

1. Policy Context

- The SEP revocation is of no impact. The strategic importance of Lodge Hill ("LH") was recognised prior to the SEP and has been properly incorporated within the emerging Core Strategy ("CS")
- Decommissioning a military site is a long-term process: discussions as to the future of the site took place in the early 1990s, and would have been undertaken in the context of the development potential of the site, and the contribution it could make to the regeneration of the Thames Gateway. Following the inevitably complex and lengthy process of decommissioning and relocating military operations from LH, a Land Sale Delivery Partner was secured in 2008. Relocation of current military uses has subsequently been taking place, with handover scheduled for November 2013. The site still needs to be checked for, and cleared of, ordnance
- The site has formed part of the consistent and longstanding Government policy commitment to regenerate the Thames Gateway, with this commitment being reinforced by it being the only regeneration area/scheme with a dedicated Government Minister as appointed by the coalition Government
- The NPPF is the relevant policy framework for the CS examination
- NPPFpp14 is an overarching policy which makes clear that the NPPF's policies must be read "as a whole"
- NPPFpp152 is expressly relevant to plan-making and is the appropriate starting point for the consideration of the LH allocation
- NPPFpp14 does not give pp118 or SSSIs special status - SSSIs are referred to as an example of areas where meeting objectively assessed needs should potentially be *restricted*, subject to the proper application of all of the relevant NPPF policies
- Pp118 does not prohibit development. LH is a reasonable NPPFpp118 exception, and the relevant policy tests are satisfied
- There is no conflict between CS6 and CS33: CS33 is a bespoke allocation formulated to deliver a specific policy aspiration; CS6 is a generic development control policy to be read in the context of policies such as CS33. Properly applied, CS33 does not weaken CS6

2. 'Reasonable prospects'

- For the CS Examination, there is no requirement for *certainty* as to outcomes and requirements pursuant to an allocation
- PIN's guidance is clear that '*a plan will not be found unsound just because uncertainty exists*'¹

¹ Examining Development Plan Documents: Learning from Experience, PINS, September 2009

- For soundness, there needs *only to be a reasonable prospect* of a plan proposal being delivered within the Plan period – this is the test that the Inspector has set²
- The CS should not focus on the detail of a particular site as this is for the development management process; NPPF (pp153 and pp157) is clear on the level of detail appropriate to a CS and allocations, and on the need for proportionality (pp182)
- It is sufficient to demonstrate that the allocation is *capable* of being delivered, that suitable land for compensatory habitat exists, and that there are *no insurmountable obstacles* to the site coming forward
- This is consistent with the NPPF's requirement for plans to be aspirational but realistic (pp154)

3. Planning judgement

- In plan-making, environmental matters must be weighed alongside both economic and social considerations and not considered in isolation – NPPFpp152
- The Council is *entitled to exercise its proper judgement* in respect of these and other matters of planning policy/consideration subject to acting reasonably/rationally and in accordance with statutory requirements and guidance
- Consideration of benefits/impacts is a judgement, not an empirical exercise

4. Strategic scheme

- Applying pp152:
- LH is a strategic allocation providing, by way of a new settlement (providing the required critical mass and infrastructure), a combination of employment, community and housing benefits. The scheme represents a sustainable regeneration project *fulfilling a particular need* within the borough and region – with an emphasis on economic and social/demographic objectives
- LH is NOT just about providing and meeting Medway's housing needs. Objection submissions focused disproportionately on the housing component of LH. Whilst LH will make an early, sustained and significant contribution to housing supply throughout the Plan period, it also delivers vital economic and social infrastructure
- LH is critical to the realisation of the CS: a focus on higher value economic activities; a new focus for services on the Hoo Peninsula; reduction of deprivation – these broader objectives need to be delivered as early as possible
- *It is not appropriate to consider, as an alternative, the piecemeal delivery of housing by way of smaller, dispersed allocations and windfall opportunities. Such an option could not deliver the strategic longer-term needs*
- Notwithstanding the acknowledged changes in circumstances LH remains the best option for

