

Inspector Laura Graham BSc MA MRTPI  
( through Programme Officer )

Matters and Issues for Hearing on 22 May 2013 – Lodge Hill

This is the MCF statement invited in the Programme Officer's covering email to the Inspector's questions dated 12<sup>th</sup> April 2013.

1) Policy context:

a) South East Plan (SEP) revocation

i) We note that the Kent Thames Gateway section of the SEP mentioned overall housing targets for Medway at Policy KTG4 and, more specifically in paragraph 19.5, at Policy KTG1, the intention for MOD land at Chattenden. Since these strictures have been removed with the revocation - which we welcome - we say that Medway Council can and should reconsider local needs with more freedom and flexibility, allowing now for sensible judgments on more up-to-date significant evidence, in particular the SSSI notification for Lodge Hill.

b) The National Planning Policy Framework (the Framework)

i) The intentions of paragraph 118 seem clear to this Forum. First, for Lodge Hill/Chattenden there will be "significant harm resulting" from this development. Since it has not been shown that "an alternative site" – or sites – "with less harmful impacts" are unavailable – see the many flaws and shortcomings in the SA Addendum pointed out by MCF and other stakeholders - nor that mitigation nor practicable compensation are clearly achievable, then in our view "planning permission should be refused". Secondly, paragraph 118 specifically highlights that "land within or outside a Site of Special Scientific Interest", where the proposed development is likely to have an adverse effect, should not normally be permitted for development. We have seen no evidence to demonstrate that development at this specific location is sufficiently and uniquely beneficial to outweigh the damage development would undoubtedly cause. As well as the adverse effects on the Chattenden/Lodge Hill SSSI, there are also potential adverse impacts on the neighbouring Northward Hill and Tower Hill to Cockham Wood SSSIs since the large Chattenden/Lodge Hill Nightingale population serves as a likely social attraction and species "stock bank" for those SSSIs too. For laypeople, though informed laypeople such as Forum members, we fail to see the purpose of such policies and principles if those promoting development on such designated and "protected" sites have merely to search out and exploit, without genuine justification, the weaker/more ambiguous elements of the text to succeed. Why bother having these policies if their spirit and deeper meaning and intentions are thwarted? We have heard our Prime Minister earlier say that SSSIs will be protected; we have also heard him say that allowing swamping developments on the edges of villages/small settlements was not his intention. Both were during the public debate on the NPPF.

Since this may be the first – if not **the** first – major test of the Framework’s protection principles, it would to us be outrageous if these failed at the first hurdle. If Lodge Hill can be developed, there is little hope for other sites either. Please don’t let it be so.

c) Core Strategy

i) Our Forum concludes that what is being planned now for Lodge Hill is neither in line with Policy CS6 nor CS33. On CS6, Medway Council seems initially to have intended meeting that with its promises on having compensatory habitat “in place and functioning” before development commenced. And the Lodge Hill Development Brief (DB) took its cue from that and specifically repeated that principle at paragraph 4.73. **It could not be clearer.** Prior to that, at paragraph 4.69, the DB reassured residents that “SSSI land....will not be developed.” In what way are the apparent current proposals to accept “temporal lag”, which was again dismissed (twice) by Medway Council at the first technical meeting in terms of no net loss of habitat at any stage, or - since Lodge Hill has been notified as an SSSI by Natural England - building on “SSSI land”, in conformity with Policy CS6 or the DB, please?

Although we have not yet been updated on possible receptor sites for compensatory habitat, paragraph 4.70 of the DB requires that “off-site mitigation (sic)... should remain within the Hoo Peninsula at worst case”. Now earliest plans were for contiguous compensatory habitat (quickly dropped) then we had a GGKM search of Hoo Peninsula options, which also failed, so we had a wider search of Medway possibilities and elsewhere in Kent and even Essex – with overstated claims of “great opportunity” and “exciting...project” etc. These too received much criticism at the technical meetings so we await further suggestions. They are unlikely to meet either paragraph 4.70 or even 4.72 of the DB. This may be dismissed by the development proposers as unimportant but that is not so for residents who were promised such local safeguards and solutions during the consultations, and relied on them.

On CS33, the third principle of paragraph 10.105 is clear in that the development will “...ensure protection of....nationally important sites...”. With the notification of Lodge Hill as an SSSI, our Forum cannot see how the development is in conformity with that CS33 assurance. In all the consultations with Medway residents during the stages of the Core Strategy and the DB, we took comfort and reassurance from the CS6, CS33 and DB protections and promises. If they were now to be discarded - which we trust not - consultations would have to start again with the wider Medway public and representatives, not just this small “representor”+ faction.

On the bigger question of how to make the Core Strategy sound, our Forum has no problem with Policy CS6 – only that it is applied here with Lodge Hill and for other wildlife sites in Medway – but Policy CS33 is another matter. We have several times respectfully asked Medway Council to withdraw the Lodge Hill strategic allocation from the Core Strategy. This would require the complete removal of Policy CS33, and any references to Lodge Hill within the CS, in order to make it sound. This would also remove any question of an internal conflict between Policies CS6 and CS33.

