

MEDWAY COUNCIL
LOCAL DEVELOPMENT FRAMEWORK
CORE STRATEGY
EXAMINATION
Hearing Wednesday 22nd May 2013

Further written statement

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Matters 1 and 3

The Medway Broad Spatial Option Map¹ identifies five spatial choices. Four it prepared itself. Apart from the Call for Sites (CFS), no other evidence exists. This suggests the related statements in the I&O report are unsafe.

Unlike for Lodge Hill the SLAA shows a major lack of developable sites that relate to the 4 spatial options. This has not been examined in any document by Medway including the recent SA Addendum.

The Capstone option: is described as a 'U' shape that is formed from two clusters of sites put forward in the CFS. In the SLAA Dec 2008 and 2013 site location map 22 and 20 there are no sites submitted that could relate to this 'U' shape. The description at Para 5.25 -5.28 is wholly misleading. The suggestion that this option would extend towards Maidstone is without foundation. There is no evidence that there has been constructive discussion with Maidstone. Maidstone would have to take some of Medway's housing allocations. Was this discussed? If it had it would never have been put forward as a reasonable alternative. See Maidstone's comments below².

North of Rainham: SLAA site locations map 14 and 15 show 4 sites. None of them alone or in combination are of a scale/size to replace Lodge Hill. Also Riverside Country Park takes up much of this land. Once again the site boundary has little relationship to the call for sites document. Considerable unavailable land would be needed together with the removal of the Country Park. Were the relevant landowners specifically contacted? Would the removal of the Country Park be acceptable?

¹ Issues and Options Report (July 2009) pp92

² Maidstone Borough Council does not support this option and does not support any development proposed in relation to this option that is within the Maidstone administrative area. Policy AOSR7 of the South East Plan 2009 directs the Maidstone local development framework to "avoid coalescence between Maidstone and the Medway towns conurbation", which development here would undoubtedly do. In addition, the supporting text to this policy requires an indicative 90% of new housing in Maidstone (11080 dwellings 2006-2026) to be developed in or adjacent to the town. The section of the Capstone Valley that is within the Maidstone administrative boundary is not an appropriate location for rural housing, and would not provide a sustainable type of settlement, or support the needs of the Borough's rural population. The 10% of new housing in Maidstone Borough that is directed towards the rural area will go towards established settlements that already serve a functioning role in this area. **I&O consultation response Maidstone District Council.**

Village Cluster or expanded Hoo: This option is dependent on the release of land around a number of villages³. (SLAA Maps 3, 4 and 5). The amount of land submitted in the CFS could not substitute for the land at Lodge Hill.

The same issues relate to the option: Land East of Rainham.

The Council have failed to equally examine alternatives to the same degree as Lodge Hill and have put forward wholly unrealistic ones. Medway fails to state how much land is actually available/unavailable for these alternatives. This would require a calculation of capacity for Housing land, Employment land, retail, infrastructure, etc. Medway⁴ now state that even for their alternative options:

...none are supported by indicative layouts or even estimates of capacity. (Position Statement 11th January 2013 Para 6.8)

This clearly demonstrates that Medway recognises that options/alternatives were never equally examined and were unrealistic from the outset.

Apart for Lodge Hill there is no outline of proposed or existing infrastructure for these options. How an equal examination can be carried out is quite surprising. If these were realistic alternatives to Lodge Hill, having an equal chance of being selected, then assessment of transport requirements would have been important. Yet the Council fails to use its Saturn Transport Model, in the SA or anywhere to generate, test and reject alternative options in terms of transport requirements. They state in 2009, their intention was to run it only for Option1 Lodge Hill⁵.

The I&O report was the first time that development locations had been put to the public for consultation and the first time alternatives had been rejected with a preferred option. The public are entitled to understand why only these alternatives were selected and the reasons why others were not. From the above, there was no equal examination on a 'comparable' basis. This is important given the High Court challenge in both *Heard v Broadlands* and *Cogent Land LLP v Rochford DC*. According to Ouseley J para 71:

...it seems to me that, although there is a case for examination of a preferred options in greater detail, the aim of the Directive, which may affect which alternative it is reasonable to select, is more obviously met, and it is best interpreted as requiring, an *equal examination of the alternatives*... even at the outset...

