



Strategic Planning
Maidstone Borough Council
Maidstone House
King Street
Maidstone
ME15 6JQ

By email only: ldf@maidstone.gov.uk

13 November 2023

Dear Sirs,

RE: Proposed Main Modifications to the Regulation 19 Maidstone Borough Local Plan Review

Introduction

1. This consultation response is made on behalf of Lenham Parish Council (“LPC”) in response to the proposed main modifications to the Regulation 19 Maidstone Borough Local Plan Review (“the draft LP”) published by Maidstone Borough Council (“MBC”) in September 2023.
2. In summary, LPC do not consider that the proposed Main Modifications to the draft LP would render it sound.
3. LPC’s primary concerns relate to the specific proposed modifications MM13 – MM15 in relation to Policy LPRSP4(A): Heathlands Garden Settlement. It addresses in detail what those concerns are and why those specific modifications do not render the plan sound.
4. For the avoidance of doubt, LPC continues to rely on what it raised both at Reg 19 and in its Hearing Statements submitted in relation to Matters 1, 2,3,4 and 8 and the Stage 1 and Stage 2 examination hearings. It considers that the points raised in those Matter Statements and Reg 19 responses have not been addressed satisfactorily by way of these Main Modifications, the evidence submitted in support of them, and the previous rounds of evidence submitted by the Council in the course of the examination.
5. This response is therefore in three parts:
 - a. **Part One** sets out the key points by LPC of why the allocation of Heathlands Garden Settlement in LPRS4(A) remains unsound, even with MM13 – MM15

- b. **Part Two** sets out in detail specific points in relation to MM13 – MM15, the new evidence submitted apparently in support of these, and the continuing lack of justification for the Heathlands allocation even with this new evidence.
- c. **Part Three** sets out why the preferred strategy of the Council, which the Council now proposes to modify by the removal of Leeds-Langley as a strategic growth area via MM7, remains unsound.

Part One: why the Heathlands Garden Settlement in LPRS4(a) remains unsound even with MM13 – MM14.

- 6. The only two real substantive changes to LPRS4(a) are:
 - a. A commitment that a new rail station should be provided on the Maidstone-Ashford line.
 - b. A requirement that *“impacts to the M20 will be fully assessed and mitigated in accordance with the Monitor and Manage Strategy in co-operation with Kent County Council (KCC) and National Highways (MM Schedule page 18)”*.
- 7. Neither of these two proposed changes sufficiently address LPC’s concerns raised throughout the examination process regarding the Heathlands allocation. Those concerns in summary are:
 - a. The selection of Heathlands as a garden settlement as part of the spatial strategy remains unsound in principle, particularly as there are reasonable and far more sustainable alternatives closer to Maidstone particularly in terms of the development of the Leeds-Langley corridor, and the fact that Heathlands performed least well of all the other options considered as potential locations for garden settlement.¹
 - b. The failure of any of the technical highways work carried out to date to demonstrate that the impacts on the road network, in particular the A20 and the nearest motorway junctions to date can be satisfactorily resolved to accommodate c.5000 homes and 5000 jobs including 14ha of employment development.
 - c. The lack of certainty over the delivery of a new railway station, and the effectiveness of that in any event even should one be provided in terms of rendering Heathlands sustainable
 - d. The loss of 332.63 hectares of “Best and Most Versatile” (“BMV”) land.
 - e. The lack of sufficient evidence to justify that Heathlands could be delivered as a viable project, and other deliverability concerns in relation to the entirety of the project.

¹ See LPC’s Reg 19 Response LPC 1, LPC 4, 6 and 9, and Legal Submission on SA, and Hearing Statement on Matter 3.2 in particular

- f. How the proposal would be compatible with the requirement for mineral safeguarding at the site;
- g. Impact on the AONB and its setting.
- h. The lack of certainty over the delivery of a wastewater treatment facility and the impact on nutrient neutrality.

