



RSPB Statement – Medway Core Strategy Examination

Participant ID: 65

Matters and Issues for Hearings Thursday 14 June 2012

Matter 5: Lodge Hill Strategic Allocation

This submission answers questions (a) to (d). The main submission addresses (a) and (d) together, and extends to consideration of wider concerns about impacts on other nearby Sites of Special Scientific Interest. It then briefly considers the implications for questions (b) and (c).

Questions (a) and (d)

- (a) Will the proposed development at Lodge Hill¹ contribute to sustainable development having regard to ii) Impact on Chattenden Woods SSSI*
- (d) Relationship to development brief*

The RSPB's representations in respect of Policy CS33 of the Core Strategy (**CS**) Publication Draft are set out in our letter of 12 October 2011 and can be summarised as:

- Concern that the impacts of the policy on the SSSI and European sites has not been fully assessed, or appropriate mitigation or compensation measures incorporated in the plan;
- Concern that the policy will lead to the direct loss of nightingale habitat;
- Concern that the policy will lead to indirect effects of recreational disturbance on nightingale.

Our understanding (and that of other organisations, including the Council) of the ecological effects of the Lodge Hill Strategic Allocation (**LHSA**) has evolved since the Publication Draft, due to detailed consideration of an Outline Planning Application (**OPA**) seeking to deliver the LHSA. The OPA has shed considerable light on the likely layout of such a scheme, as well as the practicality and effectiveness of potential mitigation and compensation measures that might come forward. While the RSPB recognises the OPA itself is not directly relevant to the CS examination, it has produced practical insights that inform our understanding of whether the LHSA will contribute to sustainable development.

The RSPB's submission concentrates on the effects on various protected areas for birds and populations of birds affected by the LHSA. The LHSA is also important for other biodiversity, in particular reptiles and invertebrates, for which we defer to the Kent Wildlife Trust.

National policy context

Since the CS was submitted for examination the Government has replaced PPS9 (*Biodiversity and Geological Conservation*) with the National Planning Policy Framework (**NPPF**). Our comments reflect this recent change.

¹ In the rest of this submission we refer to the development site as the Lodge Hill Strategic Allocation (**LHSA**) and the Lodge hill development brief (**LHDB**)

The NPPF seeks to conserve and enhance the natural environment by “minimising impacts on biodiversity and providing net gains in biodiversity where possible” (paragraph 109, NPPF).

In preparing plans to meet development needs, the NPPF requires that “Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this framework” (paragraph 110). It goes on to say that “Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), *provided that it is not of high environmental value.*” (emphasis added) (paragraph 111 NPPF). The potential harm arising from the LHSA does not reflect these requirements.

A key test of the CS’s deliverability is the determination of planning applications for the LHSA. Paragraph 118 of the NPPF requires local planning authorities to “aim to conserve and enhance biodiversity” by applying a set of principles, the most relevant of which we summarise below:

- Refuse planning permission where significant harm cannot be avoided, mitigated or, as a last resort, compensated for;
- Refuse development likely to have an adverse effect on a SSSI, only making exceptions where the development’s benefits clearly outweigh impacts on the site’s features and any broader impacts on the national SSSI network;
- Refuse development resulting in the loss or deterioration of irreplaceable habitats, unless the need for, and benefits of, the development in that location clearly outweigh the loss.

Nature Conservation Importance of Lodge Hill

The LHSA (Fig 10.11, page 125 CS Submission Draft) lies adjacent to and includes part of Chattenden Woods SSSI (**the SSSI**), notified for its woodland breeding bird assemblage, including an important population of breeding nightingales.

Nightingales are summer migrants, arriving in late April and leaving in August. They frequent areas of dense undergrowth and nest on, or close to, the ground. Based on the last national nightingale survey (**NNS**) in 1999, their breeding distribution is confined to southern England with 70% of the population in Kent, Surrey, Sussex, Essex and Suffolk (Wilson et al, 2002). Numbers have declined by more than 90% over the last 40 years, and by 60% in Britain during 1995-2009 with a reduction in coppice management of woodlands and the loss of scrub habitat to development identified as contributory causes (Holt et al 2012). Currently amber listed in Birds of Conservation Concern (Eaton et al 2009), but if these declines are confirmed by the NNS 2012, the species will qualify for red listing.

