



Town and Country Planning Act 1990 (as amended)

Medway Core Strategy

Representations by Medway Magna Ltd (45) to Inspector's Matters and Issues for Lodge Hill

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1a Policy Context - Implications for Lodge Hill

- 1.1 It is becoming clear that with the revocation of Regional Spatial Strategies, a more up to date evidence base, where available and verifiable, should be considered as part of Spatial Planning. Where no such evidence base is available or, where relevant, not been subject to examination, then generally, it is necessary to rely on the RSS, in this case, the South East Plan.
- 1.2 Para 19.5 of the Plan is simply a statement of fact, a long standing objective to development of land at Lodge Hill. If factors subsequently render that allocation unsuitable, whether or nor the SE Plan is revoked, then matters will need to be looked at afresh, in the light of up to date evidence that presents itself on the matter.
- 1.3 The biodiversity issues that bear on the suitability of Lodge Hill as a strategic development site, are discussed below.
- 1.4 The other principal issue arising from the revocation of the SE Plan, is the overall dwelling requirement for Medway. The council's position is to maintain this requirement with the objective of achieving 815 dwelling completions to 2028.
- 1.5 The evidence base embodied in the SE Plan that supports this level of provision needs now to be examined in the light of the new 2011 based Interim Household Projections. For the South East, these indicate a 17.25% increase in household formation to 2021, over and above the level in the SE Plan.

1.6 It can be argued that the projections reflect a failed housing market, as they show household formation falling in other regions and as such, need to be treated with caution.

1.7 However, it is clear that the South East remains an area, outside London, where household formation is likely to be strongest. In view of this, the annual rate of growth identified in the Core Strategy needs to be maintained.

1b The NPPF (The Framework)

1.8 Putting the Framework to one side, it has always been best practice not to develop on Sites of Special Scientific Interest, manifestly so. The Framework does not advocate any lesser protection of SSSI's than was embraced in PPS9 (Biodiversity and Geological Conservation) 2005, paragraph 8, that it replaces.

1.9 The proposal to develop at Lodge Hill clearly conflicts with paragraph 118 of the Framework. The question of whether the benefits of development outweigh its impacts has not been properly considered by the council because it has not properly looked at the alternatives to Lodge Hill, nor properly evaluated those alternatives in the Addendum to the Sustainability Appraisal, see below.

1c Conflict between CS6 and CS33

1.10 It is quite clear that Lodge Hill contained considerable biodiversity interest while the Core Strategy was being prepared. Such interest, now evidenced, is not created overnight.

1.11 Policy CS6 rightly seeks to preserve and enhance natural assets and the extent to which such assets would be preserved at Lodge Hill under CS33 has been subject to an investigation to look for compensatory habitat. For reasons set out below, associated with the timing of the provision of functioning alternative habitat, there is now clearly conflict between CS6 and CS33.

2: a, b, i and ii Mitigation/Compensation Measures

- 2.1 Others are more qualified to discuss whether the provision of compensatory habitat, rather than preservation in situ, is the right approach for a site with nature conservation value of national importance.
- 2.2 However, the debate to date has centred on the provision of compensatory habitat with no evidential advocacy from any quarter, on preservation in situ being preferable or more appropriate. Medway Council have known for a number of years of the considerable biodiversity interest at Lodge Hill and should have recognised this to a greater extent than is apparent in the submission draft Core Strategy.
- 2.3 Compensatory habitat is, in reality, the artificial creation of an alternative biodiversity regime, in the hope that the wildlife dispossessed at Lodge Hill will naturally migrate to this alternative. The BTO study suggests that it is “theoretically feasible” to do this “if the right conditions are satisfied”. Issues of amount and the timing of provision are therefore paramount.

i Amount of Compensatory Habitat Required

- 2.4 The British Trust for Ornithology (BTO) provided an estimation of the offset required and identified what sort of habitat criteria was “right” for nightingale preceptor sites. However, even with all the appropriate factors in place, the BTO noted that the establishment and persistence of a large nightingale population “cannot be guaranteed”.

2.5 The Report proposed, cautiously and with caveats on the habitat creation, that between 300 - 400 hectares of habitat creation - of the right sort, of the right quality, of the right size and with the right management and in the right place - would need to be created off-site, to provide adequate compensatory habitat (page 5 - the Report has no paragraph no.s).

2.6 The BTO recommendation is based on expert ornithological opinion of what habitat would be lost to nightingales and how much would need to be created to provide replacement habitat. However, the BTO assessment is different to the offsetting methodology used by Defra, which the Environment Bank Report applies. It must be remembered that Defra metrics is for habitat, not species.

2.7 A technical workshop convened by Medway council, concluded, amongst other things, that:

- there are a range of habitat criteria that can usefully guide habitat creation/restoration schemes but also uncertainties relating to nightingale ecology and nightingale habitat creation;
- offsetting could work in principle for nightingales in Kent - it is technically feasible but it neither straightforward nor guaranteed;
- that, given the development schedule set out in the Core Strategy, some temporary reduction in habitat availability was unavoidable;
- the biodiversity offsetting strategy for nightingales should be inclusive of all semi-natural habitats present at the site.

