RSPB nature's voice

Alison Rock
Programme Officer
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29 August 2012

Dear Ms Rock,

Medway Core Strategy, Matter 5 - Lodge Hill Strategic Allocation

The RSPB are in receipt of a copy of the letter sent by Medway Council on 28 August 2012 to the Inspector, setting out a proposed programme of work to address the question posed by the Inspector in her letter of 27 July 2012, namely "*whether there is a reasonable prospect that adequate compensatory habitat can be established*".

The Council discussed the proposed programme with stakeholders before it was submitted to the Inspector, and kindly requested comments on an earlier draft that we duly submitted. However, there remain a number of suggestions made by stakeholders, which the Council has not reflected in the submitted programme. The RSPB considers that these would be extremely useful in ensuring that the question posed by the inspector can be answered with the necessary degree of certainty such that the Inspector could be satisfied that there is "convincing evidence" before her.

We would therefore ask the Inspector to consider the addition of the following points/amendments to the programme proposed by the Council:

1. The appointment of an independent recognised nightingale expert, to act as a guiding hand and advisor throughout the process.

   The Environment Bank Limited (EBL) were proposed by the Council as ecological surveyors and as facilitators. The RSPB agrees that EBL are suitable for this role (subject to transparency about their instructions to date), but they are not recognised nightingale experts.

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The RSPB considers that as well as advising on the methodology for any survey of the Lodge Hill site, the expert would be well placed to conduct a review of any report produced at the end of the process, before it is submitted to the Inspector and to act as a guiding hand throughout. Natural England agreed that the input of such an expert would be valuable.

The Council has since communicated with the stakeholders to say that the Council "*will support Environment Bank should they choose to employ additional specialist ornithological advice. However we regard the company as a wholly competent consultant*" and to say that should the stakeholders employ their own experts "*the Council will, of course, seek to co-operate*".

The RSPB do not consider that the appointment of a subcontractor, who may not be approved by all of the parties, or the appointment of experts by individual parties is an adequate substitute for the input of an independent, recognised expert. The RSPB would be happy to contribute jointly and equally with the other parties towards the reasonable cost of an appointing an independent, recognised expert.

2. <u>The compilation of case studies</u>. The RSPB considers that in order to assess whether there is a reasonable prospect of establishing compensatory habitat, it is essential to assess the existing evidence of what currently is – or is not – known about the establishment (successful or otherwise) of nightingale habitat.

   The EBL report (page 5) describes four examples of cases where nightingale habitat creation has been proved to work. The examples have not been fully scrutinised, and the Council has, to date, been unable to supply any further information on any of them. The RSPB has been able, through its own investigations, to discover further information which casts significant doubt on the conclusions drawn by the EBL report about two of the examples, and therefore does not accept that they constitute "*evidence that habitat creation and restoration in England does indeed work for nightingales"*. The RSPB is happy to make that information available to the Inspector if required.

   The RSPB considers that if the proposed work is to provide sufficient certainty to the Inspector, it must include:

   - a comprehensive review of what is known, from site managers, conservation organisations and landowners about examples where nightingale habitat creation/management has been undertaken;
   - its success or failure (and reasons where known) and;
   - the timescales necessary to achieve success where that has been the outcome.

   Further extremely helpful information could be obtained from the RSPB's own reserves, those managed by the Kent Wildlife Trust, Natural England or other land owners/managers in the South East.

   The Council has sought to assure the stakeholders that such case studies will be welcome as part of the process, and that an invitation will be issued to submit such case studies. However, no time for their compilation is factored into the programme. The RSPB considers that this element should be included in the formal timetable and that in addition, the format should be agreed between the parties such that any case studies are comparable.

3. The RSPB is also concerned about the proposed timing of the Council's review of their Sustainability Appraisal. The RSPB does not agree that the outcome of the work to consider whether there is a reasonable prospect that adequate compensatory habitat can be established, should inform the Sustainability Appraisal. We have several concerns with such an approach:

i) The RSPB considers that an assessment of the sustainability of the Lodge Hill allocation does not need to be delayed, but can take place immediately and should, "*fully recognise the nature conservation importance of the site*". Such an assessment should be based on the advice of Natural England, who in paragraph 12 of their letter to the Inspector of 9 July 2012 stated that "*Natural England's advice is that its nature conservation importance,* now *apparent, is such that it would be appropriate to give it weight similar to that which would normally be given to an SSSI*."

ii) The Council will not have considered mitigation and/or compensation in relation to the environmental effects of any of the alternatives included in its SA. It would be inappropriate to factor such considerations into the assessment of one site and not others where this would lead to the consideration of alternatives on an equal footing.

iii) The hierarchy expressed in paragraphs 118 and 152 of the NPPF require plan makers and decision makers, when preparing a Local Plan or determining a planning application which will have an adverse impact on the conservation and enhancement of biodiversity:
- to consider alternatives first;
- to consider mitigation if there are no alternatives, and only then;
- to consider compensation as a last resort.

Therefore, the question of whether compensation is feasible or not, should not be used to inform the consideration of alternatives as such an approach will not be compliant with the NPPF.

The RSPB hopes that the above points are helpful and believes that their inclusion will assist all parties in completing the process of ascertaining "*whether there is a reasonable prospect that adequate compensatory habitat can be established*" in a constructive and effective manner.

Yours sincerely,

Samantha Dawes
Conservation Manager
South East England