

Date: 9 July 2012



Ms Alison Rock  
Programme Officer  
Medway Council  
Gun Wharf, Dock Road  
Chatham  
Kent  
ME4 3TR

International House  
Dover Place  
Ashford  
Kent  
TN23 1HU

**By email only, no hard copy to follow**

Dear Ms Rock

**Lodge Hill Strategic Allocation in the Medway Core Strategy**

Thank you for your letter of 14th June to Nigel Jennings. This letter sets out Natural England's position on the proposed Lodge Hill development allocation.

Our advice on this development allocation was most recently set out in the letter dated 8th June. In the light of the information from the national nightingale survey 2012, submitted to the Examination by RSPB, Natural England has considered it necessary to review its advice on this site.

**New information**

1. The survey data shows that the area broadly occupied by the proposed development site and the Site of Special Scientific Interest (SSSI) together, now holds 84 pairs of nightingale. This data has been fully validated. The latest nationally adopted estimate of the UK population is 6700 pairs, though this was estimated from a national survey in 1999 and there is strong information that the British population of nightingale has declined since then. Therefore it is likely that the area of the development allocation and the existing SSSI together hold well over 1% of the UK population.

2. The new survey information also confirms that nightingales are distributed across most of the proposed development area (as indicated by the outline planning application). About 60% of site population appears to be within or right on the edge of the proposed development area.

**Duty to notify special interest**

3. Natural England has a statutory duty under section 28 of the Wildlife and Countryside Act 1981 (as amended) to notify as an SSSI any land which is in its opinion of special interest by reason of its flora, fauna, physiographical or geological features.

4. In defining the duty to notify, the Act does not allow for considerations other than whether a site is of special interest. This question must be determined on the science. Matters such as the level of threat of damage, or the economic interests, cannot dictate whether the site should, or should not be notified, though they may influence the timing in which a case is progressed.

5. Natural England's opinion of special scientific interest is a matter of expert judgement, informed by the Guidelines for Selection of Biological SSSIs (NCC, 1989). These, amongst other guidelines, set out that any site supporting 1% or more of the GB population (breeding or non-breeding) of a bird species is eligible for selection.

6. Mindful of the duty to notify, Natural England has decided that it will consider notification of the proposed development area as an extension to Chattenden Woods SSSI. This requires a package of information to be drawn up to encompass not just nightingale but also the range of special

interests of the existing SSSI, which includes the breeding bird assemblage, and woodland and grassland vegetation. We will aim to make a decision on notification by the end of September and will confirm the date as soon as we are able.

7. If the site is notified, the special interest would from this point receive the protection afforded by the Wildlife and Countryside Act. This would then be subject to formal confirmation, which may be no more than nine months after notification. Before the site is confirmed, interested parties have an opportunity to make formal representations.

### **Potential to mitigate impacts**

8. Given the high proportion of nightingale within the proposed development area and their distribution, it appears unlikely now that the direct impact of habitat loss within the development land take could be mitigated substantially by adjustment of the scale, design or layout of development. If development was to go ahead, reduction of the impact on the nightingale population would therefore rely on compensatory habitat creation or management outside the development site.

9. There are a number of recorded examples of habitat creation which suggest mixed success in establishing increased site populations. Inherently there is a level of risk in reliance on new habitat creation to sustain populations of wild species. No matter how well designed the new habitat, it is possible that the target species will not establish in it. Thus if the proposed development of the site was not to go ahead, and consequently it was possible to retain the existing habitat on the site, this would be the most certain means of protecting the nightingale population.

10. However, it is clear that nightingale at Lodge Hill have colonised relatively new habitat and it is credible that the same could be achieved at other locations. Land Securities has commissioned a review of potential habitat creation sites on the Hoo peninsula, which has already shown some sites with considerable potential. Thus 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.

### **Application of the National Planning Policy Framework**

11. The National Planning Policy Framework sets the context for consideration of this development allocation in setting out the following

- Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.
- 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.
- Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.
- If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused
- Proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest

12. Natural England's advice is that this site is of high environmental value by virtue of its nightingale population and the parts of the SSSI which it contains (notwithstanding that the latter are not in the part of the development allocation which is proposed to be developed). The part of the site on which development is proposed is not an SSSI but Natural England's advice is that its

nature conservation importance, now apparent, is such that it would be appropriate to give it weight similar to that which would normally be given to an SSSI.

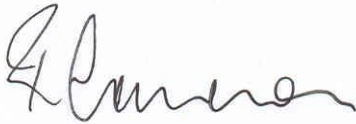
### **Conclusion**

13. Natural England acknowledges that there are compelling reasons for development of the site and accepts that the site is central to Medway Council's development strategy. It is regrettable that the new information, which shows the importance of the site, has come to light so late in the planning process.

14. It is necessary for Natural England to revise its position on the development allocation, as set out in this letter, so that the nature conservation interest can be considered clearly alongside the other affected interests. Our advice is that the importance of the nightingale population and the likely extent of impact, place a very substantial question over the soundness of this development allocation.

15. We are engaged in discussion with Medway Council and Land Securities on how compensatory habitat creation could be secured. This discussion has the potential to substantially alter the residual impact of development and therefore to affect the balance between nature conservation impact and other public interests. If it is possible to allow further time for this discussion to reach a conclusion, it may assist the Inspector to draw conclusions on this balance. Should this require further evidence to be submitted to the Inspector, and scrutinised through a reopening of the hearings into the Core Strategy, Natural England would be pleased to assist as far as it could with this.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Cameron', is centered on the page. The signature is fluid and cursive.

Rob Cameron  
Principal Advisor

[rob.cameron@naturalengland.org.uk](mailto:rob.cameron@naturalengland.org.uk)  
telephone: 07810 853618

