From: Dominic Woodfield - Bioscan [dominicwoodfield@bioscanuk.com]
Sent: 13 November 2012 13:19
To: 'Tom Tew'; 'Bexs Benmayor'
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Subject: Medway Core Strategy - comments on EBL draft report

Dear Tom

You asked for comments on your draft report by the middle of this week and with one eye on the timescales, and your recommendation in the report that the site search should be extended and further certainty on matters of practical deliverability sought, I have duly complied!

Comments are provided below under the various section headings – I have limited these to the main body of the report (i.e. not the appendices). I should make it clear that these comments are provided without prejudice to any further submissions I or my clients may choose to make to the Inspector in due course:

Introduction

The purpose of the report is surely to consider the potential for biodiversity offsetting to compensate for loss of displacement of a breeding population of nightingales at Lodge Hill, rather than generic habitat loss, as is stated.

The BTO conclusion (NB not a "recommendation") was that "*The area of land required to create a scrub mosaic supporting an equivalent Nightingale population to that currently at Lodge Hill is probably in the order of 300 to 400 hectares*" and this was qualified by the statement "*ultimately, how much area will be needed will depend on the habitat quality and characteristics that develop*". Implicit in this assessment is a recognition that a larger area of poorer quality habitat would be needed to achieve the same end – from which it can be taken that factoring in 'risk' requires scaling up of land area to cover all eventualities in terms of habitat creation success. Hence it is not appropriate to use the BTO conclusion as a direct comparator for the result achieved from use of the adapted offsetting metrics which (quite rightly and properly) attempt to factor in such risk to a degree. It is no surprise that in doing so the latter approach arrives at a larger land area. Comparing the larger figures derived from your offsetting calculations to the BTO figures does not of itself suggest the former will result in overcompensation, nor indeed can it alone be suggested to imply the delivery of net gain. That would need much more refined consideration, and yet I have noted a temptation to stray down this road in various comments offered by yourselves/Medway/LS.

Context

The opening sentence here references the Lodge Hill planning application. In fact, the purpose of EBLs commission is to answer the Inspector's question about whether there is a reasonable prospect of offsetting being successful. That question relates to Lodge Hill being the key site in Medway's Core Strategy. It is important that this is acknowledged - as it is the timeframe of the CS that gives rise to many of the problems about delivery timescales that underpin the concerns of the conservation sector and independent commentators such as myself.

This section says that 'biodiversity offsetting' was announced as a Government policy, but it does not make it clear that the Government's intention is to firstly trial the system, with pilots in several areas of the country focussed on NIAs, before rolling it out more widely. This is relevant, as what is being talked about as a strategy for Lodge Hill could be argued to leapfrog the conclusions of those pilots and trials, and aims to apply the system to a site of very high biodiversity value, using a set of adapted and untested metrics. Such things appear to me to represent a departure from the Government's intentions.

The white paper stated that "*Biodiversity offsetting should be pursued in line with guiding principles, based on those set out in Making Space for Nature".* These guiding principles include reversing fragmentation and improving resilience of ecological networks. They complement targets set under the Biodiversity Action Plan system which aim to reduce significantly the rate of loss of biodiversity. 2020 has been set as the next milestone for assessing the success of such aims. The offsetting proposals at Lodge Hill, incorporating 'temporal lag' of perhaps 8-10 years, are likely to compound the decline in nightingale numbers over that time frame, even if the long term intention is to seek to recover that loss.

The white paper also states that Government is *"clear that offsetting should complement existing habitat designations that are designed to protect our most valuable biodiversity: the current arrangements for managing protected sites remain in place*". John Day made the point that there is an element of seeking to compensate for impacts on the existing Chattenden Woods SSSI, even leaving aside the fact that the development area at Lodge Hill is under consideration for SSSI status itself, and has been asked to be considered as if designated by Natural England.

I think it would also be relevant to this section to set out that Government policy is also to ensure no net loss of biodiversity, and that they look to the planning system to help deliver that objective.

