



Planning Policy
Regeneration Community & Culture
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29th February 2016

Dear Ms Smith,

Medway Council Local Plan – Consultation on Issues and Options 2012-2035

The RSPB is grateful for the opportunity to take part in the first stage of the preparation of Medway's new Local Plan for the period 2012-2035, the Issues and Options Consultation ("the Consultation"). Whilst we appreciate that at this stage in the plan making process there are no fully formulated proposals to respond to as those will not be produced until the next round of consultation, there are some matters raised in the Council's Issues and Options document and supporting evidence that are of considerable interest to the RSPB and how proposals will be formulated in light of them. We have therefore provided our comments on both the Issues and Options document and that supporting evidence.

Please note that some of our comments concern several points, and therefore do not fit within the specific Consultation questions. In addition we do not have comments on all the issues the Council are raising. Therefore we are responding by letter rather than using the on line form but have highlighted the specific consultation sections we are responding to where possible.

The RSPB Reserves and Futurescape work

The RSPB has a direct interest in the Local Plan due to its reserves at Cliffe Pools, Northward Hill and Nor Marsh and Motney Hill. It is therefore a substantial landowner and land manager in the Council's area. At this early stage in the plan-making process, there is no evidence that these reserves will be affected by the Council's proposals, but we would welcome continued consideration of those reserves as more firm proposals emerge.

Please also note that we are fully engaged in the Greater Thames Futurescape (as set out in para 11.8 of the Consultation). The North Kent Marshes are the most important area for breeding waders in South East England, and a priority for our work. Therefore we are advocating a landscape scale approach to nature conservation (following the 'more, bigger, better and joined up' approach advocated by the Lawton Report 'Making Space for Nature' (2010)). In partnership with Statutory and voluntary bodies and private landowners, we are hoping to secure integrated management of wet grassland along the northern edge of the Hoo Peninsula.

Protected Sites

As you are aware the principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international, EU and national law, policy and guidance that assist in the attainment of this objective and plays an active role in the

domestic processes by which development plans and proposals are scrutinised and considered. Part of this involvement is working hard to ensure there are no adverse effects on International, European and national nature conservation protected sites and their species so that the sites and species can be maintained and where necessary restored to favourable conservation status.

A substantial part of the Council's area is adjacent to the Thames and Medway estuaries that are designated as Special Protection Areas (the Thames Estuary and Marshes SPA and the Medway Estuary and Marshes SPA). There are other important designated areas such as the Ramsar sites (Thames Estuary and Marshes Ramsar site and the Medway Estuary and Marshes Ramsar site), the Special Area of Conservation (North Downs Woodland SAC), the Marine Conservation Zone (Medway Estuary MCZ) as well as Sites of Special Scientific Interest, in and around the borough. The protection surrounding these protected sites and species are discussed in more detail in the annex attached to this letter.

The RSPB does not question the need to provide housing and employment opportunities in Medway. However the RSPB wishes to highlight the legal duties set out below and urges consideration to be taken of these requirements early in the plan making process.

Understandably the RSPB regards protection and restoration of the Thames Estuary and Marshes SPA and Medway Estuary and Marshes SPA, its species and its underpinning SSSIs, as well as all environmental protection policy, as a high priority in its work in the South-East of England.

For example the protection of European Sites from recreational pressures (in particular those associated with new housing) is a complex and evolving area in which the RSPB has taken an active role in both evidence base collation/interpretation and policy development at a regional and local level. It is welcomed that the Consultation highlights this issue at paragraph 11.11:

“There can be tensions between opening up access to the countryside and the needs of wildlife. Research¹ has shown that the internationally important birdlife of the SPAs can be damaged by the impact of people visiting the estuary. Dogs exercising off the lead, cycling and watersports are among the activities shown to cause disturbance to birds. These impacts could be a contributing factor to the decline of birdlife in the estuary. Action is therefore needed to address this potential damage, through avoiding inappropriate development, and land management, wardening and education interventions.”

And although the RSPB very much welcomes Medway's commitments to –

“...implement future strategic recreational disturbance mitigation in respect of any impacts on the SPA” (paragraphs 6.7 and 26.8, the Consultation)

and the work being carried out with neighbouring authorities through the North Kent Environmental Planning Group to develop *a strategic access mitigation and management strategy to address the potential of recreational disturbance to the special features of the Thames, Medway and Swale Special Protection Areas and Ramsar sites* (para 6.7 Consultation), until we see that strategy and without any further details at this stage of exactly what action will be taken it is hard to comment further. Due to our previous involvement in these areas generally and this strategy specifically, we would welcome continuing to be involved and to discuss these issues with you.

