



## **Medway Core Strategy Examination in Public, 22 May 2013**

### **Matters and Issues: Lodge Hill – Response to Inspector’s Questions from CPRE Protect Kent (ref no 15)**

#### **Matter 1: Policy Context**

**a) What are the implications of the revocation of the South East Plan (in particular paragraph 19.5) for the Lodge Hill allocation?**

1.1 The South East Plan was formally revoked on 25 March 2013, and thus it no longer forms part of the Statutory Development Plan for Medway. Therefore, it is the view of CPRE Protect Kent that the identification of Lodge Hill in paragraph 19.5 of the South East Plan now has little bearing on the Medway Core Strategy other than, perhaps, to demonstrate some continuity in planning policy.

1.2 The Core Strategy was prepared by Medway Council in the knowledge that the South East Plan was to be abolished and the Council therefore sought to justify the plan’s strategy and policies on a local evidence base, local consultations and sustainability appraisal. Consequently the Plan is considered by the Council to be locally justified and robust irrespective of the weight to be given to the South East Plan. This is explained in paragraph 1.28 of the submitted Core Strategy. CPRE Protect Kent, therefore, takes the view that the revocation of the South East Plan has no material effect on the Lodge Hill allocation and its justification for allocation in the Core Strategy.

**b) Does the proposed allocation comply with paragraph 118 which indicates that proposed development on a SSSI should not normally be permitted.....an exception should only be made where the benefits of the development.....clearly outweigh both the impacts it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs?**

1.3 As it now stands, with the proposed enlargement of the Chattenden Woods SSSI to include the vast majority of the Lodge Hill site, CPRE Protect Kent believes that the proposed allocation does not comply with paragraph 118 of the National Planning Policy Framework (NPPF). We do not consider that the benefits of the development would outweigh the impact that it would have on this designation of national importance.

The Kent Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

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1.4 It is also the case that the impact of the development will extend beyond the direct impact on the SSSI because of the compensatory land required, and this must also be taken into account. There may be impacts on the land used to create the compensatory habitat, for example through the loss of agricultural land or the disruption of other established ecological networks – see our response to Matter 2 below. No specific proposals for compensatory habitat, however, have been put forward so it is difficult to assess with certainty what these further impacts will be so a precautionary approach should be adopted.

1.5 Also of relevance is paragraph 14 of the NPPF which states:

*“Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, **unless**:*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; **or***
- *specific policies in this Framework indicate development should be restricted.”*

1.6 Whilst the first bullet point in this paragraph uses the same words as paragraph 118, the second bullet point introduces a second criterion. Footnote 9 to this second bullet point specifically includes SSSIs as being one such instance where policies in the NPPF would apply such restriction, and thus they are not areas where the presumption in favour of sustainable development would apply. The primary purpose of paragraph 118 is to conserve and enhance biodiversity and that the provision of compensatory land should be a last resort if no alternative is available with less harm. Therefore, it is our strong view that rather than proceed with a damaging development in an SSSI, which would also have unknown impacts elsewhere because of the need to provide compensatory land, paragraph 14 of the NPPF enables a decision to be made as to whether it is appropriate to plan fully for objectively assessed needs if to do so would require the development of a site where the NPPF seeks to restrict development.

1.7 Notwithstanding this, we do not believe that the development of Lodge Hill is required to meet the objectively assessed needs included in the plan. We have already explained in the representations that we submitted on Policy CS13 that the Core Strategy plans for a significant over provision of housing. Whilst in Policy CS13 the plan sets a target of 815 dwellings a year (17,930 dwellings in total over the plan period) to meet identified needs, it actually proposes to provide allocations that would provide for a total of 20,918 dwellings (see Table 5.1 of the submitted plan). This is 2,988 (17%) more dwellings than are actually needed to meet the housing target set.

1.8 Furthermore, the Core Strategy makes no allowance for windfall developments, which paragraph 5.10 of the submitted plan advises made 'a significant contribution' in the past. Unlike the former PPS3, which restricted the use of a windfall allowance (but still allowed it for after the first ten years of the plan period) the NPPF specifically permits an allowance for windfalls to be made where there is “...compelling evidence that such sites

*have consistently become available in the local area and will continue to provide a reliable source of supply*" (see paragraph 48 of the NPPF). Given the urban nature of Medway, and the significant contribution made by windfalls in the past, it is not unreasonable to assume that windfalls will continue to make a significant contribution in the future and that they will be a reliable source of supply in future. This must be a more sustainable solution than to contemplate development within a designated SSSI.

