

MATTER 1: LEGAL PROCESS AND REQUIREMENTS**c) Has the CS been prepared in compliance with the Statement of Community Involvement?**

1.1 The Brett Group made two submissions, which are grouped together as submission 08. In relation to this question, the Brett Group seeks to rely on the following sections of the submissions by Richard Ford (RF) and David Jarvis Associates (DJA):

- CS22 of RF
- para 2.6 on page 4 of DJA
- para 4.72 on page 6 of DJA
- para 3.5 of page 18 of DJA
- Appendix 1 of DJA

1.2 The Brett Group objects to the lack of consultation regarding the evidence base and in particular, regarding the content of the Landscape Character Assessment (LCA). The LCA is incorporated into the Core Strategy (CS) as de facto policy via policy CS7. It is considered that the preparation of this document did not include sufficient stakeholder consultation and is not in accordance with the Statement of Community Involvement (SCI).

1.3 Although Medway Council is not legally obliged to consult on the evidence base or the Landscape Character Assessment (LCA), it is considered that consultation on evidence base documents is in accordance with best practice set out in:

- Planning Advisory Service (2008). Local Development Frameworks: Evidence Base;
- Countryside Agency (2002). Guidance on Landscape Character Assessment;
- Paragraph 4.37 of Planning Policy Statement 12;
- Paragraph 155 of the National Planning Policy Framework.

In addition, the chart on page 11 and paragraph 5.3 of the Medway Statement of Community Involvement indicate that stakeholder and public consultation should take place at the evidence gathering stage of the local development framework process.

1.4 Paragraphs 3.41 to 3.46 of Local Development Frameworks: Evidence Base by the Planning Advisory Service address the matter of consultation on evidence. This indicates that although there is no requirement to consult, local authorities should involve relevant groups including landowners and businesses. The aim of consultation at the information gathering stage of the process is to identify specific information that would be of use.

1.5 As set out in Appendix 1 of the report to Cabinet dated 30th November 2010¹ regarding the LCA, the council consulted a mere 34 groups, including one landowner, on the LCA. The consultation consisted of a series of presentations to key stakeholders in the months of August and September 2009 and a seven week consultation period. The report notes that stakeholders were highly supportive of the document, but it should be borne in mind that the stakeholders were selected by the council and the document was not the subject of a broad consultation.

¹ Report to Cabinet 30th December 2010 on Medway LCA - <http://democracy.medway.gov.uk/mgConvert2PDF.aspx?id=6398>

- 1.6 Despite the small consultation group, section 5 of Appendix 2 of the Cabinet report notes that the main stakeholders included the wider community. In addition, section 7 notes that a wider consultation was not required on a 'technical document' and that the document would be available for further consultation as part of the Pre-publication Draft Core Strategy consultation. The document was adopted by the council on the 30th November 2010 and the Pre-publication Draft Core Strategy Consultation closed on the 10th December 2010.
- 1.7 In addition, the LCA was not specifically identified as part of the Pre-publication Draft Core Strategy Consultation, was not referred to in emails, advertisements or publicity relating to the consultation² and was not included as a supporting document on the Medway Council Consultation Portal³. The report was apparently included as one of many evidence base documents, but the evidence base was not specifically mentioned in the publicity relating to the consultation or included amongst the supporting documents. It also appears that the evidence base documents were not made available at local libraries and the council offices along with the Pre-Publication Draft Core Strategy. The document could not, therefore, be regarded as being part of a consultation, if it was not publicised as such or specifically included as part of a consultation.
- 1.8 As per Appendix 1 of the Brett Group submission on the Publication Draft Core Strategy, the council has indicated that it was unable to consult more widely due to a lack of resources and time and that such consultation was considered unnecessary in any event. The council conducted a relatively resource and time intensive consultation for a small group of selected stakeholders. This group included one major landowner. It is considered that it would not require significant additional resources or time, to extend such a consultation to other major landowners or to invite landowners, i.e. such as Brett, to the presentations.
- 1.9 Paragraph 7.4 of Guidance on Landscape Character Assessment by Countryside Agency states that when making judgements on landscape character, it is important to involve stakeholders, as well as professionals. The key issue raised by this paragraph is that it is important to consider who is making the judgement and to consider whether land managers, residents and other users of the land have a contribution to make. The document also states that there is "scope for a wide range of stakeholders to contribute to characterisation, each contributing their own judgements about variations in character"⁴. In addition, paragraph 1.31 of Topic Paper 3: Landscape Character Assessment - How