¹ Liley, D. & Underhill-Day, J. (2013). Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy. Unpublished report by Footprint Ecology.

However an Appropriate Assessment (AA) of the Local Plan will be required, due to the likelihood of effects on the Ramsar sites, Special Protection Areas and SAC resulting from development proposed within the Consultation. We would recommend that evidence gathered is checked against these development proposals at an early stage so that consideration can be given to moving development away from these protected sites and/or a robust mitigation strategy for the Local Plan can be developed, to inform the AA.

The RSPB also welcomes the Council's work on Green Infrastructure (as set out in para 11.9, the Consultation) and its commissioning a Green Infrastructure Planning Project to analyse the principle components of Medway's environmental networks, to help inform the planning process in determining the most sustainable locations for future growth, and securing multi-functional and high quality green infrastructure in new development. As outlined above this should be linked to further studies on existing pressures on protected sites and potential increase in pressures.

Housing

The RSPB welcomes the Council's commitment as set out in para 7.10 the Consultation:

"7.10 In preparing the new Local Plan, the council is committed to planning positively to meet the development needs of its area, subject to ensuring that in doing so, development would not conflict with the principles of sustainable development set out in the NPPF. Therefore the council is embarking on the plan preparation process with the intention of meeting the objectively assessed needs identified for Medway's administrative area."

And that it is *seeking to make the best use of brownfield land* as set out in paragraph 7.20, the Consultation.

The RSPB has considered the information available in the Council's Strategic Land Availability Assessment (SLAA). We have noted issues with the Council's approach that we are concerned would substantially undermine the soundness of the future Local Plan.

The Council envisages that the population of Medway will increase by nearly 50,000 people by 2035 (the Consultation document, para 3.6) and the North Kent Strategic Housing and Economic Needs Assessment (SHENA) identifies the need for 29,463 new homes by 2035 (para 7.8).

Delivery of such a large number of houses within this period will require a very positive approach by the Council. We note that the Strategic Housing Market Assessment (SHMA) has translated this into an Objectively Assessed Need (OAN) of between 1,213 and 1,281 dwellings per year. However, there appears to be a mismatch between the number of dwellings envisaged and the timeframe of the Plan - at 1,281 dwellings per year it would take 23 years to deliver these dwellings, which takes the delivery to 2039 rather than the 2035 envisaged in the Consultation document. This should be a source of concern for the Council.

The RSPB also notes that the SLAA considers a total of 9,391 potential "Suitable and Available" SLAA Sites. This is significantly lower than the 29,463 houses that the Council has indicated will be needed and is therefore a serious source of concern in relation to the overall deliverability of the Plan. Even if the 1,723 units with extant permission are included, the Council only has a total of 11,114 units against this target (less than 38%). This does not sit well against the required need for a positive approach by the Council. It is important to note that the development proposals at Lodge Hill represent 45% of the 11,114 units. If it is removed from the calculations (to reflect the uncertainty around this allocation) then the Council can only demonstrate 6,114 units (or just under 21%). This is discussed in more detail below.

The Lodge Hill site allocation

The RSPB notes the Council's acknowledgement of the uncertainty around the Lodge Hill application (paragraphs 27.5 – 27.7, the Consultation). At the time of writing the precise timetable for the "called in" public inquiry is not confirmed, however the inquiry is not likely to take place before the spring of 2017. We note that this is after the date set in the updated Local Development Scheme for the consultation on Preferred Options due in January-February 2017.

In light of our previous Local Plan concerns about the lack of consideration of alternatives to the Lodge Hill application, the RSPB welcomes the Council's commitment to now consider alternatives to Lodge Hill, both other free-standing settlements as well as locations for dispersed housing. It welcomes the range included of proposals for accommodating housing growth in the Council's area (paragraphs 27.11 et seq the Consultation).

However, the RSPB wishes to underline that any preferred options for residential development provided through a new settlement or by any other methods should:

- have full regard to the presence of the International, European and national protected sites and any potential impacts on those sites and their species;
- there should be a strategic environmental assessment and, where necessary, a Habitats Regulations assessment, carried out to inform the preferred options; and
- any need for mitigation measures required due to impacts identified through such assessments, need to be considered early in the process so that suitable location and effective measures can be considered.