Analysis of impact and offsetting needed

The summary given of the BTO report is more representative here than in the introduction (see above)

Technical workshop

The third bullet states that "some temporary reduction in habitat was unavoidable". There are two points to make here. Firstly, the recent confirmation from DIO that the site would need to be cleared of ordnance before being handed over to the developers confirms that the impact on the nightingale population will be front loaded – effectively peaking at years 0-1 of the development. I suggest the word 'some' needs to be revisited in this context. The second point is the workshop <u>did not</u> conclude that some temporary reduction in habitat was unavoidable. It is an obvious, but important, point that the temporary habitat loss <u>is entirely avoidable</u>, either through developing other sites than Lodge Hill, or by developing Lodge Hill over an extended timeframe that allows compensatory provision to be in place, mature and proven to work before the loss occurs. I suggest this bullet ought to be re-worded to state that "if the development is built out in accordance with the schedule presented in the Core Strategy and the site Development Brief, it will not then be possible to avoid a hiatus between habitat loss and compensatory provision"

It is stated that "based on ornithological expert opinion and evidence available, we will now assume that all of the habitat within the Lodge Hill site will be lost to nightingales as a consequence of the development". I made the point at the meeting that this places serious question marks over the adequacy of the EIA for the planning application currently sitting with Medway Council. That EIA makes statements such as "For all key breeding bird species, there will be no net loss in suitable habitat as a result of proposed Development, with the exception of nightingales where there will be a loss of approximately 2ha". Statements such as this need to be considered in the context of the DIO position that the site may need to be stripped prior to the commencement of development as part of ordnance remediation measures, resulting in the effective loss of all nightingale habitat.

Applying Defra metrics to estimate compensatory requirements

The assumption is made that habitat created off-site would be 'moderate' in condition. It is not clear from the report how success or failure is factored in to this. If the created habitat supports successful breeding territories of nightingales, with reference to the offsetting objective it is probably 'good'. If it doesn't, it can only be classed as 'poor'. 'Moderate' could, I guess, cover suboptimal habitat that supports unsuccessful

breeders or unpaired males, or peripheral foraging. The only objective for creation should be 'good' and it should be a function of the risk management built into the system to ensure that sufficient extent of habitat of all types is created to ensure an adequate quantum of that created habitat is 'good'.

The assumption is also made that the off-site receptor areas will perform various Lawton-esque functions, but there is no certainty whatsoever in such assumptions. The two exercises in potential compensation site identification led by GGKM have merely highlighted the suite of problems and uncertainties that surround site identification on this scale and with the level of resource allocated to the task to date. It cannot be assumed that the selected compensation site would provide 'greater interconnectivity between green spaces' and the risk that it may not needs to be factored in to the calculations. Hence, in the absence of identified and practically deliverable sites, the calculations need to assume that the compensation site or sites may need to be large enough to stand on their own. I do not see where such considerations have been factored in.

Tom asked the question of the attendees at last weeks meeting about whether restoration or new creation was preferable. I think it is clear that new creation has to be the preferred option. The decision to restore existing habitats would need to be made on a highly informed basis to head off the risk of such intervention itself contributing to further net loss of biodiversity (e.g. in terms of invertebrate interests). There would also need to be a high certainty of success – for example a relict nightingale population already present. Locations for new creation would also have to be considered carefully of course. Some of the GGKM sites identified are currently dominated by UKBAP habitat (e.g. grazing marsh). In reality, the best option has to be new creation on land that can safely be argued to be of intrinsically low wildlife importance (e.g. low lying damp intensive arable land, only where this does not itself have significant wintering birds interests).

Results of applying Defra metrics

In this section it is not entirely clear whether the objective has been to replicate the 66/14/15% split between 'good', 'moderate' and 'poor' condition in terms of the offsetting requirement. In the light of Chris Hewson's remark that territory mapping centroids had been used, it is not clear whether everything falling within these centroids has been classed as 'good' habitat (as would seem logical) and if so what allowance has been made for likely unmapped territory beyond the bounds of those centroids. There is no readily traceable calculation as to how the credit requirements translate to the figures given for restored versus created habitat. Such transparency will be important for the Inspector.

