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Our ref: SAV11/1 (LPF)
Your ref: Medway Local Plan 2041

06 July 2026

Medway Council
Planning Policy
Gun Wharf
Dock Road
Chatham
ME4 4TR

Attn: Mr Dave Harris, Chief Planning Officer

BY EMAIL ONLY: planning.policy@medway.gov.uk

Dear Sirs

RE: Medway Local Plan 2041 supporting evidence documents

1. We are instructed by Unitary Authority (Medway Council) Cllr Michael Pearce, on behalf of the Save the Hoo Peninsula campaign, an unincorporated group of individuals concerned about proposed allocations on the Hoo Peninsula. We have reviewed the supporting evidence documents not available to view during the previous consultation periods for the Medway Local Plan 2041.
2. The letter sets out our concerns with these documents most notably that the HRA is fundamentally and legal flawed and should not be accepted by inspectors following the principles established in *Waddenzee (Case C-127/02) [2004] Env LR 14* and domestic case law equivalents. By extension, this renders the draft Local Plan's reliance upon Policy S3 unsound as there is no evidence that the policy is even remotely effective.
3. For transparency, please note that we have also sent this letter to the Inspectors directly as we believe the plan cannot be progressed further until the issues are remedied and so felt it necessary to advise Inspectors of this as soon as possible.

Reliance on unproven efficacy of SAMM/Bird Wise initiative

4. The draft Medway Local Plan relies upon a 'submission HRA'¹ (Lepus Ecology 2025) which places almost total reliance on the continued implementation of the North Kent Strategic Access Management and Monitoring Strategy ("SAMMS"). The SAMMS is implemented via the 'Bird Wise' partnership² in order to reach a conclusion of "no adverse effect on integrity" in respect of recreational pressure effects from new development proposed under the draft Plan, acting on the North Kent Marshes SPA/Ramsar sites (Medway Estuary and Marshes, Thames Estuary and Marshes, The Swale).

¹ <https://medway.oc2.uk/docfiles/30/Interim%20Habitats%20Regulations%20Assessment.pdf>

² <https://northkent.birdwise.org.uk/about/>

5. That conclusion is reached for the Plan alone and in-combination with other plans or projects (see paras 7.2.6–7.2.10, restated at the overall conclusion, para 9.1.4). The submission draft Local Plan accordingly relies upon emerging Policy S3 for soundness; a policy that continues to rely on the per-unit tariff contribution to the ‘Bird Wise’ scheme as the default mitigation mechanism for any residential development within the 6km Zone of Influence proximal to the coastal SPA/Ramsar Sites.
6. All proposed allocation sites in the Hoo Peninsula fall within this 6km Zone of Influence (and indeed no part of the Hoo Peninsula is further than around 5km from the nearest area of coast). Furthermore, the geography of the Peninsula renders it more likely that new residents will seek foreshore or coastal recreation than residents in other parts of the North Kent Zone of Influence, where there are generally more significant and accessible inland recreation options.
7. As is noted at para 3.7.6 of the submission HRA, the North Kent SAMMS has been running for over a decade. It was first established in 2014, as a response to research into bird disturbance and visitor origin carried out by Footprint in 2010–2012, and has been applied to residential developments from 2015. The partnership delivery scheme (‘Bird Wise’), set up to receive, manage and deploy the income stream from tariff payments, has itself been operating since 2017.
8. **The SAMMS/Bird Wise scheme is not therefore a novel approach to mitigation whose efficacy has had no time to be demonstrated and where reliance on future monitoring might be proportionate and reasonable. It is a scheme that has been operating for around a decade. It is not unreasonable to ask the question as to whether it is working, indeed one would expect that to be a central and critical question for the submission HRA.**
9. In answering that question, one would also expect the HRA to be able to draw upon a substantial longitudinal dataset for the decade that SAMMS/Bird Wise has been operational — a dataset including visitor counts, warden intervention logs, WeBS trend correlation, and data on disturbance event frequency over multiple years, and sufficient to demonstrate whether the SAMMS mechanism has actually reduced disturbance to qualifying bird populations and successfully prevented adverse effects on the integrity of the affected European/Habitats sites.
10. However, after around a decade and an interim strategy review, the only monitoring data cited in the submission HRA is a single study by Kent Wildlife Trust (“KWT”) (2022).³ It is notable that this study is not appended to the submission HRA but merely footnoted. Chasing down that study finds that, at best, the data it presents indicates that rather than a decade-long trend of demonstrable improvement, disturbance is still a major issue and declines in qualifying bird species are continuing. Its authors state “*It is difficult to be able to attribute any change in numbers or distribution of waterbirds specifically to anthropogenic disturbance with periodic snapshot surveys eleven years apart. That type of assessment would require a longer-term programme of monitoring...*” (KWT 2022, para 4.2). One question that should concern the inspectors here is “why has there apparently been only one ‘snapshot’ survey to test the efficacy of the SAMMS approach since its inception?”