These points are discussed in more detail in the annex attached to this letter.

If these conditions were not to be fulfilled for any planning application following from the Preferred Options or later stages of the plan-making process, the new Local Plan would be at odds with the Council's own commitments to take a strategic approach to mitigation and to secure and strengthen the natural environment. The RSPB believes that the development pressures within the Council's area are such that it will be necessary to address issues such as redeveloping industrial areas to resolve the conflicts between meeting population and other growth needs and protecting nature conservation sites and their species in perpetuity.

As stated above, the RSPB does not question the need to provide housing and employment opportunities in Medway. However despite the background information provided within this Issues and Options Consultation, the Council has not demonstrated that it is essential to cause the significant harm predicted to the nationally important Chattenden Woods and Lodge Hill SSSI and its species, resulting from the Lodge Hill application, in order to deliver its housing needs. (These points are discussed in more detail below but it should be noted that this is the only SSSI in the SSSI network notified for nightingale as a single species and should the development go ahead the direct loss of SSSI would account for one of the largest losses of an area of SSSI in the UK).

It is worth highlighting that the nightingale population in Britain has undergone severe and ongoing declines in the last 45 years, with a contraction of the population into south-east England, such that it is has been red listed in the most recent Birds of Conservation Concern^{2,3}. The BTO/RSPB/JNCC Breeding Bird Survey indicated that nationally, the species declined by 37% between 1995 and

² http://www.bto.org/sites/default/files/shared_documents/publications/birds-conservation-concern/birds-of-conservation-concern-4-leaflet.pdf

³ Hewson and Fuller (2012). Factors Potentially Affecting the Viability and Success of Biodiversity Offsetting to Compensate for Nightingale Habitat Loss. BTO.

2013⁴, whilst longer term data indicates a decline of more than 90% in the last 40 years⁵. Chattenden Woods and Lodge Hill SSSI is of national importance for nightingale, comprising more than 1% of the British population.

Allocation

The RSPB particularly welcomes the SLAA stating that:

“4.19 Sites were excluded from further assessment if they were constrained by one or more of the following restrictive designations that are present in Medway:

- North Downs Woodlands SAC
- South Thames Estuary and Marshes SPA, Ramsar & SSSI
- Medway Estuary and Marshes SPA, Ramsar & SSSI
- Cobham Woods SSSI
- Northward Hill SSSI
- Dalham Farm SSSI
- Chattenden Woods and Lodge Hill SSSI
- Tower Hill to Cockham Wood SSSI
- Halling to Trottscliffe Escarpment SSSI
- North Kent Downs AONB
- Flood Zone 3b Undeveloped Land”

The SLAA goes on to consider designated sites (at para 4.54) setting out the relevant NPPF requirement:

“Designated Habitats – National & International

4.53 Paragraph 113 of the NPPF states: “Distinction should be made between the hierarchy of international, national and locally designated sites, so that protection commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks”.

4.54 As explained in paragraph 4.19, sites that fall directly within an internationally or nationally designated habitat have been screened out at stage 1 of the suitability assessment process.

4.55 However it is recognised that even if a site does not fall directly within an internationally or nationally designated habitat, development nevertheless has the potential to have adverse impacts upon these areas. Furthermore consideration also needs to be given to the impact of development upon ancient woodland and also Marine Conservation Zones.”

In light of these welcome exclusions the RSPB does not understand why Lodge Hill has remained allocated in light of the Council’s statement and without any detailed explanation for this approach. The information provided in the Appendices to the SLAA includes (re Ecological Potential):

“The site is known to accommodate protected species and habitats. However, based on information submitted in support of the extant planning application, it is anticipated that the impact on these capable of mitigation and/or compensation. Investigation into this issue is ongoing.”

And re designated habitats, state that:

⁴ RSPB et al (2015) The State of the UK Birds 2015. https://www.rspb.org.uk/Images/sukb2015_tcm9-409524.pdf

⁵ Holt, Hewson & Fuller (2012). The Nightingale in Britain: status, ecology and conservation needs. British Birds 105: 172-187.

“Development of the site is likely to have a detrimental impact on designated habitats. However, based on information submitted in support of the extant planning application, it is anticipated that this impact is capable of mitigation and/or compensation.”

It is important to note that the approach on both of these categories relies upon the Applicant’s documentation and both of these points are yet to be evaluated through the Lodge Hill public inquiry which is scheduled for 2017.