² Letter Inspector to Council dated 27/7/13

meeting the Council's policy aspirations when compared with the proper alternative options

- In respect of environmental issues:

- (i) There has not been a leap straight to "compensation": the avoid/mitigate/compensate approach has been applied and followed in respect of the ecological impacts in accordance with pp152 and pp118 (with DEFRA "off-setting" used only to help ascertain, alongside the expert opinion of the BTO, likely quantum of compensation land) AND will continue to be applied in respect of the planning application (see Annex 3 of DIO/LS written submission)
- (ii) In particular, potential impact on Nightingales has always been recognised. It is clear that there is not complete reliance on compensation: firstly, key habitat for this species will be retained as far as possible on-site; secondly, measures are proposed to avoid or mitigate the indirect effect of development on this species. Notwithstanding these measures, it is recognised that residual impact is possible and therefore the proposed mitigation package includes replacement Nightingale habitat on land owned by DIO adjacent to the site. There is also certainty that suitable off-site compensation habitat can be created and there is no reason to believe that Nightingales will be any less likely to colonise "created" habitat than natural colonisation; in our view, colonisation is *more* likely because the habitat will be designed and managed specifically to attract this species, applying the respected research on Nightingale habitat
- (iii) The mitigation and compensation approach is acceptable to NE/BTO/the Council and the proposals for Nightingales and MG5 are neither risky nor experimental
- (iv) It is perfectly appropriate to address these matters in a package of S106 obligations and/or conditions

5. Lodge Hill can be delivered now and will make an early and continued contribution to meeting identified needs through the Plan period

- Medway Council can only realise its long-term ambitions through a step-change in perception and economic performance. Through its economic attributes, its scale and the fact that it is a stand-alone development, which enables a new place and identity to be created from the outset, LH can contribute towards the success of Medway to an extent that other smaller sites could not achieve
- Assuming planning permission for LH by Autumn, this enables an infrastructure site start in 2014 and the commencement of delivery of homes in 2015.

6. Proportionality of assessment

- In the context of CS examination, policies and allocations are high-level and strategic, and should be scrutinised in proportion to that role – not subjected to the level of examination/requirement for detail as more appropriate to an AAP or a planning application
- Fixing specific compensation sites or quantum of compensation land is outside the scope of plan-making

- LH is effectively disadvantaged due to the detail submitted under the OPA, being subjected to a level of scrutiny disproportionate to the CS and SA/SEA. The alternative options may well give rise to issues which affect their suitability and sustainability, including the need for additional land for compensation.

7. Availability of potential/suitable compensation land

- Accordingly, in relation to the availability of compensation land, *it is necessary only to show that the likely required mitigation/compensation is reasonably capable of being achieved*
- It is therefore necessary only to demonstrate that there is *suitable* land, of sufficient scale, that is *capable* of and *potentially available* for accommodating the mitigation/compensation measures. This has been demonstrated to the level required for the CS; nothing said at the hearing has challenged this. Representations have sought to cast doubt but absolute certainty is not required at this stage. It is clear from the work to date that the scale of suitable compensation land potentially available at Shoeburyness alone, is *at least* 3 times that which may be lost
- *It is not necessary to demonstrate that such land is already owned by the developer or on the market*

8. Viability

- Similarly, there is no requirement for the Council or the promoters to demonstrate beyond doubt that the allocation is viable. *All that is required is a reasonable likelihood that a development in accordance with the allocation will be viable in the Plan period*
- LS has confirmed that the development would remain viable even if all of the compensatory habitat needed to be met on private sector land

