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Medway Council Planning Officers

Copy to:- All Stakeholders

Lodge Hill Nightingales

1. Thank you for your final draft report.
2. Medway Countryside Forum (MCF) offers comments in three sections. First, our general comments on the feasibility, degree of risk and appropriateness of compensating/offsetting for the loss of nightingale habitats at Lodge Hill/Chattenden, having listened to and taken part in the entire technical group's discussions and evidence appraisal; you will note our disagreement with the seeming conclusions re practical feasibility. Secondly, our requested response to EBL's final draft report consistent with the views and conclusions expressed in our first section. Thirdly, comments aimed more at the Inspector on the consequences of the technical group's work and conclusions.

#### Section 1 - General Comments on Feasibility and Degree of Risk

3. We are not dealing here with any common or garden species. This is a celebrated species which has inspired poets, musicians, authors, composers etc over hundreds of years. For most people, it is the top songster, as far as quality, vigour and beauty of birdsong goes, in our country. With an estimated UK population decline of some 90% since 1967 (BTO estimate revealed to The Independent in mid-2010) - apart from the Tree Sparrow, the biggest fall of any bird still breeding in UK - the consequence is that while "lots of people grew up hearing Nightingale song in the past...now many people will never get that opportunity".
4. Lodge Hill, as we have heard, is probably the top site in Kent, and perhaps also the UK, for this glorious songster. And we are proposing to destroy this top breeding habitat - the consolation prize being an experiment for humans to try out a theory that such a large and important population can be displaced or else compensated for elsewhere in a timely manner. There is a big difference between a theoretical possibility of success and its actual achievement. And in a statement prior to the 2012 National Census, BTO spoke of the need to have "... more exact knowledge about where the main concentrations now exist - maintaining high quality habitat in these core areas will be crucial if the species is to survive as a breeding bird in Britain."
5. Let's be frank. We are entering new territory here. In the opinion of MCF, such an experiment would present too high a risk when set against the damage. BTO say in their paper that they are unaware of any successful precedent for Nightingale establishment through habitat creation and vegetation development on a formerly unoccupied site. BTO is also unaware of any instance where habitat creation for Nightingales has been attempted on any large scale. Please read those BTO statements again. It is untried and untested.

6. There are many uncertainties, unknowns and contradictions, from the highest and most general level to the most detailed. And quite apart from the practical feasibility of compensation plans, there is a suggested complication of a time lag/gap which would make the whole process more uncertain and greatly increase the risk.

7. At the highest level, there is the contradiction - in a climate change context - that Nightingales are behaving differently here in UK than in other parts of the world. In their British Birds paper of April 2012, BTO conclude that "Without a change in its fortunes, the Nightingale, along with some other trans-Saharan migrants, could be lost from the British landscape. It is a sobering fact that the Nightingale population of our country is declining steadily at a time when it should be gaining ground because of climate change. Something is seriously wrong."

8. In terms of habitat occupied, food availability and accessibility, social factors, high density/high quality links, vegetation dynamics, speed at which regrowth becomes suitable, home ranges etc, BTO stated at the first meeting that "there is a lot of complicated stuff we don't understand". BTO in its excellent paper produced for this discussion summarises what is known - impressive - but also what is not known. Taking the trouble to highlight the latter, the paper reveals over 30 instances of unknowns, uncertainties and areas of insufficient information, openly allowed. All are very relevant to our discussions and cannot be dismissed as "asides" or redundant. And there are various references to Nightingales not using seemingly appropriate habitats. For us, a telling passage in the BTO paper poses "... variation in habitat suitability that is evident to Nightingales but not to humans". And at the paper's close, "Even if the habitat conditions can be made as suitable as possible, this might not be enough due to social factors".

9. Of course there is an undoubted desire to pursue a significant offsetting exercise to discover more about the concept's practicalities for such as this site and other potential future developments. However, didn't we learn at the first meeting (though see below) that it would not be taking place in UK for protected sites, that it is for habitat not species and that DEFRA say it must not undermine existing site protection designations. Given the "idiosyncracies" of Nightingales (see paras. 7 & 8 above), we thought at the first meeting - but did not raise - that one could strongly argue that this species for one should be excluded. Also, it would be wholly understandable for curious scientists at BTO and elsewhere to relish an unprecedented, structured and detailed project (whether under the offsetting methodology or not) on habitat creation and settlement prospects, prompted no less by the very uncertainties, unknowns, insufficient information and contradictions acknowledged in their paper. (Instead, may MCF suggest that, on a smaller scale, such a trial is carried out for the already approved Temple Waterfront development in Medway where the planning application acknowledged there would be a loss of a small number of Nightingale breeding sites.)

10. But Lodge Hill, advised by Natural England to be given the same weight as if it were an SSSI, is not the opportunity to do so. For an iconic species in

decline, and for the doubts about practicable delivery, we simply should not be taking a risk with something so important as the Lodge Hill Nightingale population. As RSPB said at the Hearings, it is the very last place which should be considered. We return to Natural England's warning, in their letter of 9th July 2012, about the undoubted risks and of "the most certain means of protecting the Nightingale population" ie if the proposed development was not to go ahead. In that regard, we support the concluding Option (b) in Ecology Consultancy's Nightingale Assessment of August 2012 produced for Medway Council.

