



**Medway Core Strategy Public Examination
2012/13**

**Matter 5: Lodge Hill Strategic
Allocation**

Further Hearing Session: 22 May 2013

STATEMENT BY MEDWAY COUNCIL



1) **Policy context:**

a) **South East Plan (SEP) revocation**

i) **What are the implications of the revocation of the South East Plan (in particular paragraph 19.5) for the Lodge Hill allocation?**

- 1.1 Revocation has been considered in a number of documents already submitted to the Examination.¹
- 1.2 Paragraph 19.5 listed “*major regeneration locations*” and included:
 - “*Within the Medway urban area at riverside sites, and to the north on Ministry of Defence land at Chattenden.*”
- 1.3 The paragraph was in lower case and supported Policy KTG1 but did not form part of the policy.
- 1.4 Although the text has been revoked it is consistent with previous development plan references to Chattenden/Lodge Hill as detailed in Appendix 2 to the Lodge Hill SOM (**EB107**)². In turn this is consistent with the broader approach to development in the Thames Gateway that has gradually evolved since 1995 and as detailed in the Thames Gateway local background document (**LD08**)³.
- 1.5 The Core Strategy was submitted for examination in full knowledge that the SE Plan was going to be revoked but equally, as the plan was still in force at the date of submission, it also had to be in general conformity with it.
- 1.6 The basis for the housing and employment targets in the submitted Core Strategy, taking account of revocation, are set out in the Background Paper **LD04**⁴ and this also considered the contribution envisaged from Lodge Hill.
- 1.7 The fact that revocation has now taken place does not therefore change any of the factors that led to the strategic allocation being identified in the first place or the continuing need for it to be allocated to meet the full objectively assessed need for development as required by the NPPF⁵.
- 1.8 Given this there are not considered to be any significant implications resulting from the revocation of the South East Plan.

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?**

¹ These include: [Statement by Medway Council, Conformity with National Policy, The Plan Preparation Process](#)

² [State of Medway Report - Chattenden \(Lodge Hill\) Updated January 2012](#)

³ [The Thames Gateway](#)

⁴ [The Basis for Housing and Employment Growth Targets](#)

⁵ For example NPPF paragraphs 14, 47, 156 and 159

2.1 It is noted that paragraph 118 applies primarily to the determination of planning applications. As such the Council's comments on this matter must, necessarily, be without prejudice to its consideration of the extant outline planning application on Lodge Hill.

2.2 With that proviso it is noted that the paragraph:

- Requires LPAs to “*aim to conserve and enhance...*” rather than imposing this as a pre-requisite.
- Indicates that if significant harm arising from development cannot be avoided then planning permission should be refused. Among the means of avoiding such harm, which is contemplated in the policy, are mitigation and compensatory measures.

In the case of Lodge Hill there are not considered to be any better alternative locations and significant and other harm can be avoided, as mitigation and compensatory measures have been identified.

- States that development likely to have an adverse effect on a SSSI should not *normally* be permitted (our emphasis). An exception should only be made where the benefits of the development clearly outweigh adverse effects on the special interest features and any broader impacts on the SSSI network.

As indicated, there are not considered to be any reasonable alternatives to Lodge Hill. The very significant social and economic benefits have to be weighed against any impacts on the conservation interest. In this case there will be no net adverse impact on nature conservation interests and on the features which justified notification of the site as a SSSI, as full mitigation/compensation is proposed and is provided for in policy. There are no other SSSIs notified specifically for their nightingale interest and so it would not affect a network. In addition large areas of the site will remain undeveloped and will be subject to more active conservation than at present. The net impact of the measures proposed will be positive.

- Encourages opportunities to incorporate biodiversity in and around developments.

This is an explicit principle applied to Lodge Hill through Policy CS33, the Lodge Hill development brief and the emerging masterplan

- States permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and veteran trees – unless the need for the development clearly outweighs the loss.

None of the grassland or scrub habitat at Lodge Hill is irreplaceable and there will be no loss of ancient woodland or veteran trees.

2.3 The remainder of the paragraph relates to candidate European and international nature conservation sites and so is not relevant here.

