



Medway Core Strategy
Examination in Public

Matter 5: Lodge Hill Strategic Allocation

Further additional information by

Kent Wildlife Trust

Respondent ref: 37

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1) Policy context:

b) The National Planning Policy Framework (the Framework).

i) Does the proposed allocation comply with paragraph 118 which indicates that proposed development on a SSSI should not normally be permitted.....an exception should only be made where the benefits of the development.....clearly outweigh both the impacts 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 SSSIs?

Paragraph 118 states that an exception should only be made “*where the benefits of the development, at this site, clearly outweigh...the impacts that it is likely to have...*” (our emphasis). It is therefore clear that the benefits being weighed must be specific to the site in question; the benefits of allocating the SSSI *compared to the alternatives* for delivering Medway’s housing must *clearly outweigh* the impacts. It is our opinion that Core Strategy (and associated Sustainability Appraisal) does not clearly demonstrate that the benefits of developing this site instead of the other options outweighs the impacts.

Paragraph 118 also states that “*planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland...*”. Ancient Woodland is a feature of the SSSI and allocation of the site would result in its deterioration.

Lodge Hill was proposed as a potential strategic development site when it became known that it would be surplus to the Ministry of Defence’s requirements. At this time, very little was known about the implications of such an allocation, particularly with regard to the environment. That was then translated into subsequent policy documents. We currently have a different policy framework and much greater knowledge of the site as a result of recent ecological surveys. Allocation of Lodge Hill is not in conformity with current national policy and legislation.

c) Core Strategy

i) Is there an internal conflict between Policies CS6 and CS33?

Yes. Several aspects to CS6 are relevant when considering CS33.

Policy CS6 states that wildlife sites and biodiversity will be protected **particularly** where they meet certain criteria. With the exception of international importance, Lodge Hill meets

all of these criteria (national and local importance, UK and Kent Biodiversity Action Plan priorities, protection or designation under relevant legislation) for many of the features present, not just those for which the SSSI is notified. Policy CS6 is consistent with paragraph 113 of the NPPF, regarding making distinctions between the hierarchy of designated sites. Chattenden Wood and Lodge Hill SSSI (the allocation site) is close to the top of this hierarchy.

CS6 states that mitigation strategies should be functioning prior to commencement of the development. It is clear from the direction taken by the work to identify compensation opportunities (*Independent assessment of the potential for Biodiversity Offsetting to compensate for nightingale habitat loss at Lodge Hill, Kent*, EBL Ltd 2012) as well as the timetable identified within the Core Strategy, that CS33 will not conform with the above requirement within CS6.

CS6 states that negative impacts should be avoided or minimised through the appropriate siting and/or design of development. Kent Wildlife Trust sees no reason why the policy to avoid impacts should not apply to site allocations as much as it does to site masterplans. This is consistent with the core principle of the NPPF that development allocations should prefer land of lesser environmental value (Para 17).

CS6 does allow for compensation of unavoidable impacts where the importance of the development outweighs the impact, but as has already been discussed, it has not been demonstrated that impacts are unavoidable (through allocation of alternative sites), nor that the importance of allocation outweighs the ecological impact (at this site).

CS33 is not in conformity with national policy or Policy CS6 of the Core Strategy and alternative options for delivering Medway's housing and employment needs should be investigated.

2) Mitigation/compensation measures

a) Is providing compensatory habitat, rather than preservation in situ, the right approach for a site with nature conservation value of national importance?

No. The NPPF refers to guidance on local authority obligations with regard to biodiversity conservation (ODPM Circular 06/2005: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system). This refers to the Wildlife & Countryside Act, which imposes a duty on local authorities to *“take reasonable steps... to further the conservation and enhancement of the features for which sites are of special interest. It applies...at every stage from the formulation of plans, to...the making of decisions.”*

If the approach advocated by Medway Unitary Authority was accepted, it appears unlikely that compensatory habitat would be delivered at a single site. It would also appear unlikely that all compensatory habitat would be delivered as extensions to occupied nightingale habitat. Both are desirable to increase the chances of success. A population of a species in one place does not necessarily equal the same number of animals across a number of locations. Larger populations tend to have greater genetic diversity, making them less susceptible to disease and inbreeding, and are less susceptible to predation pressure (they are also easier and more cost-effective to monitor and maintain). This is reflected in the Government’s Natural Environment White Paper that seeks to achieve *“...more, bigger, better and less-fragmented areas for wildlife...”* (*The Natural Choice: securing the value of nature*, HM Government 2012). Smaller and more isolated populations are more likely to be lost. Unfortunately we do not know enough about nightingale meta-population dynamics across their natural breeding range to know what impact potentially redistributing nightingale habitat into more, smaller areas would have on populations locally, regionally or nationally in the long term. Therefore, even were habitat creation to be successful, the population may be at greater risk of decline. If we assume that the nightingales on the Hoo Peninsula comprise a relatively discreet population (i.e. they interbreed more readily than birds from other areas), the loss of the Lodge Hill habitat may have a knock-on effect on the other local nightingale populations at Northward Hill SSSI, Tower Hill to Cockham Wood SSSI and the South Thames Estuary & Marshes SSSI, resulting in greater competition in the short term, leading to reduced survival and breeding, and a smaller and more isolated population in the longer term, increasing the chances of the species being lost from the area.