Due to Medway's lack of equal examination of alternatives, at I&O stage which has not been put right in the current SA addendum, it is doubtful

³ Hoo, St. Werburgh, High Halstow and Cliffe Woods.

⁴ Position Statement By Medway Council In Relation To The Proposed Lodge Hill Strategic Allocation And Related Matters 11th January 2013

⁵ Issues and options report (2009) para 4.46

whether the chosen option is the most sustainable or is the best one for Medway. The plan has **not been positively prepared**.

Further guidance is given by Collins J in *Save Historic Newmarket Limited and other v Forest Heath*. He states that:

It was not possible for the consultees to know from it (SEA) what were the reasons for rejecting ‘any alternatives’ to the urban development... The previous reports did not properly give the necessary explanations and reasons ...

No reason have been given to consultees why Medway failed to consider a more dispersed pattern of development shown in the SLAA as sites submitted by land owners. The environmental reports fail to provide any evaluation of what that might have meant in practice even though it was a reasonable and realistic choice. The reports continue with a presupposed position that had been taken at I&O stage. Looking further for guidance on alternatives the High court decision⁶ in *Heard v Broadlands* is critical about the way alternatives were selected.

Crucially, it is not possible to tell from the SA itself or from earlier documents what the Councils’ answer is to the Claimant’s question: were the only alternatives it was thought reasonable to select, ones involving development in the NEG⁷, and if so -in outline- why so, especially in view of the uncertainty over the NDR⁸, and the importance attached to the NDR in achieving the JCS⁹ with development in the NEG. The SA is wrong in saying that all the options in the “Issues and Options” paper were assessed. (Para 63)

Again, Medway do not examine why only reproducing a Lodge Hill elsewhere within Medway is the ‘only’ reasonable alternative. Particularly, when the evidence in the SLAA indicates a more dispersed pattern of development to be more realistic. The SA does not discuss this nor does the I&O report. In the Councils Matters 3 paper at para 8 it states that ‘all reasonable alternative strategic distribution options were tested’. In the SA Addendum Appendix 2 pp A2-21 it again states that:

The SA/SEA Process for the Core Strategy, including the Addendum, has provided an assessment of all reasonable alternatives considered by the plan and provided the reasons for their selection/rejection meeting the requirements of the SEA Directive and Regulations.

⁶ High Court decision *Heard v Broadlands* Neutral Citation Number: [2012] EWHC 344 (Admin) Greater Norwich Development Partnership Core Strategies. **MRJUSTICE OUSELEY:**

⁷ North East Growth Triangle

⁸ Northern Distributor Road

⁹ Joint Core Strategy

Both these documents and statements may be wrong on a number of counts as described in this paper. At paragraph 2.7 of the SA Addendum the Council state:

...that not to proceed with... (Lodge Hill)... was not a realistic or reasonable option... because... (Lodge Hill)... is vital to the economic and social development of Medway...

Yet it fails to consider why a dispersed pattern of development or other options could not provide the same benefits. The argument has not advanced from where at Para 5.16 of the I&O report it is quite unclear why the stated approach was taken. Medway '**assumes**':

The proposed new settlement at Lodge Hill should be substituted with another option; (Para 5.16)

each is of a size that could be a substitute for the proposed new settlement at Lodge Hill, (para 5.18)

There has never been any reasoned justification or assessment of these statements. The RSS states that Lodge Hill was the 'only' recognised Strategic Allocation for Medway. Yet Medway propose additional strategic sites inconsistent with and contrary to the RSS¹⁰. The SA Addendum in identifying alternatives states:

Throughout the plan's production, the LDF Core Strategy was required to be consistent with the Regional Spatial Strategy for the South East of England (the South East Plan). Para 2.2

