



Bentley Neighbourhood Plan

Habitats Regulations Screening Determination and Appropriate Assessment

January 2021

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BENTLEY NEIGHBOURHOOD PLAN

HABITATS REGULATIONS DETERMINATION

1. Introduction

This assessment relates to the 'Bentley Neighbourhood Development Plan 2018 – 2036' which was published for Regulation 14 Pre-Submission consultation at the start of October 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 Directive¹, is required for the Bentley Neighbourhood Plan.

This determination refers to:

- The HRA Screening Report and Appropriate Assessment (Dec 2020), prepared by Place Services, Essex CC [*hereafter referred to as Place Services*] which can be viewed at: www.babergh.gov.uk/BentleyNP
- The responses to this from the statutory consultee (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"

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>.

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:

"Our vision is to conserve the sense of community within Bentley, to ensure that we have the robustness to meet the challenges ahead - to enhance our rural nature and agricultural surroundings, for a safe and vibrant place to live for generations to come"

The draft Plan contains twenty-five planning policies. Of those, two are site specific housing allocations. One site already benefits from prior planning permission, the other does not. The remaining policies address a range of topics which, together, seek to ensure that new development is high quality and sensitively designed so as not to have adverse impacts on the surroundings.

There are thirteen Habitats site which lie within 20 km of Bentley parish:

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

The Plan area lies within the 13km Zone of Influence for the Stour & Orwell Estuaries SPA and Ramsar site but outside the 8km evidenced Zone of Influence for Hamford Water SPA, SAC and Ramsar site. Natural England agreed that Habitats sites in Essex were not within scope of the Suffolk Coast RAMS for Babergh DC (Ref 186522 25 May 2016) and measures cannot be secured outside of the area of jurisdiction of Babergh District Council or a strategic mitigation scheme.

It was therefore concluded that just two Habitats sites (Stour & Orwell Estuaries SPA and Ramsar site) should be assessed for any likely significant effects resulting from the Bentley Neighbourhood Plan Regulation 14 Pre-Submission Draft. Any mitigation considered necessary would need to be secured at application stage in line with policies in the Babergh and Mid Suffolk Joint Local Plan and the HRA Appropriate Assessment as the competent authority for planning decisions.

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

<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Bentley-NP-HRA-Screening-Report-Dec20>

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 no pathways likely to result in Likely Significant Effects from the Plan alone.

However, there are recommendations for the site allocation policy BEN 4 and other housing related policies in this draft Neighbourhood Plan as they have been assigned to Category C due to predicted impacts from the Plan in combination with other plans and projects.

It is not considered sufficient to rely on a general policy aimed at protecting Habitats sites e.g. Policy BEN 14. Explicit caveats need to be included where there may be conflicts between a general policy to protect Habitats sites from development and another policy. However, this is embedded mitigation which cannot be considered at HRA screening stage; the CJEU *People Over Wind v Coillte Teoranta* C-323/17 ruling indicates that measures that have been added primarily to mitigate the effects on a Habitats site cannot be considered at the screening stage.

Further Stage 2 Appropriate Assessment is therefore required under the UK Conservation of Habitats and Species Regulations 2017 (as amended). The Bentley Neighbourhood Plan Regulation 14 Pre-submission Draft may only be made after having ascertained that it will not result in adverse effect on integrity of the Habitats Sites within scope of this assessment. Predicted recreational disturbance impacts in combination with other plans and projects are considered in Section 4 Appropriate Assessment. This stage is an iterative process as measures can be incorporated in order to be able to ascertain that there is no significant adverse effect on the integrity before re-screening and making a final assessment.

Consultation on both the Screening Report and Appropriate Assessment was carried out with Natural England.

In their response (see Appendix 1) Natural England noted that *“[the] appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, [...] we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given.”*

5. Determination

In the light of the Screening Report prepared by Place Services it is determined that the Bentley 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 repeated at Appendix 2.