1.9 The Council claim, in paragraph 5.10 of the submitted plan, that a windfall allowance *'cannot be quantified'*. We would fundamentally dispute this as clear guidance on how to do this is provided in the Government's good practice on conducting Strategic Housing Land Availability Assessments (examination document ND51<sup>1</sup>), and other local authorities have had no difficulty in calculating an allowance. The Council's Strategic Land Availability Assessment (SLAA – examination document EB82) and subsequent up-dates (EB83 and 84 as well as the more recent January 2013 up-date) provide no assessment of windfalls and the contribution that they might make towards future land supply – even though paragraph 8.04 of the 2010 SLAA (EB82) states that this will be done in future updates.

1.10 However, despite this, information on past delivery from windfalls is provided in the Council's 2012 Annual Monitoring Report. Pages 91 and 92 of Volume 2 of the 2012 AMR<sup>2</sup> reports that for the five years 2007 – 2012 there was an annual average of 69 windfall dwellings completed on small sites involving previously developed land. In addition, over the same period, there was an annual average of 209 windfall dwellings completed on large sites involving previously developed land. Based on this past performance, there is potential for some 278 dwellings per annum to come forward from previously developed land as windfalls, yielding a potential total of 4,170 dwellings over the remaining 15 years of the plan period.

1.11 We consider that potential from windfalls from previously developed sites (small and large sites – 4,170 dwellings based on past performance), together with the overprovision already built into the plan (2,988 dwellings), would more than compensate for the loss of Lodge Hill and still enable the identified needs to be met. Indeed, it would be possible to strike a note of caution by including a windfall allowance lower than that suggested by past performance to overcome potential concerns that supply might diminish (even though there is no evidence to suggest that this would be the case). We believe that this should be explored in detail instead of endorsing a strategy that would see the destruction of an SSSI with unknown impacts elsewhere.

1.12 Such a change in approach would not be without precedent. This was recently done by Shepway District Council when, following the suspension of the examination of their Core Strategy as a result of the Inspector's concerns about one of the proposed strategic site allocations, the Council presented Modifications that removed the site from the Plan and replaced the dwellings lost by a review of the contingencies built into the plan

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<sup>1</sup> See page 19 in ND51:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11500/399267.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11500/399267.pdf)

<sup>2</sup> See <http://www.medway.gov.uk/pdf/AMR%20Vol2%202012.pdf> – a request was made to the Programme Officer for this to be added to the list of examination documents.

and by adding a windfall allowance<sup>3</sup>. The Inspector's final report on the Core Strategy is still to be submitted following a resumption of the hearings on 5<sup>th</sup> March.

1.13 We believe that a similar change of approach at Medway would be justified and appropriate, and it would also have the benefit of ensuring that new dwellings would be provided earlier than would be the case from Lodge Hill or, for that matter, from any of the other major greenfield alternatives assessed, given the lead-in times necessary.

**c) Is there an internal conflict between Policies CS6 and CS33?**

1.14 CPRE Protect Kent considers that there is an internal conflict between Policies CS6 and CS33 given that Lodge Hill is now being designated a SSSI. Policy CS6 was not prepared in anticipation that the Plan's primary development allocation would be made on land designated as an SSSI and being of national importance. Although the fourth paragraph of the Policy recognises that compensatory habitat will be provided where the development is considered to outweigh the impact, we do not consider that this envisaged a major allocation on such designated land. The opening part of the paragraph clearly seeks to avoid or minimise negative impact on habitats or other biodiversity features through the '*appropriate siting and/or design of development*', but this wording suggests that anticipated potential negative impacts would generally be of more localised interest which could be addressed within the site itself; not from an allocation per se of a designated site for development. This scenario is not anticipated in the Policy.

1.15 It would clearly need to be the case that in the event that the Lodge Hill site is retained as an allocation, then the known impact on the SSSI would need to be acknowledged specifically in both policies, together with the proposed mitigation and compensation measures.

