



# **Elmsett Neighbourhood Plan Focused Review (March 2024)**

## **Strategic Environmental Assessment *and* Habitat Regulation Assessment Determination Notices**

**July 2024**

## Table of Contents

	Page
<b>Overview</b>	2
<b>Part A - Strategic Environmental Assessment Determination</b>	3
1. Introduction	3
2. Legislative background	3
3. Criteria for determining likely significant effects	3
4. Assessment	4
5. SEA Screening Conclusion	4
6. SEA Determination	5
<b>Part B – Habitats Regulation Assessment Determination</b>	6
1. Introduction	6
2. Legislative background	6
3. Assessment	7
4. HRA Screening Conclusion	7
5. HRA Determination	7
<b>Appendix 1: Responses from Statutory Consultees</b>	8
Response from Environment Agency	8
Response from Historic England	11
Response from Natural England	12

# ELMSETT NEIGHBOURHOOD PLAN REVIEW (March 2024)

## Strategic Environmental Assessment & Habitat Regulation Assessment Screening Determination Notices

### Overview

This report, which is divided into two parts, relates to the Elmsett Neighbourhood Plan Review document which was made available for both public consultation and for screening purposes in April 2024, and is hereafter referred to as the 'Elmsett NP Review'. The purpose of this report is to determine whether a Strategic Environmental Assessment (SEA) and/or an Appropriate Assessment in relation to Habitat Regulation Assessment (HRA) matters are required.

Part A addresses SEA. Part B addresses HRA.

This report also refers to:

- the SEA and the HRA Screening Reports that have been prepared on behalf of the district council by Land Use Consultants, which can be found online at:

<https://www.babergh.gov.uk/documents/d/babergh/elmsett-np-review-sea-screening-report-may24>

<https://www.babergh.gov.uk/documents/d/babergh/elmsett-np-review-hra-screening-report-may24>

- and the screening consultation responses to these from the statutory bodies which are reproduced in Appendix 1.

The Elmsett Neighbourhood Plan 2017 - 2036 was 'made' (adopted) by Babergh District Council in December 2019. It contains sixteen policies, one of which allocated a site for approximately 41 new dwellings. With planning permission granted for 44 dwellings, this site is currently being built out.

Following our adoption of Part 1 of the Babergh & Mid Suffolk Joint Local Plan in November 2023, and also in recognition that the National Planning Policy Framework has been updated a number of times over the intervening years, Elmsett Parish Council have decided that it is both necessary and appropriate to undertake a partial review of their Plan. This review is limited in its scope and seeks only to bring the Planning Policy Context chapter (Chapter 4), the Planning Strategy chapter (Chapter 7) and the Spatial Strategy Policy (Policy EMST1) up to date. The latter in particular was felt to be now 'out of sync' with the latest district policy position.

Re-worded Policy EMST1 states that the Neighbourhood Plan will accommodate development commensurate with the policies of the adopted Babergh and Mid Suffolk Joint Local Plan - Part 1, that the focus for new development will be within the defined Settlement Boundaries where the principle of development is accepted and that proposals for development outside of the defined settlement boundaries will only be permitted where they are in accordance with national, district and neighbourhood level policies and where they would not have a detrimental impact.

## **Part A - Strategic Environmental Assessment Determination**

### **1. Introduction**

One of the basic conditions that all neighbourhood plans will be tested against by the independent examiner is whether the making of that Plan is compatible with European Union obligations, as incorporated into UK law. Whether a neighbourhood plan requires a SEA and the level of detail needed will depend on what is proposed in the draft Neighbourhood Plan and the characteristics of the local area.

### **2. Legislative Background**

European Union Directive 2001/42/EC (the SEA Directive), transposed into UK law through the SEA Regulations, requires a Strategic Environmental Assessment to be undertaken for certain types of plans or programmes that would have a significant environmental effect. The Environmental Assessment of Plans & Programmes Regulations 2004 (the Regulations) require that this is determined by a screening process, which should use a specified set of criteria (set out in Schedule 1 of the Regulations). The results of this process must be set out in a SEA Screening Statement, which must be publicly available.

In accordance with Regulation 9 of the SEA Regulations 2004, Elmsett Parish Council (the qualifying body) asked Babergh District Council (BDC) (the responsible authority) to determine whether an environmental report on the proposed modifications to their Review Plan was required due to significant environmental effects. In making this determination, BDC have had regard to Schedule 1 of the Regulations.

In line with the advice contained within the National Planning Policy Framework (NPPF) and Planning Practice Guidance, and after careful consideration of the best and most practical approach to this exercise, the potential scope of those aspects of the Elmsett Neighbourhood Plan that are being modification were assessed against the criteria set out in Schedule 1 of the 2004 Environmental Assessment Regulations. As mentioned already, Land Use Consultants (LUC) were commissioned to prepare a screening report and to assess whether SEA would be required.

