

Medway Core Strategy Examination 2012

Matter 5: Lodge Hill Strategic Allocation

**WRITTEN STATEMENT BY MEDWAY COUNCIL
IN RESPONSE TO THE LETTER FROM
NATURAL ENGLAND DATED 9 JULY 2012**



1. Introduction

- 1.1 This statement sets out Medway Council's interim response to the email request from the Programme Officer dated 10th July 2012. That requires any comments on a letter from Natural England dated 9th July to be submitted by 24th July.
- 1.2 It is stressed that this is an interim response and the reason for this is that substantial research and other work is required to provide a full evidence based response. In the two weeks available to it the Council has done a huge amount of work, but some of the collected material is still in draft and information expected from Natural England was not forthcoming, necessitating the employment of independent consultants.
- 1.3 It is also important to note that the Council did not have sight of the material submitted by RSPB until the evening of 13th June and there was no discussion on it at the hearing. That material was anyway labelled as "provisional" and it was only some days later that the British Trust for Ornithology (BTO) was able to confirm the results. Given its potential significance it is critical that it can be fully assessed.
- 1.4 In its letter of 9th July Natural England (NE) presented a marked change of position compared to that consistently expressed since 1995 and reiterated in its letter to the Examination as recently as 8th June.
- 1.5 That change was apparently triggered solely by the evidence submitted (after the due deadline) by the Royal Society for the Protection of Birds (RSPB) at the Lodge Hill hearing on 14th June and which NE did not attend.
- 1.6 Given the way in which the information has come forward and the fact that no party, other than NE, have been provided with an opportunity to comment on it up until this point, the Council finds it necessary to respond in some detail but also reserving the right to submit further substantive evidence in due course.

2. Broad Background to Nightingales in the UK

- 2.1 In order to determine the characteristics, vulnerability and population trends for the species, to begin to establish the relative importance of Lodge Hill for nightingales, the Council has commissioned the Ecology Consultancy to undertake an independent assessment. At the time of writing that is well underway but not surprisingly, incomplete.
- 2.2 However what can be said at this stage is that:
 - Globally and at a European scale the nightingale is an abundant species that is classified as being of "least concern" in terms of vulnerability

- From its wintering grounds in tropical Africa it spreads across vast tracts of Europe to breed. As a result it has a huge range covering at least 21 European countries with populations running into the millions
- The UK marks the northern limits of this range with few breeding pairs found beyond a line from the Severn to the Humber. The strongest locations are in Sussex and Suffolk, followed by Kent
- Probably as a result of the UK being at the extreme end of the range the population fluctuates significantly and the area occupied has contracted, with near extinction in the Midlands but increased populations in the southeast
- It is a notoriously difficult species to count and as a result the robustness of historical data and true long term trends are hard to assess. However it appears that the national population increased between 1980 and 1999 but may have declined since then. A national species specific count was undertaken in 1999 and repeated in 2012
- In the UK nightingales are classified as an “Amber” species (on the basis of a green, amber, red traffic light system) but this has not changed since at least 1981
- Reasons for any decline are not certain but are likely to include more intensive woodland grazing by increasing deer populations and changes to woodland management and coppicing practices in particular.

2.3 As indicated, a definitive assessment is nearly complete but what is already clear is that this is by no means a species in trouble and so its local significance needs to be considered accordingly.

3. Nightingales and Lodge Hill

3.1 The Ecology Consultancy is also assessing this aspect but pending completion of its work there are important points to bear in mind.

3.2 Nightingales have been noted at Lodge Hill since the 1980’s and recorded total numbers have increased steadily since then. However it is not possible to get anything other than a very generalised picture of their distribution in and around the site before 2009 as surveys prior to that date only recorded grid squares as opposed to specific locations. Moreover, with much of the area being a secure military installation, significant undercounting was likely.

3.3 This notwithstanding, the species specific national count in 1999 indicated that Lodge Hill (including the Chattenden Woods SSSI) was occupied by around 1% of the national population – one of the possible triggers for notifying a special interest. The domestic status of the species then, as now, was ‘amber’ but it was apparently not regarded as significant enough to consider a SSSI review.

