

Your ref

Our ref Lodge Hill/

Ms Jago and Mr Cooke  
Natural England  
3<sup>rd</sup>Touthill Close  
City Road  
Peterborough  
PE1 1UA.

2<sup>nd</sup> November 2012



Dear Ms Jago and Mr Cooke

### **Lodge Hill**

I write in response to your letter to Medway Council of 12<sup>th</sup> October 2012, which was copied to me by Rob Cameron. Land Securities is acting on behalf of Defence Infrastructure Organisation (DIO), and this response is made in our capacity as DIO's Land Sale Delivery Partner on the Lodge Hill site. As you know, DIO and Land Securities are fully engaged with Medway Council, Natural England and other key stakeholders on the considerations pertaining to nightingale compensatory habitat creation, and are committed to continuing to do so. We see this as a proactive process of on-going engagement. In contrast to this, whilst we take some level of comfort following Natural England's Executive Board decision not to notify Lodge Hill as a SSSI, we are very disappointed with the temporary and open ended nature of the decision. It is difficult to see how this decision provides any clarification to a situation that not only stalls but challenges the very existence of, the Lodge Hill outline planning application and Medway Core Strategy.

This is particularly frustrating given that we consider the science utilised by NE to inform the process of consideration of the Lodge Hill site for possible SSSI notification to be fundamentally flawed on two counts, namely the application of the 1% population criteria to Lodge Hill and the paucity of substantiated and representative Nightingale population data, both at a national and local level – necessary to enable a robust decision to be made, even with the completion of the 2012 National Nightingale Survey.

We remain very concerned about the application of the 1% criterion as a threshold to nightingales. Whilst the Minutes of the NE Executive Board Meeting seem to reflect some confusion as to whether the 1% threshold determines eligibility for selection or is an automatic trigger for selection, the JNCC guidance (paragraph 3.1) states that the 1% criterion 'in practice, ... covers mainly colonial species (e.g. seabirds and herons), semi-colonial species (e.g. some grebes, ducks and waders) and rare species'. However, the nightingale is normally considered to be territorial (rather than colonial or semi-colonial) and it is widespread and locally common within its range (rather than a rare species), and so does not meet the species referred to in paragraph 3.1.

It is logical to assume that the reason the 1% criterion has not been applied to more common and widespread species is because of the large areas of land to which the criterion would then apply, rendering it impractical as a tool for site selection. The application of this criterion to other bird species with similar abundance and distribution to nightingale would yield a significant number of SSSI sites that would be very large in area. The fact that there is no precedent for the designation of SSSI sites on the basis of the 1% criterion for nightingales (the absence of precedent is acknowledged within the minutes) or other breeding bird species of similar population characteristics appears to serve as a corollary to this.

Regarding the population data itself, we note that the Board raised concerns regarding the uncertainties around the robustness of the 1999 national population survey, resulting in the decision not to notify the site as a SSSI. It

**Lodge Hill (cont / 2)**

should therefore follow that the various assertions made by the Board on the national nightingale population should be heavily qualified to reflect these uncertainties.

Even if the RSPB are able to clarify their comments on the 1999 survey and as a consequence Natural England consider it appropriate to rely upon it as evidence - making the decision on whether or not to notify the site as a SSSI based on one, or at the most two, surveys is fundamentally flawed; this approach cannot be a robust basis upon which to make a confident and appropriate decision for a species that is known to fluctuate and, significantly is known to shift in distribution (moving, for example, from woodland to scrub).

The weakness that we perceive to exist in placing reliance on just one or two surveys is exacerbated by basing assumptions on the reported decline in nightingale numbers from 1999 to now on the BTO's annual breeding bird survey, which is based on a very small sample size with broadly the same sample locations monitored each year. The combination of the two result in surveys which are incapable of reflecting the nightingale's propensity to shift habitat over time. Instead the surveys have led to a reported decline in the nightingale population, exaggerated by what we consider to be flawed application of the confidence limits, and an underestimate of the nightingale population, rather than properly reflecting a change in the pattern of distribution. This population data cannot therefore be considered to be representative of the actual position.

Natural England's determination to consider notifying the site for nightingales alone, signifies the level of importance that they attach to the species. This seems to us to be inconsistent with the absence of any regular, frequent national surveys of nightingales since 1999.

The proposition of the Board reconsidering notification at some as yet undefined stage in the future gives rise to two key issues. The first is the (in our view unjustified) uncertainty that arises as a consequence, which has potential implications both for Medway Council's Core Strategy and on the progress of the outline planning application, and the potential delay that arises is at variance with the Government's clear ambitions to deliver necessary economic and housing growth on surplus, previously developed public sector land. The weakness in the scientific rigour renders the consequences of Natural England's latest position to be disproportionate to the issue. The second is that it has led Natural England to suggest that the site should be attributed the same weight as would normally be given to an SSSI, which we would question the legality of, and in any event the application of weight is a matter for the decision-making authority to determine.

Yours sincerely

**Stephen Neal**  
Development Director  
London Portfolio

[stephen.neal@landsecurities.com](mailto:stephen.neal@landsecurities.com)

cc

Paul Howarth – DIO