Nightingales breed throughout the SSSI and the LHSA site. The NNS 1999 located 4,565 singing males in the UK, Kent being the most important county with 27% of the UK population. The Chattenden Woods-Upnor area was found to be an area of national importance, with 46 territories (Henderson, 2000).

The current number of nightingales across the SSSI and LHSA site is unclear, as no complete nightingale survey has been undertaken with full access to the LHSA site. The OPA for the LHSA site puts the population at 50 territories (roughly evenly split between the SSSI and LHSA) (see Map 1, Appendix 8). Given the survey did not have full access to the LHSA site, this is likely to be an underestimate. A full survey during spring 2012 as part of the NNS should establish the true population.

Unofficial figures for the 2012 NNS indicate that the number of nightingales on the Hoo Peninsula (10km square TQ77), including the Chattenden Woods area, is increasing against a county level

decline since 1999 (Appendix 1). If practicable, we hope to provide the Inspector with additional information in due course.

The RSPB has raised the national importance of the SSSI and LHSA site for breeding nightingales with Natural England (NE) in the context of its ongoing SSSI Rapid Review (see Appendix 2). The RSPB argue that the area easily meets the 1% GB population threshold for qualifying as an SSSI for nightingale and that there is a prima facie case for the nightingale population of the area to be considered in its own right for inclusion in the NE SSSI Rapid Review. In its reply, NE committed to examine the case for extension and re-notification of the SSSI once the NNS 2012 results are available (see Appendix 3). A decision to re-notify the SSSI and relevant parts of the LHSA site to reflect its national importance for breeding nightingales would have significant implications for the sustainability of the LHSA.

Impacts on nature conservation value of Chattenden Woods SSSI and the LHSA

Development of the LHSA as proposed would have two effects on habitat used by breeding nightingales within the LHSA boundary:

- Indirect effects arising from urban development on nightingales within any buffer zone (see below for fuller consideration of buffer zones); and
- Direct and permanent loss of breeding nightingale habitat within the LHSA but outside any buffer zone.

The indirect effects of urban developments on the flora and fauna of nearby protected sites include impacts from increased visits by people and/or domestic pets. The cumulative effects most relevant in this case are shown in Appendix 4.

It is expected urban effects would, to a greater or lesser extent, without mitigation, affect the adjoining SSSI together with the nearby Northward Hill SSSI and Tower Hill to Cockham Woods SSSIs (both of which also have breeding nightingales). The main expected indirect effects would be from a reduction in overall nightingale habitat, disturbance from people and pets, predation by cats, and vandalism and rubbish dumping and fires on the SSSIs and within the buffer, trampling, and increases in the path network in the SSSI. These effects could impact on the number and distribution of nightingales settling in spring (e.g. fewer breeding birds) and subsequent breeding success, through increased disturbance to birds' nest building, foraging and feeding young, and an increase in the number and activity of both natural and introduced (e.g. cats and dogs) predators.

Mitigation

In considering what steps might be proposed to mitigate for effects of development of the LHSA site on breeding nightingales in the SSSI and on the nature conservation interest of other nearby designated sites, consideration has been given to mitigations included in the OPA. The main mitigation measures include a 200m buffer zone (also in paragraph 4.77 LHDB) a cat proof fence, thorny scrub and wet ditches, together with open space within the development. A compensation area is proposed nearby.

Buffer zones

Buffer zones are a way of increasing the distance between potentially harmful activities and sensitive species and habitats. They are based on the premise that most people and their pets only go a short distance for recreational purposes and therefore a proportion will not reach the sensitive features. Buffers would need to be very wide to be totally effective and their effectiveness will generally be a function of their width.

Studies show that people travel more than 200m to local facilities (Handley et al 2003), and cats will travel considerably further (1000m or more) (Underhill-Day 2005). The RSPB is not aware of any scientific research or precedents for a 200m buffer to protect ground nesting birds. In other areas NE and the RSPB have proposed, and strongly supported, a 400m buffer, whilst accepting that this is only partially effective against cats.

A distance of 400m dividing residential development and ground nesting birds has been widely accepted by other conservation bodies, and Local Authorities. See Appendix 5 for agreements on a 400m buffer to protect ground nesting birds against urban effects by 13 and 5 Local Authorities respectively in the Thames Basin Heaths and Dorset.

