Medway Local Plan Examination

Matter 6: Natural Environment

On behalf of Rosconn Group and St John's College (Ref E.82)

Introduction

1.1. This Pre-Hearing Statement has been prepared by Savills (UK) Limited on behalf of Rosconn Group (the Promoter) and St John's College (the landowner). Rosconn are promoting Site SR4 (North Little Church Road, west of Town Road, Cliffe Woods) which is identified for up to 130 dwellings in Policy SA11 (Rural Settlements). Rosconn are broadly supportive of the Plan and its spatial strategy, however, we have concerns that a number of the development management policies are not sound.

1.2. This Statement specifically addresses our concerns with Policy S3 (North Kent Estuary and Marshes Designated Sites) and Policy DM1 (Flood and Water Management) which form part of Matter 6.

Question 6.18: How is 'development with potential for urbanising effects' (seventh paragraph of the policy) defined for the purposes of Policy S3?

1.3. The Council has not defined this. Nevertheless, it is anticipated that all planning applications in the District will be accompanied by the necessary ecological information and surveys in accordance with relevant UK wildlife legislation.

1.4. In accordance with paragraph 16(f) of the NPPF, Local Plans should "*serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant)*." Furthermore, paragraph 2 of the policy requires planning policies and decisions to "*reflect relevant international obligations and statutory requirements*". The requirements set out by Paragraph 7 of the policy are already controlled through existing legislation and associated regulatory processes. Consequently, Paragraph 7 represents unnecessary duplication and is not consistent with the approach set out in the NPPF. It should therefore be deleted in its entirety.

1.1. As set out in our response to the Regulation 19 Local Plan, we are also concerned that paragraph 7 suggests that necessary ecological surveys are required on adjacent parcels of land to the application site. Any requirement for an applicant to access and survey third-party land, being land outside the ownership and/or control of the applicant, would be unreasonable and impracticable. Applicants, landowners, developers and their technical consultants have no automatic rights of access to land outside their ownership or control and cannot compel third parties to permit entry for survey purposes. Consequently, it would be inappropriate for planning policy to impose requirements that may be incapable of being fulfilled by an applicant.

1.2. The Council acknowledges within the Consultation Statement (reference A10.2, page 172) that difficulties in obtaining access to third-party land are occasionally encountered. However, with the exception of certain specialist surveys, such as Great Crested Newt surveys, it is generally uncommon for ecological survey requirements to necessitate access beyond the application site. The practical difficulties associated with securing access to third-party land are therefore likely to be significantly greater than the Council recognises.

1.3. The Council go onto suggest, in the Consultation Statement, that where access cannot be obtained, alternative approaches may be agreed with the Council in consultation with Natural England. However, this flexibility is neither reflected within the policy wording nor the supporting text. In any event, ecological surveys are often constrained by seasonal windows and project programming requirements. It would therefore be neither practical nor reasonable to rely on a separate process of negotiation with the Council and Natural England, which may take a considerable period to conclude and could introduce unnecessary delay and uncertainty into the development process.

Question 6.19: Where Policy 3 refers to 'project level applications' (last paragraph) what does this mean?

1.4. The Council has not defined what it means by 'project level applications'. The need for HRAs is governed primarily by the Conservation of Habitats and Species Regulations 2017 (as amended), also known as the Habitat Regulations.

1.5. As we have set out in our response to Question 6.18 above, it should not be for Local Plan policies to repeat statutory legislation and consequently this requirement should be deleted from the policy.

Question 6.20: Would the policy be effective in terms of what it is seeking to achieve, in reading the various paragraphs together?

1.6. It would appear as though the purpose of the policy is to manage the impacts of new development upon the North Kent Estuary and Marshes designated sites. When read as a whole, it is not clear that the policy would be effective in achieving this aim due to the overlap between a number of its requirements and existing statutory processes, as well as the lack of clarity regarding how certain provisions would operate in practice.