9. Time lag/delivery

- Whilst a degree of time lag between commencement of operational development on site and establishment of the compensation habitat for Nightingales is inevitable, the phasing of development and the proposed masterplan actively seek to mitigate this impact. The provision of compensation habitat will be "front-loaded" and the habitat-creation techniques will be applied so as to achieve optimal conditions at the earliest opportunity
- To minimise time lag, the clearance of habitat at LH will be *phased* but the creation of habitat will begin across *the whole* of the compensation land in Year 1 of the development. Planting will be used to hasten the development of new habitat, especially in the areas designed to compensate for the impacts of the first phase of the development
- Any time lag concerns regarding the provision of compensation habitat for Nightingales must be considered in the context of the on-site/off-site MITIGATION as discussed at Section 4 above
- *It is simply not the case that there will be up to 10 years delay to the commencement of the development*

- *The time lag is expected to be confined only to the first phase of development, substantially reducing and reversing thereafter*
- *Delay for environmental reasons will be at cost to the important economic and social benefits that the development can deliver in the short/medium term*

The mitigation for Nightingales

- We can be certain that nightingale habitat can be created:
 - (i) It is not difficult. It can be planted or, if a site is left unmanaged, it will arise naturally
 - (ii) To be successful, the created habitat needs to be in right location (within nightingale range, below 60 above sea level, not in urban areas), have the right structure (as set out in Wilson *et al* 2005, Ibis). These factors are well researched and straightforward to fulfil
- There is a high likelihood that nightingale will colonise the new habitat:
 - (i) Habitat creation for birds (either directly or as part of a wider habitat creation project) is undertaken relatively frequently and often on a large scale. Examples: London Wetland Centre (42ha); Newport Wetlands (437ha); Needingworth Quarry/Ouse Fen (700ha); the Great Fen Project (3700ha); and Wallasea Island
 - (ii) Such projects have been successful, or are regarded as having every chance of being so, by their proponents. Generally, widespread and relatively numerous species of bird will take up residence when suitable habitat is provided within their natural range and sometimes rarer species will do the same, e.g. bearded tits (amber listed) now breed at Newport Wetlands
 - (iii) That there are no/very few, examples for Nightingale reflects the status of this species, rather than indicating that habitat creation for this species is uniquely difficult – this reflects a paucity of evidence on the species which in turn reflects the fact that it has not been a species of particular focus (see reference to the State of the UK's Birds 2012 under point 12 below)
 - (iv) Nightingales colonised the naturally regenerating scrub at LH from the adjoining woodland. There is no reason to suggest that this could not happen again, elsewhere
- The proposal to compensate should be seen in the following context:
 - (i) There is no guarantee that the Nightingale population will persist at its current level at LH even with active management (funded by Natural England). In order to actively manage it, the site would need to be checked and cleared of ordnance, necessitating the removal of habitat. If left as is, the Nightingale habitat would soon become sub-optimal. Designation as SSSI is not necessarily the most appropriate mechanism for conserving Nightingales

- (ii) LH represents an opportunity to secure funded monitoring and management for both retained and created habitats for the foreseeable future over a larger area
- (iii) Nightingales are opportunistic and known to shift habitat over time. The provision of new compensatory habitat will provide every opportunity for the population to endure

The mitigation for the asserted MG5 grassland

- There is the potential to translocate to adjacent land owned by DIO, and/or to the buffer within LH and/or as an adjunct to the compensatory habitat
- The current condition of grassland is atypical and unfavourable, which improves the acceptability of translocation
- Mitigation (translocation) and compensation (habitat creation) for negative effects on the grassland is feasible and can be successful:
 - (i) Translocation of grasslands has been carried out – see LS/DIO written statement
 - (ii) Creation of grassland has been carried out before and there is an extensive body of literature, including two recent synopses; the most recent, Dicks et al (in press)³ reviewed 71 papers, whilst Walker et al (2004)⁴ reviewed 46 papers
 - (iii) The general lessons learned from "translocation" is that it can be successful but that some change in species abundance or sward composition can be expected
 - (iv) The general lessons learned from "creation" is that created habitats can be indistinguishable in terms of their floristic composition from ancient grasslands, provided soil fertility is managed
 - (v) One study indicates that there is little difference between restored, translocated and ancient grasslands in the abundance/diversity of pollinating insects (Forup and Memmott, 2005)⁵, although differences in species composition can be expected (Forup and Memmott, 2005 and Mortimer et al 2002⁶)
 - (vi) Different flora and invertebrates does not mean less valuable. Some change is desirable, given the current unfavourable condition of the grassland at LH, and would be expected to be achieved through positive management
- LS has identified potential locations to receive the translocated grassland and ascertained that they have similar soils and soil chemistry to the existing grassland