-
- 2.4 In relation to this the Council is also of the view that due regard must be had to all the relevant evidence relating to the intended role of the Lodge Hill strategic allocation and its multitude of social and economic benefits⁶ in accordance with paragraphs 7 and 8 of the NPPF.
- 2.5 Taking all this into account it is considered that the Core Strategy and Policy CS33 comply fully with paragraph 118 and fall within the exceptional circumstances it allows for.

c) Core Strategy

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

- 3.1 Policy CS6 provides for mitigation/compensation schemes in conformity with the NPPF. It states that such strategies should be in place and functioning prior to commencement of development. In the case of nightingales it is not possible to say at this stage whether all replacement habitat would be **fully** functioning at the commencement of development. However temporal lag is unlikely to be a significant issue if scrub clearance can be phased over a 10-15 year period.
- 3.2 In recognition of this kind of situation CS6 anyway states *“compensation will normally be provided on more than a like for like basis, in order to secure both the maintenance and enhancement of biodiversity”*.
- 3.3 Policy CS33, as a site specific policy, provides for mitigation for protected species, buffer and management arrangements for the (then) Chattenden Woods SSSI and measures to enhance and protect biodiversity within the locality and improve ecological connectivity. This is consistent with Policy CS6.
- 3.4 It is however accepted that Policy CS33 and the concept diagram would need to be updated to refer to the Chattenden Woods and Lodge Hill SSSI – should its notification be confirmed prior to adoption of the Core Strategy.

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?

- 4.1 As already noted, the NPPF allows compensatory habitat to be provided in appropriate cases, even when a site has been notified as being of national importance (SSSI)⁷.

⁶ See: **LD07** Spatial Strategy 2012 Background Paper; **LD08** Thames Gateway Background Paper; **EB41** Lodge Hill Development Brief Consultation Draft (and adopted version); **EB42** Lodge Hill Masterplan Evolution August 2011; **EB52** Medway Economic Development Strategy; **EB106** State of Medway Report – Chattenden (Lodge Hill) 2009 **EB107** State of Medway Report – Chattenden (Lodge Hill) 2012; **RD12** The Thames Gateway Planning Framework – RPG9a; **LH07** Lodge Hill – Employment; **LH11 & LH12** Lodge Hill - Green Infrastructure & Linkages Study; **LH18** Lodge Hill - Social Infrastructure; **LH20** Lodge Hill – Sustainability

⁷ NPPF paragraph 118 but see also paragraph 152

-
- 4.2 The notification for the Chattenden Woods and Lodge Hill SSSI covers three habitat types:
- *Ancient and long established semi-natural woodland*: Development as proposed would not result in any loss of this habitat type; indeed it should result in more effective management than is currently the case
 - *Unimproved neutral grassland*: there remain grave doubts as to whether (within the development site) this is in fact MG5. Nevertheless there are recorded cases (e.g. Birmingham) demonstrating that such grassland can be translocated or it can be effectively created from scratch through re-seeding
 - *Scrub*: This is one of the simplest habitats to re-create, although there are some specific considerations in making it suitable for nightingales – as set out in the BTO report commissioned by the Council⁸.
- 4.3 It follows that the provision of appropriate compensatory habitat to offset losses at Lodge Hill would be easier to achieve than on sites with more specialised habitats and its allocation would be consistent with the exception contemplated in paragraph 118 of the NPPF.
- 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?**
- 5.1 It is not possible, necessary or appropriate to set down a precise hectareage at this stage. That is a matter for the outline planning application.
- 5.2 However, what has been clearly established in the work undertaken by GGKM is that:
- Large areas of Kent and south Essex contain land of a suitable type
 - Sites totalling 1001 hectares have been identified and classified as “*high certainty of deliverability*”
 - A further 426 hectares is classified as “*moderate certainty of deliverability*”
 - This work has by no means considered all potential sites and it has applied some very precautionary principles. For example only sites larger than 50 ha and not within 500 metres of development – this despite the fact that nightingale populations across Europe coexist with human communities and the population at Lodge Hill does the same.
- 5.3 This site availability is more than sufficient to cover the full ranges set out in the BTO and EBL reports (BTO: 300 – 400 ha; EBL: 466 – 851 ha). It follows therefore that there is clear evidence that there is a high degree of certainty, that sufficient land is suitable and available to meet any finally assessed

⁸ [EX60 BTO report: Factors Potentially Affecting the Viability and Success of Biodiversity Offsetting for nightingales Habitat Loss, October 2012](#)

requirement for compensatory habitat. Moreover there is strong evidence that compensatory measures are likely to be effective.

- 5.4 Until a specific package has been identified through the planning application process it is not possible to say what, if any, adverse impacts might arise. However, potential agricultural land losses for each of the sites identified in the GGKM final report is set out in the table below.