- 3.4 Full and reliable data only began to become available in 2009 when Thompson Ecology carried out a survey for DIO/Land Securities. In 2010 a local member of the Kent Ornithological Society also undertook a survey. This confirmed the pattern of distribution found by Thompson Ecology but also slightly increased numbers. The 2012 BTO survey was undertaken as part of a species specific national survey but for the first time with a BTO nightingale survey, was able to record individual territories. Not surprisingly it shows a similar distribution to 2009 and 2010 surveys but, again, slightly increased numbers.
- 3.5 All of this is clearly illustrated on the plan at the end of this statement.
- 3.6 It is also important to appreciate the context for the 2012 survey:
- As indicated, earlier surveys would have been hampered by the closed nature of the site, leading to a high probability of under-recording in 1980 and 1999 compared to 2012
 - In 2012 full access was facilitated by Defence Infrastructure Organisation/Land Securities
 - Compared to the earlier survey years, and even 2009 and 2010, military activity had greatly reduced in 2012 and heavy engineering training had ceased completely – to facilitate the proposed redevelopment of the site. It is likely that this created the least disturbed conditions for nightingales at Lodge Hill for over 150 years.
- 3.7 Given these factors, all those involved were well aware that there was a high probability that the 2012 survey would yield the results that it has.
- 3.8 All of the 2009 and 2010 information was available to NE as part of its engagement on the outline planning application for Lodge Hill and the ES for that application was prepared and submitted on the basis that Lodge Hill is the location for over 1% of the UK nightingale population. All that, in turn, informed NE's response on the Core Strategy up until 9th July and the 2012 count does not change the factual basis upon which NE submitted its earlier comments and observations.
- 3.9 On the other hand there are two serious implications resulting from the way the 2012 data has been introduced and used.
- 3.10 The first is that only the Lodge Hill data has been made available and it is understood that the national results, against which Lodge Hill needs to be assessed, will not be released until Spring 2013. Thus it is impossible to reliably determine whether Lodge Hill still accounts for 1% or more of the UK population – as alleged by RSPB and apparently assumed by NE.
- 3.11 The second issue is that, again because the national information is missing, it is impossible to determine Lodge Hill's significance against other 'hotspot' locations – of which there are a number, both in Kent

and beyond. Given this lack of knowledge Lodge Hill *might* be significant but equally it may have lesser importance than a number of other locations. Until the full 2012 results are released it is simply impossible to tell.

4. Natural England's Engagement with Plans that Refer to Lodge Hill

- 4.1 At this point it is also necessary to stress just how long NE has had knowledge of the proposals for a new settlement at Lodge Hill and the number of opportunities it has had to reconsider its position.
- 4.2 As explained in various evidence documents to the Examination, the possibility of a new settlement was first identified in the Thames Gateway Planning Framework in 1995. A Government task force prepared this and it is assumed by the Council that NE's predecessor, English Nature, was consulted at the time.
- 4.3 Thereafter the principle of development and associated sustainability appraisals has been reassessed and refined, with NE being formally consulted at all stages. The specific plans involved are as follows:
- Kent Structure Plan 1996
 - Medway Local Plan 2003
 - Kent & Medway Structure Plan 2006
 - An initial Medway Core Strategy withdrawn in 2007
 - The South East Plan 2009
 - Current Core Strategy: SA scoping, Issues & Options, Pre-Publication Draft, Publication Draft, Submission Draft
 - Lodge Hill Development Brief 2011.
- 4.4 It will be noted that all bar the 1996 structure plan came forward after it was known from the 1999 survey that Lodge Hill accounted for 1% or more of the UK nightingale population.

5. Natural England's (and RSPB's) Involvement in the Lodge Hill Outline Planning Application

- 5.1 Consideration of the outline planning application is obviously a separate matter from the Core Strategy and the application is not before the Inspector. However what is relevant is the fact that Natural England (and indeed RSPB) have been actively involved with it, not just since it was submitted in November 2011 but in pre-application discussions since 2008. It must follow that this involvement has also informed their response to the Core Strategy.
- 5.2 It is known that, in response to pre application discussions NE referred the case to its "National High Level Casework Panel" that met in December 2010. The conclusion in relation to nightingales was that as there were no proposals to indicate how the nightingale population was to be maintained NE would "*expect a package of habitat retention and creation proposals to be put forward to address this issue.*"

