

CABINET

7 JUNE 2022

MAIDSTONE LOCAL PLAN REVIEW: STATEMENT OF COMMON GROUND

Portfolio Holder: Councillor Jane Chitty, Portfolio Holder for Planning,
Economic Growth and Regulation

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Summary

This report responds to issues raised by members at the Cabinet meeting on 10 May 2022. The draft Maidstone Local Plan includes a proposal for a Lidsing Garden Community on the border of Medway. Medway Council has objected to the proposals, but must demonstrate constructive engagement with Maidstone Borough Council on cross border strategic planning matters. This is a legal requirement of the 'Duty to Cooperate' in plan making. It is not a duty to agree. The matters under consideration between the two authorities are set out in a Statement of Common Ground. This is to be submitted to the planning inspector appointed to carry out the independent examination of the Maidstone Local Plan Review. This report sets out the proposed Statement of Common Ground document and the background to this work. Approval is sought to submit the Statement of Common Ground as part of the materials for the examination of the Maidstone Local Plan Review.

1. Budget and policy framework

- 1.1. The Medway Local Plan is the statutory development plan for the area and is part of the Council's Policy Framework. The Council is preparing a new Local Plan, which on adoption will replace the current Medway Local Plan, 2003. The Local Plan is being produced in conformity with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).
- 1.2. As part of the plan making process, the local planning authority must meet the Duty to Cooperate on cross border strategic matters. The Submission Draft Maidstone Local Plan Review has implications for Medway, and our authority's spatial growth strategy. Due to the potential scale of impacts on

Medway, the Statement of Common Ground, as part of the plan making process, is a matter for Cabinet.

- 1.3. The costs of preparing the Local Plan and the Statement of Common Ground are met within the Planning Service budget.

2. Background

- 2.1. Maidstone Borough Council is preparing a Local Plan Review to provide an updated framework for its growth up to 2037. As part of its development strategy, the plan proposes two 'garden communities' promoting strategic scale growth to meet the borough's housing needs over the plan period. The development proposals include Lidsing Garden Community. This proposal is for a strategic development, providing for 2000 homes, 14 hectares of employment land, up to 1500m² of retail, leisure and services in a new local centre, and wider infrastructure, including a new primary school, open space and transport services and infrastructure.
- 2.2. The proposed Lidsing Garden Community is situated directly to the south of Medway's border, and is described in the development proposals as a sustainable urban extension to Medway. Medway Council is aware of the landowner's aspirations for a wider cross border proposal for strategic growth across the Capstone Valley and adjacent areas. Work on the new Medway Local Plan has not found such forms of suburban growth to provide for sustainable development. Medway Council has responded to consultations on the preparation of the Maidstone Local Plan Review, with particular regard to the proposals at Lidsing. Due to the proximity to Medway, and the proposals to consider this Garden Community as an urban extension to Medway, there are clear implications arising from the Maidstone Local Plan Review. These matters include pressures on transport networks, services and infrastructure, impacts on the local environment, such as the Kent Downs Area of Outstanding Natural Beauty, and conflict with the emerging preferred spatial strategy for managing Medway's growth. A copy of the Council's representations to the Regulation 19 consultation on the draft Maidstone Local Plan Review is set out at Appendix 1.
- 2.3. This matter was considered by Cabinet on 10 May 2022 and members raised concerns that the version of the draft Statement of Common Ground presented to that meeting did not adequately reflect the scale of impacts that the proposed Lidsing Garden Community could have on Medway. Members requested that further work be carried out on the Statement of Common Ground so that it was more robust and explicit about the concerns and objections held by Medway Council. The Statement has been updated in line with the comments raised at the Cabinet meeting on 10 May. The revised version of the Statement of Common Ground is set out at Appendix 2. This has been shared with Maidstone Borough Council. Discussions are ongoing in considering the response from Maidstone Borough Council to the amendments proposed by Medway Council.