Date: 25 January 2021
 Our ref: 338587
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Dear Mr Bryant

Planning Consultation: Habitat Regulations Assessment (HRA) for the emerging Bentley (Suffolk) Neighbourhood Plan (Dec 2020) – second consultation request

Thank you for your consultation on the above dated 22 December 2020 which was received by Natural England on the same date. This consultation is in regard to an updated HRA for the emerging Bentley (Suffolk) Neighbourhood Plan; following comments from Natural England made on the 4th of December 2020 (ref: 334002).

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.

Habitat Regulations Assessment (December 2020)

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given.

Other comments on the Neighbourhood Plan

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.

Please note that Natural England reserves the right to provide further comments on the environmental assessment of the plan beyond this HRA/SEA 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

Further general advice on neighbourhood planning and the natural environment, including natural environment information sources is provided in Annex I.

Yours faithfully

Sam Kench
 Norfolk and Suffolk Team

Annex I - Neighbourhood planning and the natural environment: information, issues and opportunities

Natural environment information sources

The [Magic](http://magic.defra.gov.uk/)¹ website will provide you with much of the nationally held natural environment data for your plan area. The most relevant layers for you to consider are: **Agricultural Land Classification, Ancient Woodland, Areas of Outstanding Natural Beauty, Local Nature Reserves, National Parks (England), National Trails, Priority Habitat Inventory, public rights of way (on the Ordnance Survey base map) and Sites of Special Scientific Interest (including their impact risk zones)**. Local environmental record centres may hold a range of additional information on the natural environment. A list of local record centres is available [here](#)².

Priority habitats are those habitats of particular importance for nature conservation, and the list of them can be found [here](#)³. Most of these will be mapped either as **Sites of Special Scientific Interest**, on the Magic website or as **Local Wildlife Sites**. Your local planning authority should be able to supply you with the locations of Local Wildlife Sites.

National Character Areas (NCAs) divide England into 159 distinct natural areas. Each character area is defined by a unique combination of landscape, biodiversity, geodiversity and cultural and economic activity. NCA profiles contain descriptions of the area and statements of environmental opportunity, which may be useful to inform proposals in your plan. NCA information can be found [here](#)⁴.

There may also be a local **landscape character assessment** covering your area. This is a tool to help understand the character and local distinctiveness of the landscape and identify the features that give it a sense of place. It can help to inform, plan and manage change in the area. Your local planning authority should be able to help you access these if you can't find them online.

If your neighbourhood planning area is within or adjacent to a **National Park** or **Area of Outstanding Natural Beauty (AONB)**, the relevant National Park/AONB Management Plan for the area will set out useful information about the protected landscape. You can access the plans on from the relevant National Park Authority or Area of Outstanding Natural Beauty website.

General mapped information on **soil types** and **Agricultural Land Classification** is available (under 'landscape') on the [Magic](http://magic.defra.gov.uk/)⁵ website and also from the [LandIS website](http://www.landis.org.uk/index.cfm)⁶, which contains more information about obtaining soil data.

Natural environment issues to consider

The [National Planning Policy Framework](#)⁷ sets out national planning policy on protecting and enhancing the natural environment. [Planning Practice Guidance](#)⁸ sets out supporting guidance.

Your local planning authority should be able to provide you with further advice on the potential impacts of your plan or order on the natural environment and the need for any environmental assessments.

¹ <http://magic.defra.gov.uk/>

² <http://www.nbn-nfbr.org.uk/nfbr.php>

³ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

⁴ <https://www.gov.uk/government/publications/national-character-area-profiles-data-for-local-decision-making>

⁵ <http://magic.defra.gov.uk/>

⁶ <http://www.landis.org.uk/index.cfm>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807247/NPPF_Feb_2019_revised.pdf

⁸ <http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/>

Landscape

Your plans or orders may present opportunities to protect and enhance locally valued landscapes. You may want to consider identifying distinctive local landscape features or characteristics such as ponds, woodland or dry stone walls and think about how any new development proposals can respect and enhance local landscape character and distinctiveness.