- 5.3 In January 2012 RSPB wrote to NE requesting a rapid review of the Chattenden Woods SSSI. NE replied in February and stated *“Given the limitations of current survey data and timescale over which this will be resolved, it will not be reasonably practicable for NE to re-notify an SSSI in a way that would constructively influence what is a live planning application”*.
- 5.4 Also in February NE set out guidance for Land Securities’ consultants on areas within the Chattenden Woods SSSI where it may be possible to reinstate woodland to the benefit of breeding birds.
- 5.5 At a meeting on 20th February, attended by NE, RSPB stressed the importance of the 2012 BTO survey and asked for cooperation for the surveyors and that no scrub would be cleared.
- 5.6 John Day for RSPB said that *“the timing and functionality of the compensatory habitat coming forward is the key to this application”* and added *“the RSPB are not saying that it is not possible to mitigate for nightingale just that there are serious concerns about the timings of the development and the availability of compensatory habitat”*...
- “Ideally Land Securities could find a site in North Kent which already supports nightingale and was extremely unlikely to be developed and locate the compensatory habitat as a bolt on to this site.”*
- 5.7 As recently as 2nd April RSPB, in a letter to Thomson Ecology, said: *“The extent and quality of compensatory habitat required should be calculated on the basis of direct loss of nightingale habitat within the development footprint, as well as an element to compensate for the indirect impacts on nightingale habitat within the zone of influence of the development that cannot be mitigated by other means”*.
- 5.8 Of course this only touches on the detailed and prolonged discussions that have taken place but it does demonstrate that:
- NE and RSPB have consistently expressed a view that the proposed development could appropriately be mitigated/compensated
 - That NE had rejected a request for a rapid review of the Chattenden Woods SSSI as recently as February 2012.
- 6. Evidential Basis for Intention to Notify the Special Interest**
- 6.1 NE’s letter helpfully summarises its duty to notify a scientific interest (paragraphs 3–7). It stresses that it must be determined on the science and in relation to Lodge Hill the scientific factor cited is the assumption that the site supports 1% or more of the GB population. The Council has no issue with the principles that underlie this approach but is deeply concerned over the way that the principles and approach are apparently being applied in this case.

- 6.2 Pending completion of the work by the Ecology Consultancy there are four specific reasons for this.
- 6.3 The first is the fact that the site was known to support 1% of the GB population as long ago as 1999. As a matter of fact it is not known what proportion it currently supports but even if it is higher than 1% the applicable threshold was crossed 13 years ago. There is no reason to justify a change of approach.
- 6.4 The second concerns the fact that, at present, no one knows what the recorded site population in 2012 represents as a percentage of the GB population. The only proper way that can be determined is by comparison with the national results but these are not available and are unlikely to be available until Spring 2013.
- 6.5 In various discussions between NE officials and Council officers it has been suggested that other empirical data suggests a significant decline in the GB nightingale population since 1999 (with the implication that Lodge Hill must therefore have become more important) but none of this has been tabled as evidence to the Council or the Examination and it simply cannot have the same weight as the species specific 2012 survey results.
- 6.6 The third concerns the fact that, in the absence of the full 2012 survey results, it is impossible to determine Lodge Hill's importance relative to other nightingale 'hotspots'. As such it is also impossible to say whether Lodge Hill is nationally significant or not.
- 6.7 The fourth relates to the fact that notification is being considered for a breeding bird species that is internationally categorised as being of "least concern" and domestically as "amber." The Council has been unable to identify a similar case where notification occurred.

7. The Core Strategy and Natural England's Letter

- 7.1 Until NE's letter was received it had been positive about the Core Strategy and, along with RSPB and Kent Wildlife Trust (KWT) was particularly supportive of Policy CS6: Preservation and Enhancement of Natural Assets. Indeed there has been some suggestion that this represents a model policy.
- 7.2 Otherwise Policy CS33: Lodge Hill contains a number of safeguards relating to nature conservation. These include:
- Mitigation for any detrimental impact on protected species within the site and nearby
 - Taking account of the proximity of the Chattenden Woods SSSI and applying a buffer around it
 - The retention of trees, hedgerows and other features within the site

- Measures to protect and enhance biodiversity within the locality, including connectivity.
- 7.3 NE requested a meeting with Medway Council prior to the release of their letter to warn of its changed stance. This took place on 3rd July. At that meeting the Council specifically asked NE to consider whether, in the light of its new position, it considered changes could or should be made to Policies CS6 and CS33. In the event no response has been received.
- 7.4 NE's letter contains a section entitled "*potential to mitigate impacts*" and its conclusions also refer to this. It therefore clearly sees this as still providing a potential way forward and it must follow that it regards policies CS6 and CS33 as providing the right policy basis for that option.