2) Mitigation/compensation measures.

- a) Our Forum says “No” to your question. Apart from MCF views above on NPPF at 1) b), Natural England stated at paragraph 9 of their 9th July 2012 (EX20) letter that the “most certain means” of protecting the Nightingales was not to build on the site and thus retain the existing habitat. Presumably that would also go for the MG5 grassland (not known about at that time) and other biodiversity. We are, amongst other natural riches, dealing here with a unique species in the nation’s consciousness and culture. We need not repeat the pleas of the Nightingale’s many and varied admirers but we can understand when some are driven to make accusations beyond just indifference for any plans to destroy such a nationally important site involving an iconic species under pressure. Why shouldn’t we experience awe at our wildlife and bring it into our democracy? Sir Andrew Motion and Richard Mabey are arguably themselves national treasures and perhaps it takes one to know one.
- b) We note that the Inspector has placed “if the right conditions are satisfied” in bold. This is key because in our view the BTO passages on either side are of lesser impact. No-one who attended the technical meetings disagreed that it was “theoretically possible” to do so. In the same way, it is theoretically possible for humans to land on Mars. But, in practice, it is more difficult. As to the “greater probability” in Kent, this only confirms that Kent has been the top UK county for Nightingales for some time (certainly since the 1999 Census) and one would therefore expect such an observation without it necessarily making it easy to achieve in absolute terms. We do, however, have a problem with how some of BTO’s evidence has been subject to partial and selective airing because there are many unknowns and admitted uncertainties as to the potential success of habitat creation in their findings which have not been properly acknowledged in the much-disputed published minutes and reports (including the SA Addendum), in our opinion and that of other stakeholders. See our comments at EX71, paragraphs 6 to 9. We draw attention to the “additional ornithological advice” from BTO (EX61) which stakeholders outside EBL inexplicably saw only belatedly in January 2013, after much pleading, and which also qualify the more hopeful claims, particularly in the final two paragraphs. Given all this, the last thing to do is destroy the existing optimal habitat before any compensatory habitat was “in place and functioning” – and on which BTO advised that the only reliable indicator of success was that Nightingales were occupying the new habitat.

As to the Inspector’s phrase in bold, we have in earlier comments on the Nightingale technical work maintained that our interpretation of BTO’s evidence is not as sanguine as that of the development’s proposers. Far from there being a guarantee of success, BTO’s instructive report raised many concerns including social factors in likely occupation. BTO also underlined that not all apparently suitable habitat is occupied either because “there are insufficient potential colonists or because there is variation in habitat suitability **that is evident to Nightingales but not to humans** (our emphasis).” Since it has been proposed that the great bulk of any possible compensatory habitat would be newly created (rather than restored), these problems would only be heightened. BTO :- “Even if the habitat conditions can be made as suitable as possible, this might not be enough due to social factors..” at page 34 of EX60. And whereas BTO was advising at the earliest technical meeting that it would be better for one or just a couple of sites to be chosen for compensation – to increase chances of success in the context of social attraction - we seem now to be ranging far and wide in our search and upping the number of potential sites, presumably to spread the emerging risk of failure? This hedging of bets could instead lead to a worsening chance of achieving the Lodge Hill nightingale

population elsewhere. All this smacks of aspiration rather than confidence of delivery but to embark on a clearance of Lodge Hill in the mere hope that such a large population could be produced many years later in as yet undetermined locations does not, in our opinion, do justice to the research done by BTO - who confirmed there were no known examples of Nightingales occupying created habitat/vegetation development on a formerly unoccupied site. BTO is also unaware of any instance where habitat creation for Nightingales has been attempted on any large scale. **We say Lodge Hill should not be sacrificed for an experiment.** Failure cannot be reversed. Who would care if Nightingales didn't in the end occupy the offered alternative habitat, following the loss of the long-used Lodge Hill? Many, in Medway (see the objection letters to the Outline Planning Application and the SA Addendum) and throughout the country. We also confirm here the opposition to this proposed development by the Kent Ornithological Society, an organisation of some 700 members.

- i) MCF is still unclear as to what amount of compensatory land will be required – which itself reeks of unwanted uncertainty. But what is not disputed is that a considerably greater land-take will ensue, if multipliers are needed, than the existing proposed development site. And given the long-term commitment needed for such compensation, this land-take – whether in greenfield/good quality agricultural land or not - would have significant planning consequences for Medway Council or other would-be contributing authorities; much better to avoid the excess take by retaining Lodge Hill and not destroying a national treasure.
- ii) First, we have stated in previous correspondence that temporal or time lag is not unavoidable or “inevitable” as Medway Council implies, not least as it would not be in conformity with Policy CS6 or the DB or the clear commitment given by Medway Council at the first technical meeting that net loss of habitat at any stage was unacceptable. To answer the question, the main consequence is that this would greatly increase the risk that functioning Nightingale alternative habitat would not be achievable to the extent of the Lodge Hill population. Conversely, the main way of reducing the risk would be to have the compensatory habitat in place and functioning – see BTO's test on this ie that occupancy by Nightingales is the only reliable indicator of whether the habitat creation is working (EX61) – before any site clearance/infrastructure work/development started. As to the implications of this, bearing in mind it is the intention of Policy CS6 and the DB so to do, then it would be some 10 to 15 years (even with the ecologically and ethically controversial – to this Forum, unacceptable – use of social luring) before it was ready; thus the Lodge Hill development would not be deliverable within the timescale of the submitted Core Strategy. And so the CS can only be deemed unsound.
- iii) MG5 Grassland. Mitigation/off-site provision has not been openly discussed since the source data and key documents have not been made available to all stakeholders for consultation. And if further survey work reveals more invertebrate etc as well as plant species, it becomes more problematical.

