



# **Copdock & Washbrook Neighbourhood Plan**

## **Habitats Regulations Screening Determination *and* Appropriate Assessment**

**June 2020**

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# COPDOCK & WASHBROOK NEIGHBOURHOOD PLAN

## HABITATS REGULATIONS DETERMINATION

### 1. Introduction

This assessment relates to the 'Copdock & Washbrook Neighbourhood Development Plan 2018 - 2036' which was published for Regulation 14 Pre-Submission consultation at the end of February 2020.

It is a requirement of European law that a plan or project is subject to an assessment to determine whether it is likely to have a significant effect on the integrity of any European Site, in terms of impacting on the site's conservation objectives.

Submitted Neighbourhood Plans need to be accompanied by a statement to explain how the proposed plan meets the 'basic conditions' set out in Schedule 4B of the 1990 Town and Country Planning Act. These basic conditions include a requirement to demonstrate how the Plan is compatible with EU obligations, which includes the need to undertake a Habitats Regulations Assessment (HRA). This is one of the matters that will be tested as part of the independent examination of the Plan.

Whether a neighbourhood plan requires a Habitats Regulations Assessment and the level of detail needed will depend on what is proposed in the draft Neighbourhood Plan and the potential impacts on European sites designated for their nature conservation interest.

This report therefore determines whether a Habitats Regulations Assessment under the UK Conservation of Habitats and Species Regulations 2017, which enacts the Habitats Directive<sup>1</sup>, is required for the Copdock & Washbrook Neighbourhood Plan.

This determination refers to:

- The HRA Screening Report and Appropriate Assessment (May 2020), prepared by Place Services, Essex CC [*hereafter referred to as Place Services*] which can be viewed at: [www.babergh.gov.uk/CopdockWashbrookNP](http://www.babergh.gov.uk/CopdockWashbrookNP)
- The responses to this from the statutory consultees (See Appendix 1).

### 2. Legislative Background

One of the basic conditions that Neighbourhood Plans must meet is that:

*"The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017"*

The Conservation of Habitats and Species Regulations 2017 include regulations on the assessment of plans (including neighbourhood plans) and projects on European sites or European offshore marine sites. The first stage is to screen the plan to see whether it is likely

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<sup>1</sup> Directive 92/43/EEC 'on the conservation of natural habitats and of wild fauna and flora': <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>.

to have a significant effect on any Habitats (European) sites. If the plan is “screened-in” because likely significant effects cannot be ruled out, the next stage is for an Appropriate Assessment to be carried out considering the impact on the European site’s conservation objectives. Consent for the Plan can only be given if it is “screened-out” at the first stage or the Appropriate Assessment concludes the integrity of the European site will not be adversely affected.

Case law (*People Over Wind, Peter Sweetman v Collie Teoranta*) ruled that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage. Any mitigation measures can now only be considered at the Appropriate Assessment stage. Further case law (*Holohan and Others v An Bord Pleanála*) now also imposes more detailed requirements on the competent authority for any plans or projects at the Appropriate Assessment stage, including, but not limited to cataloguing the entirety of habitat types and species for which a site is protected and being beyond reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

### 3. Assessment

In determining whether a proposed development plan or programme is likely to have significant effects, the local authority must incorporate the ‘precautionary principle’ into its decision. This means that if there is uncertainty as to whether the plan or programme would cause significant effects on a European site, the full Appropriate Assessment would be required.

The Neighbourhood Plan includes the following Vision Statement:

*“Copdock and Washbrook will maintain its distinct and separate village character and accommodate new development appropriate to its location, level of services and infrastructure and importance and historic characteristics of the parish.”*

The draft Plan contains twenty-one planning policies. Of those, two are site specific housing allocations. One site already benefits from prior planning permission. The other, much larger site, is being proposed for housing development but has yet to come forward as a formal planning application. The remaining policies seek to realise and deliver the vision and objectives set out in the Plan.

There are eleven Habitats site which lie within 20 km of Copdock & Washbrook parish:

Special Protection Areas (SPAs)	Special Areas of Conservation (SAC)	Ramsar Sites
Hamford Water	Hamford Water	Hamford Water
Colne Estuary	Essex Estuaries	Colne Estuary
Deben Estuary		Deben Estuary
Stour and Orwell Estuaries		Stour and Orwell Estuaries
Sandlings		

As the Plan area lies within the 13km Zone of Influence for the Stour & Orwell Estuaries SPA and Ramsar site it was concluded that these two Habitats Sites should be assessed for any likely significant effect resulting from this draft Plan.

