



Hearings Wednesday 22 and Thursday 23 May 2013

Question 1 Policy Context

(b) *The National Planning Policy Framework (the Framework).*

- i) *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?*

The allocation of a Site of Special Scientific Interest (SSSI) as a strategic allocation site is incompatible with the policy objectives set out in the NPPF in the following paragraphs:

- 14 – the proposed allocation would not be sustainable development because of its impact on the Chattenden Woods and Lodge Hill Site of Special Scientific Interest (the SSSI);
- 152 – the proposed allocation does not avoid avoidable adverse impacts on an SSSI;
- 118 – the proposed allocation is inconsistent with the principles set out in terms of conserving and enhancing biodiversity, and the benefits of development at this location do not outweigh the impacts on the SSSI and the national network of SSSIs.

(c) *Core Strategy*

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

No matter how the Council tries to manipulate the interpretation of policy CS6, there is an obvious policy conflict between policy CS6, the purpose of which is clearly to protect and enhance biodiversity sites including SSSIs and policy CS33, the clear purpose of which is now to allocate an SSSI for development.

If policy CS6 is to be interpreted in the way the Council says it should be, or if the amendments proposed by CBRE on behalf of Land Securities and MoD were incorporated into Policy CS33, Policy CS6 would not provide protection for wildlife sites in a manner consistent with the NPPF.

In any event the proposals put forward by CBRE for Land Securities and MoD in respect of mitigation at Lodge Hill (Annex 3 of Document MF40) are not consistent with policy CS33.

Question 2 Mitigation and 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?*

The correct approach to adopt in respect of a site of national nature conservation importance, in this case one of the most, if not the most, important single nightingale site in the United Kingdom, is to secure conservation of habitat in situ. That is the fundamental object of the SSSI legislation.

Whilst there is no absolute bar to development in a SSSI, in practice the circumstances must be exceptional to justify harm to the special scientific interest. Such a decision should be approached in line with the NPPF policy, on the basis of avoidance, mitigation and compensation with compensation only as a **last resort**. It has not been demonstrated that:

- a) the socio-economic benefits potentially achievable at Lodge Hill cannot be achieved by adopting other options which would avoid harm to the SSSI; or
- b) that in any event the benefits **at this site** outweigh the harm to the SSSI; or
- c) that even if development was justified in policy terms, adequate mitigation could be achieved. The Council relies almost entirely on compensation, which is the subject of significant uncertainty.

- (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?*

The RSPB accepts that the Core Strategy cannot be expected to provide the same level of certainty and detail that a planning application must. However, we submit that there is far too much uncertainty about the compensation proposals for the plan to be found to be sound in terms of the allocation and deliverability of Lodge Hill.

Specifically there is considerable uncertainty in terms of:

1. the capacity of any compensation habitat to be occupied by and sustainably support a nightingale population;
2. the sustainability of population and breeding success of any nightingale pairs that do remain on the Chattenden Woods and Lodge Hill SSSI during and after development ;
3. the potential to mitigate or compensate for the loss of MG5 grassland;
4. securing an adequate supply of suitable compensation sites in an appropriate geographical location;
5. the timing of the provision of compensation sites and compensation habitat.

In short, whilst theoretically feasible to provide habitat for nightingales, the confidence that can be placed in the compensation proposals falls far short of what might reasonably be expected to ensure the timely delivery of Lodge Hill as a strategic allocation.

The compensation proposals are almost certain to require the loss of some good quality agricultural land. To provide sustainable habitat for nightingales, that loss would be permanent.

(b) i) *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?*

The development at Lodge Hill is bound to have a significant adverse effect on the special scientific interest of the SSSI. As currently proposed, time lag between habitat loss and provision of compensation has the effect of increasing rather than reducing the degree of harm to the SSSI and increasing rather than reducing the risk of failure to successfully compensate for the loss.