Site	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Total
Site 6 - Cleve Hill, Seasalter	0	0	420	0	0	420
Site 7 – Hinxhill Estate, Ashford ¹	0	94	145	68	0	307
Site 8 – Beachborough Park, Folkestone	0	12	224	97	0	333
Site 14 – Part of New Rides Farm, Isle of Sheppey	0	0	41	197	11	238
Site 2 – Beachborough West & Dibgate ²	0	11	37	68	0	116
Site 3 – Shoeburyness, Essex ^{1,2}	67	0	400	104	66	580

¹ These sites are larger than the land identified in the GGKM Nightingale Habitat Opportunities report (January 2013) because the precise location of land that may be available has not yet been determined.

²A small amount of additional land at these sites is classified as “urban”

- 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?**

- 6.1 This time (or temporal) lag is discussed in section 3.2 of the EBL report⁹. This concludes that some lag is inevitable but Natural England comment on this was “*whilst there is a risk, we do not consider it so grave as to rule out habitat compensation as worthwhile for nightingales, as long as measures are taken to reduce this risk..... The more habitat is provided, and the wider its distribution, the more quickly one would expect potential nightingale colonists to encounter it when it is first ready*”.
- 6.2 Since the EBL report was completed further investigations on ordnance disposal suggest that this can be phased, along with scrub clearance and it is expected that Land Securities/DIO will comment further on this aspect. If this is the case any temporal lag will be significantly reduced.
- 6.3 As stated in paragraphs 6.4-6.6 of **EX79**¹⁰ there is no reason for the provision of a mitigation/compensation package to delay the start or pace of built development at Lodge Hill.

⁹ [EX76 Report – Biodiversity Offsetting to compensate for nightingale habitat loss at Lodge Hill, Kent. The Environment Bank Limited, December 2012](#)

¹⁰ [Position statement from Medway Council to Planning Inspector, 11 January 2013](#)

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?

- 7.1 It is not considered possible to limit the loss of grassland through changes to the masterplan. The disposition of the three fields involved and their relationship to the valley bottom mean that avoiding them would result in an incoherent built development layout and an unsatisfactory settlement form.
- 7.2 The delivery risks associated with offsite provision are considered to be low. It is understood such grassland has been successfully translocated in a number of cases, plugs can be lifted and replanted and it can be recreated using readily available seed mixes. The outline planning application makes provision on adjoining land (Islingham Farm) and it is taken into account in the GGKM compensation sites.

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?

- 8.1 The SA/SEA Process, including the Addendum, has provided an assessment of all reasonable alternatives considered by the plan and provided the reasons for their selection/rejection, thus meeting the requirements of the SEA Directive and Regulations.
- 8.2 The SA Addendum was carried out in accordance with extant SA & SEA Guidance and included active involvement of statutory consultees and wider stakeholders.
- 8.3 It sets out the reasons why other alternatives were not considered reasonable, including a more dispersed pattern of development; see Section 4, Paragraphs 4.15 to 4.20.
- 8.4 It is not the purpose of the SEA to decide the alternative to be chosen for the Plan. This is the role of the decision-makers who have to make choices on the Plan to be adopted. The SEA provides information on the relative environmental performance of alternatives, informs the decision making process, and makes it more transparent¹¹. As an ongoing and iterative process the SA/SEA can help to progressively narrow and clarify alternatives.
- 8.5 It should also be noted that the basis for the options and other alternatives was set out and discussed in Chapter 5 of (MC04)¹² and Chapter 3 of

¹¹ ODPM (2005) A Practical Guide to the Strategic Environmental Assessment Directive

¹² [Issues and Options Report](#)

(MC03)¹³. These complement the parallel SA/SEA interim reports and include discussion of more dispersed alternatives.

- 8.6 Within the main options a more dispersed settlement pattern was assessed - the Expanded Hoo option.
- 8.7 The assessment of that option shows that the more dispersed sites are the harder it is to achieve the social and economic benefits possible with a more concentrated option. This is due to the lack of geographical focus and the difficulty of supporting a mix of uses, including those providing direct services to the local population. It becomes much more difficult to market than a single coherent economic development opportunity and economies of scale are lost, including in relation to infrastructure. This includes opportunities for renewable heat and power and other sustainability features.
- 8.8 Given all of these considerations the Addendum SA/SEA is considered to contain sufficient detail and to be robust.
- 8.9 Notwithstanding the duty to cooperate it is not considered realistic to consider whether Lodge Hill could be substituted by development in adjoining areas for the following reasons:
- All authorities across north Kent have a shared genesis for their spatial strategies – the Thames Gateway. Central to this is growth and so levels are being set that are ambitious. As such there is no “slack” to substitute for Lodge Hill
 - Lodge Hill is not just about accommodating growth for its own sake. It is about achieving higher levels of sustainability across the Hoo Peninsula, creating a new economic focus that will help deliver the wider economic development strategy for Medway, providing for housing choice given the nature of the urban regeneration sites and much more. Decanting it would lose all of these benefits
 - Such a radical change of approach and resulting fundamental changes to the spatial strategy could not be advanced “in examination”. As such it is not considered to be a “reasonable alternative” at this stage.