A full assessment of the likely effects of the Plan is set out in the Screening Report dated May 2020 prepared by Place Services. A copy of this can be viewed at:

<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/CopWash-NP-HRA-Screening-Report-May20>

The screening has been prepared in accordance with the Court judgment (CJEU People Over Wind v Coillte Teoranta C323/17) which ruled that mitigation measures cannot be taken into account when carrying out a screening assessment to determine whether a plan or project is likely to result in significant effects on a Habitats site.

#### **4. Screening Conclusion**

The Screening Report concluded that there are recommendations for the site allocation and that it is not sufficient to rely on a general policy aimed at protecting Habitats sites, i.e. specific caveats would need to be included where there may be conflicts between a general policy to protect Habitats sites from development and another policy. The need for an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 is therefore triggered.

An Appropriate Assessment was prepared by Place Services and the Recommendations and Conclusion of that are attached at Appendix 2. Very briefly, it concludes that “*embedded mitigation measures for projects will need to be considered in project level HRA/AA reports and secured by way of any planning consent*”. [Note: The full Appropriate Assessment is part of the same document linked in Section 3 above.]

Consultation on both Screening Report and Appropriate Assessment was carried out with Natural England. In their response (see Appendix 1) they agreed with the conclusions of both.

#### **5. Determination**

In the light of the Screening Report prepared by Place Services it is determined that the Copdock & Washbrook Neighbourhood Plan is ‘*screened-in*’ for further assessment under the Habitats Regulations 2017 and that an Appropriate Assessment is required.

An Appropriate Assessment has been carried out and the Recommendations and Conclusion of that are attached at Appendix 2.

Date: 16 June 2020  
 Our ref: 316430  
 Your ref: Copdock & Washbrook Neighbourhood Plan – SEA / HRA  
 Screening Consultation



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Dear Mr Bryant

**Screening consultation: Neighbourhood Plan SEA / HRA Screening Consultation.**  
**Location: Copdock & Washbrook**

Thank you for your consultation on the above dated 7 May 2020 that was received by Natural England on the same day. Please accept our apologies for the delayed response.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

**Screening Opinion Report: Strategic Environmental Assessment (SEA)**

Natural England concur with the conclusions of the Copdock and Washbrook Parish Council Neighbourhood Development Plan SEA Screening Opinion final report dated March 2020. It is our advice, that, in so far as our strategic environmental interests are concerned (including but not limited to statutory designated sites, landscapes and protected species, geology and soils), that the neighbourhood plan does have the potential to have significant environmental effects in relation to the baseline, and that SEA is required.

**Screening Report: Habitats Regulations Assessment (HRA)**

Natural England agrees with the conclusion of the "Copdock and Washbrook Neighbourhood Plan 2018-2036: Regulation 14 Regulation 14 Pre-Submission Draft. Habitats Regulations Assessment (HRA): Screening Report, and Appropriate Assessment - May 2020". Embedded mitigation measures for projects will need to be considered in project level HRA/AA reports and secured by way of any planning consent. Consequently, there will be no need for further assessment for this Neighbourhood Plan as it is not predicted to result in any Adverse Effect on the Integrity of Habitat Sites either alone or in combination with other plans and projects.

For any queries relating to the specific advice in this letter only please contact me on [REDACTED]. For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk)

Yours sincerely,

Patrick Robinson.  
 Norfolk and Suffolk Area Team

Sourced from: *Copdock & Washbrook Neighbourhood Plan Habitats Regulations Assessment (HRA): Screening Report, and Appropriate Assessment – May 2020 (pg 38 – 40)*

## 5. Recommendations

The Habitats Sites that have been considered within this HRA are:

- Stour and Orwell Estuaries SPA;
- Stour and Orwell Estuaries Ramsar site;

Potential impact pathways between the above Habitats Sites and the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-submission Draft have been identified, considered and assessed, i.e. water quality & quantity and recreational disturbance).

