



Whatfield Neighbourhood Plan

Habitats Regulations Screening Determination

September 2020

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WHATFIELD NEIGHBOURHOOD PLAN

HABITATS REGULATIONS DETERMINATION

1. Introduction

This assessment relates to the Regulation 14 Pre-submission draft 'Whatfield Neighbourhood Development Plan 2018 - 2036' which was made available for public consultation in early August 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 Whatfield Neighbourhood Plan.

This determination refers to:

- The HRA Screening Report prepared by Place Services, Essex CC [*hereafter referred to as Place Services*] which can be viewed at: www.babergh.gov.uk/WhatfieldNP
- 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:

"The Whatfield Neighbourhood Plan will deliver a sustainable and enduring environment, affordable and high quality legacy for our future generations."

The draft Plan contains six policies. Three are themed around 'Community and Amenity', and three around 'Housing and the Built Environment'. The draft Plan does not allocate any new sites for housing development but does contain a policy that supports 'windfall development' subject to certain criteria being met. Other policies also seek to realise and deliver the Plans vision and objectives.

There are two Habitats Sites which lie within 20 km of Whatfield parish:

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

As the Plan area is not within the Zone of Influence for any of these Habitats Sites, none are screened in for assessment for any likely significant effect resulting from this draft Plan.

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

<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Whatfield-NP-HRA-Screening-Report-Aug20.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 that, subject to Natural England's review, the Whatfield Neighbourhood Plan is not predicted to have any Likely Significant Effects on any Habitats Site, either alone or in combination with other plans and projects.

In their response, Natural England did not raise any specific concerns but did place the onus on the District Council to identify significant risks, having also had regard to the generic advice contained in their 'Annex 1 Neighbourhood planning and the natural environment: information, issues and opportunities.

5. Determination

In the light of the Screening Report prepared by Place Services and information contained in the response from Natural England, it is determined that the draft Whatfield Neighbourhood Plan **does not require** further assessment under the Habitats Regulations 2017.

Date: 08 September 2020
Our ref: 325295
Your ref: Whatfield NP - SEA / HRA Screening Consultation



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Dear Paul Bryant

Whatfield Neighbourhood Plan - SEA / HRA Screening Consultation

Thank you for your consultation on the above dated 14 August 2020

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.

Natural England is a statutory consultee in neighbourhood planning and must be consulted on draft neighbourhood development plans by the Parish/Town Councils or Neighbourhood Forums where they consider our interests would be affected by the proposals made.

Natural England is not able to fully assess the potential impacts of this proposal on statutory nature conservation sites or protected landscapes or, provide detailed advice on the application. If you consider there are significant risks to statutory nature conservation sites or protected landscapes, please set out the specific areas on which you require advice.

The lack of detailed advice from Natural England does not imply that there are no impacts on the natural environment. It is for the local planning authority to determine whether or not the proposal is consistent with national and local environmental policies. Other bodies and individuals may provide information and advice on the environmental value of this site and the impacts of the proposal on the natural environment to assist the decision making process. Generic advice is provided in the Annex attached.

For any further consultations on your plan, please contact: consultations@naturalengland.org.uk

Yours sincerely

Julie Lunt
Consultations Team

Annex 1 - 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.

Priority and protected species

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 <http://webarchive.nationalarchives.gov.uk/20140711133551/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/>