### 3) SA Addendum

- a) We do not believe the SA Addendum (EX83) provides a fair or robust assessment of alternative options. One stakeholder has earlier argued that it is inappropriate to factor in compensation in such assessments. Regardless, the intention to ignore the land consequences for compensatory habitat for Lodge Hill, when comparing options, seems to us bizarre and undermines any notion of like-with-like.
- i) It is right to raise the changing circumstances in relation to Lodge Hill; this has not yet been truly grasped by those pursuing the development. Other alternatives should be given the same scrutiny as Lodge Hill if the process is to be seen as fair and robust, nor would it be right to reject some mix of smaller developments. We are more attracted to the notion of neighbouring authorities helping because in earlier submissions on Medway housing plans and Core Strategy iterations, we have expressed the view that none of the “Issues and Options” sites was really suitable since they all involved developments on Areas of Local Landscape Importance (ALLIs) – and because these represent the last remaining green lungs for Medway residents (to balance the urban sprawl) which we do not want to lose. (We have separately argued for the retention of ALLIs as protection designations at this Examination during the June 2012 Hearings.)
- ii) We note that others with more legal awareness are of the opinion that the SA Addendum does not meet the implications of such cases.

4. We do not believe it is. Not only is the development shamelessly planned for an Area of Local Landscape Importance (and two Protected Open Spaces – the existing playing fields), the overwhelming sense of the site is one of a green visual amenity and natural habitat. This is largely because in addition to the existing Chattenden Woods SSSI and the ancient woodland of Round Top Wood etc, even the erstwhile military training areas are overgrown with scrub etc or otherwise naturally regenerated and have been for years. For these reasons, we deplore the SA Addendum’s repeated and inaccurate use of “mainly”, “predominantly”, worst of all, “is”, when referring to previously developed land (PDL) on this site; and thus the invalid comparisons with other options.

a. Only a small proportion, in our opinion. RSPB has shown, in its comments on the draft SA Addendum (EX82A), that the Framework definition excludes from PDL classification land that has naturally regenerated with the passage of time, so only the clear hardstanding/concrete areas/existing buildings etc should be regarded as PDL, a small percentage of the Lodge Hill site. Strangely, the authors of the SA Addendum do not wish to test their claims with the NPPF definition of PDL, on the grounds that it is more recent. This also applies to the Core Strategy itself, Policy CS33, where at paragraphs 10.100 and 10.104, what now amounts to a misleading impression of the true amount of Lodge Hill PDL land prevails.

b. In our view, the scoring should indeed be tempered by the additional “high environmental value” warning in the definition. (Other stakeholders have pointed out that Lodge Hill should be accepted as of “high environmental value”. We agree and find unconvincing Enfusion’s attempts to downplay the importance of scrub and the questioning of the MG5 grassland.)

Taking our opening comments to Matter/Issue 4 together with our thoughts at a. and b. above, then the “very positive” score given to Lodge Hill in relation to PDL is to us wholly **unjustified**.

In view of our reasoning at 3) and 4. above, we believe the SA Addendum needs re-doing, again.

General comment.

If opposition to the Lodge Hill development were limited to a few technical points which could be addressed or smoothed away, then no doubt it would proceed.

But the number of major policy (national and Core Strategy) and other contradictions, tilting at the essence of the Framework’s protection intentions; the absence of any confident (by proposers) still less credible (for others) plans for practicable mitigation or compensation; the utter confusion over temporal lag; the proposal’s and SA Addendum’s flaws pointed out not by one stakeholder but virtually all outwith the development’s own involved backers; the unprecedented evidence of opposition expressed personally by local people and more widely in Kent and elsewhere – we say these must place it in the least justifiable category. It should be deleted from the Core Strategy, please.

Medway Countryside Forum

1st May 2013

PS It is difficult to comment on the belated GGKM Report (EX98) since the site assessments are so sketchy and the absence of any overt criteria for selection cause us to question how even GGKM could justify its proposals. Some initial reactions:-

- why is goal only 500ha?
- deliverability and occupancy are conflated
- New Rides (for one) has no nearby Nightingales (Sheppey devoid)
- exaggerated assertions, again eg “massive potential”
- Nightingale only areas?