Duty to Cooperate

- 2.4. There is a legal requirement under the Duty to Cooperate on the Council to engage constructively, actively, and on an on-going basis, during the preparation of development plan documents, such as a Local Plan. This is a test that local authorities need to satisfy at Local Plan examination stage and is an additional requirement to the test of soundness. The Duty to Co-operate applies to strategic planning issues of cross boundary significance.
- 2.5. The statutory requirements of the Duty to Co-operate are not a choice but a legal obligation. Whilst the obligation is not a duty to agree, co-operation should produce effective and deliverable policies on strategic cross boundary matters in accordance with Government Policy in the National Planning Policy Framework (NPPF). In the Planning White Paper, 'Planning for the Future', published in 2020, the government consulted on changes to the requirements on strategic working in plan making, including the removal of the Duty of Cooperate. The government has indicated that reforms will be part of the Levelling Up and Regeneration Bill.
- 2.6. To demonstrate effective and on-going joint working, Local Planning Authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress made in subsequent co-operation. The NPPF states that strategic policy makers should collaborate to identify the relevant strategic matters which they need to address in their plans. In Medway organisations that are covered by this requirement and where statements of common ground may need to be compiled, include neighbouring local authorities and statutory consultees, such as Natural England and National Highways.
- 2.7. The NPPF defines the topics considered to be strategic matters, which are potential subjects for consideration in statements of common ground, as follows:
 - a) Housing (including affordable housing), employment, retail, leisure and other commercial development.
 - b) Infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat).
 - c) Community facilities (such as health, education and cultural infrastructure).
 - d) Conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change and mitigation and adaptation.
- 2.8. Medway Council and Maidstone Borough Council have engaged during the plan preparation processes for their respective Local Plans. A draft Statement of Common Ground has been prepared between the two authorities as part of the supporting information for the Maidstone Local Plan Review. This has been reviewed on an iterative basis, to take account of updated information and comments. The Statement is to be agreed and signed by both authorities. The Statement of Common Ground does not replace the representations

made to consultations on the draft Maidstone Local Plan Review. The Statement is to be submitted to the inspector appointed for the examination of the Maidstone Local Plan Review. An updated copy of the draft Statement of Common Ground that reflects comments made by Cabinet members at the meeting on 10 May 2022 is set out at Appendix 2. This document is the subject of ongoing correspondence and discussions between Maidstone Borough Council and Medway Council. Maidstone Borough Council has proposed further amendments in response to the updated content from Medway Council. The latest amendments are still under consideration.

3. Options

- 3.1. The Duty to Cooperate is a legal requirement of the plan making process. Medway Council has engaged with Maidstone Borough Council and made representations at formal stages on its draft Local Plan Review. The Statements of Common Ground are an important component of this process and involve iterative reviews to take account of key issues and additional evidence.
- 3.2. It is appropriate for Medway Council to produce a Statement of Common Ground with Maidstone Borough Council. It is a means to duly inform the examination of how and if the Duty to Cooperate has been met, and can support the planning inspector in testing the soundness and legal compliance of the draft Maidstone Local Plan Review.
- 3.3. If Medway Council did not produce a Statement of Common Ground with Maidstone Borough Council, this could damage our authority's case at the examination.

4. Advice and analysis

- 4.1. It is considered that the proposals in the Submission Draft Maidstone Local Plan Review could negatively impact on Medway, placing pressures on services and infrastructure and the local environment. The Council has particular concerns about the detrimental impact on Medway roads and services, not least education and health services. Medway Council made robust representations to the Regulation 19 consultation on the draft Maidstone Local Plan Review in late 2021. A large number of objections to the Lidsing Garden Community were submitted to this consultation, notably from local communities. This is likely to be a key matter selected by the Inspector for further consideration at the examination of the Maidstone Local Plan Review. Medway Council has requested to participate in the hearing sessions that will be held as part of the examination procedure. The Council will be able to re-state its grounds of objection to the Lidsing Garden Community to the Planning Inspector.
- 4.2. Meetings have taken place between Medway Council and Maidstone Borough Council that have discussed the concerns raised with regard to the development proposals. These meetings have helped to inform the iterations of the Statement of Common Ground between the two authorities in relation to

the Maidstone Local Plan Review. The Statement of Common Ground sets out information on the key cross border strategic planning matters. It records that a number of matters are not yet resolved, such as the assessment of transport impacts from proposed development, and how and where key infrastructure will be funded and delivered.