SEA can be required in some limited situations where a sustainability appraisal is not needed. Neighbourhood Planning is one of these situations. Sustainability Appraisals (SAs) may incorporate the requirements of the Strategic Environmental Assessment Regulations, which implement the requirements of the 'Strategic Environmental Assessment Directive' on the assessment of the effects of certain plans and programmes on the environment.

A Sustainability Appraisal ensures that potential environmental effects are given full consideration alongside social and economic issues, and it is good practice to do one to understand how a plan is to deliver sustainable development. However, NPPF Planning Practice Guidance states that there is no legal requirement for a neighbourhood plan to undertake a Sustainability Appraisal as set out in Section 19 of the Planning and Compulsory Purchase Act 2004. It is down to the qualifying body to demonstrate whether the plan is likely to have significant environmental effects. This is the purpose of the SEA Screening Report.

### **3. Criteria for determining likely significance of effects**

The criteria are set out in the following table:

1. The characteristics of plans and programmes, having regard, in particular, to:
  - a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
  - b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy
  - c) (the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
  - d) environmental problems relevant to the plan or programme,
  - e) the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).
  
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:
  - a) the probability, duration, frequency and reversibility of the effects,
  - b) the cumulative nature of the effects,
  - c) the trans-boundary nature of the effects,
  - d) the risks to human health or the environment (e.g. due to accidents),
  - e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),
  - f) the value and vulnerability of the area likely to be affected due to:
    - i) special natural characteristics or cultural heritage,
    - ii) exceeded environmental quality standards or limit values,
    - iii) intensive land-use,
  - g) the effects on areas or landscapes which have a recognised national, Community or international protection status.

[Source: Schedule 1 of Environmental Assessment of Plans & Programmes Regulations 2004]

#### **4. Assessment**

An overview of the proposed changes to the adopted Elmsett Neighbourhood Plan and an assessment of the likely effects of these are set out in the relevant screening report.

#### **5. SEA Screening Conclusion**

The LUC Report first notes that the adopted Elmsett NP (2019) was screened by Place Services on behalf of Babergh District Council and that this had determined that a full SEA was not required. It then notes that the Elmsett NP Review “... amends only one policy in the 2019 Plan, to bring it into lines with the new policies for the location of development across Babergh” and, “... that it does not allocate any additional sites for development.”

On this basis, it concludes that “... the Elmsett NP Review is unlikely to have significant environmental effects and that full SEA is therefore not required.”

Consultation on the SEA Screening Report was carried out with the Environment Agency (EA), Historic England (HE), and Natural England (NE). Written responses were received from all three bodies and these are replicated in Appendix 1.

- The EA response does not specifically comment on SEA matters

- HE have concluded that, 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], that the preparation of a Strategic Environmental Assessment is not required.
- NE have concluded that, on the basis of the material supplied with the consultation, that significant effects on statutorily designated nature conservation sites or landscapes are unlikely.

## **6. SEA Determination**

In the light of the SEA Screening Report (May 2024) prepared by LUC and having considered the responses to this from the three statutory consultees, it is our determination that the Elmsett Neighbourhood Plan Review **does not require** a Strategic Environmental Assessment in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004.

## Part B – Habitats Regulations Determination

### 1. Introduction

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 Directive<sup>1</sup>, is required for the Elmsett NP Review.

### 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.

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.

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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>.

### 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.

An overview of the proposed changes to the adopted Elmsett Neighbourhood Plan and an assessment of the likely effects of these are set out in the relevant screening report. The screening has also been prepared in accordance with the relevant CJEU judgements.

Two European sites were identified for inclusion in the HRA on the basis of being within 20km of Elmsett Parish. They were the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site and the Deben Estuary SPA and Ramsar site.

### 4. HRA Screening Conclusion

The Screening Report concluded that:

*'No likely significant effects are predicted on European sites as a result of the Elmsett Neighbourhood Plan Review, either alone or in combination with other policies and proposals. This is because, although there are potential impact pathways from the Neighbourhood Plan Review area to European sites, the Neighbourhood Plan Review does not include policies that will result in new development.'*

... and that:

***"An Appropriate Assessment is not required for the Elmsett NP Review."***

Consultation on the HRA Screening Report was carried out with the Environment Agency (EA) and Natural England (NE). Their responses are set out in Appendix 1.

- The EA response does not specifically comment on HRA matters.
- NE have concluded, on the basis of the material supplied with the consultation, that significant effects on Habitats sites, either alone or in combination, are unlikely.

