance of the strategic allocation to the CS as a whole, this conclusion renders the CS as a whole unsound.

7.3. For the reasons given in my letters to the Council of 18 April 2013¹⁶ and May 2013¹⁷ the Council has further work to do to ensure that the Plan meets objectively-assessed needs, as required by the Framework, rather than relying on the SEP targets, particularly in relation to housing.

7.4. My conclusions regarding the Lodge Hill allocation (and the lack of any contingency), in conjunction with the shortcomings relating to objectively assessed needs, mean that the extent of main modifications required

¹⁶ EX95

¹⁷ EX110

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would be so significant as to amount to the plan being rewritten. A significant amount of further work and consultation would have to be undertaken. I consider the changes required are so significant that I am unable to deal with the matter through main modifications and that the only reasonable course of action is for the Council to withdraw the CS and prepare a new Local Plan.

Laura Graham

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