

LOCAL DEVELOPMENT FRAMEWORK EXAMINATION MEDWAY COUNCIL

Date: 7 August 2013

Mr Brian McCutcheon
Planning Policy & Design Manager
Medway Council
Gun Wharf
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Chatham
Kent ME4 4TR

Dear Mr McCutcheon

Thank you for your letter of 23 July 2013. I deal first with some of the main points raised in your letter. I then consider the issue of how the Examination can be concluded.

SSSI notification process

You would have been well aware of the timescale of the notification process at the hearings on 22 and 23 May 2013. Neither your evidence nor closing submissions suggest that the Examination should be delayed to await the outcome of the notification process. I was, therefore, surprised to read the criticism in your press release of 24 June, which implied that I should have waited until the end of the notification process.

So far as that process itself is concerned, I note your comments about further evidence, but I have already stated that it would be inappropriate for me to comment on Natural England's decision to notify the site or the underlying reasons for that.

For the avoidance of doubt, and in the light of your comment: 'the obvious importance **you** attach to the SSSI notification' (my emphasis), I must reiterate that my task is to consider the soundness of the Plan. One of the tests of soundness is consistency with national policy. My letter sets out my consideration of compliance with the National Planning Policy Framework (the Framework), in particular policies relating to biodiversity. It is not a matter of the importance that I as an individual, or as a Planning Inspector, attach to SSSI designation.

Soundness of the Core Strategy at submission

I have no reason to doubt that the Council submitted what it considered to be a sound plan. That is not, of course, a guarantee that the Plan would be found sound through the Examination process. As you point out, circumstances have changed, including the SSSI notification and revocation of the South East Plan, and these have to be taken into account through the Examination process.

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Sustainability appraisal and reasonable alternatives

My concern with the sustainability appraisal, as set out in my identification of matters and issues, is not with the level of detail per se, but rather whether it meets the requirement established in *Heard v Broadland*, i.e. that alternatives must be appraised as thoroughly as the preferred option; and the implications of *Cogent Land LLP v Rochford DC*, that an addendum report must be a genuine exercise rather than a mere justification for decisions that have already been taken.

I specifically raised the issue at the hearing, that the Council must recognise that it is open to criticism on the latter point, because of its reliance on the long history of the development of the Lodge Hill proposals. Involving the statutory consultees in the appraisal process may well be a good idea, but it is not a guarantee against predetermination. Unfortunately, the tone and content of the Council's press release of 24 June 2013 does nothing to dispel concerns that the Council was determined to include the Lodge Hill allocation in the Plan, regardless of other considerations, because it had already invested so much time and money in the proposal. In all the circumstances I have serious concerns as to whether the Sustainability Appraisal meets the requirements established in the *Cogent Land* judgement, and consequently whether the Plan can be judged to be compliant with the legal requirements. Even if I were to be persuaded that the sustainability appraisal was a genuine exercise, and not simply a justification for decisions already taken, I consider that the Council would be vulnerable to a High Court Challenge to the adoption of the Plan and it would then be a matter for the Courts to determine.

I note what you say about undertaking a further transport appraisal but I am surprised by your comment that this has already been done twice. When I asked at the hearing whether any more detailed appraisal was available, other than the assessment in the SA, your response was that no further evidence on this matter was available.

Housing needs assessment

You assert that: 'we had the new PINS requirement to reassess local housing need.' The requirement to objectively assess needs for market and affordable housing is contained in the Framework, it is not a PINS requirement. We have exchanged correspondence on this matter which I will not repeat. It is true that a number of examinations have been suspended to enable further work to be carried out in relation to this issue, but there are also a number of plans which have been withdrawn because of failure to deal adequately with this requirement. Much depends on the particular circumstances of the Examination concerned. In this case I have already agreed to suspend the Examination once to enable further work to be undertaken and I have significant doubts about whether a further suspension would be acceptable. Furthermore, I raised this issue with you in my letter of 18 April 2013 but you were initially unwilling to accept that further work was necessary (your letter of 3 May 2013) which led to further

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correspondence culminating in your letter of 20 June which finally accepts the need for further work.

Conclusion of the Medway Core Strategy Examination

You say that there is a known timetable for the SSSI matter to be resolved. However, all that is really known at the present time is that Natural England has nine months to complete the process, from the date of notification which, by my reckoning, is December 2013. In my view it would not be reasonable to keep the examination open pending the conclusion of the SSSI notification process and the completion of the further work you envisage and with no clear date for resumption. This would lead to an unacceptable degree of uncertainty for all those involved in the Examination. I may be able to consider a further suspension of the Examination if you provide a clear, coherent and comprehensive timetable for the work to be undertaken. Any timetable should be realistic, enabling all work to be completed; adequate public consultation to be undertaken; and for the results of that consultation to be considered by the Council. You will also need to take into account the fact that it is now some 18 months since the Core Strategy was submitted for Examination and by December 2013 it will be two years since the CS was published. Whether or not the delay arises from factors outside the Council's control, the passage of time is a factor you will have to consider, bearing in mind the Framework's requirement (paragraph 158) that Plans should be based on up-to-date evidence. At an early stage you will need to consider whether there are any elements of the evidence base that should be updated, for example the Employment Land Study dates from 2010 (which was itself an update of an earlier piece of work) and the Retail Needs study dates from 2009. I am not suggesting that these pieces of work are necessarily out-of-date, but the Council would need, in my view, to undertake a review of the evidence base to determine whether further work is necessary. Such a review would also need to consider the implications of new or revised guidance which is likely to become available very soon as a result of the External Review of Government Planning Practice Guidance by Lord Taylor.

You should bear in mind that it would be a further waste of time and resources if the work undertaken during suspension of the Examination resulted in the need for modifications to the submitted Plan that are so substantial that they cannot reasonably be considered in the context of the present Examination. This is an inevitable risk of a further suspension.

If you wish to make a request for suspension of the Examination for a defined period of time, supported by a clear programme of work to be undertaken, I will give that request detailed consideration. However, a further suspension of the Examination would lead to an overall timescale which would extend well beyond the six months envisaged as acceptable in the Inspectorate's Procedure Guidance. As I have already indicated to some respondents who have raised this issue with me, I have exercised my discretion to enable the examination to remain open beyond the usually acceptable limits, bearing in mind that new information (the 2012 Nightingale count) became available at a very late stage.

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However, I have strong doubts as to whether it is now appropriate to suspend the examination for a further period. It remains my view that the best course of action would be for the Council to withdraw the CS and prepare a new Local Plan. This would, potentially, assist in overcoming the impression of predetermination to which I refer above. Alternatively, if after further consideration I do not consider it appropriate to agree to a further suspension of the Examination, I will proceed to complete my report and advise you of the date you will receive the fact check version. However, you should be aware that it is highly likely the CS would be found unsound.

I would be grateful for an early indication of whether you intend to make a formal request for a suspension of the Examination.

Laura Graham

Inspector

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