The SA addendum is wrong. The 'plans production' clearly was not consistent with the RSS. Medway knew this when it prepared its 5 options because it evaluated conformity with the RSS in the Issues and Options report tables at para 5.40. Only Lodge Hill conformed. Where is the logic of proving to the public that Medway's own work was inadequate? Smaller sites in the SLAA of lesser environmental value in combination could provide a similar quantity of development to Lodge Hill. With a dispersed pattern of sustainable local benefits throughout Medway these would dilute the impact on the highways network. This remains to be quantified as the Sustainability Assessment work was/has never been done. In its position statement Medway confirm that such sites already exist and contingencies for Lodge Hill are :

...neither appropriate nor necessary...(para 6.7) Because,

The Core Strategy already contains a substantial buffer beyond the stated housing and employment land targets. (Para 6.8)

It follows that the SA addendum assumption that Lodge Hill alone is vital to the economic and social development of Medway maybe both false and contradictory, because:

¹⁰ POLICY KTG1: CORE STRATEGY South East Plan

Either 1) Lodge Hill is vital and cannot be substituted, or
2) there have always been sites available in the Core Strategy to compensate for Lodge Hill. (*With a different degree/level of sustainability as yet undetermined*)

Both statements can not be correct.

If there are alternatives to compensate for Lodge Hill why weren't these worked up into an alternative strategy and tested?

With the questioning of household projections¹¹, revocation of the RSS and uncertainties of bringing forward Lodge Hill it is unsafe not to generate and equally examine new alternatives. More important is to identify the reasons why this was and has not been done. In a recent High Court judgements¹² Mr Justice Ouseley states:

...and it is also possible that the answer to why no non NEG-T growth scenario was considered is so obvious to a planner that it needs no explanation; it could not have been considered a reasonable alternative. But I did not receive such an explanation either from the Councils, nor does the inspectors' conclusion suffice to answer it. (Para 64)

Therefore, it is important that the Inspector is satisfied why:

- 1) only (unrealistic) substitutes for Lodge Hill were put forward during the I&O stage and,
- 2) other alternatives were not identified during the I&O stage (such as a dispersed pattern of development and given that buffer sites appear to exist) and,
- 3) alternatives were never equally examined, and
- 4) additional alternatives of lesser environmental value have not been identified and equally examined within (or outside) the Medway boundary when the uncertainties with Lodge Hill became evident including the revocation of the RSS. (given that buffer sites appear to exist)

To date there is no reasonable explanation of these matters and a high probability of a major deficiency in identifying alternatives for Medway. This is very relevant when in the High Court¹³ decision Mr Justice Ouseley says:

Without the reasons for the earlier selection decisions, it is less easy to see whether the choice of alternatives involves a major deficiency. (Para 66)

Having examined these matters, the Plan is clearly **not justified**.

¹¹ Inspector letter to Medway Council dated 18th April 2013.

¹² High Court decision Heard v Broadlands Neutral Citation Number: [2012] EWHC 344 (Admin)

Greater Norwich Development Partnership Core Strategies **MRJUSTICE OUSELEY**:

¹³ Ibid

NPPF.

At paragraph 3.43 of the Medway Initial Sustainability Appraisal (July 2009) it states:

The first to be considered is development at Lodge Hill, Chattenden. The others are alternatives if this were not to come forward.

What is mystifying is that the Council have during and after the hearings stated that there are no alternatives to Lodge Hill whether or not it is confirmed as a SSSI and they will not identify any contingencies.

This flies in the face of the NPPF including paragraph 118.

In 2009 Medway clearly recognised the reason for having an alternative Strategy should Lodge Hill not come forward. Yet it failed, at that time, to put forward and equally examine, any realistic alternatives. It now continues to blatantly ignore the NPPF. This suggests Medway is putting pressure on the examination process to force through an unsound core strategy. The Plan is **not Effective**¹⁴

In addition, Paragraph 152 of the NPPF indicates that where adverse impacts on the various dimensions of sustainable development are identified, alternative options, which reduce or eliminate such impacts, should be pursued.