The purported inclusion of a new railway station

8. What remains noticeably lacking in MM15 is any inclusion of a new railway station as an actual requirement for a new railway station as part of the infrastructure package necessary to support and mitigate the impacts of the Heathlands Garden Settlement under section 5 of the Policy (as contrasted for example with other basic infrastructure requirements such as a Waste Water Treatment facility – see Section 5 which lists “Infrastructure” – why is the Railway Station not included as infrastructure in this Section?). The words “Indicative Complementary Infrastructure” in Section 1 (Phasing) leaves far too much scope for the site developers at the planning application stage to avoid getting approval from Network Rail (NR) before development commences. Indeed, the words “Indicative Complementary Infrastructure” indicates a scenario in which none of the infrastructure elements listed need to be delivered. The fact that the MBC is relying on “Indicative Complementary Infrastructure” rather than “Essential Complementary Infrastructure.” rather indicates the council’s need for complete flexibility to meet any kind of future planning requirements.
9. Moreover, section 6 of the MM does not state that a new rail station will be provided before first occupation of any of the units. It simply states that a new railway station “will be provided”. But the policy does not deal with the scenario if that station has not been provided: according to the policy, this does not bar any development coming forward. Moreover, there is no requirement for the railway station to be secured prior to commencement of the development. Agreement in principle is far short of securing the delivery of a railway station. The proposed policy as worded allows for up to 1,310 dwellings to be constructed at the site prior to the point at which it is discovered that no railway station can be delivered. These dwelling cannot then be “unbuilt”. The policy should be changed to state that the railway station works must be approved by Network Rail prior to commencement of Phase 1.
10. The only possible reason for the exclusion of the provision of a new railway station as an express requirement is a lack of conviction on the part of the Council and no doubt the site promoters that Network Rail will actually approve the Business Case. The concern of LPC expressed throughout the Stage 1 and 2 hearings about the lack of any certainty that NR will actually approve the Business Case and grant an approval in principle remain entirely justified, and indeed are only exacerbated by the way in which the Council has carefully drafted MM15 to avoid this as an express requirement preventing development taking place. That approval could, and should, have been sought long ago by NR and the fact that one year on there is still no sign of it being forthcoming is telling and confirms and justifies LPC’s concern that it will not be approved.

Reference to “a Vision and Validate” and “Monitor and Management Strategy” and “impacts to the M20 will be fully assessed and mitigated” via an SPD

11. The inclusion of this particular modification in Section 6 of Policy LPRSP4(A) merely confirms what LPC and others have repeatedly said throughout the examination process: there is currently a complete lack of evidence as to what highway improvements might be necessary to render the Heathlands allocation acceptable. Given how fundamental the highway impact (and therefore what highway infrastructure might be required) is to both the viability and the impact of the entire Heathlands scheme on the highway network, this assessment and evidence should have been carried out and submitted as part of the evidence base justifying the inclusion of Heathlands at this stage. It is no answer to say that at this stage in the process (i.e at the plan-making stage) it would have been disproportionate to carry out this assessment: it could, and should, have been done in order to justify the allocation.

The vagueness of what this “Vision and Validate” and “Monitor and Manage Strategy” entails is obvious. It is nothing other than an attempt to sidestep the clear need to assess the impacts of the scheme before it is accepted into the allocation and development is commenced. There is no clarity to guide the decision maker at development plan level as to what mitigation is required before development commences. According to the “indicative” complementary infrastructure column in Section 1, there is no requirement for any mitigation at all to have been identified before the completion of 1310 homes in Phase 1.

12. What is also clearly unlawful is the proposed use of the SPD to include a “detailed Transport Assessment” through an SPD as now envisaged in MM15 (Section (f)). That is clearly an inappropriate and unlawful use of an SPD, whose purpose is to provide more detail for decision makers and developers to assist in the application of local plan policy. An SPD is not the appropriate place to set out assessments which should have been carried out in support of the local plan policy in question in the first place. There is absolutely no reason why the very Transport Assessment referred to in MM15 (Section 6(f)) could not have been carried out before the plan was submitted in support of the application. Since it has not been carried out, the allocation of Heathlands Garden Settlement remains unjustified and unsound.

Part Two: Further Detailed Points regarding MM15, the further evidence relied on by the Council and why the Heathlands allocation remains unsound.

New Transport evidence (see ED127)

13. Off-site highway measures are listed under the heading ‘Infrastructure Costs’ as £6,120,000. The sum of £1,425,000 is listed for both Years 7 and 8 of the project (2028/2030). No further contributions are the listed until Year 13 (2034/35).

