



Stutton Neighbourhood Plan

Habitats Regulations Screening Determination

and

Appropriate Assessment

May 2022

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STUTTON NEIGHBOURHOOD PLAN

HABITATS REGULATIONS DETERMINATION

1. Introduction

This assessment relates to the 'Stutton Neighbourhood Development Plan 2022 - 2037' which was published for Regulation 14 Pre-Submission consultation in November 2021.

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 notice therefore determines whether a Habitats Regulations Assessment under the UK Conservation of Habitats and Species Regulations 2017, which enacts the Habitats Directive¹, is required for the Stutton Neighbourhood Plan.

This determination refers to:

- The HRA Screening Report and Appropriate Assessment (May 2022), prepared by Place Services, Essex CC [*hereafter referred to as Place Services*] which can be viewed at: www.babergh.gov.uk/StuttonNP
- 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 Habitats (European) sites. If the plan is "screened-in" because likely significant effects cannot be ruled out, the next stage is for an Appropriate

¹ 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>.

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 draft Neighbourhood Plan sets out the following Vision Statements ...

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| <ul style="list-style-type: none"> • <i>“Stutton should remain a vibrant, cohesive community supporting high levels of wellbeing for its residents.</i> • <i>As the village grows and society changes, the character of the village should be maintained, whilst permitting small-scale sustainable growth in line with the needs and wishes of the community.</i> • <i>The beautiful countryside and landscapes will be retained and enhanced and continue to be a source of great pleasure for the community.</i> • <i>Together, we will ensure that the infrastructure of the village supports all residents at different stages of their lives.</i> |
|---|

... and contains twenty-three planning policies categorised under seven themes. The Plan makes no sites allocations for housing development or other built development but does contain policies that address topics including landscape, flooding, biodiversity, transport and the protection of the historic environment. Together these policies seek to ensure that new development in Stutton is high quality and sensitively designed so as not to have adverse impacts on the surroundings

Sixteen Habitats site were identified as lying within 20 km of Stutton parish:

Special Protection Areas (SPAs)	Special Areas of Conservation (SAC)	Ramsar Sites
Hamford Water	Hamford Water	Hamford Water
Colne Estuary	Essex Estuaries	Colne Estuary

Abberton Reservoir		Abberton Reservoir
Deben Estuary		Deben Estuary
Stour and Orwell Estuaries		Stour and Orwell Estuaries
Alde, Ore & Butley Estuaries		Alde, Ore & Butley Estuaries
Sandlings		
Outer Thames Estuary		

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

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/Stutton-NP-HRA-Screening-Report-Jan22.pdf>

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 there were two impact pathways; recreational and other forms of disturbance, *and* changes in water quality from waste water, which could result in Likely Significant Effects from the Plan alone, and it identified policies SN11 [Mitigating the impact of development on the Stour & Orwell SPA], SN14 [Visitor and Tourism Development], and SN22 [New and Expanding Businesses] as requiring further assessment. The need for an Appropriate Assessment was therefore triggered.

The Appropriate Assessment and the 'Recommendations' and 'Conclusion' of that report are attached at Appendix 1. Briefly, it sets out a number of recommendations to strengthen policy wording and, in one case supporting text.

Consultation on both the Screening Report and Appropriate Assessment was carried out with Natural England. Their response (set out in Appendix 2) states that "in so far as [their] our strategic environmental interests (including but not limited to statutory designated sites, landscapes and protected species, geology and soils) are concerned, [they felt] that there are unlikely to be significant environmental effects from the proposed plan, but also reminded us of our responsibilities in regard to this matter.

5. Determination

In the light of the Screening Report prepared by Place Services it is determined that the Stutton 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 1.

Sourced from: *Stutton Neighbourhood Plan Habitats Regulations Assessment (HRA): Screening Report, and Appropriate Assessment – May 2022 (pg 39 – 41)*

Recommendations

The Habitats Sites that have been scoped into this HRA are:

- Stour and Orwell Estuaries SPA;
- Stour and Orwell Estuaries Ramsar;
- Deben Estuary SPA and
- Deben Estuary Ramsar

Potential impact pathways between the above Habitats sites and the Regulation 14 Pre-submission Stutton Neighbourhood Plan have been identified, considered and assessed for predicted recreational disturbance from the Plan alone.

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). Annex 1 of the Natural England advice to Babergh District Council includes advice on green infrastructure requirements for large residential developments to avoid impacts from the Plan alone. Any residential development coming forward, will therefore need to meet this advice.

This AA has recommended amendments to the Regulation 14 Pre-submission Stutton Neighbourhood Plan. These include the following changes:

Policy SN11 requires

- large residential developments (50 units or more) provide Suitable Alternative Natural Greenspace (SANG) on site or access to sufficient greenspace.
- all development would not have an adverse impact on the integrity of the Stour & Orwell Estuaries SPA and Ramsar site from the development alone.

