



Planning Policy
Regeneration Community and Culture
Medway Council
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25 June 2018

Dear Ms Smith

Consultation on the Medway Council Local Plan Development Strategy 2012 – 2035

The RSPB is grateful for the opportunity to contribute to the Development Strategy consultation as part of the process of preparing the Medway Council Local Plan 2012-2035 (“the Consultation”). We remain committed to trying to help Medway Council secure a sound Local Plan, for the benefit of all.

Please note that, as with previous consultations on the Medway Plan, some of our comments concern several points and therefore do not fit easily within the specific questions set out in the Consultation. In addition, we do not have comments on all the issues in the Consultation. Therefore, we are responding by letter rather than by using the online form. However, as before, we have sought to structure our response in a format that is consistent with the way the consultation is set out in order to make it clear to which parts of the document we are responding. Please note that our response should be read in conjunction with letters sent to Medway Council during the consultation period, namely letters dated 5 April 2018, 16 April 2018 and 11 May 2018, which we have included as appendices to our Consultation response.

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1. The RSPB's interests in Medway

The RSPB is a significant landowner and land manager in Medway Council's area. We have nature reserves at Cliffe Pools, Northward Hill, Nor Marsh and Motney Hill (857 ha in total). The northern part of the Council's area lies within the Greater Thames, a national priority landscape for the work of the RSPB. This is one of our highest priority places in the UK for the promotion of conservation at a landscape-scale, adopting the principles advocated by the Lawton Report *Making Space for Nature* (2010), which recommended (in simple terms) more, bigger, better and more joined up protected areas.

A substantial part of the Council's area is subject to statutory nature conservation designations. This includes the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site, the Medway Estuary and Marshes SPA and Ramsar site, the North Downs Woodlands Special Area of Conservation (SAC), the Medway Estuary Marine Conservation Zone (MCZ) and a number of Sites of Special Scientific Interest (SSSIs). Among the SSSIs is the large (351 ha) Chattenden Woods and Lodge Hill SSSI, which is designated for supporting a nationally important population of the red-listed nightingale, along with rare grasslands. Indeed, the site has been identified as holding *the* most important population of nightingales nationally¹, and is the only site designated specifically for them. The RSPB regards the protection and enhancement of the SPAs and their underpinning SSSIs, along with the protection of the Chattenden Woods and Lodge Hill SSSI, as being among the highest priorities for our work nationally.

2. Section 2: Vision and Strategic Objectives for the Local Plan

The RSPB **welcomes** and **supports** the Vision set out on page 19 of the Consultation: *"By 2035 Medway will be a leading University waterfront city of 330,000 people, noted for its revitalised urban centres, its stunning natural and historic assets and countryside."*

We **strongly support** the commitment to the conservation and enhancement of the natural environment through coordinated working at a landscape scale, set out in para. 2.27, including the work of the Strategic Access Management and Monitoring Scheme (SAMMS). We **welcome** the recognition of the Council's custodial duty to conserve and enhance the natural environment, in particular designated habitats and landscapes, as set out in para. 2.40. ***However, this custodial duty would be fundamentally undermined by any allocation of development that led to damage, directly or indirectly, to the Chattenden Woods and Lodge Hill SSSI.***

We **broadly support** the Strategic Objectives set out in para. 2.43.

¹ Hewson CM, Miller M, Johnston A, Conway GJ, Saunders R, Marchant JH, Fuller RJ. 2018. *Estimating national population sizes: Methodological challenges and applications illustrated in the common nightingale, a declining songbird in the UK.* Journal of Applied Ecology; Vol 55(4): 2008–2018

3. Section 3: Development Strategy

Comments on the Council's overall approach to allocation of land for development

The Consultation presents four alternative development scenarios, largely focused on the spatial distribution of housing land. The way this section is presented represents some improvement over the corresponding section in the Development Options consultation (2017), insofar as the information on Component of Land Supply and total Number of dwellings for each scenario is clearer, although in the absence of a revised Strategic Land Availability Assessment (SLAA), or at the least an update report, it is not clear how these totals were arrived at, which is a considerable barrier to understanding the options and comparing their merits. We welcome the fact that the status of the Lodge Hill site as a SSSI is this time acknowledged, rather than previously when it was not mentioned.

However, we remain **deeply concerned** about the approach adopted with regard to compatibility with the National Planning Policy Framework (NPPF) and the principles of sustainable development on or adjacent to nationally and/or internationally important sites for nature conservation. In particular, it still does not appear that the Avoid, Mitigate, Compensate hierarchy has been followed, as was made clear by the previous Local Plan inspector, and which we and many others have flagged previously. We set out our concerns in detail below.

Unexplained major anomaly within screening process

In the RSPB's response to the previous Development Options consultation, dated 13 April 2017, we drew attention to the inconsistent application of the criteria for screening potential housing development sites. In particular, Stage 3 of the SLAA screening process, which removed sites if they had environmental designations such as SSSIs, SACs, SPAs, Ramsar, Area of Outstanding Natural Beauty and ancient woodland, was applied inconsistently. Chattenden Woods and Lodge Hill SSSI ("the SSSI") was allowed to proceed to Stage 4, in contrast to other potential sites with heritage designations being screened out, along with other areas of land without designation. This remains unexplained, and inexplicable. We refer you to our arguments in previous rounds of consultation (attached), which remain unchanged.

