

Mr. A. Waters
LDF Programme Officer
Medway Council
Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR

22nd March 2013

Dear Mr. Waters,

Implications to partial revocation of the South East Plan.

I refer to your email dated 8th March and to the letter from the Inspector dated 7th March inviting comments upon the implications to partial revocation of the South East Plan (SEP). This representation is submitted on behalf of my clients, McCulloch Homes, Rochester Bridgewood and Medway Sports and Leisure Park Ltd.

The plan-making process must fully accord with the National Planning Policy Framework ("The Framework"). Whilst the Council had begun its plan making process some considerable time ago and so had probably by now expected to have the plan adopted, this is not the case. With the partial revocation of the SEP, the Council can no longer rely on this document to provide the basis and justification for its Core Strategy. Plans must now be based on the Framework which requires local authorities to produce their plans containing and complying with the following requirements:

1. Each local authority must produce a single local plan for its area (paragraph 153)
2. There must be early collaboration with, inter alia, businesses (paragraph 155)
3. Local Plans must plan positively for the development required in the area (paragraph 157)
4. Plans must be drawn preferably over a fifteen year timescale and be kept up to date (paragraph 157)
5. Be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations (paragraph 157)
6. Allocate sites to promote development with flexible use of land (paragraph 50 and 157)
7. The plan must indicate broad strategic locations for growth and land use designations on a proposals map (paragraph 157)



8. The plan must be assessed on adequate and an up to date evidence base (paragraph 158)

9. Prepare a Strategic Housing Market Assessment (SHMA) to fully assess housing needs and to work with neighbouring authorities where housing market areas cross administrative boundaries (paragraph 159)

10. Prepare a Strategic Housing Land Availability Assessment (SHLAA) to establish realistic assumptions of land available to meet identified need (paragraph 159)

11. Boost significantly the supply of housing and ensure that the local plan meets the full objectively-assessed needs in the housing market area (paragraph 47)

Medway's draft Core Strategy does not comply with these requirements. Indeed, it does not meet any of them. Our evidence and justification is set out below.

First, the Council has prepared a Core Strategy rather than a local plan. It therefore conflicts with points 1, 6 and 7 above.

Secondly, it is arguable that there has been a collaborative approach with businesses. My clients would certainly contest such an assertion. Furthermore, Gravesham Council has decided to halve its proposed housing provision compared to that set out in the SEP. In these circumstances, the requirement of point 5 above has not been met.

Thirdly, it is disputed the plan has been prepared in a positive manner. This can clearly be seen at paragraph 5.7 of the Core Strategy which comprises a very negative policy to prevent greenfield development.

The plan will not have a fifteen year timescale on adoption. Furthermore, its policies are certainly not up to date to accord with the Framework. The latest situation relating to Lodge Hill is a clear demonstration of this. Not only has the status of this site been immeasurably altered by its designation as an SSSI, but it will certainly not provide housing at the start date and at a rate previously proposed. The proposed Core Strategy fails point 8 above.

The SHMA was prepared several years ago. It certainly does not address the full needs of those local authorities. Indeed, it was based on the provisions of the SEP. As that document has been revoked, a new SHMA is required as a matter of urgency.

The Council's Strategic Housing Land Availability Assessment is out of date and it was not produced in accordance with the Framework. Furthermore, the promised new "call for sites" made by Mr. Cronk at the Hearings last June has never materialised. Indeed, the existing SHLAA was produced on the basis of the housing requirement as set out in the SEP together with the policies included within that document. As SEP is now revoked, a new SHLAA along with a SHMA is unquestionably required for a Medway plan to comply with the Framework.

And last but by no means least is the crucial issue of housing provision. The SEP identified a provision of 815 dwellings per annum (dpa) for Medway. This matter was the topic of considerable discussion during the Hearing. The Council stood rigidly to this target figure and rejected any arguments that a higher figure was more appropriate based on the needs set out in the SHMA. With the revocation of the SEP, the Council cannot now simply argue that its housing provisions need only accord with a revoked SEP; it's plainly neither possible nor capable of argument to rely upon a defunct policy document. Instead, the starting point for target housing provision is the government's 2008-based household projections. These indicate that between 2010 and 2028, the number of households in the council area will increase from around 106,000 to 122,000. Whilst this could be interpreted as meaning that there is a need for 16,000 dwellings in the plan period, it is somewhat more complicated to statistically assess. First, there needs to be an allowance for vacancies (say +3%) and secondly, for second homes (say +1%). Thirdly, consideration needs to be given as to whether there is a proposed under-provision within neighbouring Gravesham, Tonbridge and Malling, Swale and Maidstone. Fourthly, as Medway is mainly within the strategic Thames Gateway growth zone an allowance for the government led ambitions for the district as a centre for housing and economic growth which the council should actively and positively embrace. Fifthly, initial analysis of the 2011 census indicates a substantial rise in the national population due to the impact of net inward migration.