The BTO Report was welcomed and there was a broad consensus that the area of habitat proposed by the BTO (with all the caveats) seemed about right.

- 2.8 The Report then applied the Defra metrics to the habitat being lost with the result that 450 ha of existing, i.e. suitable habitat would need to be provided and/or 850 ha of new habitat provided. The offset requirement is likely to be circa 600 - 660 ha if a combination of creation and restoration options are used (pages 8 and 9).
- 2.9 The Report then goes on to consider the opportunities for the delivery of offset. On the basis of an initial search, the Report concludes that it appears likely that there will be enough sites in Kent to provide compensatory habitat.
- 2.10 However, the stakeholder workshop noted, and The Environment Bank agrees, that there are a wide range of other criteria, both ecological and non-ecological, that need to be applied when considering specific individual sites as potential habitat creation locations - these include: soil type, previous land use, owner willingness, habitat creation/restoration costs, existing biodiversity etc. These criteria would certainly be better informed by a more detailed analysis of existing case studies habitat management, as was suggested by the technical workshop.
- 2.11 Environment Bank then recommended that if offsetting were to proceed, then the site search be extended to provide additional potential sites and to investigate potential site areas to more completely assess whether an offsetting strategy in Kent would be deliverable. Additional potential sites would be helpful, as applying further criteria may well further limit the suitability of those sites identified thus far. Such further criteria would include agricultural land quality, the best and most versatile needing to be retained.
- 2.12 The Report then goes on to consider temporary loss of habitat during the delivery of offset, because while habitats can be destroyed instantaneously, ecological functional habitat cannot be created overnight. In absolute terms, temporary loss can only be avoided by planning and delivery of offset ahead of any development loss (Report page 10).

2.13 This is the crux of the issues, that have arisen, because the Medway Draft Core Strategy states that compensation strategies should be in place and functioning prior to the commencement of development. Specifically, the Lodge Hill Development Brief states that “new habitat must be ecologically functioning before the area it is replacing is developed”.

ii Time Lag

2.14 The practical aspect of offsetting involves consideration of a large range of variables, however the general consensus arising from the consideration of these issues while the examination has been in abeyance, is that taken in the round, a minimum of at least 10 years is required before suitable replacement habitat can be established, so as to comply with the Core Strategy and Lodge Hill Development Brief replacement requirement policies.

2.15 The issue of Temporal Lag is left for those more qualified to discuss.

2.16 A new freestanding settlement at Lodge Hill is clearly fundamental to Medway’s housing provision (para 2.7 of the Addendum, considers it “vital”). Therefore, in view of the identification of significant biodiversity issues at Lodge Hill, the SA, through the Addendum, needs to properly examine other options, or a combination of options. Having regard to the knowledge now available, such examination should be on the basis of no development at all taking place at Lodge Hill, or a reduced scale of development during the Plan Period, while biodiversity offset is secured and provided. The Addendum fails to do this.

- 2.17 If planning permission were to be granted for development at Lodge Hill, then the two mechanisms for securing biodiversity offset would be by way of a condition precedent (Grampian) or a Section 106 Agreement, or both.
- 2.18 Paragraph 40 of **Circular 11/95 - The Use of Planning Conditions in Planning Permission**, essentially states that Grampian Conditions should only be imposed on a planning permission if there are reasonable prospects of the action in question being performed within the time limit imposed by the permission.
- 2.19 However, this advice may need reconsideration after the Court of Appeal's decision in **Merrit v Secretary of State for Environment, Transport and the Regions**. Here, the Court held that it was not necessary for the action in question to be performed during the time limit of permission. This was because once the time limit on the permission had elapsed, the development could not, in any event, be commenced.
- 2.20 The question of whether or not it would be appropriate to grant planning permission at Lodge Hill, subject to a negative condition/s that required the provision of compensatory biodiversity habitat to be provided and functioning, must be considered in the context of delivery of housing and employment.
- 2.21 It is clear from the Environment Bank Report that the time taken to secure fully functioning habitat, would be 10 years, at a minimum. The commencement of development will impact on nightingale habitat, so any negative condition would need to restrict the commencement of development until the compensatory habitat is not only provided, but fully functioning.
- 2.22 It is not therefore sound to rely on a major development site, where there will be a substantial time lag and uncertainty before development commences. The Core Strategy is clear (para 3.13), that the delivery of 815 dwellings per annum is necessary to meet local needs and achieve regeneration.