14. There is still no complete evidence of the highway impacts of Heathlands before the Examination. The impact of 5000 additional dwellings and as close to 5000 new jobs as possible on the rural lane network to the south simply has not been included in the modelling. The Inspector specifically asked for this assessment work to be undertaken and MBC has failed to deliver it. Furthermore, KCC has refused to work with third

parties willing to have this work undertaken.

15. By failing to identify the location, scale and magnitude of off-site highway impacts and associated mitigation at this plan making stage, there is no evidence to support cost assumptions for off-site highway works. Indeed, it is incredulous to believe that any reliable cost estimate can be provided for something that is unknown. There is a significant risk that the amounts given for off-site highways may turn out to be a significant underestimate of the true ultimate cost under the 'monitor and manage' regime.
16. Furthermore, LPC now notes that the proposals, as set out in ED59, whereby bus services would be delivered by the construction of 629 homes has been extended to provision by 1310 homes. This extension of the date before buses will be provided will exacerbate the use of private vehicles as potential residents will have no other way of getting to work or school and further weakens the case for sustainability and viability.
17. LPC would expect any off-site highway mitigation to be significantly more front-end loaded than is currently shown on ED128.
18. The work on the highway impacts, and the cost of mitigation, should have been carried out to allow it to have been factored into a comprehensive comparative assessment of the alternative development strategies. The LPR should not be progressed to release Heathlands unless and until such a complete comparative assessment has been undertaken and published for public scrutiny and comment.

Viability (see ED128)

19. LPC made an objection to the soundness of the Submission Plan at Regulation 19 Stage in relation to viability at LPC FIFTEEN. This section below reviews the updated Viability Assessment provided at ED128 (June 2023). The conclusions reached at paragraph 15 of LPC FIFTEEN remain equally valid. In spite of these issues being raised by several parties during Stages one and two, the conclusions are as follows:
 - a. It remains unclear that a complete and accurate viability assessment can have been prepared for Heathlands to include all relevant costs.
 - b. It remains unclear that enough work has been done on any of the individual items to understand what would be involved and how much each of these items would actually cost at the final out-turn.
 - c. It remains unclear that the Heathlands project can ever be viable when the recommended 40% optimism bias contingency is built in, as has been required by the Inspectorate at other, similar, garden community projects.

Paragraph 7.6 of ED128 reads as follows:

"Heathlands is viable with a sufficient viability surplus of circa £18.5 million. Our sensitivity analysis shows that a 5% increase in build costs (or a 5% decrease in values could render the scheme unviable".

LPC is concerned that the evidence base supporting the plan does not demonstrate that Heathlands is viable. It is not clear how carrying costs for funding the project have been built into the appraisal and, as a consequence, how increased interest rates impact on viability.

The comments made earlier in this commentary cast significant doubts as to whether all the infrastructure costs have been robustly calculated.

The lack of clarity about land ownership indicates it is not possible to be certain that all the land necessary will be made available at viable cost.

ED128 itself indicates that the viability of Heathlands is such that a 5% increase in build costs could render the scheme unviable.

As set out in LPC FIFTEEN, other similar projects have adopted a 40% contingency allowance (not a mere 5% allowance). The Treasury's supplementary green book guidance advises a 44% allowance for capital expenditure on standard civil engineering projects, based on real world research, to allow for 'optimism bias'.

Until such time as a realistic contingency allowance can be incorporated into the project, LPC is of the opinion that Heathlands will not be able to legally comply with government guidance and common good practice in relation to this issue and therefore remains unsound.

(a) Levelling Up and Regeneration Bill

20. Paragraphs 2.4 -2.10 of ED128 describe changes proposed to be made to reform the current S106/CIL arrangement. It is proposed to introduce a new nationally set, value-based flat-rate charge in the 'Infrastructure Levy'. Paragraph 2.5 of ED128 describes this as follows:

"The reform is to capture a greater share of the uplift in land value that comes with development."