For the reasons above, the allocation of Lodge Hill is not in conformity with national environmental policy or legislation. Alternative options should be investigated and pursued in order to achieve a sustainable solution to Medway's housing and employment needs.

b) If it is acceptable, I am minded to give significant weight to the conclusions of the BTO study that it is 'theoretically feasible to create habitat that will be occupied by nightingales in lowland England' and that '*if the right conditions are satisfied*', there is greater probability of achieving success in Kent than in most parts of the Country'. On that basis:

i) How much compensatory habitat is required and how likely is it that sufficient land of a suitable type will be made available and what potential adverse impacts may arise, such as loss of good quality agricultural land?

The Council have commissioned studies to try to come up with a figure to answer this question, and the figure ranges from 300ha to 851ha, depending on the method used, consideration of 'risk', and assumptions made. This work has been unable to overcome uncertainties regarding success or demonstrate that there is a reasonable prospect of compensation being delivered. Taking such a risk with a unique site of national importance before the alternatives have been fully explored is unacceptable.

Further studies have attempted to identify particular sites where compensatory habitat could be delivered, and it is our opinion that these investigations demonstrate that it is unlikely that sufficient suitable land is available. The most recent study (Summary of Nightingale Habitat Creation Opportunities, January 2013) equates 'reasonable prospect' with 'high level of certainty of landowner interest'. We do not consider that the fact the landowner is willing to negotiate regarding a potential purchase or rental agreement gives a 'reasonable prospect' that adequate compensatory habitat can be provided. A couple of the options suggest rental agreement could be negotiated, but it seems unlikely that a landowner would find the terms necessary to deliver nightingale habitat in perpetuity acceptable.

Some of the sites proposed demonstrate potential adverse impacts that may arise from nightingale habitat creation. For example, we note that creating compensatory habitat on the site currently proposed as one of the best options (Cleve Hill) would conflict with Swale Borough Council's Landscape Character SPD, which states that the area should be restored to

grazing marsh and its open character maintained. It is not clear if this has been discussed with Swale Borough Council or not. This site is also some distance from the nearest existing nightingale habitat, so it does not meet the second critical element set out in the BTO report that would give a degree of likelihood of the site being colonised were the habitat to be successfully created.

Choices made to create or enhance habitat for certain species may have a negative impact on other species already present; sacrificing one habitat/species for another. For example, a couple of the 'high certainty' sites cover areas designated as Local Wildlife Sites (sites of County importance for biodiversity). Altering management of such sites to establish nightingale habitat could result in the loss of the existing biodiversity interest, particularly that of grassland habitats. This conflicts with the aims of the NPPF to minimise loss of, and ideally enhance, biodiversity, and also would potentially conflict with CS6 for sites within Medway, and similar policies in other Local Authority areas that reflect Paragraph 113 of the NPPF.

The provision of extensive areas of off-site habitat is likely to increase the costs considerably, compared to developing a site that does not require such extensive compensation. For example, using a basic 2011 national agricultural land valuation, the 400ha Cleve Hill site could be valued in the region of £6million (assuming the owner would accept this, given the uplift it provides to development at Lodge Hill). This does not include habitat creation or management costs. The report into biodiversity offsetting did not consider the costs of management and purchase to be part of demonstrating a 'reasonable prospect'. However, paragraph 173 of the NPPF states that careful attention should be paid to viability and costs during plan-making.

Restrictions on public access (current or future) may be necessary to increase the chances of nightingales colonising created sites, and buffer areas would be required to prevent any future developments from impacting upon the compensation areas. This would very much depend upon the compensation sites' proximity to existing public rights of way and proposed development areas.

There would potentially be a loss of agricultural land. The 400ha Cleve Hill option proposed is Grade 3 ('Good') agricultural land. The area to the south of Lodge Hill that has been

proposed for mitigation in the outline planning application (i.e. prior to identification of the scale of the nightingale population) is also good (or better) agricultural land. The need for extensive off site compensation for Lodge Hill has the potential to result in a greater loss of agricultural land than the direct loss resulting from the alternative options.

At the time Lodge Hill was suggested for major development, and at the times of its transferal into subsequent local and regional policy documents, such an extensive compensation strategy was not anticipated. The compensation strategy itself is potentially not in conformity with national policy, and therefore, CS33 should be removed and alternatives investigated.

ii) What are the likely consequences of the time lag between loss of habitat at Lodge Hill and the provision of new habitat if development proceeds as currently proposed? Alternatively what are the implications for the Core Strategy if development at Lodge Hill is delayed to allow for new/restored/improved habitat to become available?