In the light of this, the Council has to undertake a new SHMA so that the evidence base is up to date and prepared in accordance with the Framework guidelines. This would take into account the Council's own predicted requirements for affordable housing and the likely needs arising during the plan period, with assumptions and alternative options in the event of unpredicted and unforeseen events (Inspectors letter dated 23rd January "Monitoring and implementation"). The Council may wish to consider too extending the plan period (as is now proposed at Maidstone) so as to provide a more appropriate timeframe.

Such an approach would also need to be coupled with a review of the existing constraining policies. A number of these are themselves derived from the defunct SEP. These should now be deleted and/or re-considered and justified to comply with the Framework. It would be completely wrong for the Council to seek to retain policies of restraint simply because they were set out in the SEP.

All of this amounts to a substantial undertaking. It would not be reasonable or justifiable if the Council were to continue to use the submitted Core Strategy for development control purposes predicated on statistics and policies from a defunct SEP. As it stands, the Council's plan is clearly unsound and would not stand up to testing at Appeals because it is based upon out of date data and policies with no fallback proposals. The Inspector should therefore consider this especially given the latest SSSI Notification of Lodge Hill. This Notification is a clear example (however expected or unexpected) which skews the timing, delivery and now unknown quantum of housing from the forecasted trajectory. The Inspector has repeatedly asked the Council for its system of monitoring and implementation (and how fallbacks options are triggered) but the Sustainability Assessment dismisses all fallback Options. If the Inspector agrees with this view, then she should say so rather than let matters drag on with its significant commensurate costs to all parties involved in the Inquiry process.

The final Sustainability Assessment has been published today online. We have the following comments:

- 1) The Council and their consultants were aware during the preparation of the final SA that on 11th March, Natural England's Executive Board notified land identified by Medway for the Lodge Hill strategic allocation as an extension to the Chattenden Woods SSSI (see 3.14 etc). This confirmation that the statutory authority has now satisfied itself that the scientific evidence base in support of SSSI designation is robust has not materially influenced the SA conclusions. The Council continues to be determined, in the face of all contra-indications about its sustainability credentials, to bring Lodge Hill on stream as its key site for development. It also dismisses all other Options, and identifies no Option as suitable as a "fallback".
- 2) The SA conclusions about the sustainability of Lodge Hill are in large part predicated on unproven and highly optimistic assumptions about the delivery prospects and likely success of a loose compensation proposal for nightingales which is absent of critical detail. The general approach draws on principles that not only deviate from the prototype 'biodiversity offsetting' system that is still only being piloted by government, but in our view have been actively manipulated to produce a favourable, but unsupported, answer in the face of the significant constraints at Lodge Hill. This is an abuse of a system that is still only being trialled, and entirely contrary to its *raison d'être* as clearly set out in the Lawton Report which states:

"Biodiversity offsetting must not become a 'licence to destroy' or damage existing habitat of recognised value. In other words, offsets must only be used to compensate for genuinely unavoidable damage. Development should avoid adverse impacts first, mitigate impacts second and compensate for unavoidable impacts as a last resort.

- 3) We note in particular that the SA fails to reference central government advice to Local Planning Authorities about how the biodiversity offsetting pilot should be applied¹. This advice is very clear that "*we [government] would not normally expect the biodiversity offsetting mechanism to be used on designated sites and species protected under legislation. For such sites, existing policies and procedures will apply*". In the case of SSSIs of course, the existing policy and procedures are heavily weighted against loss or damage as a consequence of development, especially (as in this case) where there are serious question marks over whether the alternatives have been adequately explored. The SA declines to engage with this policy and procedural framework.
- 4) In light of the above, it is our view that the Inspector must first assess whether the guidance permits the application of offsetting to the Lodge Hill site at all, given its now

¹ <http://www.defra.gov.uk/publications/files/pb13744-bio-local-authority-info-note.pdf>

notified SSSI status, the magnitude of impact and the level of uncertainty as advised by acknowledged experts in evidence, and secondly weigh up whether the SA correctly balances the impact of the potential damage contemplated at Lodge Hill in arguments in dismissing alternative Options.

Relevant to such considerations is the fact that the success or otherwise of the compensation package proposed will only be able to be assessed well beyond the fifteen year life of the CS, and that the quantity and pace of housing and employment delivery at Lodge Hill relied upon by the Council to achieve their targets can only be delivered by exacerbating the magnitude of impact on the nationally important biodiversity interests at Lodge Hill. The SA patently fails to take such factors into account, relying on an optimistic prospect of successful compensation at some undefined point in the future. The reality is that within the life of the CS, the net effect of the Lodge Hill development will be both highly negative and significant at national level. This is not recognised in the SA. The only means to ameliorate this impact will be to hold back or massively retard housing delivery for most of the life of the CS, resulting in a shortfall of supply. In the context that Lodge Hill is identified as being critical for securing the employment and housing land needs for the district, continued reliance on it as a strategic allocation can only make the draft CS unsound.

This leads to the overall likelihood upon the deliverability of the draft CS, the reliance upon a defunct SEP and the quality of the evidence base for both the recognised demand for housing need and the current identified supply of housing sites. And finally, Lodge Hill is identified as being critical for the securing of the employment land needs for the district, and the deliverability and its timing are very seriously questioned. The draft CS must now be unsound.

Yours sincerely,



Peter Court.
Director