³ KWT (2022) Medway SAMMS Bird Disturbance Survey Report 2021/22

11. We reiterate that KWT 2022 is the single and only document the submission HRA cites as its evidence base for evidence of SAMM/Bird Wise efficacy (HRA footnotes 126/128). Yet, as indicated by the quote above, the authors of that report explicitly disclaim the ability of that study to support any conclusion that SAMM/Bird Wise is working. In point of fact, Appendix 2 of KWT 2022 reproduces WeBS (Wetland Bird Survey) population trend data for SPA feature species that, if anything, suggest the opposite.
12. The data series presented in Appendix 2 encompasses the 25 years to 2016/17 and therefore captures only the earliest years of commencement of the SAMMS initiative, within the 'short-term' (i.e. 5 year) data bracket. It is notable that these short-term data show trends of continuing significant decline (Thames Estuary and Marshes and Swale SPAs) or a slowing of improvement (Medway Estuary and Marshes SPA) amongst the waterbird assemblage taken as a whole, despite the implementation of the SAMMS scheme (see Figure 1 below).

Figure 1: short term (5 year) trends in waterfowl assemblage up to 2016/17

	Short-term (5 yrs)	Medium term (10 yrs)	Long term (25 yrs)
Thames Estuary and Marshes	-11%	+14%	+30%
Medway Estuary and Marshes	+6%	+17%	-46%
The Swale	-17%	-30%	-8%

13. In order to look at this further, Appendix 2 of KWT (2022) is reproduced in full below. It is notable that at the species level, and in the short-term period that encompasses the inception of the SAMMS, there are also significant trends of decline amongst disturbance-sensitive species in both the Thames Estuary and Marshes and Medway Estuary and Marshes SPAs (e.g. Grey Plover (-41%/-49%), Knot (-63%/-25%), Redshank (-39%/+24%). While some other species are stable or increasing (e.g. Avocet, Black-tailed Godwit), in most cases this is a consequence of well-known population level increases in the Thames Estuary generally which are unrelated to SAMM/Bird Wise efficacy.

APPENDIX 2 – Waterbird trends on North Kent SPAs

		Thames Estuary & Marshes			Medway Estuary & Marshes			The Swale		
		ST	MT	LT	ST	MT	LT	ST	MT	LT
GG	Great Crested Grebe				-24	-1	-72	-44	-57	-24
LG	Little Grebe				-67	-76	-77	25	0	-16
AV	Avocet	14	73	645	81	47	755	125	68	800
BA	Bar-tailed Godwit	-88	-56	-36	11	-24	6	-8	55	89
BW	Black-tailed Godwit	3	202	641	26	167	214	-26	-18	3
CS	Common Sandpiper									
CU	Curlew	9	-9	0	11	-14	-68	-15	-25	-25
DN	Dunlin	1	15	55	68	75	-61	-21	-18	-38
GP	Golden Plover	-34	-63	-60	-57	-31	-14	-65	-81	-29
GK	Greenshank				82	63	-84			
GV	Grey Plover	-41	-4	-18	-49	-65	-93	-22	-31	-46
KN	Knot	-63	20	342	-25	-14	24	8	12	22
L	Lapwing	-7	-5	-47	-17	-11	6	-34	-54	-32
OC	Oystercatcher	-21	-53	-10	6	-7	-42	-22	-27	-4
PZ	Purple Sandpiper									
RK	Redshank	-39	-49	-61	24	4	-77	-18	-25	-53
RP	Ringed Plover	43	-37	-56	72	42	-72	-3	-31	-38
SS	Sanderling							-50	33	1400
SN	Snipe									
DR	Spotted Redshank									
TT	Turnstone	-29	-67	-58	44	-10	-53	66	30	61
CG	Canada Goose									
DB	Dark-bellied Brent Goose				10	39	-66	-6	-3	-8
E	Eider									
GA	Gadwall									
MA	Mallard	-4	-6	-28	18	33	-62	-12	-37	-28
MS	Mute Swan	-30	-31	-46	30	42	-46	-7	-34	22
PT	Pintail	-34	-61	-70	2	-37	-39	-30	-64	-42
RM	Red-breasted Merganser				-77	-79	-96	-65	-74	-80
SU	Shelduck	-7	-34	-44	33	35	-51	-1	-23	-23
SV	Shoveler	21	194	236	4	-29	24	-34	-47	-45
T	Teal	-33	0	46	22	115	-6	-51	-52	-9
WN	Wigeon	16	131	303	-37	-30	-71	20	4	37
	Assemblage	-11	14	30	6	17	-46	-17	-30	-8