8. Process for and Progress with a Mitigation/Compensation Strategy

- 8.1 As will be apparent from the section above that refers to the outline planning application, considerable investigation and negotiation concerning a mitigation/compensation package has already occurred. Not only has NE been party to that process throughout but also RSPB and KWT.
- 8.2 In some respects good progress has been made but recently a specific issue has been a failure by NE to identify the parameters or criteria to be applied when developing and assessing a mitigation/compensation strategy. This is necessary so that quantum and type(s) of replacement habitat can be established.
- 8.3 In order to progress matters two steps have been taken as follows:
- The Council commissioned Environment Bank Limited (EBL) to carry out an independent assessment of the potential for Biodiversity Offsetting to compensate for nightingale habitat loss at Lodge Hill. This reflects the very latest Defra best practice and the associated report is being submitted alongside this response
 - Land Securities commissioned Greening the Gateway Kent and Medway (GGKM), with the encouragement of the Council, to undertake a "without prejudice" assessment of the availability of replacement habitat, both across the Hoo Peninsula and further afield. This has resulted in two papers that have been taken into account in the EBL assessment.
- 8.4 What this work demonstrates is that, on any likely scale, a robust mitigation/compensation strategy is entirely feasible for Lodge Hill and has excellent prospects of being delivered – the appropriate test for the Core Strategy. Indeed to have this level of detail available at

examination stage is unusual and it consequently affords greater confidence.

9. Conclusions

- 9.1 The Council greatly values its relations with all statutory consultees to the plan making process, including Natural England. In the case of Natural England the relationship also extends well beyond plan making to embrace landscape scale projects, new structures to engender joint working and much more.
- 9.2 Throughout the many stages involved in first preparing and then examining the Medway Core Strategy there was regular and wholly positive engagement. In parallel there has also been a (very welcome) higher than normal involvement in Lodge Hill, first through an extensive pre-application process and latterly in response to the outline planning application.
- 9.3 Against this wholly positive background NE's letter has come as a complete surprise to the Council. As such it has been necessary for the Council to fully analyse the reasoning set out in the letter and assess it against the available evidence.
- 9.4 In summary the evidence is that:
- Nightingales are far from being an endangered species. Their range within Great Britain has contracted but numbers have increased in the southeast. Reliable population and trend data is hard to come by but considerable fluctuations occur. The causes of domestic decline are becoming clearer and are reversible with sensitive habitat management
 - Nightingale data is far more comprehensive for Lodge Hill than is usual and has been collected at a much finer grain than for other locations. There are detailed surveys available for 2009, 2010 and 2012. While these show increasing numbers that trend was fully expected. In particular the 2012 results are well within the expected range
 - Reliable figures are not yet available to determine the relative importance of Lodge Hill in a national context. Nor is there any knowledge of other nightingale hotspots
 - 1999 survey results show Lodge Hill as having around 1% of the GB population. Since then its development has featured in five plans and one development brief and NE has commented on them all, without raising fundamental concerns
 - NE has been involved in the process associated with the current outline planning application since 2008, and has participated in numerous negotiations over the impact on the nightingale population. Those negotiations were informed by reference to the NE High Level Casework Panel in 2010. As recently as February of

this year it declined a request from RSPB for a rapid review of the Chattenden Woods SSSI – as now apparently contemplated

- The evidential basis for the intention to notify is fundamentally flawed. It relies solely on incomplete data that cannot be judged in a national context. It also suggests an inconsistent approach in relation to other species with much smaller UK populations
- No suggested amendments have been put forward for the Core Strategy, despite a specific invitation to do so and NE have failed to identify or set out the criteria that would allow mitigation/compensation measures to be assessed, despite apparently supporting the principle of such an approach. Given this the Council has commissioned its own independent assessment and this demonstrates that the strategic allocation is deliverable when judged against the NPPF and the most recent Defra guidance on offsetting.

9.5 The NE letter¹ contemplates that compensatory measures may be required if the development at Lodge Hill proceeds. The current policies in the Core Strategy make provision to ensure that such measures will be put in place. The appropriate time at which to consider such measures is the time at which any planning application is determined. Accordingly, the Council considers that NE's letter does not provide evidence to support or justify any change to the policies set out in the Core Strategy and the examination should be concluded in the normal way.

9.6 In the event that the inspector concludes that NE's letter causes any element of the Core Strategy to be unsound, or would necessitate any change to the Core Strategy, the Council contends that the following procedure should be followed:

9.6.1 NE should be allowed two weeks to provide details of the criteria to be adopted when considering whether the compensatory measures they contemplate in their letter of 9th July 2012 are sufficient and adequate, such criteria should include details of geographical extent (i.e. area), and a description of the appropriate habitat.