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.

- 9.1 The SA Addendum meets the requirements established in *Heard v Broadland* and *Save Historic Newmarket v Forest Heath BC*¹⁴. All the reasonable alternatives (Options 2 to 5) have been assessed to the same level of detail as the Preferred Option (Option 1), which is presented in Appendix 1 of the SA Addendum. There is more information available with regard to Lodge Hill (Option 1) as an Outline Planning Application has been submitted and therefore there is more lower level assessment work which has been carried

¹³ [Pre-Publication Draft Core Strategy](#)

¹⁴ [2011] EWHC 606 (Admin) – see paragraph 40

out. The SA Addendum clearly sets out the reasons for progressing or rejecting alternatives in Table 4.3, and these are still valid based on the updated evidence.

- 9.2 With regard to Cogent Land LLP v Rochford DC and Bellway Homes Ltd, the SA Addendum provides a revised assessment of reasonable alternatives taking account of updated evidence with the findings summarised in Section 4 and the detailed assessment provided in Appendix 1.
- 9.3 It was assessed that the 'Preferred Option' (Lodge Hill - Option 1) would have a greater negative effect on biodiversity than previously identified. However, there has been substantial work by a number of organisations to determine the scale of potential loss of habitat at Lodge Hill, opportunities for mitigating negative effects through compensatory habitats, and the feasibility of providing alternative sites. There are a number of uncertainties and assumptions regarding the provision of compensatory habitat, particularly with regard to practical delivery. However, from the available evidence, the SA Addendum assumed that if the compensatory habitat (including translocation of grassland) is successfully implemented, it would address the significant negative effects on nightingales and grassland through Option 1 (Lodge Hill) and Policies CS13 and CS33, resulting in potentially insignificant negative residual effects. Therefore, the reasons for selecting and rejecting strategic alternatives were determined to still be valid.

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

a. How much of the development area meets the definition of previously developed land set out in Annex 2 to the framework?

10.1 This is estimated as just over 67% (Developable area = 254 ha; PDL = 172 ha).

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?

11.1 The revised assessment presented in Appendix 1 of the SA Addendum takes account of the biodiversity value of the Lodge Hill Option against SA objective 1 (*Conserve and enhance the diversity and abundance of habitats and species*). Changing the assessment against SA objective 7 (*Maximise land use efficiency through appropriate use of previously developed land and existing buildings*) would double count this biodiversity value when the majority of the site is in fact PDL. Accordingly the score stated is considered appropriate.

Conclusions

12.1 The consequences of notification of the extension to the SSSI have been considered, and the very extensive evidence, which addresses those consequences, unequivocally supports confirmation of the strategic allocation and in full conformity with the NPPF.

12.2 To place this matter in context:

- Lodge Hill is a key site on the MoD's Major Land Disposal Programme and part of the Government's strategy to accelerate housing delivery through the use of surplus public land
- It is a flagship project for the Thames Gateway
- 68 nightingales were recorded within the development area in 2012. Those birds will have been resident for a maximum of 12 weeks but full compensation will be made for any displaced as a result of development
- That would be provided in conjunction with a permanent settlement with a population of around 12,500, 5,000 homes and 5,000 jobs plus a range of associated services and facilities that will benefit settlements across the Peninsula
- A SSSI has never before been notified specifically for its nightingale interest and the science underpinning the decision is being challenged
- The significance of the site for nightingales was known long before June 2012 and major adjustments had been made to the masterplan to ensure that provision was made for appropriate mitigation. Over the 17 years since development was first proposed by a Government (Thames Gateway) task force Natural England is estimated to have been consulted on at least 40 occasions up to 2012
- The Medway urban areas make up 20% of the administrative area. Without the proposed Chattenden and Lodge Hill SSSI, SSSIs cover 28% of that same administrative area. Medway is the location for Plantlife's largest reserve and many Council sites are under active management to maximise their biodiversity interest.
- That however needs to be balanced with the requirement to deliver sustainable development as required by the NPPF.