1.7. Much of the policy repeats requirements that are governed by the Conservation of Habitats and Species Regulations 2017 and the HRA process. As set out above, it is not the role of Local Plan policy to unnecessarily duplicate statutory requirements. Much of this policy simply repeats obligations that already arise through the HRA process. This risks creating uncertainty regarding which requirements are policy-led and which arise through existing legislative and regulatory processes. We therefore suggest that substantial parts of the policy are deleted. Notwithstanding this, it is recognised that setting out the requirement for developer contributions towards strategic mitigation measures, including Bird Wise, is an appropriate matter for Local Plan policy.

1.8. Furthermore, the requirement for "*all applications for development at the allocations set out should be accompanied with detailed noise assessments and lighting strategies and where necessary, construction method statements and management plans should be put into place*" conflicts with proposed policy DM4 (Noise and Light Pollution) which is more flexible. As set out in our Regulation 19 response, if the Council is minded to ensure that proposals in the Zone of Influence do consider noise and lighting, this could be addressed through a cross-reference to Policy DM4. As currently drafted, the policy risks imposing additional requirements irrespective of whether there is evidence that such assessments are necessary.

1.9. The Council's Consultation Statement (A10.2) refers to the Hoo Peninsula Strategic Environmental Programme Topic Paper as supporting elements of the policy wording. However, the Topic Paper principally addresses matters arising from Natural England's representations in relation to the protection of the Hoo Peninsula environment and Policy S2. It does not provide a clear justification for many of the detailed requirements contained within Policy S3, nor does it address several of the concerns raised by representors regarding the practical implementation of the policy. Accordingly, the evidence base does not appear to provide comprehensive support for all elements of the policy, particularly those relating to urbanisation impacts, ecological survey requirements and the circumstances in which additional mitigation would be required.

Question 6.42: Is foul water drainage and wastewater a matter for the Plan and therefore justified, or else solely for statutory undertakers?

1.10. Whilst foul water drainage and wastewater are matters which should be considered in the course of a Plan's preparation, it is for statutory undertakers to ensure capacity is provided, not applicants, as implied by Policy DM1.

1.11. Throughout the preparation of the Plan, it is clear that the Council has engaged with Southern Water (as the statutory undertaker for wastewater) on matters of foul drainage and wastewater so that Southern Water can plan accordingly and ensure that there is sufficient capacity in the sewerage system to accommodate growth. In this regard, the Plan is considered sound.

1.12. However, Policy DM1, as currently drafted, is not justified and therefore cannot be considered sound. The wording of this policy places an unreasonable and unduly onerous requirement on applicants to agree upon, and provide, mitigating measures with the sewerage undertaker before planning permission has been granted.

1.13. The responsibility for every sewerage undertaker to ensure the effective drainage and sewerage systems, including planning for future growth, is established by the Water Industry Act 1991. Sewerage undertakers are required to prepare and maintain a Drainage and Wastewater Management Plan (DWMP). The undertaker should commit to delivering an appropriate level of capacity to serve all allocated sites through its DWMP. The method and mechanisms by which this capacity is secured are matters for the undertaker and should be set out through its future investment programmes and committed upgrades to the sewerage network and associated infrastructure.

1.14. Policy DM1 gives the statutory undertaker the ability to prevent planning permission from being granted where its own planning may have failed. The Council has engaged with Southern Water throughout the Plan's preparation so that they can plan for future growth and if they have failed to plan appropriate upgrades in their five year plans, this should not hinder or stall the delivery of the allocations and strategy within the Development Plan.

1.15. It is not the responsibility of landowners, applicants or developers to agree or secure mitigating measures to address deficiencies in wastewater or foul drainage infrastructure, with the obligations and duties placed on sewerage undertakers operating outside the planning system. Whilst wastewater infrastructure is a relevant planning consideration, the proposed wording of Policy DM1 inappropriately transfers responsibility for addressing capacity constraints to applicants and makes compliance dependent upon matters that fall within the remit of the statutory undertaker as agreed through separate legislation. Accordingly, Policy DM1 is not justified or effective and is unsound.

1.16. We would also note that the Council's Consultation Statement (A10.2) does not adequately address our representations on this matter. The issue has not been appropriately captured within the schedule of issues raised, and there is no meaningful response to the concerns identified. Consequently, it is therefore unknown whether the Council has fully considered our representations or the reasons for rejecting them.