

Mrs. A. Rock
Programme Officer
Medway Core Strategy Inquiry
Medway Council
Gun Wharf
Dock Road
Chatham
Kent.
ME4 4TR

20th July 2012.

Dear Mrs Rock,

Response to letter from Natural England re. Lodge Hill.

I am writing in response to the letter submitted to the Inquiry from Natural England dated 9th July. As you are aware, I act on behalf of clients, McCulloch Homes and Rochester Bridgewood : indeed, I gave evidence on behalf of both of them in relation to housing and employment issues at the recent Inquiry into the Core Strategy. Furthermore, the situation at Lodge Hill was referred to in my written submissions and was considered at the Inquiry under Matters 2, 3, 4 and 5. It is on this basis that I am now writing to you regarding the implications of the letter from Natural England.

At the Inquiry, submissions were made by environmental organisations who were very much against the principle of development at Lodge Hill. Other developers and landowners, two of which I represented, questioned the timing and rate of delivery of dwellings and other land uses. In essence, we believed that, if development did go ahead, it would begin much later and proceed more slowly than forecast by the Borough Council and Land Securities and accordingly Lodge Hill would not be able to make the contribution to the Council's housing land supply which the Core Strategy anticipated. It was therefore against this background that the Inspector sought the formal views of Natural England.

The letter from Natural England is clear in its advice. It makes it clear that Natural England agrees with the evidence presented to the Examination by the RSPB that Lodge Hill is of critical importance for a local population of nightingales that exceeds the threshold criteria for "national importance". Consequently, Natural England are under a statutory duty to consider extension of the adjoining Chattendon Woods SSSI (for which nightingales are a special interest feature) to encompass much or all of the development area. I also note that Natural England will be looking at other interest features of the development site that may be compatible with and complement the existing SSSI designation. Consequently, it is possible that nightingales may ultimately prove to be only one of a number of special interest features for which the development site at Lodge Hill is designated.



It is understood that the Council and Land Securities are exploring the potential for compensatory habitat creation on other sites in the Hoo Peninsula, as a means to reduce or offset impacts on the nightingale population at Lodge Hill. We note also that Natural England make the comment that “if a well-designed habitat creation scheme was put in place on a sufficiently ambitious scale, then it should be capable at least of substantially reducing the residual impact on the nightingale population.”

My clients have sought advice from expert ecologists Bioscan UK Limited on the practicalities of identifying, securing and implementing an appropriately “ambitious” compensatory habitat creation scheme for that part of the nightingale population at Lodge Hill which would be displaced by development. Their advice is that there are three principal reasons why such a strategy could not be relied upon to ensure delivery of the Lodge Hill proposals within the life of the Core Strategy (15 years). These are as follow:

1) Habitat Creation Timescales. Bioscan’s advice is that successful compensatory habitat will take at least ten years to develop on sites where it is not already present. Where existing nightingale habitat is present, it may already be carrying capacity for the species (in which case its value in compensation would be compromised), or the reasons why the species is absent would need to be determined. The exact timescale for new habitat creation will depend on factors such as soil fertility and ground conditions. Land currently under arable cultivation may be the easiest to secure for the purpose, but creation of suitable habitat here may be more problematic because high soil fertility is likely to foster development of scrub with a more layered structure and “grassier” field layer. There will be much more limited availability of post-industrial land of a type more typically associated with the sort of scrub that supports high densities of nightingale. Such land may have other problems such as existing development value or contamination, even if it can be secured by Land Securities. For all these reasons, suitable compensation habitat may not be able to be delivered within the fifteen year life of the Core Strategy at all, and even at the optimistic end of the scale, compensation provision is unlikely to be proven to be effective until towards the very end of its life. If, as would appear likely, development at Lodge Hill were only permitted subject to conditions to minimise effects on the nightingale population, until such time as the compensation provision has been proven to work, very few of the allocated units might actually be able to be delivered within the life of the Core Strategy. The logistical and phasing implications of such a scenario would also be significant in terms of implementation costs.

2) Achievability. Bioscan agree with the position advanced by the RSPB that whilst on face value, the dense scrub habitat requirements of nightingale should be easy to replicate with suitable lead-in time, there remains a lack of proven examples of successful habitat creation for this species, and many sites that would appear suitable for the bird do not actually support it. This significantly reduces the certainty that can be attached to any compensation package, both in terms of delivery timescales and overall success. We have not had the chance to review Land Securities’ “potential habitat creation sites on the Hoo Peninsula” referred to in Natural England’s letter, but we make the point that sites referred to by Natural England as having “considerable potential” may already support the species and their suitability may be compromised as a result. Of course to achieve the requisite

certainty of delivery, any suitable sites would also need to be within the control of Land Securities before they could be considered as a realistic prospect.

3) Increased policy and legal protection. Natural England correctly state that they are under a duty to notify as a SSSI any land which is of special interest. The special interest of the site is beyond doubt given the 1% of national population threshold is clearly exceeded – indeed the Lodge Hill site is now probably more important for nightingales than the adjoining SSSI. It is therefore difficult to envisage any scenario other than notification and subsequent confirmation of the SSSI extension. If the SSSI is duly notified by the end of September, a whole raft of stringent policy and legislative protection for the site will come into play that will significantly increase the uncertainty of delivery (and costs associated with securing delivery) at Lodge Hill. Once the site becomes a SSSI, opposition to its development is not only likely to increase, but the case for opposing its development will be much strengthened. There is no mechanism by which Natural England can “caveat” a SSSI designation to provide certainty in terms of a site’s future development potential, regardless of the existence or otherwise of a compensation package. Future SSSI status will, arguably, carry an equal or greater weight in any subsequent planning determination than the existence of an allocation in the Core Strategy. The only realistic scenario is a substantial denudation of the number of units that are capable of being delivered on the site and a significantly reduced rate of delivery.

In the light of the above advice, it is therefore the conclusion of my Clients that no reliance whatsoever can be placed upon any development taking place at Lodge Hill. This leaves the Inspector with no choice other than to conclude that too much uncertainty surrounds the allocation of Lodge Hill as a development site. The Council accepted at the hearing that the Core Strategy was reliant on Lodge Hill and by implication if nothing more would be unsound without it. Accordingly the Inspector is respectfully invited to find the Core Strategy unsound. Any other conclusion would, in all probability, result in a series of legal challenges to the adoption of the Plan.

Yours sincerely,



Peter Court
Director.

cc. McCulloch Homes.
Rochester Bridgewood.
Kingsley Smith Solicitors.