**Matter 2: Mitigation/compensation measures**

**a) Is providing compensatory habitat, rather than preservation in situ, the right approach for a site with nature conservation value of national importance?**

2.1 No. CPRE Kent's view is that it is always preferable to retain and protect existing habitats rather than to provide compensatory habitat elsewhere, especially if it is of national importance. Paragraph 118 of the NPPF clearly sees the provision of compensatory land as a matter of last resort.

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<sup>3</sup> See [http://www.shepway.gov.uk/UserFiles/File/pdf/local-plan/cs\\_mods\\_consultation/Proposed%20Shepway%20Core%20Strategy%20Modifications%202012%20rev%2008%20FINAL%20VERSION.pdf](http://www.shepway.gov.uk/UserFiles/File/pdf/local-plan/cs_mods_consultation/Proposed%20Shepway%20Core%20Strategy%20Modifications%202012%20rev%2008%20FINAL%20VERSION.pdf)

**b) If it is acceptable, I am minded to 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’, there is greater probability of achieving success in Kent than in most parts of the Country’. On that basis:**

**i) How much compensatory habitat is required and how likely is it that sufficient land of a suitable type will be made available and what potential adverse impacts may arise, such as loss of good quality agricultural land?**

2.2 CPRE Protect Kent is unable to comment on the amount of land needed as compensatory habitat, but we note that the BTO report advises that between 300 and 400 hectares would be needed. This is an extensive area of land, and the options identified in the ‘*Summary of Nightingale Habitat Creation Opportunities – Executive Summary Report*’ (EX98) suggest that a wide-range of possible compensatory sites might be suitable and available. We have not seen the full report of which this is the summary, or any maps showing the areas identified, but from the brief descriptions given in the summary report it seems that all the identified sites will have potential impacts, as follows:

- Loss of arable land (sites 3, 6 & 14)
- Loss of grazed pasture (sites 2, 3 & 8)
- Impact on other habitats and designated sites (sites 2, 3, 6, 7 & 14)
- Impact on other uses (sites 2 & 3).

2.3 These potential impacts need to be fully assessed as part of the assessment of the Lodge Hill site itself, and we consider that the SA addendum should have done this.

**ii) What are the likely consequences of the time lag between loss of habitat at Lodge Hill and the provision of new habitat if development proceeds as currently proposed? Alternatively what are the implications for the Core Strategy if development at Lodge Hill is delayed to allow for new/restored/improved habitat to become available?**

2.4 CPRE Protect Kent is unable to comment in detail on this, so we can only comment in general terms. With regard to the first question, it seems to us that if the development proceeds as proposed in the submitted plan, then the established nightingale habitat at Lodge Hill will be lost before the compensatory habitat is provided. This will inevitably mean that the nightingales that usually use the site will have to go elsewhere to breed or the population will decline, though we are not an expert on what the likely behaviour of the nightingales will be.

2.5 With regard to the second question, if development is delayed until the compensatory habitat has been provided and established, it will be highly unlikely that any development from the site can be expected with any certainty during the Plan

period – though there may be potential for some development from the residual parts of the site not subject to the SSSI designation if these are considered to be suitable for development on their own.

2.6 We would also wish to say that there can be no guarantee that the replacement habitat, no matter how carefully it is designed, will actually provide an alternative for the nightingales that currently use Lodge Hill. The assessment of sites presented is a theoretical one, and so reliance on it would make it a high risk strategy. This supports the approach advocated in paragraph 118 of the NPPF that it should only be considered as a measure of last resort.

### **Matter 3: SA Addendum**

**Does the SA Addendum provide a robust assessment of alternative options? In particular:**

- i) Are there other reasonable alternatives that should be evaluated in greater detail bearing in mind the changing circumstances in relation to Lodge Hill? For example, is it right to reject a more dispersed pattern of development without a more detailed evaluation of what that might mean in practice? Should neighbouring authorities be approached under the duty to cooperate in order to avoid development at Lodge Hill if there really is no reasonable alternative within Medway?**

3.1 CPRE Protect Kent is of the view that it would be reasonable, and appropriate, for the SA to consider an alternative approach that sees windfalls as forming part of the development strategy. As we have explained in our comments under Matter 1, the Council recognise that windfalls on previously developed land – both from small sites and large sites – have made a significant contribution to housing land supply in the past, but they resolutely decline to see that they have any role to play in the development strategy of the Plan. Given the quantity of development that is likely to be achieved from windfalls, which is broadly equivalent to that envisaged being delivered at Lodge Hill during the Plan period (see Table 11-2 of the submitted Plan), this does present a reasonable alternative to assess.