² Public Consultation Report for Pre Publication Draft Core Strategy November – December 2010 - <http://www.medway.gov.uk/pdf/PPDCS%20Public%20Consultation%20Report%20Nov-Dec%202010%20Iss%204.pdf>

³ Medway Consultation Portal Pre Publication Draft Core Strategy Consultation - http://medway-consult.limehouse.co.uk/portal/pre-publication_draft_core_strategy?tab=info
Medway Consultation Portal Pre Publication Draft Core Strategy Consultation Supporting Documents - http://medway-consult.limehouse.co.uk/portal/pre-publication_draft_core_strategy?tab=files

⁴ Paragraph 2.13, The Countryside Agency, Scottish Natural Heritage (2002). *Landscape Character Assessment: Guidance for England and Scotland*.

- stakeholders can help⁵, by the same author, notes that it is important to involve stakeholders as they have the most to lose or gain by the decisions reached. In addition, a case study in Box 1.7 notes that consultation on Landscape Character Assessments need not be expensive.
- 1.10 Although Planning Policy Statement 12 (PPS12) had been superseded by the National Planning Policy Framework, it was in place at the time of the adoption of the LCA. For this reason, and in the absence of more detailed guidance, it is considered appropriate to refer to PPS12. Paragraph 4.37 of PPS12 indicates that the evidence base should contain two elements; one of these is participation.
- 1.11 Paragraph 155 of the National Planning Policy Framework indicates that early and meaningful consultation and collaboration with neighbourhoods, organisations and businesses is essential and advocates proactive engagement. The LCA, which forms a key part of the evidence base and is incorporated into the Core Strategy as de facto policy by policy CS7, was not adequately consulted on.
- 1.12 The chart on page 11 of Statement of Community Involvement clearly indicates that evidence gathering is part of the consultation process and that stakeholders and the public would be consulted. In addition, paragraph 5.3 states, in relation to the pre-production and survey stage, that there are benefits to involving the community at this stage.
- 1.13 Although the council regards the LCA as a technical document, LCAs involve an element of subjective judgement. As outlined by the Countryside Agency guidance, landowners and other stakeholders can make a valuable contribution to this subjective judgement.

Conclusion

- 1.14 **Although the council was not legally obliged to consult on the evidence base, it is best practice, and national policy at the time of the adoption of the document and the Statement of Community Involvement indicate that it is preferable to do so. The failure to do so represents a failure to comply with the spirit and intent of the Statement of Community Involvement.**

e) Is the CS in compliance with the Regional Spatial Strategy (RSS)?

- 1.15 The Brett Group made two submissions, which are grouped together as submission 08. In relation to this question, the Brett Group seeks to rely on the following sections of the submissions by Richard Ford (RF) and David Jarvis Associates (DJA):
- para 7.16 of RF
 - para 3.22 on page 4 of DJA
 - para 3.23 on page 4 of DJA
 - para 7.17 on page 12 of DJA
 - para 3.2 of page 18 of DJA

⁵ The Countryside Agency, Scottish Natural Heritage (2002) Topic Paper 3: Landscape Character Assessment - How stakeholders can help - http://www.naturalengland.org.uk/Images/lcatopicpaper3_tcm6-8173.pdf