21. The garden communities are to be excluded from the current MBC CIL arrangement with their comprehensive infrastructure requirements being delivered solely through section 106 Agreements. Paragraph 2.11 of ED 128 states:

"For our viability assessment we have IGNORED the proposed reforms."
(writer's emphasis)

22. LPC considers this decision to ignore an upcoming change in the Infrastructure Levy arrangement to be highly questionable in terms of the overall viability of the garden communities, and Heathlands in particular.
23. LPC considers that in view of the possible upcoming changes to national legislation in relation to the Infrastructure Levy a much greater margin of error should be built into the Heathlands viability in order for the project to achieve legal compliance with government guidance on this issue. This issue is, of course, a new material planning consideration, evolving in Parliament after the closing of the last session of the

Examination which, we consider, affects the soundness of the entire proposal.

(b) Land Ownership

24. Paragraph 6.8 of ED128 reads as follows:

“Homes England has confirmed that there were 11 landowners for Heathlands. The land is currently being assembled and Homes England has confirmed that xxxxx is £xxxx per acres gross.” The numbers have been redacted by HE.

25. In spite of repeated requests, there is no evidence before the Examination that the land has been assembled and agreement reached with the relevant landowners. As a consequence:

(i) it is not possible to be certain that the site can be delivered physically because not all the key ownerships are known to be available to deliver every piece in the jigsaw.

(ii) It is not possible to be certain that the site can be delivered financially because it is not known what price will finally be required to secure all the land.

26. As a consequence, any decision in principle to release Heathlands in the LPR should be delayed until such times as a clear and authoritative update statement can be issued confirming that ALL the relevant land parcels are genuinely available at a realistic price to ensure the entire project is deliverable as a whole.

27. The clear uncertainty about land availability and price is another reason why the Heathlands viability should incorporate the recommended 40% optimism bias contingency.

(c) Strategic Site Cost Assumption

28. Table 6.2 of ED128 sets out the estimated Strategic S.106 contributions for Heathlands. These are set out in more detail at Appendix 2 of the Addendum Report.

29. Potential New Railway Station:

i. Railway contributions are listed as £13,000,000.

ii. Railway contributions are given as £2,600,000 for each of years 10-14 (2032-2036).

30. There are numerous examples in the construction industry, including some high-profile local examples, where new railway stations serving development projects have either been:

(i) impossible to secure at all,

(ii) heavily delayed in their programme,

(iii) much more expensive to deliver than costed in the initial estimates.

31. The total cost of £13M for the new railway station is not based on any approval of the Strategic Outline Business Case by the relevant authorities. In fact, we understand that MBC will not even embark on a SOBC until after the review of the local plan is complete and has been adopted. In order for Heathlands to have any vestige of a sustainability profile, the new station (if one can be secured at all) should be delivered at the early earliest stages of the project. It should be emphasised that even the delivery of a new station (if one can be delivered at all) still cannot transform Heathlands into a genuinely sustainable location because of the sites inherent isolation within mid-Kent.
32. LPC considers the cost estimate of £13M may turn out to be a very significant underestimate of the cost of the final cost out-turn for this project.
33. LPC also believes the timing of the cost of the station should be much more 'front end loaded' and delivered at the outset of the project.

(d) Wastewater Treatment

34. The total cost for Wastewater is given at Appendix 2 as £30,240,000. £30M is undoubtedly a very significant sum, bearing in mind that none of the other potential strategic locations would have had to afford anything like such a complex and expensive new element of infrastructure provision.
35. The nutrient neutrality proposals are a completely new and untested form of infrastructure provision. There is a genuine concern that when the more detailed site survey and design work is undertaken the cost out-turn of £30M may be a significant underestimate.
36. After initial expenditure 2028/2031, no further costs are shown for this element from 2031/2036. LPC is concerned that the delivery of adequate foul sewage disposal should be available at the earliest stages of the project and the cost profile should, as a consequence, be significantly more front-end loaded.
37. All of the above calls into doubt the viability and soundness of the scheme. Absent of any updated viability evidence, it cannot be concluded that the scheme is deliverable. Moreover, the recent submission from Fish Legal casts significant doubt over the veracity and even legality of the proposals. None of this has featured in the MMs and Lenham Parish Council would need to see that the concerns raised therein had been appropriately and comprehensively addressed.

Part Three: The selection of the preferred strategy remains unsound.