Theoretically, loss of habitat results in loss of species reliant upon that habitat, even temporarily. The consequences of a time lag on nightingales are uncertain on a long-term, population level scale (assuming success of new habitat creation) (see also answer to 2(a)), and may not be detectable if the national population continues to decline (though nevertheless contribute to it).

What is certain is that the nightingale population has undergone severe declines in the past 45 years, and the species is declining at a rate of about 3% per year. While the BTO study concluded that there is a greater probability of achieving success in Kent than in other parts of the Country if the right conditions are satisfied, this probability is unquantified. It would therefore seem irresponsible to take a risk with such an important element of the national population when alternatives have yet to be properly assessed.

b) To what extent can the loss of the area of MG5 Grassland be mitigated by changes to the Masterplan and if offsite provision is necessary what are the risks to delivery?

The SSSI notification document states that “*the boundary has been drawn to include land supporting the features of special interest and those areas required to ensure the long-term*

sustainability of these features.” This recognises that changes to the local environment can result in indirect effects that negatively impact upon these habitats. Increased nitrates from vehicles and fouling by dogs, changes in hydrology and water quality, and excessive trampling may all degrade the grassland. Therefore, redrawing the masterplan to avoid the areas of MG5 (or the SSSI) will not necessarily provide mitigation without further measures to prevent the indirect impacts.

As with nightingale habitat creation, site selection would be crucial in successful delivery of MG5, although the criteria used would be different; knowledge of soil pH and nutrient levels of the compensation sites would be essential, for example. The condition of the particular sites selected would determine the habitat creation methodologies followed to establish the habitat (for example, the degree of nutrient stripping necessary and how that would be achieved). Other factors, such as costs and logistics, would determine the ongoing management techniques used (e.g. grazing, mowing or a combination). The potential risks are broadly similar to those regarding nightingale habitat creation – identification of suitable sites; cost of purchase, habitat creation and management; loss of agricultural land – with some generic and some site-dependant.

3) SA Addendum

a) Does the SA Addendum provide a robust assessment of alternative options? In particular:

i) Are there other reasonable alternatives that should be evaluated in greater detail bearing in mind the changing circumstances in relation to Lodge Hill? For example, is it right to reject a more dispersed pattern of development without a more detailed evaluation of what that might mean in practice? Should neighbouring authorities be approached under the duty to cooperate in order to avoid development at Lodge Hill if there really is no reasonable alternative within Medway?

ii) Does the SA Addendum meet the requirement established in *Heard v Broadland* that alternatives must be appraised as thoroughly as the preferred option; and the implications of *Cogent Land LLP v Rochford DC* and *Bellway Homes Ltd* (as reported in *JPEL issue 2 2013* (pages 170-192)) that an addendum report must be a genuine exercise rather than a mere justification for the decisions that have already been taken.

Justification for the allocation of Lodge Hill in preference to alternatives is predicated on an assertion that a new standalone development is more sustainable than expanding existing settlements, either one or a number of more dispersed extensions. The potential for extensions to existing settlements to use existing, and increase the viability of potential new,

public transport networks, as well as increasing the viability of existing town centres, does not appear to have been considered. The SA Addendum states that three of the options have the potential to divert investment away from existing town centres (Para 4.8), yet it is not clear why this is not also considered a potential drawback of the development of Lodge Hill. We are not convinced that the potential alternative options have been subject to the same scrutiny as the Lodge Hill allocation, particularly with regard to their potential to contribute to the regeneration of existing settlements. It would appear that investigation of the solutions to the issues surrounding alternative sites is rather cursory compared to the effort undertaken to pursue the allocation of Lodge Hill.

We do not consider that the Core Strategy and SA, with regard to its approach to the options available, is in conformity with national policy or the case law referred to in question 3(a)(ii). We consider that a re-appraisal of the SHLAA, the SA and the alternatives is necessary to address this.

4. Is the ‘very positive’ score given to the Lodge Hill option in relation to previously developed land justified?

No. The quantum of development proposed for Lodge Hill is much greater than the scale of development currently present on site, so it is inevitable that much development is not on previously developed land, even if we take a generous view of what constitutes the curtilage of the developed area. If we are to take the outline planning application as an indication of how the allocation will be delivered, it cannot be considered effective re-use as, with the exception of the access roads, the proposed pattern of development does not match the existing pattern of development, with central access roads becoming parks, and the majority of buildings being demolished rather than re-used.

b. Should the scoring be tempered by the Framework’s core planning principle that reusing previously developed land should be encouraged, provided that it is not of high environmental value?

Yes. Previous planning policies encouraging the use of PDL were too simplistic to contribute to sustainable development in isolation, and conflicts between those policies and the policies

and legislation protecting the environment were not uncommon. Recognition of the potential ecological value of previously developed land has grown considerably in the past decade (Lodge Hill is not the first 'brownfield' to be notified as a SSSI) and the inclusion of this caveat seeks to avoid potential policy conflict and contribute to sustainable development.

The very positive score given to Lodge Hill regarding reuse of previously developed land is not in conformity with national policy by virtue of the site being of high environmental value.