



# **Elmsett Neighbourhood Plan**

## **Habitats Regulations Screening Determination**

**January 2019**

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# ELMSETT NEIGHBOURHOOD PLAN

## HABITATS REGULATIONS DETERMINATION 2019

### 1. Introduction

This assessment relates to the Elmsett Neighbourhood Plan 2017-2036 Pre-Submission Consultation Version, dated October 2018.

It is a requirement of European law that a plan or project is subject to an assessment to determine whether it will significantly affect 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 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 regulation 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 (HRA) under Directive 92/43/EEC, also known as the Habitats Directive<sup>1</sup>, is required for the Elmsett Neighbourhood Plan.

This determination refers to:

- A Screening Report prepared by Essex Place Services which can be viewed at: [www.babergh.gov.uk/ElmsettNP](http://www.babergh.gov.uk/ElmsettNP)
- 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 to have a significant effect on any European site. If the plan is "screened in" because 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

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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>.

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.

### **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 AA would be required.

The vision of the Neighbourhood Plan is that *“In 2036 Elmsett will be a thriving rural village and will have balanced the provision of housing growth with the need to maintain existing village services and minimising the impact of growth on both the local environment and infrastructure.”*

The Neighbourhood Plan provides for up to 60 dwellings to be developed between 2017 and 2036 to be met through the allocation of the sites set out below and smaller sites not specifically identified.

- Land at Hadleigh Road – 41 dwellings
- Land south of Whatfield Road – 7 dwellings

There are two European sites which lie within 20 km of Elmsett Parish:

- The Stour and Orwell Estuaries SPA
- The Stour and Orwell Estuaries Ramsar

There are two Habitats Sites which lie within 13km of Elmsett parish, which is the Impact Risk Zone for the Stour and Orwell Estuaries Habitats Sites listed above.

These are therefore the Habitats sites considered within the screening assessment.

A full assessment of the likely effect of the Plan’s policies and proposals on these sites is set out in the Screening Assessment prepared by Essex Place Services which can be viewed at:

<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Elmsett-NP-SEA-HRA-Screening-Report-Final.pdf>

The screening has been prepared in accordance with the recent 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 Natura 2000 site.

### 3. Screening Conclusions

The HRA Screening determines that European Sites lie within 13km of Elmsett parish. The Plan area is within the 13km Zone Of Influence (ZOI) of the Stour and Orwell Estuaries SPA and Ramsar and as such the Plan, in allocating land for development purposes has the potential for Likely Significant Effects in-combination with other plans and programmes that result in a cumulative increase in growth within the ZOI.

Despite this, mitigation relevant to potential effects on the Stour and Orwell Estuaries SPA and Ramsar in-combination with other plans and projects has been secured alongside the applications to which the Plan's allocations relate.

The Screening Report concluded that, subject to Natural England's review, the Elmsett Neighbourhood Plan is not predicted to have any likely significant effects on an N2k site. The response from Natural England notes that the two main housing allocations (EMST3 and EMST4) have secured appropriate mitigation at the planning stage. Natural England is therefore satisfied by the conclusions of the HRA with relation to these two developments.

The requirement for the Plan to undertake further assessment under the Habitats Regulations 2017 is therefore **screened out**.

Natural England also notes that there may be further outstanding developments pending planning approval within Elmsett parish (12 houses). A policy should be included in the Neighbourhood Plan to require and secure contributions to the Suffolk RAMS.

### 5. Determination

In the light of the Screening Report prepared by Essex Place Services and the responses from the statutory bodies it is determined that the Elmsett Neighbourhood Plan **does not require** further assessment under the Habitats Regulations 2017.

Date: 21 January 2019  
Our ref: 267280

Babergh and Mid Suffolk District Council

**BY EMAIL ONLY**



Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

Dear Paul Munson

Elmsett Neighbourhood Plan SEA/HRA

Thank you for your consultation on the above dated 10 December 2018

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.

**Neighbourhood Plan**

The Elmsett neighbourhood plan follows previous consultation with Natural England on the Babergh Local Plan. At this time Natural England advised that the emerging strategic solution, the Suffolk Coast Recreational Avoidance and Mitigation Strategy (Suffolk RAMS) is a key consideration in the context of the Habitats Regulation Assessment. The Suffolk RAMS seeks to mitigate the recreational impacts as a result of new development within the Zones of Influence (Zoi).

**Elmsett Neighbourhood Plan Policies**

The Elmsett Parish falls in its entirety within one or more of the Zones of Influence (Zoi). There is therefore residential development within the parish area which will be subject to the requirements of this strategic solution. This will be in accordance with the RAMS supplementary planning document once adopted.

All residential development within the zones of influence of European Sites will be required to make a financial contribution towards mitigation measures, as detailed in the Suffolk RAMS, to avoid adverse in-combination recreational disturbance effects on European Sites.

In the interim period, before the Suffolk RAMS is completed, all residential development within the zones of influence will need to deliver all measures identified (including strategic measures) through project level HRAs, or otherwise, to mitigate any recreational disturbance impacts in compliance with the Habitat Regulations and Habitats Directive.

Natural England notes that the two main housing allocations (EMST3 and EMST4) have secured appropriate mitigation at the planning stage. Natural England is therefore satisfied by the conclusions of the HRA with relation to these two developments.