Implications of NPPF for SSSIs

The RSPB acknowledges the challenge faced by the Council in identifying sustainable locations for the delivery of housing supply adequate to meet Objectively Assessed Need (OAN). Clearly, this challenge is more acute if the aim is to meet the Government's proposed Standard Method calculation of Local Housing Need. Notwithstanding these considerations, the starting point for considering scenarios for the delivery of housing (and other development) is the NPPF and, in the context of the Council's custodial duty to conserve and enhance the natural environment, the provisions in paragraph 118 thereof.

Paragraph 118 states:

*"Proposed development on land **within or outside** a SSSI likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that makes it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest."* (emphasis added)

Each of the four alternative Scenarios presented in this section would include housing development in close proximity to (and indeed directly abutting) the boundary of the Chattenden Woods and Lodge Hill SSSI and in the case of Scenario 4 the construction of a substantial number of dwellings directly within the SSSI. The provisions of paragraph 118 are accordingly of the utmost importance in assessing the acceptability or otherwise of each Scenario.

We have set out our specific comments on each Scenario below, but there are a number of common themes. Because nightingales are a ground nesting (or near-ground nesting) species that is vulnerable to all manner of urban disturbance, any allocation for housing development right next to the SSSI is extremely likely to be highly damaging to the nightingale population, and could not be considered to be sustainable development (a point we expand upon in Section 1212 below), nor to have met the tests set out in the NPPF.

Accordingly, the first sentence of paragraph 118 is very pertinent: *“Proposed development on land within or outside a SSSI likely to have an adverse effect....should not normally be permitted.”* Given the likely impacts arising from development we would therefore expect to see a considerable land gap between any allocation boundary and the boundary of the SSSI, the precise size of which should be determined through collaborative discussion between expert parties. We would also expect to see a simple policy statement in the Local Plan that explains this, and the factors that developers need to take into consideration when proposing development in proximity to the SSSI.

We have reviewed the *Interim Consideration of the Implications of Development Strategy Scenarios on European Sites* (Arup, March 2018), hereafter referred to as the Habitats Regulations Assessment (“the HRA”) and the *Medway Local Plan Sustainability Appraisal* (Arup, April 2018) (“the SA”) and our detailed comments on the latter are contained in a separate section below. We have where appropriate made reference to them in our specific comments on the development scenarios.

Housing targets

We know that Medway Council has made it very clear in Cabinet meetings and public statements that the Council does not accept the Government's Standard Methodology, yet we also understand that the government expects the Standard Methodology to be followed. This makes it very difficult as a consultee to know whether the four options presented are true options, or whether the three using Medway's preferred methodology are going to prove to be a false choice. We also note that if the Council is required to apply the Government's Standard Methodology the approach that it has adopted in this consultation document means that it is effectively not consulting on alternative scenarios as only one of the scenarios considers this situation. It would have been helpful to have provided some guidance as to how that uncertainty should be dealt with.

Comments on the four Development Scenarios

Scenario 1: Meeting Objectively Assessed Need

This Scenario seeks to meet the Objectively Assessed Need for the provision of 29,463 dwellings over the plan period, identified in the 2015 North Kent Strategic Housing and Economic Needs Assessment (SHENA).

Whilst the Scenario does not envisage direct land take from the SSSI in the form of development within its boundary (which we welcome), it would entail extensive housing provision in immediate proximity to the boundary. Accordingly, from experience with other sites where development has occurred close by, we consider that the SSSI would be the subject of significant urbanising effects, including disturbance, lighting,

and an increase in the level of predation by domestic cats on ground nesting birds, including breeding nightingales, the key interest feature of the SSSI.

Notwithstanding these considerations, the SA concludes with regard to Objective 6: *To protect and enhance biodiversity features* that the overall impact of the Scenario is 'neutral' (paragraphs 5.1.1.2 and Table 37, pages 32-33). This conclusion is incomprehensible, as we cannot see how it can be anything but negative or double negative. It strongly infers that the authors of the SA did not take appropriate account of the implications of development in close proximity to the SSSI. We explore our concerns with the SA's conclusions in Section 11 - Sustainability Appraisal below.

Scenario 2: Investment in infrastructure to unlock growth

Like Scenario 1, this Scenario seeks to meet the Objectively Assessed Need for 29,463 dwellings, whilst accelerating the delivery of a slightly higher number of homes than in Scenario 1 (delivering 31,033 dwellings over the plan period rather than 29,950).

It does not envisage direct land take from the SSSI but the same considerations outlined above about Scenario 1 apply concerning urbanising effects from housing proposed immediately adjacent to the boundary of the SSSI.

The SA concludes with regard to Objective 6 that the overall impact of the Scenario is 'unknown' because of uncertainties about strategies for ecological gain or mitigation against ecological loss associated with management of greenspace or the expansion of the rail network and related infrastructure. Whilst there are indeed uncertainties about these matters, the delivery of such strategies would not itself mitigate or remove the negative impacts of development in close proximity to the SSSI upon breeding nightingales located within the SSSI, and therefore we believe that at the very least the impact of this would be negative. We explore our concerns with the SA's conclusions in Section 11 - Sustainability Appraisal below.

Scenario 3: Meeting Government's proposed calculation of local housing need

This Scenario addresses the projected housing need arrived at through the government's proposed Standard Method, which leads to a calculated need for 37,143 homes during the plan period. As noted above, it is the only scenario which considers the provision of 37,143 homes, which renders it distinct from the other scenarios.

It does not envisage land take from the SSSI but the same considerations apply concerning urbanising effects to those outlined above regarding Scenarios 1 and 2. The fact that it is able to suggest providing an additional 7,193 dwellings without the need to consider building houses on the Chattenden Woods and Lodge Hill SSSI is of particular importance for Scenario 4 below.