³ Dicks, L. V., Danhardt, J., James, K., Jönsson, A., Randall, N., Showler, D. A., Smith, R. K., Turpie, S., Williams, D. & Sutherland, W. J. (in press) Restore/create species-rich, semi-natural grassland. Conservation Evidence.com.

⁴ Walker K.J., Stevens P.A., Stevens D.P., Mountford J.O., Manchester S.J. & Pywell R.F. (2004) The restoration and re-creation of species-rich lowland grassland on land formerly managed for intensive agriculture in the UK. *Biological Conservation*, 119, 1-18

⁵ Forup M.L. & Memmott J. (2005) The restoration of plant-pollinator interactions in hay meadows. *Restoration Ecology*, 13, 265-274.

⁶ Mortimer, S.R., Booth, R.G., Harris, S.J., Brown, V.K., 2002a. Effects of initial site management on the Coleoptera assemblages colonising newly established chalk grassland on ex-arable land. *Biological Conservation* 104, 301–313.

10. The Council has taken into consideration the impacts of compensatory habitat on land

- The process has demonstrated the general availability of suitable sites, not limited to those identified to date
- The only likely significant impact of the LH compensation land is the loss of agricultural land to scrub for Nightingales. The "MG5" grassland will not be lost to agriculture as it will be subject to managed grazing/mowing. The alternative options all give rise to significant built development on greenfield, agricultural land. *These impacts cannot be considered as being similar*
- We endorse advice from NE in respect of off-site compensation that *'it appears likely that substantial lower quality agricultural land can be found with the 'high' potential sites'*; this is consistent with assessments to date. NE has also advised that, ultimately, the LH compensation effects are reversible

11. The site is predominantly PDL

- The site has been in military use for over 100 years. Although operations have reduced in the last c.6 months, it is still operational (within the LH Training Area (due to end November 2013))
- In respect of the purported MG5 land, this area has been used until recently for ordnance training (search/disposal). Accordingly the ground has been disturbed regularly since WW1
- The site will need to be checked and cleared of any remaining ordnance
- Accordingly the site cannot reasonably be described as having blended into the landscape – such an assessment is a matter of judgement for the plan-maker/decision-taker
- Relative to the alternative options, and notwithstanding any judgement as to "blending", LH delivers significantly more PDL, and should, in any event, score more highly than those alternatives

12. There would be no detrimental impact on the network of SSSIs

- The primary purpose of SSSIs should be to protect *irreplaceable* features. With the exception of the Ancient Woodland (which is irreplaceable and would be retained and protected), the features for which LH has been notified as a SSSI *are replaceable*. Any general principle of strict protection is not appropriate. This does not set a precedent for SSSIs and features which are irreplaceable
- The purpose of conservation law and policy is maintaining habitats, species populations and ecological functionality. These can properly be maintained through mitigation/compensation. SSSI designation is a tool, and not an end in itself
- A network of SSSIs is not necessarily the best approach for Nightingale conservation – the recent 'population boom' of Nightingales on temporarily suitable/non-SSSI/previously developed/industrialised land at LH is a good example of this. Indeed, we believe that a better approach by NE (and RSPB) to conserve Nightingales would be to establish a national

strategy and targeted (components of) schemes. There should be a greater body of evidence on compensation/mitigation for the species. The State of the UK's Birds report (2012) identifies the Nightingale as a common and widespread species, and one of 126 species of moderate concern

- Much of the Chattenden Woods and Lodge Hill SSSI will in any case be retained and there are several other SSSIs in the locality/region with Nightingales as a feature or component of the woodland bird assemblage which will be retained