Population trends over the short (ST), medium (MT) and long (LT) terms of SPA feature waterbirds recorded during disturbance surveys in 2021/22. Data presentation is adapted from Woodward *et al.* (2019); blank cells = no data available.

14. These WeBS data therefore provide grounds for concern, or at least caution in considering the efficacy of the SAMMS/Bird Wise scheme. It cannot be deduced from these data that the scheme is “working”, and yet the submission HRA presents or relies upon no other dataset. In fact the submission HRA never once reproduces, cites, or engages with even these data — its only WeBS-related footnote is to somewhat older “Marshes WeBS counts 2010/11 to 2015/16.” It is a fundamental omission of the submission HRA that data in a document evidently available to its authors and which shows a trend of continuing declines in the wintering waterfowl assemblages of the SPAs most exposed to the Plan's growth is simply not discussed anywhere in the recreational pressure chapter.
15. Of course, a relevant consideration here is whether or not these ongoing declines have continued since 2017 and if so whether they are solely or partially caused by unmitigated

or inadequately mitigated recreational disturbance. The submission HRA fails to tackle either. KWT 2022 at least attempted to engage with the latter question (at Section 4.3) and (rightly) concluded that it requires further investigation. KWT 2022 suggests, for example, further WeBS sector-plot analysis to help attribute cause including frequent (ideally annual) monitoring at the busiest sites rather than snapshots spaced 11 years apart. It also suggests a dedicated Brent Goose study given this species' consistently high disturbance response rate; and research into whether Covid-era lockdown access changes affected bird behaviour. It is striking that no such studies appear to have been carried out – at least none are referred to in the December 2025 submission HRA; no sector-plot analysis is referenced, no annual monitoring dataset is cited, no Brent Goose study is mentioned. It must be concluded that these recommendations, despite their crucial importance to the question of efficacy, have simply been ignored.

16. In short, three and a half years after KWT made clear recommendations to close the efficacy evidence gap, the submission HRA a) gives no indication that they were acted upon and b) continues instead to rely upon the mere existence of the SAMM/Bird Wise as an adequate answer to the question of efficacy. It therefore proceeds to a conclusion that disregards the intrinsic importance of the efficacy question to the integrity test and the critical legal test of scientific certainty and lacunae.
17. The submission HRA's total reliance on the mere existence of the North Kent SAMM/Bird Wise initiative as a whole answer to the question of mitigation is completely insufficient.
18. It clearly fails, in our view, to surmount the high scientific certainty test set by CJEU case law such as Waddenzee and reflected in England and Wales case law by cases such as Steel Cross.⁴ While an argument that it is "too early to tell" if the North Kent SAMM/Bird Wise initiative is working might have had some justification a decade ago, that is no longer a legitimate excuse. It is stark that the submission HRA seeks to rely upon a study that specifically highlights key lacunae and recommends measures to try and address such evidence gaps, but then disregards that no such measures appear to have been taken. Furthermore, the data at Appendix 2 of KWT 2022 actually magnifies the concern. One cannot help but wonder what the administrators and partner organisations of the North Kent SAMM/Bird Wise initiative have been doing in all that time.
19. The implications of this evidence gap are hugely significant for the soundness of the draft Local Plan. Table 7.1 of the submission HRA lists at least 20 allocations sitting within the Zone of Influence — something in excess of 8,000 residential dwellings (HHH12: 1,800; HHH22/31: 1,700; GN15: 1,100; RN9: 750; HHH26: 760; HHH8: 450; and so on). This is before counting the wider 6km Zol population which is larger still.
20. We note that the submission HRA flags, at para 7.2.13, that Bird Wise "may not completely address" recreational impacts for exactly these higher-risk allocations — a gap the submission HRA then suggests is closed by the non-statutory, undelivered Hoo Peninsula Strategic Environmental Programme. Unfortunately, that is no answer to the problem — it is merely an aspirational policy initiative, not any bespoke, improved or enhanced form of the unproven SAMMS/Bird Wise initiative, and it therefore similarly fails the lacunae/certainty tests.