CBRE for Land Securities and MoD submitted that harm and risk would be minimised by “frontloading” the compensation as much as possible through phasing of the proposed development. We heard from Medway Council that compensation would be secured by a section 106 agreement, but that future phases of development would not be restricted based on the success or failure of that compensation. The phasing of development therefore does little to ameliorate the harm to the SSSI, or the risk of failure to successfully compensate.

The alternative referred to in the Question is simply not being offered by the Council or CBRE on behalf of Land Securities and MoD. If it were, there would still be harm to the SSSI and also significant impact on the delivery of the Core Strategy, as development at Lodge Hill could not be delivered within the plan period. The RSPB notes that CBRE for Land securities states that a delay of 5-10 years would “*fundamentally undermine the Council’s spatial strategy*” (Document MF40, Paragraph 41). The RSPB considers that nightingale habitat would take approximately 20-30 years to reach peak condition.

(b) *To what extent can the loss of the area of MG5 Grassland be mitigated by changes to the Masterplan and if offsite provision is necessary what are the risks to delivery?*

The RSPB remains of the view that this issue requires thorough consideration. The best that can be said is that there is significant uncertainty surrounding the ability to mitigate or compensate effectively for the loss of MG5 grassland or the time required to do so.

As with nightingales, the correct approach to adopt in respect of a site of national nature conservation importance, is to secure conservation of habitat in situ.

Question 3 SA Addendum

- (a) *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?*

The RSPB has consistently submitted that the SA/SEA Addendum is fundamentally flawed.

It is clear that no adequate assessment of options has been undertaken in light of the changes brought about by the discovery of a nationally significant population of nightingales at this site, or by the SSSI notification.

The Council conceded at the Hearing that it needs to revise the SA/SEA Addendum to consider the effect of the proposed Lodge Hill Strategic Allocation on the loss of agricultural land. The outcome of that revision and its public consultation cannot be pre-empted.

Paragraph 14 of the NPPF does not rule out the prospect of objectively assessed needs being unmet in exceptional circumstances, such as where the NPPF indicates development should be restricted in order to protect SSSIs.

- (a) i) *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.*

The SA/SEA process has not been undertaken with an impartial approach to all options but with a closed mind in order to support the Lodge Hill allocation irrespective of its environmental harm and the merits of other options. It is clearly not a genuine exercise but is a mere justification for the selection of Lodge Hill.

Question 4 Previously Developed Land

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

The RSPB remains of the view that the "very positive" score given to Lodge Hill in respect of previously developed land is not justified.

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

It is clear that there is a significant difference between the parties in terms of the extent of Previously Developed Land (PDL) on the Lodge Hill site. The RSPB and Natural England base their calculations on the Phase 1 Habitat survey carried out in October 2012 and appended to the EBL Report (Document EX76). The RSPB considers this survey to constitute the most up to date assessment of the habitat types present on the site.

- 4(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?*

During the hearings the Council submitted that there has been no proper assessment of whether the Lodge Hill site is of high environmental value. The RSPB considers that the evidence presented by Natural England to justify the notification of an SSSI across a large proportion of the strategic allocation, represents a proper assessment of the extent to which the land is of "high environmental value".

However much of the site is deemed to be PDL, no part of the site that is of high environmental value, including all of that part of the site which is notified as SSSI, should be accorded PDL policy priority.

It was submitted by CBRE for Land Securities and the MoD that paragraph 17 of the NPPF contains a caveat "*where consistent with other policies in this Framework*" (bullet point 7 of paragraph 17). The RSPB contends that the allocation of an SSSI as a strategic allocation site is incompatible with the policy objectives set out in paragraphs 14, 152 and 118. There is therefore no conflict between the core planning principles set out in bullet point 7 and bullet point 8 of paragraph 17. PDL policy priority should not apply, because the site is of high environmental value and the allocation of land of lesser environmental value should be preferred, in this case entirely consistently with other policies in the framework.

Royal Society for the Protection of Birds

May 2013