A number of Local Authorities have included these provisions in core plans and these have been found 'sound' by Planning Inspectors e.g Bracknell core plan which states "Within this zone a significant adverse effect can only be avoided or mitigated in exceptional circumstances, therefore there will be a general presumption against new residential development within 400 metres of the SPA boundary". There are a number of other Core Plans with similar provisions – a list of these is included in Appendix 6. The 400m buffer has also been upheld by Ministerial and Inspector's decisions in a number of planning appeals, for example a mixed use development at Crowthorne, Berkshire opposed by both the RSPB and Natural England (Ref No APP/R0335/A/08/2076543) and, for example, several cases in Dorset (see Appendix 7).

On the LHSA, a 400m buffer around the SSSI (see Map 2, Appendix 8) will capture a proportion of those who might otherwise visit the SSSI but many others will still travel to the SSSI or other conservation sites. Surveys have shown that, on average, visitors on foot to other local woodland sites in north Kent walk between 0.57-0.78km and visitors to the coast 0.8km to reach their destination (Fearnley & Liley 2011a, 2011b). A 400m buffer as shown on Map 2 will therefore capture less than half of the visitors expected to visit the SSSI and a 200m buffer an even smaller proportion.

Existing information on nightingale numbers and distribution within the LHSA site shows the proposed buffer contains a number of nightingale territories. The habitat supporting nightingales in the buffer will either need to be removed and compensatory areas provided, or those parts of the buffer that have, or might, contain breeding nightingales will need to be additionally buffered to reduce the urban effects for which the buffer is needed against the SSSI (see Map 3, Appendix 8).

Cat proof fences

Another typical mitigation measure proposed by developers (including in the OPA) is the use of cat proof fences to reduce impacts on ground nesting birds from cat predation given the limited effectiveness of buffers in this respect. The RSPB is not aware of any evidence for effective cat proof fences between residential development and recreational areas. Where fences have been erected they have been cut, climbed over or otherwise breached by people. There is a strong incentive to breach a fence separating residential and recreational areas. We do not believe that promises of regular maintenance will be effective over the life of a development.

In a recent appeal (Ref APP/Q1255/V/10/2138124) at which the effectiveness of a fence to prevent access by people and pets was examined, the Secretary of State dismissed the appeal and stated that he "shares the concerns of NE and the RSPB regarding the more general efficacy of a linear fence ... In particular, he agrees that cats would still be able to enter Talbot Heath round the end ... and that there would be potential for deliberate breaching of the fence in view of the direct route to key destinations ...".

A wet ditch (proposed as part of the OPA) could become ineffective from drying out or by crossing points e.g. wooden planks placed there by children. Planted thorny scrub (proposed as part of the OPA) could attract breeding birds which would then be at risk of predation by cats and disturbance, vandalism and fire setting by humans, and would provide a visual screen for vandals and anyone cutting the fence.

Although some residents will use open spaces within a development, the large and attractive SSSI woods will provide an experience which cannot be replicated within the LHSA site.

Summary

Overall, it is the RSPB's view that possible mitigation measures available (and indeed suggested by the OPA) would be ineffective in avoiding adverse impacts on the breeding nightingales in the SSSI and associated 400m buffer, and would do nothing to reduce the direct and indirect effects on those nightingales in the LHSA site outside any buffer.

Compensation

Given the national importance of the SSSI and LHSA area for breeding nightingales, the RSPB's preference is for *in situ* conservation. In accordance with paragraph 118 of the NPPF, it is necessary to consider whether compensatory measures could be provided should it be decided that significant harm resulting from a development cannot be avoided or adequately mitigated.

In cases where habitat compensation is to be provided, it should adhere to well-established principles:

- **Targeted** at completely compensating for the damage caused by the development (so-called "like for like" or "within type")
- **Effective** in both ecological and legal terms so that it supports the ecological functions of the species affected over the long-term, is adequately protected, financially secure and subject to regular monitoring and review
- **Well-located** through compensation measures realised as close as practicable to the location where the damage will be caused (but not vulnerable to the same pressures – see Effective)
- **Well-timed** so that the compensation measures are fully functional before the damage is caused.
- **Sufficient** in extent to meet the ecological needs of the affected species and habitats. The area ratio of habitat compensation provided to habitat lost increases in line with risks associated with effectiveness, location and timing.