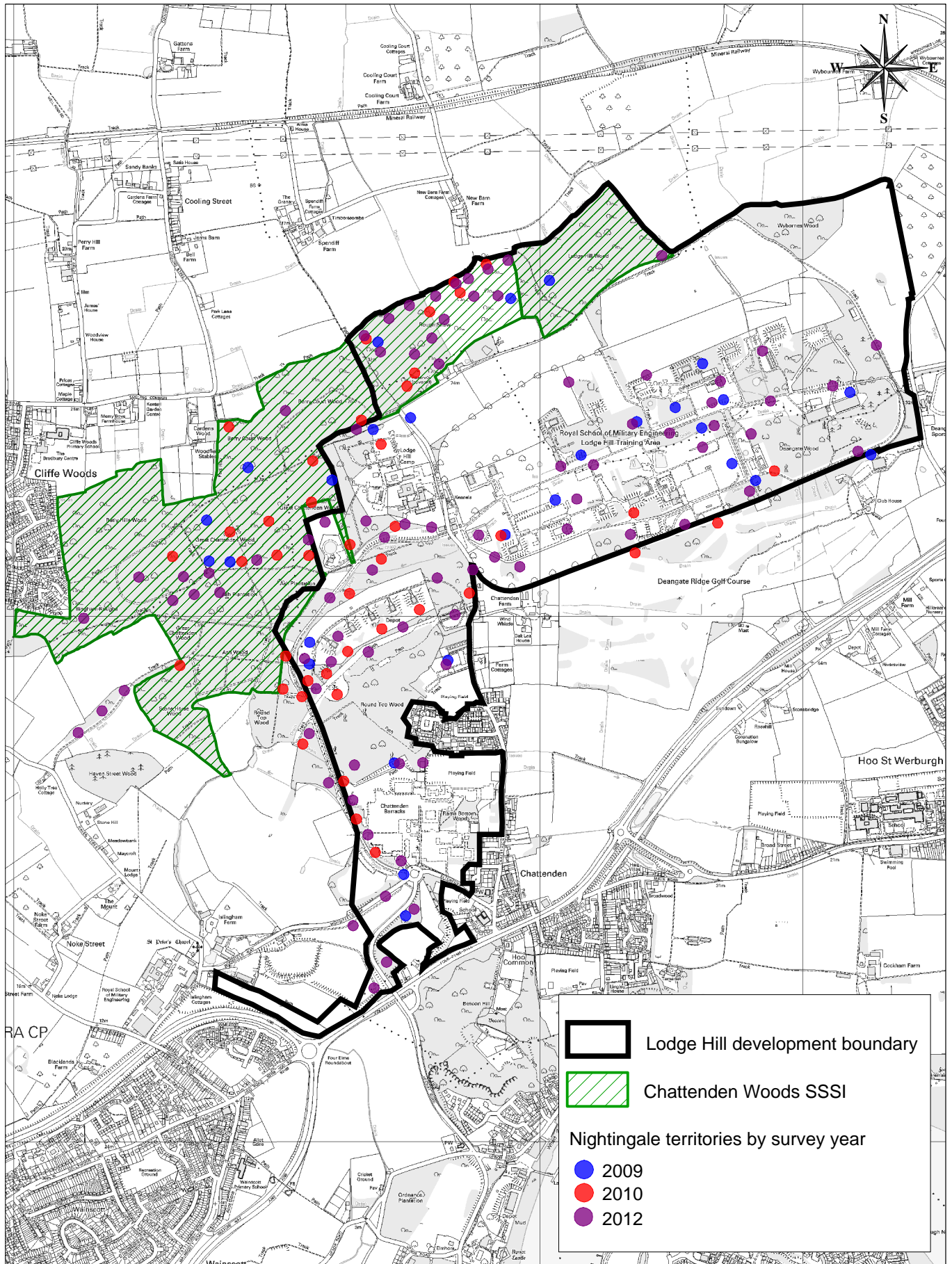
9.6.2 The Council and other parties (including Land Securities) should be given four weeks to respond following receipt of the NE criteria. The response should allow the Council to demonstrate that adequate land is available to provide compensatory habitat if it is required.

9.6.3 NE should be given two weeks to respond to the information submitted by the Council and other parties, and to indicate whether they agree that adequate and appropriate land would be available to provide compensatory habitat.

¹ See, in particular, paragraphs 8 and 15 of NE's letter dated 9th July 2012

9.6.4 In the event of a dispute between NE and the Council as to whether compensatory measures can, if necessary be provided, the areas of dispute should be identified and a hearing session be arranged to resolve that dispute.

9.7 In the absence of such a procedure (or a procedure in similar form), the Council and other parties would suffer considerable unfairness as a result of NE's late submission and change of position, and would be deprived of a fair hearing.



Lodge Hill: Nightingale territories by survey year