⁴ Wealden District Council v Secretary of State for Communities and Local Government and Knight Developments Ltd [2016] EWHC 247 (Admin) (Lang J), upheld on appeal as Secretary of State for Communities and Local Government v Wealden District Council [2017] EWCA Civ 39 (Lindblom LJ and McFarlane LJ).

21. In conclusion, the only evidence presented for the efficacy of the mitigation relied upon in the submission HRA in order to avoid adverse effects on the integrity of the coastal Habitats Sites is a) that fact that the SAMMS/Bird Wise scheme exists and b) the fact that it functions as a repository for tariff contributions and a revenue stream towards mitigation efforts. The absolutely essential further question - "is it working?" - is wholly, and we would argue potentially unlawfully, neglected and in fact the only monitoring data cited, the Kent Wildlife Trust Winter 2021/22 bird disturbance survey (cited repeatedly, e.g. paras 3.7.6, 7.2.2) merely provides grounds for heightened concern about the efficacy of the SAMM/Bird Wise approach, not any evidence of efficacy.
22. The KWT study describes continuing impact pathways such as the link between dogs off the lead and bird disturbance and it identifies key focal areas along the coast for access and recreational activity. Appendix 2 of the study contains data that only partially overlaps with the operational phased of SAMMS/Bird Wise, and which for that overlap period shows, overall, a picture of *declining* trends for qualifying features, not stabilised or improving trends. Individual species data show continuing declines for a suite of species vulnerable to disturbance. While there may be legitimate grounds for attributing some of these declines (or some portion of these declines) to regional or national trends unrelated to site-specific recreational pressure, those grounds are not articulated or evidenced and no attempt is made to disaggregate the effect of such trends from local effects as a means to test the efficacy of the Bird Wise/SAMM approach.
23. In short, the submission HRA never once engages with the critical question of whether the SAMM/Bird Wise recreational mitigation package is actually working. It just assumes it is. That is a long way short of the appropriate assessment requirements demanded by relevant case law.
24. Arguably worse is the fact that the submission HRA describes crucial monitoring of the efficacy of the SAMM/Bird Wise initiative, over a decade into its operation, still as a *future* exercise. Para 7.2.6 says the 2024 strategy sets out "*measures to monitor the efficacy of this mitigation and will be subject to regular review*". The submission HRA therefore falls into the trap of illegitimately treating a commitment to future monitoring as adequate and robust assurance of efficacy, instead of a means for collecting robust evidence that in this case ought already to have been gathered and assessed.
25. Finally, it is striking how different the evidential standard sought for assessing air quality impacts is versus recreational pressure. At para E17/9.2.1, for the North Downs Woodlands SAC, the authors identify likely adverse air quality effects and explicitly state: "*further evidence is required to demonstrate that the proposed mitigation will be effective before a conclusion of no AIOSI can be reached.*" Precisely the same evidence gap exists for recreational disturbance too — yet for the Bird Wise/SAMMS scheme there is no equivalent qualification. Indeed, the recreational no AIOSI conclusion (para 9.1.4) is stated unconditionally, while sitting on evidence that is, even more lacking than the air quality evidence the authors themselves judge to be insufficient. That's an internally inconsistent standard of proof.

Conclusion

26. The submission HRA is fundamentally and legally flawed and should not be accepted by the inspectors. By extension, this renders the draft Local Plan's reliance upon Policy S3,

in the absence of the relevant measure of certainty that this policy is even remotely effective, as unsound.

Yours faithfully

A handwritten signature in black ink, appearing to be 'RB' or 'RS' with a stylized flourish.

RICHARD BUXTON SOLICITORS