With regards to **water quality and quantity**, land with connectivity for water which drains into the Belstead Brook via the Washbrook watercourse, creates uncertainty for managing water quality. In times of high rainfall water could enter the Belstead Brook creating potential water quality and quantity issues downstream for the Stour & Orwell Estuaries SPA and Ramsar site. Sustainable Drainage Systems (SuDS) have been identified as being crucial to prevent this by retaining water on development sites, thereby reducing the water going to Water Recycling Centres. Mitigation will be embedded into the Neighbourhood Plan requiring that each development site must offset its own increase in runoff. The additional mitigation and amendments to policies provide assurance that this is a suitably robust approach to ensure that adverse effects on the integrity of Habitats sites as a result of change in water quality or quantity arising from Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-Submission Draft would be avoided, either alone or in-combination. Potential effects as a result of construction can generally be mitigated for example by requiring Construction Environment Management Plans. The text for each policy should also provide additional text to explicitly require that there will be no adverse effect on site integrity.

With regards to **recreational disturbance**, all residential development within the Plan area is predicted to result in additional recreational impacts from increased visitor pressure on the Stour and Orwell Estuaries SPA and Ramsar site. In 2016, Natural England proposed a strategic approach to LPAs and recommended identifying the scale of the disturbance and implementing measures to mitigate impacts through the preparation of a joint Suffolk Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This strategic mitigation scheme has now been adopted by Babergh DC (November 2019) to support the Babergh & Mid Suffolk Joint Local Plan and, any residential development coming forward, will thereby also support the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-submission Draft.

This AA has recommended a number of wording amendments to the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-submission Draft. These include the following types of changes:

- Recommended policy wording changes
- Recommend strategic mitigation is required (e.g. Suffolk Coast RAMS) for residential allocation policies for sites within the 13km Zone of Influence as well as site based mitigation.
- No change but this AA identifies the need for project level HRAs at application stage e.g. to cover construction impacts and good practice in relation to run off, air quality during construction, on site silt management etc. to secure a CEMP (Biodiversity) as a condition of any consent issued.

Where policies do not identify specific locations, set a fixed level of development or the potential for significant effects relates to the possibility of development coming forward in a particular location or with particular characteristics is likely, the risks may be simply avoided with straightforward clarifications, which remove any uncertainty.

The recommendations to amend or add text to the policy include an explanation of how the policy should be implemented to avoid Adverse Effect On Integrity of the Stour & Orwell Estuaries SPA and Ramsar site. This does not exclude the need for project level HRA but enables a conclusion of no adverse effects on integrity at the Plan level, because the identified risks to Habitats sites have been removed. Project level HRA provides a means of checking for any further risks unforeseen at the Plan level, and for developing project specific mitigation measures in greater detail within a project level AA. Clarification to remove AEOI can be achieved by adding to the supporting text e.g. “strategic projects may require joint working by public bodies to ensure the requirements of Habitats Regulations are met.”

The recommendations from the Appropriate Assessment are precautionary, to ensure that the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-submission Draft identifies clear mitigation needs and protects the Habitats sites from any project level impacts.

## 6. Conclusion

This Habitat Regulations Assessment, including Appropriate Assessment, considers the impacts arising from the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-Submission Draft.

The HRA Screening stage identified that, without mitigation, further consideration was required at the Appropriate Assessment stage to determine whether the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-Submission Draft, either alone or in-combination with other plans and projects, would adversely affect the integrity of Habitats sites as a result of various potential impact pathways, i.e.; changes in water quality and quantity and recreational disturbance.

In applying the HRA Test 2 –the integrity test at AA stage - based on the development type and proximity to Habitats (European) sites, the potential for *in combination effects* resulting from other plans or projects has also been assessed and avoidance and/or mitigation measures have been considered. Embedded mitigation measures for projects will need to be considered in project level HRA/AA reports and secured by way of any planning consent. Therefore, there will be no need for further assessment for this Neighbourhood Plan.

Subject to Natural England’s review, this HRA Screening Report including Appropriate Assessment concludes that the Copdock and Washbrook Neighbourhood Plan Regulation 14 Pre-Submission Draft is not predicted to result in any Adverse Effect on the Integrity of the Habitats sites in scope, either alone or in combination with other plans and projects.