The RSPB is not aware of any evidence that guarantees the effectiveness of intentional establishment of fully functioning habitat capable of supporting breeding nightingales. Even if such establishment was possible, it is likely to be at least 10 years, if not longer, before any habitat would be capable of supporting breeding nightingales. The compensation area proposed as part of the OPA will be within 400m of proposed and existing residential development and subject to the same pressures as the SSSI will be from the new development.

Overall, the RSPB is not persuaded it is possible to guarantee the success of habitat compensation for breeding nightingales at this point in time. Nightingale habitat should, at this stage, be considered irreplaceable in the context of paragraph 118 of the NPPF. Therefore, it should be assumed that there would, over time, be a permanent reduction in the local and national nightingale population, as a consequence of the direct and indirect effects of any development at the LHSA.

Conclusion

The LHSA and SSSI area supports a nationally important population of breeding nightingales: the national importance of this location has emerged during the preparation of the core strategy against a backdrop of a species in national decline.

The RSPB is extremely concerned that development of the LHSA will result in a permanent reduction in the population of nightingales, both at a local and national level due to habitat deterioration, disturbance by people and pets giving rise to failure to establish territories, lower breeding densities, delays in breeding, higher failure rates and lower productivities, as well as permanent habitat loss.

For the reasons given in this submission, the RSPB:

- Does not believe it is possible successfully to mitigate the urbanisation effects on the nightingale populations within the SSSI and LHSA;
- Does not believe it possible to guarantee habitat compensation for nightingales will succeed.

We currently see three main scenarios with an increasingly severe effect on the area of developable land at Lodge Hill:

- Buffer the SSSI alone (Map 2, Appendix 8)
- Buffer the SSSI and nightingales within that buffer (Map 3, Appendix 8)
- Buffer all nightingales territories (Map 4, Appendix 8).

If the 2012 nightingale survey confirms the SSSI and adjoining LHSA site hold in excess of 1% of the British population of breeding nightingales, the case for re-notifying the SSSI and relevant parts of the LHSA site to reflect the importance for breeding nightingales in their own right becomes strong. While we cannot prejudge NE's decision ahead of the results of the NNS 2012, any decision by Natural England to extend and re-notify the SSSI and relevant parts of the LHSA site to reflect its national importance for breeding nightingales would clearly have significant implications for the sustainability of the LHSA.

Given the uncertainties associated with possible mitigation and compensation measures, the national importance of the LHSA and SSSI for breeding nightingale and the species national decline, the RSPB's preference is for conservation of the nightingale population *in situ* to secure the future of this important stronghold for the species. We therefore recommend deletion of LHSA as it is not compatible with nightingale conservation at a national and local level. This is in line with paragraph 118 of the NPPF which recommends planning permission should be refused if significant harm to biodiversity cannot be adequately mitigated or compensated for and the habitat is irreplaceable.

Questions (b) and (c)

- (b) Is there a realistic prospect that the goal of a free-standing settlement can be achieved, particularly bearing in mind uncertainties relating to employment provision?*
- (c) Is the timetable for development realistic and achievable, particularly the necessary infrastructure provision and its impact on viability?*

No, given the RSPB's conclusions on questions (a) and (d) set out above.

Appendices

- 1 Posting by Andrew Henderson (organiser for the NNS 1999 and NNS 2012 in Kent) on the Kent Ornithological Society Forum, regarding interim results from NNS 2012
- 2 RSPB letter to Natural England (sent 13 January 2012) in respect of the Lodge Hill area and Natural England's SSSI Rapid Review
- 3 Reply from Natural England to RSPB (dated 10 February 2012) in respect of the Lodge Hill area and Natural England's SSSI Rapid Review
- 4 A summary of urban effects from residential development on the wildlife of adjacent and nearby designated sites
- 5 Copies of the Thames Basin Heaths Delivery Framework and the Dorset Heaths Interim Planning Framework
- 6 Development plans which contain buffer policies protecting nature conservation interests
- 7 List of planning appeal decisions within 400m of heathlands in Dorset from 2004 to 2010 (supplied by Natural England for the Talbot Heath Public Inquiry (APP/Q1255/V/10/2138124))
- 8 Maps 1-4

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