### 5. HRA Determination

In light of the HRA Screening Report (May 2024) prepared by LUC and having considered the responses to this from the statutory consultees, it is our determination that the Elmsett NP Review is '**screened out**' from further assessment under the Habitats Regulations 2017 and that an Appropriate Assessment is not required.



## Appendix 1



Paul Bryant  
Babergh and Mid Suffolk District Council  
Spatial Planning Policy Team  
8 Russell Road  
Ipswich  
Suffolk  
IP1 2BX

**Our ref:** AE/2024/129531/01-L01  
**Your ref:** Elmsett/NP/SEA&HRA  
**Date:** 07 June 2024

Dear Paul

### **SEA & HRA SCREENING REPORTS ON ELMSETT NP REVIEW (BABERGH DC)**

Thank you for consulting us on SEA & HRA Screening Reports for the Elmsett Neighbourhood Plan.

For the purposes of neighbourhood planning, we have assessed those authorities who have “up to date” local plans (plans adopted within the previous 5 years) as being of lower risk, and those authorities who have older plans (adopted more than 5 years ago) as being at greater risk. We aim to reduce flood risk and protect and enhance the water environment, and with consideration to the key environmental constraints within our remit, we have then tailored our approach to reviewing each neighbourhood plan accordingly.

A key principle of the planning system is to promote sustainable development. Sustainable development meets our needs for housing, employment and recreation while protecting the environment. It ensures that the right development, is built in the right place at the right time. To assist in the preparation of any document towards achieving sustainable development we have identified the key environmental issues within our remit that are relevant to this area and provide guidance on any actions you need to undertake. We also provide hyperlinks to where you can obtain further information and advice to help support your neighbourhood plan.

#### **Environmental Constraints**

We have identified that the Neighbourhood Plan Area will be affected by the following environmental constraints:

#### **Flood Risk**

Based on a review of environmental constraints for which we are a statutory consultee, we find that there are areas of fluvial flood risk and watercourses within the neighbourhood plan area along Belstead Brook.

On the basis that future development is steered away from the sensitive aspects of the environment highlighted, we do not consider there to be potential significant environmental effects relating to these environmental constraints. Nevertheless, we recommend the inclusion of relevant policies to cover the management of flood risk. Allocation of any sites and any windfall development delivered through the Plan period should follow the sequential approach. [National Planning Policy Framework](#) (NPPF) paragraph 167 sets this out.

## **Water Resources**

Being in one of the driest areas of the country, our environment has come under significant pressure from potable water demand. New developments should make a significant contribution towards reducing water demand and mitigate against the risk of deterioration to our rivers, groundwater and habitats from groundwater abstraction. We recommend you check the capacity of available water supplies with the water company, in line with the emerging 2024 Water Resources Management Plan which is due to be published in 2023. The Local Planning Authorities Water Cycle Study and Local Plan may indicate constraints in water supply and provide recommendations for phasing of development to tie in with new alternative strategic supplies.

New development should as a minimum meet the highest levels of water efficiency standards, as per the policies in the adopted Local Plan. In most cases development will be expected to achieve 110 litres per person per day as set out in the Building Regulations &c. (Amendment) Regulations 2015. However, a higher standard of water efficiency (e.g. 85 l/p/d) should be considered, looking at all options including rainwater harvesting and greywater systems. Using the water efficiency calculator in Part G of the Building Regulations enables you to calculate the devices and fittings required to ensure a home is built to the right specifications to meet the 110 l/p/d requirement. We recommend all new non-residential development of 1000sqm gross floor area or more should meet the BREEAM 'excellent' standards for water consumption.

Developments that require their own abstraction where it will exceed 20 cubic metres per day from a surface water source (river, stream) or from underground strata (via borehole or well) will require an abstraction licence under the terms of the Water Resources Act 1991. There is no guarantee that a licence will be granted as this is dependent on available water resources and existing protected rights. The relevant abstraction licencing strategy for your area provides information on water availability and licencing policy at Abstraction licencing strategies (CAMS process) - GOV.UK ([www.gov.uk](http://www.gov.uk)).

## **Contaminated Land**

For land that may have been affected by contamination as a result of its previous use or that of the surrounding land, sufficient information should be provided with any planning application to satisfy the requirements of the NPPF for dealing with land contamination. This should take the form of a Preliminary Risk Assessment (including a desk study, conceptual model and initial assessment of risk), and provide assurance that the risk to the water environment is fully understood and can be addressed through appropriate measures. This is because Elmsett Neighbourhood Plan Area is a source protection zone 2 and 3 as well as on a principal Aquifer. For any planning application the prior use should be checked to ensure there is no risk of contamination.