More generally the RSPB is profoundly concerned by the way in which the Lodge Hill site has been considered in the current SLAA. Although we welcome the fact that the Council has treated the site as uncertain due to not having planning permission, we note that the site is included in the list of Suitable Housing Sites and that the full total of 5,000 units for the Lodge Hill scheme is used. This means that the Council is relying on Lodge Hill to provide 17% of its total needed housing units during the Plan period. However, given the significant current discrepancy between the number of sites in the SLAA and the total housing need, if Lodge Hill does not get developed for housing the Council will only have 6,114 units against its target of 29,463 (a total figure in the SLAA that is less than 21% of the target). We are therefore concerned that the Council is consulting on this option despite such uncertainty over its potential deliverability.

Rating

Paragraph 4.52 of the SHLAA states:

“... In considering the site at Lodge Hill, the council recognised the developers proposed a compensation and mitigation package to address impact on the features of the SSSI. However, as this is a key matter to be considered through a Public Inquiry in 2016, an Amber rating was viewed appropriate.”

The Amber designation at this point means “The presence or absence of protected species and/or habitats cannot be established at this stage”.

As the site was notified as a Site of Special Scientific Interest by Natural England in 2013 it is difficult to see how this approach can be presented credibly on behalf of the Council. In addition, although the RSPB welcomes the mitigation and compensation proposals accompanying the Lodge Hill application, due to the lack of ecological and legal certainty regarding how those proposed measures will be achieved and delivered, including if needed whether planning permission will be granted for the chosen compensatory area(s), mean that the inclusion of these measures at this stage is premature. Lodge Hill will have direct effects within the SSSI and possible indirect effects on Ramsar sites, SPAs, SAC and other SSSIs. These effects include:-

1. Increased recreational pressure arising from the Lodge Hill proposal that may affect national, European and international designated sites for example the Foulness SPA/Ramsar site, Crouch and Roach Estuaries SPA/Ramsar site and Essex Estuaries SAC which at present the RSPB thinks needs further assessment in light of updated surveys.
2. Direct and permanent destruction of significant areas of the Chattenden Woods and Lodge Hill SSSI, including:
 - Scrub, woodland and associated supporting habitats that hold the majority of the nationally important population of breeding nightingales for which the SSSI is notified; and
 - The majority of the nationally scarce neutral grassland for which the SSSI is notified.

3. Indirect effects - the remaining breeding nightingales can be expected to suffer significant negative impacts from a combination of various urbanisation effects (for example trampling of habitat, disturbance, predation and eutrophication) which will persist for the lifetime of the Lodge Hill development; and
4. Impacts on other SSSI breeding bird populations for example turtle dove (currently red-listed in the Birds of Conservation Concern 4⁶ due to significant long-term declines and being identified in the most recent State of the UK Birds (2015)⁷ as showing one of the greatest declines of any UK breeding bird species with a 97% decline between 1970 and 2013).

Therefore the Lodge Hill application listing, at this stage, should be made purely on the basis of the known harm it will do to the SSSI, SAC, SPAs and Ramsar sites, not on the basis of future mitigation and compensation proposals that may or may not overcome these known effects.

On the basis of the Council definition for red listing *“Development of the site is likely to have a detrimental impact upon internationally/nationally designated habitats which is not considered resolvable.” “Site has direct relationship with the designated site and its sensitive features.”* Lodge Hill must be included within the Red List.

In addition, it is our view that the application runs directly counter to national planning policy (one of the reasons for the application being called in by the Secretary of State). Therefore the RSPB is profoundly concerned by the continued reliance on Lodge Hill as a key part of the housing figures that the Council is advancing. If the Secretary of State decides not to grant planning permission following the Inquiry in 2017 the consequences for the development of the Plan will be at least as serious as for the Council’s previous draft Core Strategy. We strongly urge the Council to re-evaluate all the housing site data that it holds to ensure that the Plan is not reliant upon the delivery of 5,000 housing units at Lodge Hill.

Overall Housing Conclusions

The RSPB considers that the SLAA submitted with the Issues & Options document is clearly inadequate for the purpose and that as a result it needs to be redone to clearly identify a sufficient number of housing units, without relying upon the Lodge Hill site. This may need to be a multi-round approach, working out which sites are entirely unacceptable and then reconsidering some of the other categories (e.g. distance from certain facilities) until the requisite number of housing units is arrived at.