- 2.23 The level of development proposed at Lodge Hill will need to be replaced, certainly in the early years of the Plan period, by alternative sites, especially if the housing trajectory, set out in figure 5.1 of the CS is to be achieved. Given the way things stand at present, i.e. the uncertainties surrounding compensatory biodiversity habitat, Lodge Hill might not happen at all during the Plan period.
- 2.24 The time taken to secure alternative habitat also relies on agreeing terms with the landowners, on whose land it is to be provided. Because such compensatory land would need to facilitate development, it follows that an element of development value may well be attributed to it when seeking to secure its provision.
- 2.25 If alternative habitat provision were, as is likely, to be the subject of a Section 106 Agreement, then the schedules to that Agreement would need to be specific on those issues set out in 3.3 page 11 of the Environment Bank Report, which considers the practical aspects of compensatory habitat delivery. These issues are extensive and will take time to resolve.
- 2.26 Medway Magna therefore conclude that the council's assertion in the January Position Statement, that development at Lodge Hill will be delayed only by 12 Months, is simply untenable.

3a: SA Addendum - Does the Addendum provide a robust assessment of alternative options?
i and ii

- 3.1 We understand the Inspector has seen Medway Magna's Representations on the Addendum to the SA, occasioned by biodiversity issues at Lodge Hill.
- 3.2 Lodge Hill is fundamental to the delivery of the Core Strategy. Whether or not the examination of Lodge Hill in the Sustainability Appraisal to date has, in respect of the alternatives, been adequate, is not the issue. The issue now is, having regard to significant biodiversity implications, that have arisen in respect of Lodge Hill, whether it can be justified as the most sustainable option for development, particularly in the context of delivery.
- 3.3 The updated summary of key alternatives considered and for the reasons for selection/rejection, appear in Table 3.2 of the SA Addendum. In respect of Lodge Hill, this states that notwithstanding recently identified significant biodiversity matters, nature conservation impacts are "significantly outweighed by social and economic benefits". These benefits primarily involve the delivery of housing and employment.
- 3.4 By reference to the Environment Bank Report, the Addendum only describes its findings. Those findings, impact on delivery at Lodge Hill, yet the Addendum offers no analysis of this. Not only this, but it fails to discuss and assess the limitations of delivery at Lodge Hill, which would inform an objective assessment of the alternatives in respect of delivery.

- 3.5 The criticism to be levelled at the SA Addendum, is not that it has been cursory or arbitrary in considering delivery, but that it has not considered the matter at all. Crucially, it is not possible to tell from the Addendum, or earlier documents, what the council's answer is to the implications of delayed delivery at Lodge Hill and its response in this context to an assessment of the alternatives under this heading.
- 3.6 Failure to consider delivery, in the light of significant biodiversity issues at Lodge Hill, is, in effect, a failure to give reasons why the alternatives have not been selected for assessment at this stage. This clearly represents a breach of the Directive on its express terms.

3.7 While, for the Defendants, it was put to Ouseley J in **Heard v Broadland DC** that there is no express requirement in the Directive that alternatives be appraised at the same level as the preferred option, the judge concluded:

“Again, it seems to me that, although there is a case for the examination of a preferred option in greater detail, the aim of the directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. I do not see that such an equal appraisal has been accorded to the alternatives referred to in the SA of September 2009. If that is because only one option had been selected, it rather highlights the need for and absence here of reasons for the selection of no alternatives as reasonable. Of course, an SA does not have to have a preferred option; it can emerge as the conclusion of the SEA process in which a number of options are considered, with an outline of the reasons for their selection being provided. But that is not the process adopted here.”

3.8 The Addendum to the SA of the Medway Core Strategy, goes beyond this deficiency, because in terms of delivery, it neither assesses the merits of the preferred option nor the alternatives. Using the words in the Addendum, significant biodiversity impacts have arisen at Lodge Hill, where housing provision is “vital” and where such provision has “social and economic benefits” that outweigh any nature conservation impacts.

3.9 This is a major procedural failing in the Addendum to the SA.

Dispersal Pattern of Development

- 3.21 There clearly are reasonable alternatives that should be evaluated in greater detail, in the light of changed circumstances at Lodge Hill. Medway Magna have previously and still do, argue that sustainable planned urban extensions should be provided south of Medway, where the labour force is largest, where there is a demand for employment sites; and at a location that is more sustainable for housing, rather than the Hoo Peninsula.
- 3.22 Until alternatives are examined, it is not possible to say whether neighbouring authorities should be approached under the duty to cooperate. If alternatives do not, or cannot provide for the 4 - 5,000 dwellings potentially lost at Lodge Hill, then clearly they should. Those authorities would primarily be Maidstone and Swale, given green belt constraints in Gravesham to the west.

4: Very Positive Score at Lodge Hill

- 4.1 Because of fundamental procedural failings with the SA Addendum, the “very positive” score for Lodge Hill cannot be justified. There is no comparative foundation for it.
- 4.2 Medway Magna have consistently argued that not all of the land proposed for development at Lodge Hill can be regarded as previously developed; with some justification, now that all of it has been notified as a SSSI.
- 4.3 It has never been clear how much of the development area at Lodge Hill can be regarded as previously developed. Attempts to clarify this have come to nothing. A considerable proportion of the land has always been open.
- 4.4 It is clear that whether pdl or greenfield, regeneration has taken place, as evidenced by the biodiversity capital the site possesses. This capital is enough for SSSI notification, so the SA “score” must be tempered to reflect this.