The SA concludes with regard to Objective 6 that the overall impact of the Scenario is 'unknown', for reasons that parallel those mentioned in relation to Scenario 2. We would add a similar proviso about impacts on the SSSI interest features to that mentioned above and we believe that at the very least the impact of this would be negative. We explore our concerns with the SA's conclusions in Section 11 - Sustainability Appraisal below.

Levels of residential development of this magnitude inevitably raise questions about the possible increases in recreational disturbance to the Thames Estuary and Marshes and/or Medway Estuary and Marshes SPAs and the ability of the current strategies in place to mitigate for such increases. We would expect to see these questions directly addressed and solutions found, but we are not convinced that this issue has been

satisfactorily addressed by the Habitats Regulations Assessment (*Interim Consideration of the Implications of Development Strategy Scenarios on European Sites* (March 2018)).

Scenario 4: Consideration of development within Lodge Hill

This Scenario seeks to deliver the Objectively Assessed Need, but in contrast to each of the other Scenarios it is predicated upon the development of up to 2,000 homes within and immediately adjacent to the boundary of the SSSI, in addition to those in other allocations directly adjacent to the SSSI boundary from the other scenarios. This would probably represent the largest direct loss of a SSSI, by definition a nationally important wildlife site, to development in the UK for at least 20 years. As set out in our general comments above, such a loss would be directly contrary to the guidance in the NPPF and thus contrary to Government policy, unless the derogation in the second sentence of paragraph 118 could be invoked.

The RSPB strongly believes that there are no grounds for departure from the underlying principle of paragraph 118. In our view the benefits would demonstrably **not** outweigh the impacts, as there would be a catastrophic loss of a large part of a nationally important wildlife site and almost certainly a devastating negative impact on a nationally important breeding population of the red-listed nightingale².

In paragraph 3.58 the Council itself acknowledges the weight of the policy:

*“National policy provides **the highest level of protection from development** that would result in significant harm to land designated as a SSSI. The NPPF directs local planning authorities to seek to avoid development likely to have an adverse effect on a SSSI, with the only exception being that the benefits of the development clearly outweigh the impacts on the features of the site, and any broader impacts on the network of SSSIs. **Only where development can not be avoided**, should mitigation and compensation measures be considered.”* (emphasis added)

We have seen nothing within the draft Local Plan that shows that development at that site cannot be avoided. Indeed, we note that Scenario 3 envisages a further 7,193 dwellings within Medway during the plan period **without** recourse to development at Lodge Hill. Given the Council acknowledges the level of protection conferred on the site and the apparent lack of need for this site in order to meet the Council's Objectively Assessed Need we would expect to see compelling evidence justifying a scenario that envisaged potential harm to this site. We have been unable to find any such information within the draft Local Plan or its supporting documentation. There are also demonstrably alternatives to development within the SSSI. Three such alternatives are set out in Scenarios 1-3, albeit that in their current formulation they present indirect negative impacts, as described above. We are not convinced that the inclusion of this scenario constitutes the “transparent and objective assessment of the impacts” that the Council suggests in paragraph 3.59.

We note the Council's assertion in the draft Plan that “A key feature of Medway is the extent of areas that are designated of international or national importance for their biodiversity and landscape value. These indicate areas where development should be restricted in order to protect their special characteristics as outlined above” (paragraph 7.6). We consider that there is a clear tension between this statement and the Council's approach to the inclusion of the Lodge Hill site in Scenario 4. We further note that the Council highlights potential sites which may not need to be released if Lodge Hill is developed in paragraph 3.60. However, given the acknowledged extent of protection conferred upon this site, we consider it is

² Birds of Conservation Concern 4 (Eaton *et al.* (2014)):
<https://www.rspb.org.uk/globalassets/downloads/documents/birds-and-wildlife/birds-of-conservation-concern-4--the-population-status-of-birds-in-the-united-kingdom-channel-islands-and-the-isle-of-man.pdf>

inappropriate and potentially misleading to consultees to present Lodge Hill as an alternative to the development of undesignated sites elsewhere in Medway. Additionally, as highlighted in the previous paragraph above, it appears that there are other sites that could come forward as viable alternatives to Lodge Hill.

The SA concludes that Scenario 4 would have minor negative impacts on biodiversity (paragraph 5.1.5.2, page 36) but goes on to say that *“this could be improved through an approach which commits to a comprehensive monitoring strategy that would identify adverse impacts in a timely manner to allow further remediation or mitigation to take place”*. It is difficult to understand how comprehensively monitoring the inevitable decline, possibly to near extinction, of the remaining nightingale population will facilitate *“further remediation or mitigation”*. We also cannot see how the largest direct loss of SSSI in a generation, anywhere in the country, can be classified as a 'minor negative' impact rather than a 'significant negative' impact. We set out our detailed concerns about this in Section 11 below.

We note that removal of unexploded ordnance is cited as a benefit of the proposed scheme (e.g. paragraphs 3.54 and 3.57) but consider that this overstates the level of risk posed as the site is currently closed to the public and by implication the risks are therefore managed appropriately (a point that is actually acknowledged in the SA). In the event that there is an unacceptable risk to the public outside the Lodge Hill site from unexploded ordnance within the site, we consider that this is a matter that needs to be addressed independently of any considerations of potential development on the site. However, if it is safe to leave the unexploded ordnance on the site until planning permission has been granted and implemented then we respectfully suggest that this risk is being overstated – if it is not safe then it should be dealt with now, irrespective of any future development, rather than exposing the public to the continued risk.

