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Habitat Regulation Assessment (HRA)¹ Screening Matrix and Appropriate Assessment (AA) Statement

IMPORTANT NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations¹. However, it is the responsibility of the applicant to provide the Competent Authority with the information required to complete this process.

Application reference:	17/505711/HYBRID
Application address:	Land at Wises Lane, Borden
Application description:	<p>Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works.</p> <p>Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.</p> <p>For clarity - the total number of dwellings proposed across the site is up to 675.</p>
Lead Planning Officer:	Andrew Byrne
HRA Date:	03/08/18

¹ All references in this document to the 'Habitats Regulations' refer to the Conservation of Habitats and Species Regulations 2017

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European site or sites potentially impacted by planning application, plan or project (Delete as appropriate):	Medway Estuary & Marshes SPA and Ramsar Site Thames Estuary & Marshes SPA and Ramsar Site The Swale SPA and Ramsar Site
Is the planning application directly connected to the management of the site?	No

Part 2 – HRA Screening Assessment**Screening under Regulation 63(1)(a) of the Habitats Regulations – The Applicant should provide evidence to allow a judgement to be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA / Ramsar Site.**

The coastline of North Kent encompasses three Special Protection Areas (SPAs): the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA and the Swale SPA. They are classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and / or vulnerable in a European context, and also sites that form a critically important network for birds on migration. All three sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). For clarity, and the purpose of this assessment, 'European Sites' refers to both the SPA(s) and Ramsar² Site(s). Studies have shown marked declines in key bird species, particularly in areas that are busiest with recreational activity.

Research³ conducted in 2011 found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar Site. The studies found that 75% of recreational visitors to the North Kent coast originate from within 6km of the SPA boundary and Ramsar Site. The impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.

Following the CJEU ruling⁴, avoidance or mitigation measures cannot be taken into account as part of the application at this stage of the HRA, and must be considered under an Appropriate Assessment stage of the HRA in part 3 of this document.

² As a matter of Government Policy (NPPF Paragraph 18), Ramsar Sites should be given the same protection of European Sites.

³ Liley, D. & Fearnley, H. (2011). Bird Disturbance Study, North Kent 2010/11. Footprint Ecology

⁴ CJEU Ruling Case C-323/17

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Are there any other plans or projects that together with the planning application being assessed could result in a likely significant effect the site when considered in-combination?	Yes. All new dwellings built within 6km of the SPA and Ramsar Site, or other developments that could lead to an increased recreational pressure, could combine to have a likely significant effect on the SPA and Ramsar Site.
Would the proposal lead to a likely significant effect on the European sites, without mitigation measures either alone or in-combination? YES (if yes, continue to part 3)	

Part 3 – Appropriate Assessment

Appropriate Assessment under Regulation 63(1) – if there are any potential significant impacts, the Applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

The project being assessed would result in a net increase of 675 dwellings within 6km of the North Kent SPAs and Ramsar Sites. In line with Policy CP7 ‘Conserving and enhancing the natural environment – providing for green infrastructure’ and Policy DM 28 ‘Biodiversity and geological conservation’ and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development, is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.

The North Kent Strategic Access Management and Monitoring Strategy⁵ (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:

- Rangers to provide wardening and visitor engagement
- A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
- Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
- Interpretation and signage
- New and/or enhanced infrastructure
- Enforcement and Monitoring

The report⁴ also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.

⁵ Liley, D. & Underhill-Day, J. (2013). Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy. Unpublished report by Footprint Ecology

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The suite of strategic mitigation measures are being delivered through the Bird Wise⁶ project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. A per-dwelling tariff⁷ has been calculated using the total cost of delivering the mitigation measures in-perpetuity and the planned number of additional dwellings expected to be built in North Kent. Swale's tariff is £239.61 per dwelling.

The applicant has set out the likely impact arising from the development in the supporting documentation on Ecology and Nature Conservation submitted with the application. This sets out that the site lies approximately 3.5 KMS from the nearest parts of the SPA, being at Lower Halstow and adjacent to the Sheppey Crossing. The reports include a wintering birds survey, which shows that the site does not support such species, primarily given its distance from the SPA, the relative abundance of suitable grassland and arable fields closer to the SPA, and the physical separation of the town of Sittingbourne which disconnects the SPA and the site. The applicant also refers to the open space measures proposed as part of the development, and the closer proximity of other recreational areas such as Milton Creek Country Park as reasons why adverse impacts on the SPA would be unlikely. Notwithstanding this, given the proximity of the site to the SPA and the established operation of the SAMMS, I consider that a payment in accordance with this strategy is still necessary, and this is agreed by the applicant.

Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects. Evidence should however be submitted showing that a mitigation contribution payment has either:

- Been made to the Bird Wise scheme through a Unilateral Undertaking; or
- Be made through a s106 agreement where Heads of Terms have been agreed and the agreement will be signed prior to any permission being granted.

Part 4 – Summary of the Appropriate Assessment - To be carried out by the Competent Authority (the local planning authority) in liaison with Natural England

Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Council conclude that with mitigation, the plan or project will have no adverse effect on the integrity of the European protected site(s).

The applicant has agreed to make the required financial payments under SAMMS through a S106 agreement. Given the size of the development, this will be on a phased basis with

⁶ Full details available at www.birdwise.org.uk

⁷ Baseline tariff set at £223.58 per new dwelling in 2014, index linked and subject to annual increase.

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proportionate payment prior to occupation of each phase.

Having made this appropriate assessment of the implications of the plan or project for the site(s) in view of that site's conservation objectives, and having consulted Natural England and fully considered any representation received (see below), the authority may now agree to the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Natural England Officer:

Summary of Natural England's comments:

On the basis of the appropriate financial contributions being secured to the North Kent SAMMS, Natural England concurs with your authority's conclusion this is suitable mitigation, as such the proposed developments will not have an adverse effect on the integrity of the following European protected sites:

- Medway Estuary & Marshes SPA and Ramsar Site
- Thames Estuary & Marshes SPA and Ramsar Site
- The Swale SPA and Ramsar Site

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ⁱ This template is to be used to aid the decision making for residential developments where the only potential impact is from recreational pressure that the Bird Wise scheme can mitigate. There may be cases close to the designated sites where additional impacts such as loss of habitat supporting SPA bird species or additional recreation management measures are needed, for example, which will require a bespoke, more detailed appropriate assessment.