Policy SN14 requires

“Developments that provide facilities or services for the visitor or tourist will be supported provided that they:

.....

- would not have an adverse impact on the integrity of the Stour & Orwell Estuaries SPA and Ramsar site from the development alone.”

Policy SN22 require the provision of

- a project level HRA for any projects in relation to changes in water quality from waste-water.

In addition, it is also recommended that the supporting text for SN11 is amended to refer to Natural England’s advice on natural greenspace requirements for residential development of more than 50 units to avoid adverse effects on integrity on the Stour & Orwell Estuaries SPA and Ramsar site from the Plan alone, as follows:

(Cont.)

"Given that the Stour & Orwell Estuary SPA and Ramsar site is within walking distance for residents of Stutton. on-site natural greenspace or access to sufficient greenspace must be provided for any residential development of more than 50 units in order to avoid adverse effects on integrity on the Stour & Orwell Estuaries SPA and Ramsar site from the development alone."

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

Conclusion

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

The HRA Screening stage identified that, without mitigation, further consideration was required at the Appropriate Assessment stage to determine whether the Regulation 14 Pre-Submission Stutton Neighbourhood Plan either alone or in-combination with other plans and projects, would adversely affect the integrity of Habitats sites as a result of the recreational disturbance potential impact pathway, i.e. this HRA recommended that Policies SN11, SN14 and SN22 should be assessed further as they were assigned to Category C due to predicted recreational impacts or changes in water quality from the Plan alone.

In applying the HRA Test 2 –the integrity test at AA stage -, based on the proximity to Habitats (European) sites, and in order to be in accordance with the Suffolk Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), mitigation needs to be embedded in the Plan in relation to recreational disturbance and changes in water quality from waste-water to avoid impacts from the Neighbourhood Plan alone. Therefore, this HRA has recommended that the policy and supporting text is altered for Policies SN11, SN14 and SN22.

Embedded mitigation measures for projects (planning applications) will need to be considered in project level HRA/AA reports assessed by Babergh Council and secured by way of a legal agreement attached to any planning consent. Therefore, there will be no need for further assessment for this Neighbourhood Plan.

Subject to the above recommendations being incorporated, and Natural England’s review, this HRA Screening Report including Appropriate Assessment concludes that the Regulation 14 Pre-submission Stutton Neighbourhood Plan is not predicted, with the mitigation secured, 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.

Date: 11 March 2022
 Our ref: 385125
 Your ref: Stutton Neighbourhood Plan



Mr P Bryant
 Neighbourhood Planning Officer
 Babergh & Mid Suffolk District Councils

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BY EMAIL ONLY

Dear Mr Bryant

Stutton NP - SEA & HRA Screening Consultation request (Babergh)

Thank you for your consultation on the above dated and received by Natural England on 01 March 2022

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 Request: Strategic Environmental Assessment / HRA Screening

It is our advice, on the basis of the material supplied with the consultation, that, in so far as our strategic environmental interests (including but not limited to statutory designated sites, landscapes and protected species, geology and soils) are concerned, that there are unlikely to be significant environmental effects from the proposed plan.

Neighbourhood Plan

Guidance on the assessment of Neighbourhood Plans, in light of the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended), is contained within the [National Planning Practice Guidance](#). The guidance highlights three triggers that may require the production of an SEA, for instance where:

- a neighbourhood plan allocates sites for development
- the neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan
- the neighbourhood plan may have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan.

We have checked our records and based on the information provided, we can confirm that in our view the proposals contained within the plan will not have significant effects on sensitive sites that Natural England has a statutory duty to protect.

We are not aware of significant populations of protected species which are likely to be affected by the policies / proposals within the plan. It remains the case, however, that the responsible authority should provide information supporting this screening decision, sufficient to assess whether protected species are likely to be affected.

Notwithstanding this advice, Natural England does not routinely maintain locally specific data on all potential environmental assets. As a result the responsible authority should raise environmental issues that we have not identified on local or national biodiversity action plan species and/or habitats, local wildlife sites or local landscape character, with its own ecological and/or landscape advisers, local record centre, recording society or wildlife body on the local landscape and biodiversity receptors that may be affected by this plan, before determining whether an SEA/HRA is necessary.

Please note that Natural England reserves the right to provide further comments on the environmental assessment of the plan beyond this SEA/HRA screening stage, should the responsible authority seek our views on the scoping or environmental report stages. This includes any third party appeal against any screening decision you may make.

For any queries relating to the specific advice in this letter only please contact consultations@naturalengland.org.uk.

Yours sincerely

Joanne Widgery
Consultations Team