The Council needs to demonstrate that the Plan will comply with the National Planning Policy Framework (NPPF)(these are discussed in detail below in the annex attached to this letter) including the tests of soundness set out in paragraph 182 of the NPPF. At present the SLAA suggests that the Council fails to meet all four of the tests. It is not:

- **Positively prepared** – as at present it appears incapable of meeting the objectively assessed housing requirements of Medway;
- **Justified** – as the Plan currently fails to meet the objectively assessed housing requirements by a significant extent, it cannot be considered to be the most appropriate strategy, when considered against the reasonable alternatives, and it is clearly not based on proportionate evidence;
- **Effective** – if the Council is unable to identify where its housing should go then the plan will not be deliverable over the Plan period; and

⁶ Eaton M.A., Aebischer N.J., Brown A.F., Hearn R., Lock L., Musgrove A.J., Noble D.G., Stroud D.A. & Gregory R.D. 2015. Birds of Conservation Concern 4: the population status of birds in the UK, Channel Islands and Isle of Man. British Birds. 108, 708-746.

⁷ RSPB et al (2015) The State of the UK Birds 2015.

- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework. Reliance on the Lodge Hill scheme runs counter to the stipulations in paragraphs 117 and 118 of the NPPF (please see below).

Economy - Employment land

The RSPB does not have a strong view on the distribution of new employment development within the existing employment area identified within the Local Plan, subject to any such developments respecting environmental sensitivities, in particular the network of nature conservation designations within the borough. This requirement is particularly relevant to future potential intensification of heavy industry development at Kingsnorth and Isle of Grain, which has the potential to impact on coastal areas of national, European and international importance to wildlife.

With regard to the potential for a new employment site at Lodge Hill, we would remind the Council that the evidence base supporting the recent outline planning application for this site (submitted in February 2014) indicated that the area currently proposed (in the application) for commercial floorspace and the proposed timing of its release mean that this site would not significantly contribute towards the employment needs of the wider borough, and would largely only meet the employment demand generated by the new housing proposed as part of the wider scheme.

Furthermore, we note the concerns raised within the Medway Employment Land Assessment Report (supporting the Issues and Options Consultation) with regard to the employment potential at Lodge Hill. The Report considers that due to the lack of any existing employment market demand in this area, employment potential for the site is unlikely to be realised until any new settlement on the site is established, which, if the site were to receive permission, would not be realised until later in the Plan period. It goes on to caution any predictions of future economic activity at the site *“given the need to establish it as a place first, the lack of an existing high quality office market in this area and the still relatively weak market for business parks in Kent”* (paragraph 9.20). An example is given of another business site in Tonbridge and Malling (Kings Hill) that failed to deliver its predicted employment potential, supporting the need for placing caution on such future predictions.

Given the added uncertainty of the deliverability of the Lodge Hill site, the RSPB would strongly advise against placing any weight on this as an employment opportunity area within the Local Plan.

It is noted that a number of other potential employment sites are identified within the Medway Employment Land Assessment Report, including the Thameside Industrial Estate at Cliffe. We would caution the allocation of this site, as expansion of the existing low level use of this site raises significant access and environmental issues (acknowledged within the Report – paragraph 7.95). It is important that the potential environmental and ecological impacts of all such sites identified within the Report are carefully assessed should they be taken forward into the next stage of the Local Plan.

Although we have tried to cover all relevant points with this response, however there may be other issues of importance to the RSPB that only arise once the preferred options are identified.

Open Space

The RSPB supports the creation and protection of a high quality network of open spaces to help support sustainable development within Medway. The Consultation highlights deficits in the existing quality and quantity of some types of open space within the borough, and further highlights Medway’s comparatively low standard for new open space provision through development compared to neighbouring boroughs.

While efforts to improve the quality of the open space network appear to be underway in Medway (the Consultation describes significant investment in recreational spaces and some other types of open space), the shortfall in accessible open spaces will undoubtedly place increased pressure on the nationally, European and internationally important coastal areas within and adjacent to the borough. As the Council is aware, a mitigation strategy is being developed to protect these sites from additional recreational pressures arising from new housing development in the wider area.

It is recommended that, where new and improved recreational areas (Suitable Alternative Natural Greenspace, 'SANGS') are proposed to reduce pressure from new development (either through the North Kent strategic mitigation and management strategy or as part of bespoke mitigation for individual developments), the Council should ensure that such proposals maximise the value of existing accessible open spaces, for example by ensuring that new sites link into the existing network, creating larger accessible areas and reducing the overall cost of their future management.

