



Copdock & Washbrook Neighbourhood Plan 2023 - 2037

Habitats Regulations Screening Determination

July 2023

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COPDOCK & WASHBROOK NEIGHBOURHOOD PLAN 2023 - 2037

HABITATS REGULATIONS DETERMINATION

1. Introduction

This assessment relates to the March 2023 Regulation 14 Pre-submission draft version of the 'Copdock & Washbrook Neighbourhood Plan 2023 - 2037' [hereafter referred to as the 'Plan']. A copy of this was made available for screening purposes in May 2023.

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 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 at the independent examination.

The assessment itself and the level of detail needed will depend on what is proposed in the draft Neighbourhood Plan and the potential impacts on Habitats Sites designated for their nature conservation interest.

This report therefore determines whether a HRA under the UK Conservation of Habitats and Species Regulations 2017, which enacts the Habitats Directive¹, is required for the Copdock & Washbrook Neighbourhood Plan. In doing so, it refers to:

- The HRA Screening Report (May 2023) prepared by Land Use Consultants, which can be found online at: www.babergh.gov.uk/CopdockWashbrookNP
- The response 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 a Habitats site (European Site or a European offshore marine site). The first stage is to screen the plan to see whether it is likely to have a significant effect on any Habitats 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 Habitats 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 Habitats site will not be adversely affected.

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>.

Case law is also relevant, including most notably the ‘People over Wind’ and ‘Holohan’ rulings. The ‘People Over Wind, Peter Sweetman v Collie Teoranta’ judgement 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. The ‘Holohan and Others v An Bord Pleanála’ judgement 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 Habitats Site, the full Appropriate Assessment would be required.

The Plan includes a vision for the long-term future of the parish, to be delivered through sixteen objectives grouped under the following themes: ‘Housing’, ‘Business & Employment’, ‘Natural Environment’, ‘Built Environment & Design’, ‘Infrastructure & Services’, and ‘Highways & Movement’. It then sets out seventeen policies (C&W 1 to C&W 17) to help realise and deliver the vision. None of the policies allocate sites for new built development, although some policies do set out the circumstances in which development will be supported.

The following European Sites were identified as lying within 20km of the Copdock & Washbrook NP Area:

- Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site
- Deben Estuary SPA and Ramsar site
- Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site
- Hamford Water Special Area of Conservation (SAC), SPA and Ramsar site
- Essex Estuaries SAC
- Sandlings SPA

A full assessment of the likely effects of the Plan are set out in the Screening Report. [See link in Section 1 above].

The screening has been prepared in accordance with the relevant CJEU judgements.

4. Screening Conclusion

The Report concludes that: *“At the screening stage of HRA, no likely significant effects are predicted on European sites as a result of the Copdock & Washbrook Neighbourhood Plan, either alone or in combination with other policies and proposals”.*

It goes on to say that: *“An Appropriate Assessment is not required for the Copdock & Washbrook Neighbourhood Plan as none of the policies will result in development and likely*

significant effects from the Plan can therefore be ruled out, both alone or in-combination with other plans or projects.”

Consultation on the Screening Report was carried out with Natural England. In their responses (see Appendix 1) they agreed with the conclusion.

5. Determination

In light of the HRA Screening Report (April 2023) prepared by LUC, and the response to this from the statutory consultee, it is determined that the Copdock & Washbrook Neighbourhood Plan 2023 – 2037 is '**screened-out**' for further assessment under the Habitats Regulations 2017 and that an Appropriate Assessment is not required.

Date: 22 June 2023
 Our ref: 436651
 Your ref: Copdock & Washbrook Neighbourhood Plan



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Dear Mr Bryant

Copdock & Washbrook Neighbourhood Plan – Review SEA & HRA Screening

Thank you for your consultation on the above dated and received by Natural England on 05 June 2023.

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

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 SA/SEA is necessary.

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

Habitats Regulations Assessment (HRA) Screening

Natural England agrees with the report's conclusions that the Copdock & Washbrook Neighbourhood Plan would not be likely to result in a significant effect on any European Site, either alone or in combination and therefore no further assessment work would be required.

For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Sally Wintle
Consultations Team