3.2 CPRE Protect Kent considers that there should be discussions with neighbouring authorities under the duty to cooperate. In particular the opportunity for such discussion with Maidstone and Swale Borough Councils would seem potentially most useful given that both of these authorities have yet to finalise their respective local plans. We are aware, though, that both of these councils are already finding it very difficult to accommodate their own development needs without unacceptable environmental impact and that the prospect of further development to meet the needs of another local authority area may prove to be politically challenging.

3.3 Our preference would be for Medway Council to grapple with the issue itself and amend the Core Strategy to embrace windfall sites on previously developed land. This must be more desirable, and more sustainable, than the identification of alternative greenfield sites, whether they are in Medway or elsewhere.

**ii) Does the SA Addendum meet the requirement established in *Heard v Broadland* that alternatives must be appraised as thoroughly as the preferred option; and the implications of *Cogent Land LLP v Rochford DC* and *Bellway Homes Ltd* (as reported in JPEL issue 2 2013 (pages 170-192)) that an addendum report must be a genuine exercise rather than a mere justification for the decisions that have already been taken.**

3.4 CPRE Protect Kent is content that the SA Addendum appraises the preferred site and the identified alternatives in a consistent way, though we have highlighted specific concerns with details of the assessments in our comments on it. However, the SA Addendum fails to assess the alternative approach that we have suggested.

3.5 As far as we understand the *Cogent Land LLP v Rochford DC* and *Bellway Homes Ltd* judgement, and we have not had time to study it in detail, we are similarly content that the SA Addendum has been a genuine exercise.

**Matter 4: Is the 'very positive' score given to the Lodge Hill option in relation to previously developed land justified?**

**a. How much of the development area meets the definition of previously developed land set out in Annex 2 to the framework?**

4.1 Aerial photographs of the Lodge Hill site clearly show that significant portions of it are undeveloped and comprise open land and woodland – some of which already falls in the Chattenden Woods SSSI and other comprises ancient woodland. Other parts are clearly previously developed and contain buildings, roadways and hard standings.

4.2 The definition of previously developed land (pdl) as included in Annex 2 of the NPPF does not specifically exclude former MoD sites, and so the site falls under the general definition of pdl, i.e. *"land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure."* The proportion that is pdl, therefore, depends on what is defined as the curtilage of the developed land. In this case, we consider this a difficult matter to determine given the size of the site and the general mix of built development, open land and woodland throughout it. If either landownership or the security fence is taken as defining the curtilage it would be the case that areas of land would be defined as pdl which clearly are not. We therefore find it difficult to come to a definitive answer to this question, but our judgement would be that about 50% of the site would be classed as previously developed.

- b. **Should the scoring be tempered by the Framework's core planning principle that reusing previously developed land should be encouraged, provided that it is not of high environmental value?**

4.3 It is CPRE Protect Kent's view that the scoring of individual sustainability objectives should not be tempered in this way, as it should be the case that the overall assessment should recognise this. The SA has separate sustainability objectives that seek to assess alternatives against biodiversity (objective 1) and use of previously developed land (objective 7). We consider that this should enable this core planning principle to be addressed in the round.

4.4 Under objective 1 the Lodge Hill site is quite rightly recognised as being 'very negative' because of its impact on the SSSI, whilst under objective 7 it is scored as 'very positive'. There is clearly a conflict between these two assessments, and a judgement needs to be made on the balance between the two. It is in making that judgement that the Core Planning Principle should come into play.

4.5 However, as we have already stated in our submissions on the SA Addendum, we believe that the assessment of the Lodge Hill site under objective 7 is wrong in concluding that the site scores 'very positive'. This seems to treat the site as a typical and 100% pdl site, which is incorrect. It also gives no regard to the off-site greenfield implications of the compensation land needed. The mixed greenfield/pdl nature of the site and the fact that significant compensatory greenfield land will be needed, must mean that under objective 7 the Lodge Hill site would not perform much, if any, better than the greenfield alternatives assessed under this objective. Consequently, it is likely that the judgement to be made against the Core Planning principle will be more clear cut.