The consultation document says that *“Ecological survey work has informed a new proposal for the site that directs development to the western and southern areas, around Chattenden Barracks and Lodge Hill Camp”*. Given that the proposal would take out, by our estimate (based on 2012 baseline survey), 16% of the nightingale territories directly beneath the built footprint, with a total of 73% of the nightingale territories within an additional 400m and 100% of nightingale territories within just 1km of the boundary of the proposal (see illustrative map in Appendix 4), and hence subject to at least some indirect effects, it is difficult to see how ecological survey work can have informed such a proposal, and it is concerning that no background information has been given to consultees to support this statement.

Also, section 3.57 says

*“Homes England has outlined an initial nature conservation strategy based on the ecology surveys and assessments carried out in and around Lodge Hill. The strategy consists of both on-site and off-site measures, with land management for conservation interests, sensitive clearance of unexploded ordnance to secure site safety, and establishment of compensatory habitat for nightingale habitat to address negative impacts arising from potential development. **The nature conservation strategy informs both the location of potential development land and its phasing.**”* (emphasis added)

Given that this makes it clear that the plans presented in the consultation have been based on a strategy, we are concerned that this strategy has not been shared, despite our requests.

Conclusions on Section 3

The Development Strategy set out in this section presents four scenarios for delivery of housing need in Medway. Scenario 4 entails the construction of up to 2,000 dwellings within and immediately adjacent to

land that is designated as the Chattenden Woods and Lodge Hill SSSI, in addition to undefined numbers of dwellings on other allocations directly adjacent to the SSSI, leading to the direct loss of and major indirect impacts to a nationally important wildlife site. This fundamentally conflicts with the guidance set out in paragraphs 117 and 118 of the NPPF. Furthermore, as we have highlighted above, it is demonstrably the case that housing need in Medway, whether based on OAN or on the Government's proposed Standard Method calculation of local housing need, can be delivered without development within the SSSI, as the consultation presents three scenarios that do not include such development.

Also, we note that the proposed allocations in the 2018 Regulation 18 consultation have changed since those in the 2017 Regulation 18 consultation, removing several areas of proposed allocation on non-designated land, yet we can find no clear explanation within the consultation documentation as to why this is the case, and on what grounds these changes have been made. We consider it essential that the changes must be fully explained and justified.

The three Scenarios that exclude development within the SSSI also raise critical issues of indirect impacts upon the interest features of the SSSI which have not been satisfactorily addressed by the consultation document. They are consequently unacceptable as currently presented. Delivery of housing based on any of these Scenarios would require the incorporation of adequate buffer zones (i.e. zones left undeveloped or containing less damaging forms of non-residential development) around the SSSI, and there is no information indicating whether such buffers would have an impact upon the housing numbers anticipated for these neighbouring sites and whether it would impact on either the deliverability of these sites or have an impact on the overall housing numbers.

4. Section 4: Housing

Our comments on the delivery of housing need in Medway are incorporated into our section 3 comments above.

The RSPB has noticed a slight variance between the text in paragraph 4.43 on houseboats and the wording of policy H7: Houseboats. Paragraph 4.43 includes the wording:

“Medway’s river and estuary are designated for their environmental importance. Opportunities to upgrade facilities and amenities will be supported where there will be no adverse environmental impacts. Particular regard needs to be given to the health of the designated marine and supporting habitats of the estuaries and river.”

However, we can identify nothing in the policy wording beyond the phrases *“in order to minimise impact”* (2nd bullet point) and *“to deliver improvements that benefit the local amenity and environment”* (final bullet point) which could reflect this text. In particular there is no reference to *“upgrading facilities and amenities”*, nor is there a clear reference to the health of the environment. We recommend that an additional bullet point is added to the following effect:

- Potential developments will only be supported where there are no adverse environmental impacts upon the health of the designated marine and supporting habitats of the estuaries and rivers.

5. Section 5: Employment

The RSPB does not have a strong view on the allocation of new employment development, subject to any such developments respecting environmental sensitivities, in particular the network of nature conservation

designations within the Council's boundaries. In this respect we support the conclusions of the HA set out in paragraph 6.2.1.3 (page 50). We note also that the HRA, in paragraph 7.2.3 Mitigation Measures (page 42) refers to the boundary of the Medway Commercial Park requiring revision to prevent encroachment onto the Medway Estuary and Marshes SPA/Ramsar site, which we strongly support (we assume that this apparent encroachment is the result of a mapping error).

6. Section 6: Retail and Town Centres

The RSPB does not wish to make any comments on this section.

7. Section 7: Natural Environment and Green Belt

The RSPB **supports** the overall approach taken in this section to the protection of the natural heritage of Medway. In particular, we welcome the recognition in paragraph 7.3 of the national and international wildlife designations that apply to about one third of the land area of Medway.

We note the references in paragraphs 7.10 and 7.11 to the potential tensions between increased coastal access and disturbance to the interest features of the three SPAs and Ramsar sites, notably over-wintering and breeding bird species. The RSPB is actively involved in implementing the Strategic Access Management and Monitoring Scheme (SAMMS) for the Thames, Medway and Swale (being a member of both the Steering Group and the Project Board) and we strongly support the Council's intention, set out in paragraph 7.12, to include a policy relating to SAMMS in the new Local Plan.

We **support** the approaches set out in boxes NE 1 (Sites of international importance for nature conservation), NE 2 (Conservation and Enhancement of the Natural Environment) and NE 5 (Securing strong Green Infrastructure). We look forward to continuing to work closely with the Council on delivering the benefits deriving from a robust and extensive network of "green" spaces, including the RSPB's own landholdings at and adjoining Northward Hill and Cliffe Pools.