- 1.16 The Core Strategy (CS) does not comply with the Regional Spatial Strategy (RSS), in relation to:
- the need for a higher proportion of marine won aggregates to ensure a steady supply of minerals;
 - the safeguarding of mineral wharves and rail depots;
 - the promotion of intermodal freight; and
 - landscape management.
- 1.17 The RSS notes that marine dredged minerals are an increasingly important source of supply (paragraph 10.62, policy M3). Cliffe Works is an extremely sustainable operation that lands and processes marine dredged minerals and exports the processed material from the site by rail and boat. The site also includes a concrete batching plant and a block manufacturing plant. As outlined in paragraph 4.248 of the Core Strategy Issues and Options Report, Medway has a significant regional role in the importation of aggregate minerals. Half of the minerals imported into the region are landed at the three wharves in Medway, including Cliffe Works.
- 1.18 The main objection by the Brett Group to the Core Strategy is that the Landscape Character Assessment (LCA), which is specifically incorporated into policy CS7, indicates that expansion of industrial development, including the legitimate and authorised operations at Cliffe Works, should be resisted at Cliffe Pits and Pools. This negative approach to development at Cliffe Works does not reflect the approach to minerals development in the RSS.
- 1.19 Paragraph 10.63 of the RSS notes that mineral production is becoming focussed on a few large sites, which increases the distance to the market and that regional policy is to safeguard mineral wharf sites (policy M5). The Core Strategy also proposes to safeguard mineral wharves and associated facilities. It is submitted, however, that this is not adequate in the context of an increased need for marine minerals and a reduced number of mineral production/processing sites.
- 1.20 It is also important to ensure that such sites can develop and change, if necessary, to meet increased demand. As outlined in detail below, the Landscape Character Assessment underemphasises the role of Cliffe Works in the landscape and recommends that expansion is resisted.
- 1.21 Paragraph 10.63 states that regional policy also seeks to encourage a modal shift in mineral transportation by increasing the volume of minerals transported by sea and rail. Cliffe Works is served by both a wharf and a rail head. The RSS indicates that in order to achieve this capacity, constraints will need to be overcome and existing and new sites will need to be safeguarded. In addition, policy T12 seeks the safeguarding of wharves and the development of intermodal facilities for freight. Although the Core Strategy safeguards existing wharves and associated facilities, this commitment is undermined in the case of Cliffe by the LCA. It is submitted that the LCA and the Core Strategy do not support the intention of the RSS, to encourage a modal shift in minerals transportation and to overcome constraints, by limiting future capacity at Cliffe Works.
- 1.22 In relation to landscape management, paragraph 10.65 of the RSS notes processing or extraction should only be permitted in exceptional circumstances in Areas of Outstanding

Natural Beauty or in nationally or internationally designated nature conservation sites. The text goes on to note, however, that in order to maintain mineral reserves, development on such sites may be required. Although Cliffe Works adjoins and some of Brett Group landholding includes designated nature conservation sites, Cliffe Works is not designated as a Site of Special Scientific Interest (SSSI), a Ramsar site or a Special Protection Area. There are no AONBs in the vicinity. As noted in paragraphs 4.18, 4.54 and 4.87 of the Habitat Regulations Assessment (Appropriate Assessment) Report, development proposals in relation to specific sites should be the subject of detailed assessments.

- 1.23 It should be noted that potential developments at Cliffe Works have not been the subject of an appropriate assessment and there is no evidence to suggest that the expansion, development or intensification of the use of the site would result in significant adverse impacts on adjoining designated nature conservation sites. Given that the site is not located in an AONB, the relevant policy is policy CR4 of the RSS.
- 1.24 Policy C4 of the RSS indicates that planning authorities should manage the open countryside, should aim to protect and enhance the landscape as informed by a landscape character assessment and should seek mitigation where damage to the landscape cannot be avoided. In the case of Cliffe Works, the LCA does not provide an adequate evidence base for the assessment of development at Cliffe Works (see Appendix 1 of the Brett Group submission to the Publication Draft Core Strategy). The LCA underplays the role of industry in the landscape and seeks to constrain development. By recommending that the expansion of industry is resisted, the LCA prejudices development at Cliffe Works without the benefit of an objective assessment of the impact of any such development and without considering the possibility of mitigatory measures. This is particularly significant, given that the LCA is proposed as de facto policy via policy CS7 of the Core Strategy. It is submitted, therefore, that the LCA does not provide an adequate basis for the implementation of policy C4 of the RSS and the positive management of the open countryside.

Conclusion

- 1.25 **Therefore, that the CS and the LCA is not in accordance with the RSS particularly in relation to the safeguarding or wharves and landscape management.**