## Section 2 - MCF Response to EBL's Final Draft Report

11. MCF appreciates the challenge faced by EBL in its attempts to reflect accurately and fairly, in the meeting notes and consolidation report, the many conflicting views and perceptions expressed by various contributors during the technical assessment process.

12. It is a matter of record (exchanges of emails with EBL) that MCF and others did not accept the accuracy of the report of the first meeting ie 25th September. It was not pedantry that caused us to question the language summarising the feasibility of compensation, at that stage, but our own understanding of our position and the sense of others too. A second major disagreement concerned the issue of temporary lag/gap together with its disputed mitigation - but because we did not wish to delay further technical work, we simply asked for our dissent to be registered. (Incidentally, we have not seen such recording of our dissent.)

13. We had strong reservations too about the stated conclusions in the first draft report, again concerning both the assessment of practical feasibility and the time lag/gap and how "unavoidable" it is (it is completely avoidable if you choose so), but were content to await the impending discussions and other evidence to be aired at the Workshop on 9th November.

14. We regret that, despite the acknowledged difficulties, we again take the view that this final draft report does not reflect a true picture of how all the phases of our work should be summarised in addressing the question put by the Inspector and the convincing evidence she sought on timing re the development's place in the Core Strategy. Phrases such as "theoretically possible" - which MCF can accept - or "technically feasible" are less than crucial when tested against what is deliverable in practice and we comment further on this at paras. 21 and 22 below. We therefore continue to question EBL's conclusions at pages 12 and 13, not least the overall, and incomplete, "prospect" summary in relation to the Inspector's questions. And we seriously question a view that a temporary loss "probably wouldn't" lead to a permanent one (still less an eventual permanent gain), given our quote at Section 1 above on the importance of "maintaining high quality habitat" together with the unknown effects of contraction into the SE vis-a-vis loss of the Lodge Hill population. All of the uncertainties and caveats about new compensatory habitats surely apply, but particularly where there is no existing population as BTO acknowledge. It is more than disappointing that at Table 2 the Notes

assume "simulated social attraction". If this is what could lead to the "ecological trap" referred to at the very end of "Section 9. Summary and Conclusions" (page 34) of BTO's Report of October 2012 then, in the opinion of MCF, it should not be allowed. (It also smacks of desperation.)

15. As in the notes of the first meeting and the first draft report, the many uncertainties and unknowns (see Section 1 above) are downplayed in this final draft, in our opinion. In the urge to overcome obstacles and "find solutions" - rather than a more rational appraisal of what was do-able in response to the Inspector's query - it seems to MCF that the process was too notable for the way that earlier, quoted guidelines and unambiguous assertions - and safeguards - were changed in order to ensure the proposed development was not hindered, even straying from the technical aspects regarding nightingales to amended planning matters. For example, those limitations on offsetting mentioned at para. 9 above with regard to designated sites seem to have been smoothed away in this final draft report. And the major drawback of time lag/gap is simply swept aside with the intention to amend the Core Strategy and Lodge Hill Development Brief to remove the undertaking that compensatory habitat would be "in place and functioning" before any development could commence. (If offsetting does not require this, this suggests the scheme is inappropriate for Lodge Hill.) Presumably this change followed from the dawning lack of any serious prospect of finding another Orlestone-type solution which might supply a successful colonisation of Nightingales in the short-term (we found the one possible "restoration" site mentioned at the Addendum (page 57) hardly relevant for a number of reasons and terms such as "great opportunity", "great possibilities", "excellent opportunity" and "exciting....projects" in that same Addendum seem out of place. Not half as exciting as retaining Lodge Hill as an SSSI, many would think.) As a general comment on the receptor site exercise, those proposed were at such an early stage of scrutiny that they really added little to the conversion of a theoretical possibility into a practicable chance of deliverable habitat suitable for Nightingales, certainly in the timeframe of the Core Strategy.

16. Now we argued at Section 1 that we were not able to share a view of confident compensation but that applied in all contexts ie with or without a time lag. Doubtful as any plans would have been without a time lag, it seems from this final draft report, far worse, that essentially Medway Council and the developers wish to drop any pretence about that, clear the site of all habitat, start the infrastructure and building and somehow hope that somewhere or in several places successful colonisation of many Nightingale breeding sites will be produced from planted or, preferably, naturally regenerated scrub etc in the many years ahead - again, a complete contradiction of the declared aim of offsetting which is surely to increase confidence in achieving effective, rather than aspirational, compensation. Who can justify such a gamble when the species is known to be in decline?

Section 3 - Consequences of the Final Draft Report in Planning Terms

17. MCF does not believe that the outcome of the technical group's work meets the reassurance requested by the Inspector in her letter to Medway Council dated 27th July 2012, not least in respect of the timing of the development.