In our response to Scenario 4 we have highlighted several statements within the draft Plan that reflect government policy towards protecting SSSIs and have highlighted that we consider that the proposal to allow development that would damage the Chattenden Woods and Lodge Hill SSSI would not be appropriate. We consider that the inclusion of this scenario marks a clear contradiction with the policy statements regarding the natural environment set out elsewhere in the draft Plan, and in particular the statements made in this section.

8. Section 8: Built Environment; Section 9: Health and Communities; Section 10: Infrastructure

The RSPB does not wish to make any comments on these sections.

9. Section 11: Transport

The RSPB is committed to the aims of sustainable development, and it is critical that major new development is supported by realistic transport infrastructure, with a focus on air quality and green transport options.

While we recognise that, as the Council says, "*planning policies must relate to the development and use of land, while other strategies, including the Local Transport Plan, will directly deliver improvements to transport*", the Council's proposals do include what appears to be a doubling of the housing on the Hoo

Peninsula, accessed by one major road that is already a congestion hotspot and Air Quality Management Area (AQMA).

In Section 11.6, the Council says that *"The council has commissioned a Strategic Transport Assessment (STA) as a key component of the evidence base. It is used to assess the existing situation and determine the transport implications of potential site allocations, providing an understanding of the cumulative and site specific impacts in terms of the capacity of the road network and the associated safety issues. The STA will inform strategic and specific mitigation requirements for sites allocated for development in the Local Plan."*

As **Policy T1: Promoting sustainable transport** says, *"The council will work with the relevant authorities and transport providers to...ensure development is located and designed to enable sustainable transport"*.

As it stands, it is impossible as a consultee to tell whether the development allocations being proposed are indeed located in places that enable sustainable transport systems, and whether the infrastructure required will actually pose further impacts on the SSSI and SPA protected sites network. For example, the Lodge Hill masterplan appears to have just one dead-end road leading to the major new development. We question whether this is sustainable, or whether added transport infrastructure is required, in which case the implications for the SSSI are even more severe.

In order to present scenarios that set out spatial options we would have expected to see some technical work which would have identified what transport infrastructure needs these scenarios might have and the likelihood that they could be funded and delivered in a sufficiently timely manner to enable key housing sites to be delivered. We have not seen such a document, and as we have highlighted, we are aware of at least one area where a potential transport bottleneck exists. There are also associated issues around air pollution – we have noted above that there is already an AQMA on the Hoo Peninsula, and its potential implications for future increases in housing numbers and hence vehicle traffic and attendant air pollution needs to be taken into account. Without a clear evaluation of the transport infrastructure needs and potential air pollution constraints at this stage we consider that the deliverability, and hence the soundness, of the options as they stand must be in question.

10. Section 12: Minerals, Waste and Energy

The RSPB has no comments on this section.

11. Sustainability Appraisal

The latest iteration of the Sustainability Appraisal (SA) was published on 27 April 2018 and provides a useful overview of the implications of the proposed Development Strategy against a wide range of objectives. It rightly points out in paragraph 1.2.1.1 that *"Local Plans should not propose policy that contradicts legislation, and they should seek to fulfil obligations set out in policy which sits above local plans (i.e. national policy guidelines and priorities)." A key example of the latter is the NPPF.*

We have significant concerns about how the various objectives have been evaluated within the SA. The assessment of Scenario 4 (pages 36-37) concludes that the implications for Objective 6 are 'minor negative', a conclusion which we strongly refute, as the direct loss of a substantial area of SSSI that would result from this Scenario we would contend can only be a 'significant negative'. The suggestion that *"This could be improved through an approach which commits to a comprehensive monitoring strategy that would identify adverse impacts in a timely manner, to allow further remediation or mitigation to take place"* is fundamentally flawed. Where the destruction of a large part of a SSSI is concerned, no monitoring strategy,

however comprehensive, is capable of reversing the adverse impacts that this would have on the site and its interest features.

Our concerns relate in particular to Objective 6, set out in the SA, *“to protect and enhance biodiversity features.”* This Objective has a set of nine ‘Guideline Questions’ against which to assess this Objective. However, no guidance appears to be provided on how, if at all, these individual Guideline Questions are weighted, and looking at the way that various elements of the plan have been evaluated forces us to conclude that there has been little, if any, weighting of the answers to reflect their comparative importance in both law and national planning policy: in essence each consideration is treated as being equally important by the SA – which leads to incorrect conclusions. For example, Question 1 is *“Will it protect and enhance international, national and locally designated wildlife sites including Natura 2000 sites and SSSIs, including avoiding indirect impacts?”* Does this have equal weighting with Question 8, *“Will it result in greater community engagement with biodiversity?”* The latter is a highly laudable aim, which the RSPB fully supports, but the consequences of failing to achieve community engagement with biodiversity are incomparably lower than of failing to achieve the protection of a statutory protected site. If the answer to Question 1 is ‘no’ but the answer to the other eight questions is ‘yes’, does that result in a positive assessment? The RSPB consider that there is no legal or policy justification which would support these two issues being given identical weight. Indeed, we consider that doing so is contrary to Medway’s own SA.

A key element of the SA, and one which we consider has not been properly taken into account is Table 2: *The assessment criteria used to assess the local plan against the sustainability objectives.* We quote the text from the **Significant negative** entry:

“Likely to affect the whole, or large areas of Medway and neighbouring areas. Also applies to effects on nationally significant or internationally important assets. The effects are likely to be direct, irreversible and permanent and/or affecting areas or assets with high sensitivity to change. The magnitude of the predicted effects will also be major.”