We note that there may be further outstanding developments pending planning approval within Elmsett parish (12 houses). A policy should be included in the Neighbourhood Plan to require and secure contributions to the Suffolk RAMS.

We would also take this opportunity to advise you that these windfall applications which would be in excess of what has been assessed in the Neighbourhood Plan Habitats Regulation Assessment (HRA), would need to be subject to their own, project level HRA.

**Other matters**

A recent judgment from the Court of Justice of the European Union (Case C-323/17 People Over Wind v Coillte Teoranta) has provided authoritative interpretation relating to the use of mitigation measures at the screening stage of a HRA, when deciding whether an appropriate assessment of a plan or project is required. The court concluded that measures intended to avoid or reduce the harmful effects of a plan or project on a European Site can only be considered as part of the appropriate assessment stage of HRA, and not at the preceding screening stage. This means that it is no longer appropriate to rely on these measures when deciding whether a plan or project is likely to have significant effect on a European site(s). Neighbourhood plans which cannot rule out Likely Significant Effect at the screening stage will need to progress to Appropriate Assessment.

For clarification of any points in this letter, please contact Tom Borges on 02080 266 582. For any further consultations on your plan, please contact: [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours faithfully

Tom Borges  
West Anglia Sustainable Development



Mr Paul Munson  
Babergh District Council  
Endeavour House Russell Road  
Ipswich  
Suffolk  
IP1 2BX

**Our Ref:** AE/2018/123615/01-L01  
**Your ref:** ElmsettSEAScreening

**Date:** 04 January 2019

Dear Mr Munson

## **ELMSETT NEIGHBOURHOOD PLAN SEA & HRA SCREENING REPORT CONSULTATION**

### **ELMSETT PARISH COUNCIL**

Thank you for your consultation dated 10 December 2018. We have reviewed the SEA & HRA Screening Report and agree with the conclusions and recommendations that both the SEA and HRA are screened out.

Our considerations at this stage reflect the scale of development that is currently proposed within the Plan. Whilst there are two site allocations for housing within the policies, these have already obtained planning permission. The remaining development proposed is of small scale and low risk and should not have significant environmental effects on the area. Policy EMST9: Local Green Spaces, should also help protect and where possible enhance the environment in the area, and so mitigating some potential impacts of development proposed in the Plan. The conclusions of the report are therefore considered suitable.

We trust that this advice is useful.

Yours sincerely

**Mr Ed Abigail**  
**Planning Advisor**

Environment Agency  
Iceni House Cobham Road, Ipswich, IP3 9JD.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)

[End]



EAST OF ENGLAND OFFICE

Mr Paul Munson  
Babergh and Mid Suffolk District Councils  
Endeavour House  
8 Russell Road  
Ipswich  
Suffolk  
IP1 2BX

Direct Dial: [REDACTED]  
Our ref: PL00518915

18 December 2018

Dear Mr Munson

**RE: Elmsett Neighbourhood Plan SEA Screening**

Thank you for your email of 10 December regarding the above consultation. As the Government's adviser on the historic environment Historic England is keen to ensure that the protection of the historic environment is fully taken into account at all stages and levels of the local planning process. Therefore we welcome this opportunity to review the Screening Report for this plan. For the purposes of this consultation, Historic England will confine its advice to the question, "Is it (the Elmsett Neighbourhood Plan) likely to have a significant effect on the historic environment?". Our comments are based on the information supplied with the Screening Opinion.

The Screening Report indicates that the Council considers that the Elmsett Neighbourhood Plan will not have any significant effects on the historic environment. We note that the allocations in the neighbourhood plan reflect existing outline planning permissions, and that the principle of development is therefore agreed.

On the basis of the information supplied, and in the context of the criteria set out in Schedule 1 of the Environmental Assessment Regulations [Annex II of 'SEA' Directive], Historic England concurs with the Council that the preparation of a Strategic Environmental Assessment is not required.

The views of the other two statutory consultation bodies should be taken into account before the overall decision on the need for an SEA is made.

I should be pleased if you can send a copy of the determination as required by REG 11 of the Environmental Assessment of Plans and Programmes Regulations 2004.

We should like to stress that this opinion is based on the information provided by you with your correspondence dated 10 December 2018. To avoid any doubt, this does not reflect our obligation to provide further advice on later stages of the SA/SEA process and, potentially, object to specific proposals which may subsequently arise (either as a result of this consultation or in later versions of the plan/guidance) where we consider that, despite the SA/SEA, these would have an adverse effect upon the environment.

Historic England strongly advises that the conservation and archaeological staff of the relevant local authorities are closely involved throughout the preparation of the plan and its assessment. They are best placed to advise on; local historic environment issues and priorities, including access to data held in the Historic Environment Record (HER), how the allocation, policy or proposal can be tailored to minimise potential adverse impacts on the historic environment; the nature and design of any required mitigation measures; and opportunities for securing wider benefits for the future conservation and management of heritage assets.

Yours sincerely,

Edward James  
Historic Places Advisor, East of England



24 BROOKLANDS AVENUE, CAMBRIDGE, CB2 8BU  
Telephone 01223 582749  
HistoricEngland.org.uk



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