We look forward to further opportunities to participate in the subsequent stages of the preparation of the plan and request that if at all possible you contact us directly once those further stages become available. In addition we would welcome the opportunity to meet with you early in the Consultation process to highlight and discuss the RSPB's concerns.

As mention above, although we have tried to cover all relevant points with this response, there may be other issues of importance to the RSPB that only arise once the preferred options are identified.

Yours sincerely



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Legal and Policy Annex

There are a number of legislative provisions and policies that are relevant to this Options and Issues' Consultation as well as the Local Plan and the Council more generally. We have set these out below, highlighting how, in our view, they are relevant.

1. Nature conservation law

Sites of Special Scientific Interest and the Wildlife and Countryside Act 1981 (as amended)

- 1.1. Sites of Special Scientific Interest (**SSSIs**) are the most important sites for national wildlife and natural features in England. In England, SSSIs are notified by Natural England who has a duty under Section 28 of the Wildlife and Countryside Act 1981 (as amended) (**the WCA**) to notify SSSIs where it is of the opinion that an area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features and to secure their day-to-day protection and conservation.
- 1.2. The purpose of SSSIs is defined in the Defra Code of Guidance⁸ (paragraph 1) as being:

"...to safeguard, for present and future generations, the diversity and geographic range of habitats, species, and geological and physiographical features, including the full range of natural and semi-natural phenomena throughout England..."
- 1.3. SSSIs make a fundamental contribution to the ecological processes upon which we all depend and to human quality of life. Individual SSSIs may also provide, or safeguard for the future, valuable research, educational and amenity resources.
- 1.4. Under Section 28G(2) of the WCA, public bodies must:

"...take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest"
- 1.5. The Defra Code of Guidance (paragraph 73) states that the Secretary of State expects that all public bodies will take full account of their responsibilities under this duty whenever their actions may affect SSSIs.
- 1.6. Government Circular 06/2005⁹, paragraph 61 requires all section 28G authorities, including local planning authorities, to apply strict tests when carrying out any functions within or affecting a SSSI, to ensure that they avoid or at least minimise adverse affects. It also requires public bodies to adopt the highest standards of management in relation to SSSIs in their ownership and to take positive steps wherever possible to conserve and enhance the special interest features of a SSSI where their activities may be affecting it or as opportunities arise in the exercise of their functions.
- 1.7. As set out above the RSPB welcomes the exclusion from consideration of developments within these nationally important sites. However it questions how the Lodge Hill proposed development, with its direct damage to the Chattenden Woods and Lodge Hill SSSI and its

⁸ Defra (2003): Sites of Special Scientific Interest: Encouraging Positive Partnerships.

⁹ Government Circular 06/2005: Biodiversity and geological conservation – statutory obligations and their impact within the planning system, 16 August 2005.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7692/147570.pdf.

notified features can be included within the SHLAA and therefore form part of the draft Local Plan and the Section 28G(2) duty be complied with.

The Natural Environment and Rural Communities Act 2006

1.8. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) sets out a public authority's duty to conserve biodiversity. It states that:

"Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity."

1.9. The RSPB welcomes the Council's commitments to the conservation of biodiversity as set out in the Consultation but again questions how Lodge Hill can remain within the development options and this duty be complied with.

The Conservation of Species and Habitats Regulations 2010 (as amended)

1.10. The RSPB wishes to highlight that compliance with Regulation 9 of the Habitats Regulations is also required. Regulation 9A(1) of the Regulations provides:

"(1) Without prejudice to regulation 9(1), the appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the marine area, the Environment Agency, the Forestry Commissioners, local authorities, the Broads Authority and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive...

...(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), appropriate account must be taken of economic and recreational requirements."

1.11. And in addition Regulation 9A(8) provides that:

"So far as lies within their powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies)".

Strategic Environmental and Habitat Regulations Assessments

1.12. Whilst we acknowledge that a strategic environmental and Habitat Regulations assessments of the plan cannot not be carried out until proposals and options are confirmed, the RSPB strongly recommends that consideration be given to the requirements of those assessments now, to ensure that all unsuitable sites are excluded and adequate information is available to complete them once there is a draft Local Plan.