I note the remark "it is predicted that the development will cause the loss of all nightingale territories present at the site, and the consequent habitat loss suffered by the birds is much greater than considered previously". By 'previously' one assumes reference is being made to the EIA and supporting studies submitted in support of the Lodge Hill planning application currently before Medway Council. There is a clear implication that such information has been superseded by the application of more expert judgment as part of the current exercise. It suggests that the EIA ecology material and impact assessment may not be fit for purpose in terms of the determination process for that planning application.

Table 1 raises some commonsense practical issues. How does one 'restore' scattered broadleaved trees over a 20 (or is it 25) year timescale? The only means would be to partially clear an existing mature woodland, which is likely to give rise to biodiversity impacts of itself. Indeed how does one create semi-natural broad-leaved woodland over a similar timescale. If what is being talked about is plantation, there is no allowance in these calculations for the 'trade down' loss in biodiversity resulting from mature stands being replaced by immature stands, likely with an impoverished ground flora and a highly restricted suite of associated species such as saproxylic invertebrates. Immature woodlands are obviously less likely to have equivalent structure or food resources to mature stands and may consequently be less likely to be exploited by foraging nightingales.

Potential for habitat management to deliver offsetting

The discussions last week that were centred around the latest GGKM site search do much to highlight the inherent difficulties of identifying suitable habitat creation or restoration sites in the first instance, to say nothing of their practical deliverability. Local experts, who had not been actively consulted as part of the process, expressed reservations about some or all of the 'potentially suitable' (green colour coded) sites on the basis of their innate suitability alone, let alone their achievability. Issues were identified with landowners being unlikely to wish to release sites without significant (development value-equivalent) compensation, with certain sites having existing biodiversity interest which may make them unsuitable for nightingale habitat creation, and others being in areas subject to future development.

The report recommends that the site search be extended. I agree – indeed I think this is imperative if there is any chance of the Inspector being furnished with any certainty whatsoever that offsetting could ever represent a reasonable prospect. But as well as further sites being identified it is clear that much more progress needs to be made towards being able to provide certainty on matters such as practical deliverability.

Conclusion

The statement is made that "there is an issue of unavoidable temporary loss of habitat which is not the subject of this report". Why can such things not be considered in the report? As the RSPB commented at the meeting, it cannot actually be said that the impact is 'unavoidable' without reference to the planning context. It is the demands of Medway's forward planning strategy timescales that has created the current situation where EBL are being asked to consider recommending an offsetting solution within what are, by their own admission, sub-optimal timescales for investigation and a sub-optimal timescale for delivery. Medway might describe that timescale as 'unavoidable', but others would say it is inherently 'avoidable'. Indeed Medway could (and should) be exploring, through a revised SA, whether it is avoidable in line with the 'avoid, mitigate, compensate' hierarchy and yet, as made clear last week, no progress appears to have been made on this and they strongly appear to be wholly relying on offsetting to deliver a rabbit out of the hat in respect of this site.

The conclusion is offered that "other studies suggest there are enough suitable areas to adequately create or restore nightingale habitat". It is assumed what is being referred to here is the GGKM studies. These offer no such certainty, and it is alarming that such conclusions are being offered by EBL on the basis of information they elsewhere note to be inadequate for such purposes.

The final emboldened conclusion is again alarming in its conveying of false certainty. Given all the caveats elsewhere in the report, it must be the case that the conclusion at this stage can be put no higher than restoring or creating nightingale habitat elsewhere could (not would) compensate for the loss of the Lodge Hill nightingale habitat. Technical feasibility is referenced, but nothing is offered on practicality. In any event such conclusions do also have to be framed within the context of the significant hiatus between impact (loss) and compensation, even in the best possible scenarios. There remains, it seems, a determination to avoid grappling with this issue, despite the fact that it should be entirely relevant to a commission that seeks to look into the appropriateness of offsetting as a strategy.

I hope these comments are helpful.

Best regards

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