18. The inexplicable about-turn by Medway Council in dropping its unambiguous commitment to no temporary loss of Nightingale habitat, at any stage, has serious repercussions for the Core Strategy and Lodge Hill Development Brief. Policy CS6 of the Core Strategy - which applies throughout Medway - and the Ecology section of the Lodge Hill Development Brief make it clear that compensatory habitat must be in place and functioning before development starts. If these undertakings are now dropped it means surely that the consultation process - over several phases and years with the local population and stakeholders for the Core Strategy, and the many exhibitions, workshops, meetings conducted by Land Securities leading to the Development Brief itself - becomes invalid. And what are the effects on the EIA and the SA? Surely the knowledge gained through this technical process calls into question the findings of those studies?

19. MCF has warned Medway Council about the importance of the Nightingale population at Lodge Hill for some 10 years. Even we did not completely understand how much, with the declining national population, this site would increase in national importance. Whilst we can sympathise with our Council, we believe that it too must adjust its thinking to a new reality. For example, during all the iterations of the draft Core Strategy and the Lodge Hill consultations with the people of Medway, Medway Council and the developers claimed credit for and made much of the fact (when many Medway residents also oppose the proposed build on an Area of Local Landscape Importance and two Protected Open Spaces) that there was no intention to build on Chattenden Woods SSSI etc and by assuring everyone that buffers, cat fences etc would solve any problems. Well, the whole development site is now to be treated as an SSSI but we have yet to see any evidence of altered thinking by our Council, which consistency would demand.

20. Irrespective of an enlarged SSSI notification, surely with these validated 2012 Survey numbers (84 singing males) our Council should now instead be celebrating this confirmed natural jewel in Medway, and retaining it, so that the people of Medway can know more about and enjoy this remarkable local concentration of this songster, rather than submit to recommended treks to Ashford, Folkestone or Sandwich etc.

21. At the beginning of Land Securities/Thomson Ecology's work, there was a confidence that mitigation (on-site) and compensation (off-site, but in those days, contiguous) would be easily deliverable, despite MCF's - and no doubt others' - strong reservations, indeed disagreement. It is interesting that as recently as April 2012, in the revised Breeding Birds Masterplan, the area designated for off-site compensation was 88ha (and that was an increased figure). We are now discussing BTO (300-400ha), EBL off-setting (658ha created, 375ha restored) and a further possible increase in the calculations here if habitat condition is raised from "moderate" - according to final draft

report, 894ha created with 546ha restored. Importantly, we do not believe that multipliers or other contingencies have crucial meaning with regard to a genuine enhancing effect on feasibility of delivery where the uncertainties re habitat are acknowledged (multiply zero by whatever is still zero). The search for receptor sites has spread from Lodge Hill contiguous, to Medway generally, to throughout Kent - and now, belatedly, perhaps to "adjacent counties". We are really no nearer a practicable solution within the Core Strategy timetable regardless of whether the previous assurances vitally important to local people - see para.18 above - are junked.

22. Although there were many disagreements, clarifications and genuine differences of view arising at all stages, both oral and written, we in MCF believe that everyone would accept that the process at least demonstrated that attempted delivery of the required number of compensatory breeding territories for nightingales at Lodge Hill in the time expected became signally more difficult (rather than simpler) as our deliberations proceeded. Why else would the compensatory areas increase hugely; the realisation that a large Orlestone Forest-type restoration to provide a reasonably quick success was disappearing; the ever-widening search for receptor sites; the re-visited/re-interpreted offsetting guidelines; the suggested use of "simulated social attraction"; and, most disturbingly, the rush to overturn the promised safeguard to have the compensatory habitat "in place and functioning" before development begins? (Off-topic perhaps, but we could add the appeals by Medway Council officers asking participants to consider the length of Job Centre and housing waiting lists. For those of us who live in Medway, this would have more meaning if there were not thousands of existing housing unit approvals as well as mixed-use development sites ie including jobs just laying there without the development taking place now - or in cases like Rochester Riverside, laying there for years. And if it is off-topic, why was it raised at a forum which was meant to be nightingale-technical only?)

23. There is a big decision to make. MCF looks to Natural England to fulfil its mission in protecting this site, in line with its current advice on treating it as an SSSI or more formally, a SSSI notification based on BTO up-dated nightingale populations. In view of our comments above, MCF concludes that the technical work outcome fails to give the Inspector the confidence she needs to regard the Lodge Hill development as deliverable in the Core Strategy timeframe and that therefore, without the withdrawal of that allocation, the Core Strategy is unsound.

24. MCF welcomes the assurance given recently by Medway Council that all comments (including this entire note) on the EBL report will be seen by the Inspector.

PS Very recent further exchanges with stakeholders on offsetting metrics, habitat creation timescales etc have not changed any of the views or conclusions expressed above. If anything, they serve only to confirm our doubts about the appropriateness of offsetting for this species and site (part of which is an existing SSSI and more of it abuts an existing SSSI). For instance,

the "technical difficulty" multiplier for scrub being assessed as "medium" difficulty seems excessively optimistic when judged against the likes of para. 8 above. And the necessary crystal ball approach to unidentified receptor sites confirms an inability to provide any confidence in this compensatory aspiration, still less its delivery of functioning Nightingale habitat in line with the development timetable as laid out in the Core Strategy.

Medway Countryside Forum

28th November 2012