With the removal of the RSS there is no policy conformity requirement for a Strategic Allocation in Medway. Lodge Hill should be removed from the Core Strategy due to its notification as an SSSI. Medway's rationale for the generation of existing alternative options is now unsafe. Other sites should be identified from Medway's SLAA to fill the development gap. Therefore, it is inappropriate to assess the same substitutes for Lodge Hill in the SA Addendum. The NPPF¹⁵ dictates that reasonable alternative options should be identified and tested using proportionate evidence. This has not taken place and the CS is **not consistent with National Policy**.

Para 118 NPPF exceptions and the Duty to Co-operate

The SSSI at Lodge Hill is of National importance. At paragraph 3.12 of Medway's SLAA 2010 the methodology¹⁶ excludes SSSIs from the assessment as a Category 1 site¹⁷. If this exclusion has been relaxed to develop on a SSSIs (because there are no other alternative sites to avoid

¹⁴ NPPF para 182

¹⁵ **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

¹⁶ Strategic Housing Land Availability Assessments **Practice Guidance 2007**

¹⁷ Scheduled Ancient Monuments; Special Protection Areas; RAMSAR Sites; Special Areas of Conservation; Sites of Special Scientific Interest; National Nature Reserves; Areas of Outstanding Natural Beauty; Ancient Woodlands; Historic Parks and Gardens; Major Accident Hazard Areas.

significant harm from this development), then it follows that all other Category 1,2 and 3 areas must have been be equally examined for development potential in Medway's SLAA and ruled out. This is not the case.

Until the SLAA demonstrates Medway has no land of lesser or equal environmental importance better suited for development other than a category 1 area, it has no evidential basis for designating Lodge Hill. The Policy decision to develop at Lodge Hill is not based on robust or up-to-date evidence.

This point is relevant under the duty to co-operate. Development of Lodge Hill is a strategic planning matter. The NPPF principles (para 17), states that land of lesser environmental value is preferred so as to conserve and enhance the natural environment.

Medway have no evidential basis to demonstrate that Lodge Hill SSSI is the best and only land available for development. In fact they say quite the reverse¹⁸. Such extreme circumstances would demonstrate that their housing needs could not be wholly met from within their own area.

The NPPF (para152) suggests that before mitigation and compensation are considered, where ever possible, alternative options (to the SSSI) should be pursued to avoid adverse impacts.

Paragraph 179 of the NPPF **requires** councils to work **diligently** together to address strategic priorities relating to homes and jobs across boundaries and development requirements which cannot be wholly met within their own areas. Therefore, Medway should seek to identify developable land of lesser environmental value with adjoining authorities before developing on an SSSI.

In addition Section 110 of the Localism Act outlines the 'duty to co-operate'. In this regard both the Act and the NPPF places a duty on Medway to discuss such strategic matters with adjoining Councils to see if they have developable land that can accommodate some of Medway's strategic development requirements.

As Medway have failed to engage constructively, actively and on an on-going basis with adjoining LPA when problems arose with Lodge Hill and given the requirements of the Act and NPPF, the Core Strategy also **fails in the Duty to co-operate.**

¹⁸ Medway's Position Statement para 6.6 to 6.8 (11 Jan 2013)

Conclusion.

Under Matters 1 and 3 Medway Councils Core Strategy has ***not*** demonstrated that it is:

- Justified¹⁹
- Positively prepared²⁰.
- Effective²¹
- Consistent with National Policy²²
- Complies with the Duty to Co-operate²³.

To make the CS sound will require significant changes. The removal of Lodge Hill from the Plan, due to its notification as a SSSI but also the failure to equally examine and generate realistic alternatives. Lodge Hill should be replaced with a more sustainable spatial strategy. One that is based on, a sustainable, dispersed pattern of development in the SLAA 2013 site location maps 3, 4, 5, 14, 15,16, 22, and 20.

¹⁹ NPPF para 182

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ NPPF para 178