We consider that Sites of Special Scientific Interest would logically and inescapably fall within the definition of “nationally significant”.

The entry in Table 2 for **Minor negative** reads:

“Minor negative effects are likely to be limited to small areas within Medway, or limited to small groups of people and receptors and or those with low sensitivity to change. The effects can be direct or indirect, temporary or reversible. The importance of the receptor is likely to be minor as is the magnitude of the predicted effect.”

Given the potential significance of the SA conclusions to the Council’s views on (amongst other things) the appropriateness of development within the Chattenden Woods and Lodge Hill SSSI, we would be grateful for an explanation of the approach to balancing these Guideline Questions. In addition, we would like a clear explanation as to why combining the results of all of the questions has enabled an impact that qualifies, under the Council’s own criteria set out above, as a significant negative one to be combined with others and downplayed so that the overall impact is identified as a minor negative one – a conclusion that entirely fails to reflect a key finding which should have been reached within the SA. We would strongly make the case that, if a Natura 2000 site or SSSI is not protected and enhanced, including taking account of indirect impacts, then no matter what other positives are achieved in the Plan, the only conclusion possible is of significant negative impact. We consider that this is the only possible approach that would properly reflect the steer set out in paragraphs 117 and 118 of the National Planning Policy Framework.

Overall, we were disappointed that the Council was not able to answer a number of our questions in our letter of 11 May 2018, which we felt were essential to understanding the Sustainability Appraisal, namely:

- the process the Sustainability Appraisal followed to reach its conclusions
- the area of SSSI that would be allocated for development
- the area of land proposed for allocation for development within 400 metres of the SSSI boundary.
- the lack of reference to ‘buffers’ in Scenarios 2, 3 and 4 with regard to SSSIs

The RSPB raised these concerns so shortly after the SA was published because we hoped to give the Council the opportunity to answer them and for us to reflect those answers in our response to this consultation. If the Council had done so it is possible a number of the points that we have raised above could have been dealt with satisfactorily. We urge the Council to ensure that, insofar as they are pertinent to the Regulation 19 consultation, these questions are answered in the supporting documentation that accompanies these responses.

12. The Soundness of the Plan

Despite the changes made in the current version, the RSPB continues to have serious concerns about the soundness of the emerging plan. In our response to the 2017 Regulation 18 consultation we considered the soundness of the plan, viewed through the lens of paragraph 182 of the NPPF. We consider that it would be helpful to repeat that exercise to reflect the changes that Medway Council have made to the draft plan in the intervening year.

For ease of reference we set out paragraph 182 below:

182. The Local Plan will be 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. A local planning authority should submit a plan for examination which it considers is “sound” – namely that 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.

The RSPB is concerned that despite the changes since the 2017 version the current plan fails to comply with a number of these requirements.

i. Legal and procedural requirements: As set out above we are profoundly concerned that there have yet again been significant deficiencies in the consultation on the plan: given the problems the Council experienced in supplying supporting documentation for the consultation in 2017 we find it hard to comprehend how the Council can have found itself in a similar situation over the production of the Sustainability Appraisal in 2018. We consider that the Council needs to consider carefully whether the Inspector at the future examination of the Plan could decide that this consultation has been procedurally

deficient. Such deficiencies cannot be rectified at the examination stage, and as with a failure to comply with the Duty to Cooperate, the Inspector would have no option but to reject the Plan. We are keen to ensure that the Council avoids this outcome.

ii. Positively prepared: The RSPB notes the reliance on the Lodge Hill site to deliver housing in Scenario 4, despite the clear statements from the Core Strategy Inspector that it should not be relied upon. We note that this approach is being undertaken by the Council in the clear knowledge that it runs counter to national policy. We question how a document which takes such an approach can be considered to be positively prepared.

iii. Justified: The RSPB has highlighted, as we did at the previous Core Strategy examination, that based on the Council's own figures Lodge Hill is not required to meet the Council's housing needs. The RSPB notes in particular that Scenario 3 is capable of delivering 7,193 more dwellings than scenarios 1 and 2 – both of which exclude Lodge Hill. Consequently Scenario 4 could easily dispense with the Lodge Hill allocation. The RSPB considers that the Council has not presented any evidence that the sites it has presented within the options are not available or suitable. Consequently, a strategy that will lead to the destruction of a significant proportion of a SSSI when other options are available cannot be considered to be the most appropriate.

iv. Effective: There are clear uncertainties over the delivery of housing at the Lodge Hill site, due to its inconsistency with national planning policy. We return to this point in the next paragraph. We consider that relying upon an allocation which national policy says should not be developed due to its protected status is likely to end up with any development proposal being called in by the Secretary of State if the Council were minded to approve it: this is the antithesis of a Plan that is deliverable over its period.

v. Consistent with national policy: Paragraph 111 of the NPPF states that development on brownfield land should be encouraged *“provided that it is not of high environmental value”*. Lodge Hill is designated as a SSSI, a clear public statement of its high environmental value. This acknowledgment of high environmental value should be enough to exclude Lodge Hill, without needing to move on to consider national policy on development on SSSIs, set out in paragraph 118.

It is also important to consider the extent to which the Plan that the Council is preparing is sustainable, as that reflects a number of key policy stipulations within the NPPF. The Ministerial foreword to the NPPF states:

“The purpose of planning is to help achieve sustainable development.

Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations.”

It continues *“Sustainable development is about change for the better ...”*. *“Our natural environment is essential to our wellbeing ... opened to people to experience it, to the benefit of body and soul.”* The RSPB consider that the survival of Lodge Hill and its nightingale population represents a key test for Medway Council. The loss of Lodge Hill would prejudice future generations and their ability to enjoy the song of this rare bird.

The NPPF makes it clear that *“to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.”* (NPPF, paragraph 8). The RSPB

considers that this means that any potential trade-offs, in particular harm to protected sites with the promise of measures elsewhere, are not likely to deliver on this expectation.

“Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment ...” (NPPF, paragraph 9). The RSPB does not consider that proposals to build housing at Lodge Hill will achieve such positive improvements.

Paragraph 14 (and footnote 9) of the NPPF makes it clear that sustainable development requires that development should be restricted for sites that are designated as SSSIs. Inclusion of a scenario within the plan that includes development within the SSSI is highly unlikely to accord with this provision, and we consider that the Council has failed to advance evidence which would justify such development.

“Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.” (NPPF, paragraph 151) The RSPB considers that allocation of Lodge Hill would not meet this requirement.

*“Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. **Significant adverse impacts on any of these dimensions should be avoided, and wherever possible, alternative options which reduce or eliminate such impacts should be pursued.** Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation measures are not possible compensatory measures may be appropriate.”* (NPPF, paragraph 152) (emphasis added) As we have highlighted above, the information provided in Scenarios 1 to 3 makes it clear that Lodge Hill is not required to deliver the Council’s objectively assessed housing need. Consequently it would be appropriate to avoid harm to this SSSI by dropping Scenario 4.

“In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.” (NPPF, paragraph 197) The logical and inevitable implication of this statement, given the consideration above, is that Medway Council would be expected to refuse any planning application which threatened to harm the Chattenden Woods and Lodge Hill SSSI. So any allocation at Lodge Hill is extremely unlikely to be deliverable. Consequently we recommend that the Council does not consider Scenario 4 any further and focuses its efforts on meeting its housing numbers away from Lodge Hill.

13. Conclusions

- The RSPB **strongly supports** the Vision that, *“by 2035 Medway, will be noted for its stunning natural assets and countryside”*.
- The RSPB **welcomes** the approach taken in the HRA with regard to Special Protection Areas.
- The RSPB is **concerned** about the presentation of four scenarios that vary in whether they are to achieve the OAN or the Standard Methodology.
- The RSPB is **pleased** that, in contrast to the 2017 consultation on the Development Options, Medway Council has included three Scenarios (1–3) for allocation of land for development that do not include direct land take from the Chattenden Woods and Lodge Hill SSSI.
- However, one of the four Scenarios entails direct land take from a SSSI, which is contrary to the Council's own stated methodology for screening sites, and whose 'Significant Negative' impact is

not recognised appropriately in the SA, is contrary to the NPPF and its obligations to biodiversity, and would lead to a devastating impact on the nation's best site for the red-listed nightingale.

- Also, **all** the Scenarios presented would involve significant development (we understand this to be in the order of 3000 houses in or adjacent to Lodge Hill as well as further housing at Deangate, although in the absence of a revised SLAA this is not possible to verify) in close proximity to the boundary of the SSSI. These, too, would have consequent serious adverse impacts on the interest features of the site, notably breeding nightingales, and this needs to be recognised and the Avoid-Mitigate-Compensate hierarchy followed accordingly.

We therefore consider that **all** the Scenarios as currently presented **cannot be justified** within the Avoid/Mitigate/Compensate hierarchy as required under NPPF.

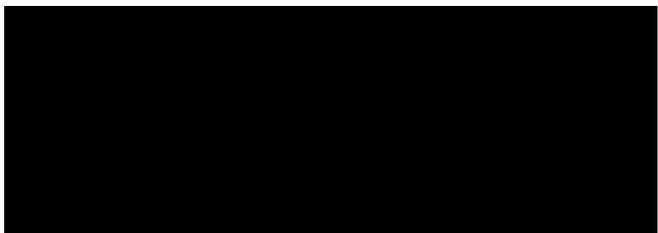
We recommend that Scenario 4 is withdrawn from the draft Local Plan, as it has been shown that there is an alternative (i.e. it can be avoided).

We also consider that the other three Scenarios would require a land buffer between the SSSI and development land, the precise size of which to be determined by adopting expert advice, and we would very much welcome being part of that discussion.

We continue to have **deep reservations** about the sustainability of the Plan as it currently stands in the absence of clearer information, in particular with regard to transport.

The RSPB looks forward to continuing to work with the Council towards the adoption of a sound Local Plan, and to help achieve a sustainable vision for Medway.

Yours sincerely



Steve Gilbert

Senior Conservation Officer

Email: 

Appendix 1: Letter from RSPB to Medway Council dated 5 April 2018



Planning Policy
Regeneration Community and Culture
Medway Council
Civic Headquarters
Gun Dock Wharf
Dock Road
Chatham ME4 4TR

By Email only: planning.policy@medway.gov.uk ; catherine.smith@medway.gov.uk

Dear Ms Smith

05 April 2018

Request for clarification on the publication of the Sustainability Appraisal and an extension to the consultation period with respect to Medway Local Plan Development Strategy consultation

Further to our telephone conversation on 3 April, I note that the Sustainability Appraisal to support the draft Medway Local Plan Development Strategy is still not available, despite the fact that the consultation on the draft Strategy has now been open for almost three weeks. I would be very grateful if we could receive clarification about when this important document will be published. We are unable to formulate an informed response to the consultation in its absence.

