



# **Elmswell Neighbourhood Plan**

Spring 2022 R14 consultation draft

## **Habitats Regulations Screening Determination**

**October 2022**

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# ELMSWELL NEIGHBOURHOOD PLAN

## HABITATS REGULATIONS DETERMINATION

### 1. Introduction

This assessment relates to the Regulation 14 pre-submission draft Elmswell Neighbourhood Plan' [the Elmswell NP]. A copy of this was made available for screening purposes in May 2022.

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 Elmswell NP. In doing so, it refers to:

- The HRA Screening Report (August 2022) prepared by Land Use Consultants, which can be found online at:

<https://www.midsuffolk.gov.uk/assets/Neighbourhood-Planning/Elmswell-NP-HRA-Screening-Report-Aug22.pdf>

- 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

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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>.

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.

### **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 Elmswell NP sets out five planning policies under the titles of: Planning Strategy, Important Views, Local Green Spaces, Open Space, Sports & Recreation Facilities, and Employment Sites.

The draft Plan does not allocate sites for any new dwellings but does state that the designated area will accommodate development commensurate with the villages settlement hierarchy designation, and it supports the retention and development of existing employment and other business uses.

Four European sites were identified as lying within 20km of the designated Plan Area:

- Redgrave & South Lopham Fens Ramsar
- Waveney & Little Ouse Valley Fens Special Area of Conservation
- Breckland Special Protection Area and Special Area of Conservation

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 Screening Report concludes that: *“no likely significant effects are predicted on European sites, either alone or in combination with other policies and proposals.”*

It goes on to say that: *“An Appropriate Assessment is not required for the Elmswell Neighbourhood Plan as none of the policies will result in development and likely significant effects from the plan can therefore be ruled out.”*

Consultation on the Screening Report was carried out with Natural England. In their response (see Appendix 1) they concurred with the findings of the report.

## **5. Determination**

In light of the HRA Screening Report (Aug 2022) prepared by LUC, and the response to this from the statutory consultee, it is determined that the Elmswell Neighbourhood Plan is '**screened-out**' for further assessment under the Habitats Regulations 2017 and that an Appropriate Assessment is not required.

Date: 16 September 2022  
Our ref: 403992  
Your ref: Elmswell Neighbourhood Plan



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Dear Sir or Madam

Elmswell Neighbourhood Plan - SEA & HRA Screening Reports

Thank you for your consultation on the above dated 12 August 2022 which was received by Natural England on 12 August 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.

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.

### **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.

### **Habitat Regulations Assessment**

Natural England concurs with the findings of the HRA Screening report.

However, we refer you to the attached annex which covers the issues and opportunities that should be considered when preparing a Neighbourhood Plan.

For any further consultations on your plan, please contact:  
[consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk)

Yours faithfully

Corben Hastings  
Consultations Team

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

### Natural environment information sources

The [Magic](#)<sup>2</sup> 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](#)<sup>3</sup>.

**Priority habitats** are those habitats of particular importance for nature conservation, and the list of them can be found [here](#)<sup>4</sup>. 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](#)<sup>5</sup>.

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](#)<sup>6</sup> website and also from the [LandIS website](#)<sup>7</sup>, which contains more information about obtaining soil data.

### Natural environment issues to consider

The [National Planning Policy Framework](#)<sup>8</sup> sets out national planning policy on protecting and enhancing the natural environment. [Planning Practice Guidance](#)<sup>9</sup> 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.**

#### 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](#)<sup>10</sup>), such as Sites of Special Scientific Interest or [Ancient woodland](#)<sup>11</sup>. 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](#)<sup>12</sup>) or protected species. To help you do this, Natural England has produced advice [here](#)<sup>13</sup> 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](#)<sup>14</sup>.

### **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.

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](#)<sup>15</sup>).
- 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).

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<sup>2</sup> <http://magic.defra.gov.uk/>

<sup>3</sup> <http://www.nbn-nfbr.org.uk/nfbr.php>

<sup>4</sup> <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

<sup>5</sup> <https://www.gov.uk/government/publications/national-character-area-profiles-data-for-local-decision-making>

<sup>6</sup> <http://magic.defra.gov.uk/>

<sup>7</sup> <http://www.landis.org.uk/index.cfm>

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807247/NPPF\\_Feb\\_2019\\_revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807247/NPPF_Feb_2019_revised.pdf)

<sup>9</sup> <http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/>

<sup>10</sup> <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

<sup>11</sup> <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences>

<sup>12</sup> <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

<sup>13</sup> <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

<sup>14</sup> <http://publications.naturalengland.org.uk/publication/35012>

<sup>15</sup> <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/>