## **Informatives**

We encourage you to seek ways in which your neighbourhood plan can improve the local environment. For your information, together with Natural England, Historic England and Forestry Commission, we have published joint guidance on neighbourhood planning, which sets out sources of environmental information and ideas on incorporating the environment into plans. This is available at: [How to consider the environment in Neighbourhood plans - Locality Neighbourhood Planning](#)

## **Source Protection Zones**

Your plan includes areas which are located on Source Protection Zones 2 and 3. These should be considered within your plan if growth or development is proposed here. The relevance of the designation and the potential implication upon development proposals should be considered with reference to our Groundwater Protection guidance:

<https://www.gov.uk/government/collections/groundwater-protection>

## **Biodiversity Net Gain**

We encourage you to seek ways in which your neighbourhood plan can improve the local environment. Identifying sites for the delivery of [Biodiversity Net Gain](#) could lead to habitat improvements in your area. Biodiversity Net Gain is a system that delivers habitat improvements on any local sites including [Local Wildlife Sites](#) to ensure that there is no loss of habitats from new development. Identifying areas that could benefit from management for conservation within your area could enable habitat to be created closer to development sites in your plan area, providing local ecological enhancement.

We trust this advice is useful.

Yours sincerely

Mr Andrew Thornton  
Planning Advisor

By e-mail dated 4 June 2024

**Re: Elmsett NP SEA Screening Opinion**



Historic England

Dear Paul,

Thank you for inviting Historic England to comment on this 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 plan will not have any significant effects on the historic environment. We note that the plan does not propose to allocate any sites for development.

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. To avoid any doubt, this does not reflect our obligation to provide further advice on later stages of the 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) where we consider that, despite the 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.

Please do contact me, either via email or the number below, if you have any queries.

Ross McGivern (he/him)

Historic Places Adviser

East of England Region | Partnerships Team

Historic England | Brooklands | 24 Brooklands Avenue | Cambridge | CB2 8BU

Date: 03 July 2024  
Our ref: 479128  
Your ref: Elmsett Neighbourhood Plan



Mr Paul Bryant  
Babergh & Mid Suffolk District Councils

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**BY EMAIL ONLY**

[communityplanning@baberghmidsuffolk.gov.uk](mailto:communityplanning@baberghmidsuffolk.gov.uk)

T 0300 060 3900

Dear Mr Bryant

**Elmsett Neighbourhood Plan - SEA & HRA Screening Consultation**

Thank you for your consultation on the above dated and received by Natural England on 13 June 2024.

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 (SEA) and Habitats Regulations Assessment (HRA)**

**It is Natural England's advice, on the basis of the material supplied with the consultation, that:**

- **significant effects on statutorily designated nature conservation sites or landscapes are unlikely; and,**
- **significant effects on Habitats sites<sup>1</sup>, either alone or in combination, are unlikely.**

The proposed neighbourhood plan is unlikely to significantly affect any Site of Special Scientific Interest (SSSI), Marine Conservation Zone (MCZ), Special Areas of Conservation (SAC), Special Protection areas (SPA), Ramsar wetland or sites in the process of becoming SACs or SPAs ('candidate SACs', 'possible SACs', 'potential SPAs') or a Ramsar wetland. The plan area is unlikely to have a significant effect on a National Park, Area of Outstanding Natural Beauty or Heritage Coast, and is unlikely to impact upon the purposes for which these areas are designated or defined.

Guidance on the assessment of Neighbourhood Plans, in line with the Environmental Assessment of Plans and Programmes Regulations 2004 is contained within the [Planning Practice Guidance](#). This identifies three triggers that may require the production of an SEA:

- 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.

Natural England does not hold information on the location of significant populations of protected species, so is unable to advise whether this plan is likely to affect protected species to such an extent as to require an SEA. Further information is included in Natural England's [standing advice](#) on protected species.

Furthermore, Natural England does not routinely maintain locally specific data on all environmental assets. The plan may have environmental impacts on priority species and/or habitats, local wildlife sites, soils and best and most versatile agricultural land, or on local landscape character that may be sufficient to warrant an SEA. Information on ancient woodland, ancient and veteran trees is set out in Natural England/Forestry Commission [standing advice](#).

We therefore recommend that advice is sought from your ecological, landscape and soils advisers, local record centre, recording society or wildlife body on the local soils, best and most versatile agricultural land, landscape, geodiversity and biodiversity receptors that may be affected by the plan before determining whether a SEA is necessary.

Natural England reserves the right to provide further advice on the environmental assessment of the plan. This includes any third party appeal against any screening decision you may make. If a SEA is required, Natural England must be consulted at the scoping and environmental report stages.

Please send any new consultations, or further information on this consultation to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk)

Yours sincerely

Sally Wintle  
Consultations Team

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<sup>1</sup> Habitats sites are those referred to in the [National Planning Policy Framework](#) (Annex 2 - glossary) as “any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites”.