- 4.3 Medway Council considers that further work is needed to resolve its concerns about the impacts on services, infrastructure and the environment. These concerns are noted in the latest version of the Statement set out at Appendix 2.

5. Risk management

- 5.1. This report specifically considers the cross border issues between Maidstone Borough Council and Medway Council relating to the Maidstone Local Plan Review. The risks are scoped to relate to the legal requirements of the Duty to Cooperate and the potential impacts on Medway, resulting from proposed growth at Lidsing.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Duty to Cooperate legal requirements not met.	Maidstone Local Plan Review and Medway Local Plan at risk of being found not legally compliant at Examination and plan making progress delayed.	Preparation and publication of Statement of Common Ground. Adherence to process of strategic working throughout plan making.	C2
Negative impacts on Medway from development of Lidsing Garden Community.	Unsustainable development at Lidsing creates pressures on Medway's services and environment.	Medway Council's objections considered by planning inspector into Maidstone Local Plan Review and securing infrastructure contributions and modifications to development proposals.	C2

6. Consultation

- 6.1. Maidstone Borough Council carried out consultation on its emerging Local Plan through formal 'Regulation 18' stages, and on its draft plan at 'Regulation 19' for six weeks in late 2021. Medway Council submitted representations to

the formal consultations and has set out objections to the proposed Lidsing Garden Community.

- 6.2. Maidstone Borough Council has submitted its draft plan for independent examination by a planning inspector. The materials submitted included details of the consultation conducted during the plan making process and copies of the representations made. The planning inspector will consider if the issues raised during consultation require further consideration as part of the examination process.
- 6.3. There is no requirement for the councils to consult on the Statement of Common Ground between Maidstone Borough Council and Medway Council. The Statement will be published on the Maidstone Local Plan Review Examination website.

7. Climate change implications

- 7.1. The Statement of Common Ground recognises climate change as a strategic issue for both Medway Council and Maidstone Borough Council. The respective local plans seek to take a proactive approach to mitigating and adapting to climate change. There are particular considerations regarding transport, air quality, and flood risk, and green infrastructure is recognised as having potential to provide mitigation and adaptation solutions to climate change impacts. Medway Council's comments on the draft Maidstone Local Plan Review seek to avoid negative impacts on Medway, including further pressures on the environment.

8. Financial implications

- 8.1. The costs of preparing the Statement of Common Ground are met through the Planning Service budget. The proposed Lidsing Garden Community has implications for services and infrastructure in Medway, and the Statement of Common Ground recognises that close working is required between the two councils so that developer contributions are appropriate to the degree of pressure placed on Medway's services.

9. Legal implications

- 9.1. The Duty to Cooperate is in accordance with the Localism Act, 2011 and the National Planning Policy Framework (2021, as revised).

10. Recommendation

- 10.1. The Cabinet is requested to approve the content of the Statement of Common Ground (as set out at Appendix 2) and delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Leader and the Portfolio Holder for Planning, Economic Growth and Regeneration, to make any amendments necessary, following discussions with Maidstone Borough

Council to finalise the Statement of Common Ground for signing and submission to the examination of the Maidstone Local Plan Review.

11. Suggested reasons for decision

11.1. To provide a robust and effective governance process supporting the legal Duty to Cooperate.

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Appendices

Appendix 1 Medway Council representations to publication of draft Maidstone Local Plan Review at Regulation 19, 2021

Appendix 2 Draft Statement of Common Ground between Maidstone Borough Council and Medway Council

Background papers

Maidstone Local Plan Review – Submission Draft

<https://drive.google.com/file/d/13MfNeKxSGxYIfCCKZcP6-ggua2EFInbt/view>