38. In light of the flaws above, the selection of Heathlands as part of the preferred two so-called Garden Settlements remains unsound. More than that, the very fact that MBC has accepted that major infrastructure in the way of a railway station, and (although unascertained) highways improvements are necessary, means that the basis for the selection of the preferred two Garden Settlement strategy is clearly unsound.

LPC had highlighted in its legal submission accompanying its Reg 19 submission how the spatial strategy is contained in Policy LPRSS1 was unsound and in particular how the SA

had failed to assess reasonable alternatives, particularly because of the approach taken to the Leeds-Langley Corridor. It made it clear that merely proposing this area as having the “potential” as a Strategic Development Location (“SDL”) without having properly investigated whether in fact it should be proposed in the plan was not only unsound, but also rendered the SA Report that has been carried out inadequate and contrary to the 2004 Regulations.

39. In light of the Council’s acceptance that a new station is required to render the Heathlands settlement sustainable, and the continued lack of certainty as to whether or not such a station can in fact be delivered, the Council could and should have revisited whether its preferred strategy remains sound, and whether the identification of the Leeds-Langley Corridor as a strategic growth location should be revisited.
40. The mere deletion of it as a safeguarded “SDL” area (as proposed in MM 7, page 4) is no answer to that fundamental issue. As LPC set out in its Reg 19 response and hearing statements, the Leeds-Langley Corridor has never been properly assessed as a potential broad location for growth. The fact that the Council has now decided to remove it even as a safeguarded SDL area is a recognition of the lack of evidence to even support it as a potential area for development (despite this being anticipated and indeed expected at the last local plan review) merely begs the question as to why such an assessment has not been carried out.

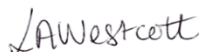
Conclusion

41. In his letter to MBC at the conclusion of Stage one (ED70) at point 5.11 the Inspector, Mr Spencer, found: *“the detail of the submitted Lenham Heathlands Policy LPRSP4(a) is not sound.”*
42. LPC remains of the view that there are no modifications, major or otherwise, that can make this policy sound.
43. From the outset of this proposal (Policy LPRSP4(a)) LPC has maintained that this is the wrong approach in the wrong place.
44. The current Main Modifications add little to the understanding of the delivery of policy (LPRSP4(a)) which proposes to create a so-called “Garden Community” east of Lenham village. In effect this will be a new town, settled in the countryside with little prospect, as far as the Development Partnership can provide, of any access to genuinely high-capacity public transport; the likelihood of a new station remains unresolved and without that the whole proposal, the delivery of which hinges on it, is also unresolved and, we consider, unsound.
45. Like all the other developments before it which have promised but failed to deliver “modal shift” this will inevitably become a car-based development, and the only access to the network will be along a road, the A20, which due to wider circumstances such as doubling up for the M20 when that is closed between junctions 8 and 9, is already well beyond its ‘sell-by date’.
46. In his response to MBC at the end of stage one the Inspector, Mr Spencer, notes this:

“Notwithstanding improved bus services, the potential of a new station and the requirement in Policy LPRSP4(a) to appropriately phase the delivery of infrastructure, services and jobs, the reality is, however, that future inhabitants will travel, and the private car will remain a key transport choice.” That concern remains completely unresolved.

47. In addition to raising specific concerns with the proposal to create Heathlands, at Regulation 19 LPC also submitted a comprehensive set of responses to other proposals within the plan, most of which have not been addressed or have been side-lined. In particular the submission regarding the Leeds-Langley corridor (LPC6), as picked up by the inspector of the 2017 plan, remains unresolved and a further substantial weakness in this plan.
48. Prior to its submission of this consultation response, LPC has had the benefit of considering the response provided on behalf of Fish Legal (dated 10th November 2023). It agrees with those comments and conclusions.
49. Lenham Parish Council remains convinced that the creation of Heathlands as a so-called Garden Development is undeliverable, unsustainable and unviable. The proposed modifications do not change the fact that the allocation derives from a flawed spatial strategy. Its allocation in the local plan, even with these Modifications, is contrary to the NPPF and remains unsound.

Yours faithfully,



Lisa Westcott

Clerk to Lenham Parish Council

Email: clerk@lenhamparishcouncil.org.uk

Tel: 01622 829034

Address: 1A High Street, Lenham, Kent, ME17 2QD