Whilst in principle we would have preferred the consultation to run to its originally proposed timetable, we feel that an extension is the only appropriate course of action for the benefit of everyone taking part, as currently no one has all the information in front of them to make properly formulated representations.

Accordingly, we request an extension to the consultation period, such that it closes six weeks after publication of the Sustainability Appraisal.

We look forward to confirmation that the deadline will be extended.

Kind regards

Steve Gilbert
Senior Conservation Officer
Email: [REDACTED]

**South East England
Regional Office**

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The RSPB is part of BirdLife International, a partnership of conservation organisations working to give nature a home around the world.

Patron: Her Majesty the Queen **Chairman of Council:** Kevin Cox **President:** Miranda Krestovnikoff
Chief Executive: Dr Mike Clarke **Regional Director:** Nic Scothern

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

Appendix 2: Letter from RSPB to Medway Council dated 16 April 2018



Planning Policy
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Civic Headquarters
Gun Dock Wharf
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By Email only: planning.policy@medway.gov.uk ; catherine.smith@medway.gov.uk

Dear Ms Smith

16 April 2018

Request for clarification on the publication of the Sustainability Appraisal and an extension to the consultation period with respect to Medway Local Plan Development Strategy consultation

With regard to my letter of 5 April and your interim reply the following day, I note that the Sustainability Appraisal has still not been published. As you will appreciate, we (along with other interested parties) are unable to formulate meaningful representations in the absence of this key document.

The consultation states (Section 1, paragraph 1.21) that the “Development Options consultation document is **informed** by a... Sustainability Appraisal” (emphasis added) but it is difficult to understand how this can be the case when the Sustainability Appraisal is still not available some four weeks after publication of the Development Strategy.

I would appreciate an update and confirmation that the consultation period will be extended to run for six weeks from the date of publication of the Sustainability Appraisal.

Kind regards

Steve Gilbert
Senior Conservation Officer
Email [REDACTED]

South East England Regional Office

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Chief Executive: Dr Mike Clarke Regional Director: Nic Scothern

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Appendix 3: Letter from RSPB to Medway Council dated 11 May 2018



Planning Policy
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By Email only: planning.policy@medway.gov.uk ; catherine.smith@medway.gov.uk

Dear Ms Smith

11 May 2018

Consultation on the Medway Council Local Plan Development Strategy 2012 – 2035

Thank you for confirming the extension to the consultation period on the Medway Council Local Plan Development Strategy, following the publication of the latest iteration of the Sustainability Appraisal (SA).

The RSPB will submit a full response prior to the close of the consultation on 25 June.

However, on an initial reading of the SA we feel that important information is lacking in a number of areas, making it very difficult to formulate considered comments. I thought it would be helpful if I raise these points now, in the hope that you may be able to provide clarification before we finalise our response to the consultation as a whole, and ideally ahead of the proposed meeting with conservation organisations.

1. Scenario 4 includes significant direct land take from the Chattenden Woods and Lodge Hill Site of Special Scientific Interest (SSSI), which is by definition a nationally important wildlife site. This would represent probably the largest direct loss of SSSI to development in the UK for at least 20 years. We find it inconceivable that this could be assessed as anything other than a 'double negative' **Major Impact** on a nationally important site. Yet this is not the conclusion reached in the SA. In order for us to consider this adequately, could you please share the details of the process followed by Arup that led them to their conclusion? In particular, what area of the SSSI would be allocated for development under this Scenario? This information is particularly important in understanding the reasoning behind Arup's conclusions in relation to this site.

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2. All four Scenarios would allocate extensive areas of land for development within 400 metres of the SSSI boundary, with significant development directly adjacent to the SSSI. The urban effects of such development, such as light, noise, disturbance and incursion by cats, are well understood and documented and are likely to have serious negative impacts on breeding nightingales, an interest feature of the SSSI, and the reason why the SSSI was extended to cover most of the Lodge hill site. One would accordingly have expected this to be assessed as a 'double negative' **Major Impact** on a nationally important site. However, the SA does not come to this conclusion and indeed Scenario 1 is assessed as having 'neutral effect'. On the information available to us we are unable to understand how this conclusion was reached. It would be helpful to have the details of the process followed by Arup that led them to this conclusion including confirmation of the amount of land proposed for allocation for development within 400 metres of the SSSI boundary.
3. The Development Strategy refers, in Scenario 1, to the inclusion of 'buffers to protected land'. Does this apply to the Chattenden Woods and Lodge Hill SSSI, and if so what form might such 'buffers' take? Will they cover the whole of the SSSI or only parts of it? Why is there no reference to 'buffers' in any of the other Scenarios, although Scenarios 2 and 3 also exclude development on the SSSI?
4. The Development Strategy states, with reference to the SSSI, that 'the new proposal is significantly reduced in scale from the withdrawn outline planning application, **reflecting a new strategy for nature conservation on the site**' (emphasis added). Could you possibly share that strategy with us? In the absence of an understanding of the scope of such a strategy, it is difficult to make a meaningful response, particularly as this strategy still involves a significant land take from the SSSI.

I hope that it is useful to raise these interim points at this stage, and hope that you will be able to provide us with the further information requested above to allow us to make a fully informed response to the Development strategy consultation.

Kind regards

Steve Gilbert
Senior Conservation Officer
Email [REDACTED]

Appendix 4: Map illustrating the potential impacts of the Medway Development Strategy on Chattenden Woods and Lodge Hill SSSI Nightingale Populations