1.13. For example Regulation 12(2) of the Environmental Assessment of Plans and Programmes Regulations (2004)(as amended)(the SEA Regulations) states that the *responsible authority shall prepare.... an environmental report* and that

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–

(a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

1.14. Schedule 2 of the SEA Regulations sets out in more detail what is required particularly paragraphs 6, 7 and 8:

“6. The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues”

“7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.”

“8. An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.”

1.15. The Government’s SEA Guidance¹⁰ explains:

“2.24 It is not usually appropriate in SEA, and is often impracticable, to predict the effects of an individual project-level proposal in the degree of detail that would normally be required for an EIA of a project. If, however, a plan or programme proposes a specific development or type of land use for a particular area or location, the Environmental Report should include information which can reasonably be provided on the likely significant effects of that proposal and alternatives to it.”

1.16. With the Guidance confirming that all necessary comparable information must be presented to enable the decision maker to be fully informed and therefore able to consider the implementation of the Local Plan or any of the alternatives:

“5.B.7 It is not the purpose of the SEA to decide the alternative to be chosen for the plan or programme. This is the role of the decision-makers who have to make choices on the plan or programme to be adopted. The SEA simply provides information on the relative environmental

1.17. In light of this guidance the RSPB again wishes to highlight the lack of information currently provided as to why many sites have been excluded early in the SHLAA process. In our view it is important to understand exactly why these sites were excluded particularly in light of the Lodge Hill site remaining so that full consideration can be given to all possible development sites to meet the Council’s housing and employment needs.

¹⁰ A Practical Guide to the Strategic Environmental Assessment Directive Practical guidance on applying European Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment September 2005 Office of the Deputy Prime Minister (ODPM Practical Guidance)

2. The National Planning Policy Framework

- 2.1. The Government has clearly directed that Local plans must be positively prepared, justified, effective and consistent with national policy in accordance with section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) and the national planning policy framework (NPPF).
- 2.2. The National Planning Policy Framework (**NPPF**) is the Government's flagship planning policy. It is designed to encourage the provision of development where it is needed, while at the same time protecting the environment from damaging development.

The need for strategic planning to meet objectively assessed needs

- 2.3. The NPPF sets out in a number of policies about the importance of local plan making in delivering sustainable development and meeting objectively assessed needs:

- 2.4. Paragraph 12 of the NPPF states:

“This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.”

- 2.5. Paragraph 14 of the NPPF states:

“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.*⁹

⁹ *For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.*

- 2.6. Paragraph 17 of the NPPF sets out 12 core principles that should underpin both plan-making and decision taking. These 12 principles are that planning should:

- *encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;”*

2.7. It is our view that the allocation of a Site of Special Scientific Interest (SSSI) as a strategic development allocation for both housing and business is incompatible with the policy objectives set out in the NPPF in the following paragraphs:

14 the proposed allocation would not be sustainable development because of its impact on the Chattenden Woods and Lodge Hill Site of Special Scientific Interest;

152 the proposed allocation does not avoid avoidable adverse impacts on an SSSI; and

118 the proposed allocation is inconsistent with the principles set out in terms of conserving and enhancing biodiversity, and the benefits of development at this location do not outweigh the impacts on the SSSI and the national network of SSSIs.

2.8. In addition the NPPF includes conserving and enhancing the natural environment policies as set out in paragraph 117 as follows:

“To minimise impacts on biodiversity and geodiversity, planning policies should:

- *plan for biodiversity at a landscape-scale across local authority boundaries;*
- *identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;*
- *promote the preservation, restoration and re-creation of priority habitat, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;*
- *aim to prevent harm to geological conservation interests; and*
- *where Nature Improvement Areas are identified in Local Plans, consider specifying the types of development that may be appropriate in these Areas.”*

2.9. And in relation to the presumption in favour of sustainable development (paragraph 14), paragraph 119 makes it clear that this presumption does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. As set out above due to the increase of recreational pressures on the near by Ramsar sites, SPAs and SAC information has been gathered for an appropriate assessment to accompany the Lodge Hill planning application and therefore should not benefit from the presumption. For the Council to ensure that its Local Plan fulfils the NPPF’s requirement for sustainable development, Lodge Hill should at least be re-categorised or preferably excluded from the strategic development allocation.

Examining Local Plans

2.10. As you are aware Local Plans are examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. As set out above but included here for completeness - a local plan is “sound” when it is:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** - the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

In light of the comments made above we question whether even at this early stage the proposals that are being taken forward (considering the underlying evidence provided with the Consultation) would enable a sound local plan to be drafted.