If you are proposing development within or close to a protected landscape (National Park or Area of Outstanding Natural Beauty) or other sensitive location, we recommend that you carry out a landscape assessment of the proposal. Landscape assessments can help you to choose the most appropriate sites for development and help to avoid or minimise impacts of development on the landscape through careful siting, design and landscaping.

Wildlife habitats

Some proposals can have adverse impacts on designated wildlife sites or other priority habitats (listed [here](#)⁹), such as Sites of Special Scientific Interest or [Ancient woodland](#)¹⁰. If there are likely to be any adverse impacts you'll need to think about how such impacts can be avoided, mitigated or, as a last resort, compensated for.

You'll also want to consider whether any proposals might affect priority species (listed [here](#)¹¹) or protected species. To help you do this, Natural England has produced advice [here](#)¹² to help understand the impact of particular developments on protected species.

Best and Most Versatile Agricultural Land

Soil is a finite resource that fulfils many important functions and services for society. It is a growing medium for food, timber and other crops, a store for carbon and water, a reservoir of biodiversity and a buffer against pollution. If you are proposing development, you should seek to use areas of poorer quality agricultural land in preference to that of a higher quality in line with National Planning Policy Framework para 171. For more information, see our publication [Agricultural Land Classification: protecting the best and most versatile agricultural land](#)¹³.

Improving your natural environment

Your plan or order can offer exciting opportunities to enhance your local environment. If you are setting out policies on new development or proposing sites for development, you may wish to consider identifying what environmental features you want to be retained or enhanced or new features you would like to see created as part of any new development. Examples might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Think about how lighting can be best managed to encourage wildlife.
- Adding a green roof to new buildings.

⁹<https://webarchive.nationalarchives.gov.uk/20140712055944/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

¹⁰ <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences>

¹¹ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

¹² <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

¹³ <http://publications.naturalengland.org.uk/publication/35012>

You may also want to consider enhancing your local area in other ways, for example by:

- Setting out in your plan how you would like to implement elements of a wider Green Infrastructure Strategy (if one exists) in your community.
- Assessing needs for accessible greenspace and setting out proposals to address any deficiencies or enhance provision.
- Identifying green areas of particular importance for special protection through Local Green Space designation (see [Planning Practice Guidance on this](#)¹⁴).
- Managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips in less used parts of parks, changing hedge cutting timings and frequency).
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network, e.g. cutting back hedges, improving the surface, clearing litter or installing kissing gates) or extending the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition, or clearing away an eyesore).

¹⁴ <http://planningguidance.planningportal.gov.uk/blog/guidance/open-space-sports-and-recreation-facilities-public-rights-of-way-and-local-green-space/local-green-space-designation/>

Bentley Neighbourhood Plan HRA Screening Report & Appropriate Assessment (Dec 2020)

Recommendations and Conclusions

5. Recommendations

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

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

Potential impact pathways between the above Habitats Sites and the Bentley Neighbourhood Plan Regulation 14 Pre-submission Draft have been identified, considered and assessed for predicted recreational disturbance in combination with other plans and projects.

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 Bentley Neighbourhood Plan Regulation 14 Pre-submission Draft.

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

- Recommended policy wording changes particularly with reference to Annex 1 of Natural England's advice in relation to greenspace requirements for development of more than 50 units.
- 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 to secure mitigation for recreational disturbance.

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 any adverse effect on integrity (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 Conservation of Habitats and Species Regulations 2017 (as amended) are met.*"

The recommendations from the Appropriate Assessment are precautionary, to ensure that the Bentley 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 Bentley 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 Bentley 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., 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, mitigation needs to be embedded in the Plan in relation to residential developments of more than 50 dwellings to avoid impacts from recreational disturbance from the Plan alone.

Subject to Natural England's review, this HRA Screening Report including Appropriate Assessment concludes that the Bentley Neighbourhood Plan Regulation 14 Pre-Submission Draft is not predicted, with 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.

[Ends]