



Mendlesham Neighbourhood Plan Modification Draft (May 2020)

Habitats Regulations Screening Determination

September 2020

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MENDLESHAM NEIGHBOURHOOD PLAN (Modification Draft)

HABITATS REGULATIONS DETERMINATION

1. Introduction

This assessment relates to the 'Mendlesham Neighbourhood Development Plan 2016 - 2036 Modification Draft v4.4' document dated May 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 Mendlesham Neighbourhood Plan which is currently being modified by the Parish Council.

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.midsuffolk.gov.uk/MendleshamNP
- Natural England's automated response e-mail (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.

Like the adopted Mendlesham Neighbourhood Plan (March 2017), this modification draft does not contain a single vision statement but, instead, sets out a number of objectives based on social, environmental and, business and economic themes. The modified draft plan contains twelve planning policies, of which two relate to housing delivery (including making site allocations). The remaining policies seek to shape future development within the designated plan area.

There are three Habitats site which lie within 20 km of Mendlesham parish:

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

As the Plan area is not within the Zone of Influence for any of these Habitats Sites, it was concluded that 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 prepared by Place Services. A copy of this can be viewed at:

<https://www.midsuffolk.gov.uk/assets/Neighbourhood-Planning/Mendlesham-NP-HRA-Screening-Report-Jul20.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 modification draft v4.4 Mendlesham 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.

Natural England were invited to comment on the Screening Report but no written response was received. This conclusion must therefore rely on the general advice contained in their automated response of 4 August 2020 (see Appendix 1).

5. **Determination**

In the light of the Screening Report prepared by Place Services and the information contained within Natural England's automated response, it is determined that the Mendlesham Neighbourhood Plan modification draft **does not require** further assessment under the Habitats Regulations 2017.

6. **Supplementary note re Neighbourhood Plan Policy MP1 / MP1A**

While the Place Services Screening Report was out to consultation with Natural England, Mendlesham Parish Council advised Mid Suffolk District Council that they had decided to merge policies MP1 and MP1A from their v4.4 modification draft document into one new policy. As a precautionary measure, the merged policy text was shared with Place Services, who were asked if this altered their original screening conclusion. In response, they advised that *"as Mendlesham parish lies outside the Zone of Influence for any Habitats sites, any revised text to policy wording will make no difference to the HRA screening."* No further action was taken as a consequence of this amendment to the policy text.

Copy: Automated e-mail response from Natural England dated 4 August 2020

Dear Sir or Madam

Thank you for contacting [Natural England](#). We will action your request as follows:

For consultations on Development Management, we will respond within 21 days from the receipt of your email.

For consultations on Development Plans, we will respond within 6 weeks from the receipt of your email.

If you have specified a different deadline or we agree a revised deadline with you, we will respond within the time specified or agreed.

If you are applying for the Discretionary Advice Service, we will respond to you within 15 working days.

If you are a member of the public, we will respond to your query within 10 working days from receipt of your email.

If your consultation relates to a Tree Preservation Order, Advertisement Consent, Hedgerow Removal Notice or Listed Building Consent, there is no requirement to consult us and you will not receive a further response.

If you do not receive a response from Natural England (or communication on a revised response date), we have no specific comments to make. Please refer to our general advice in the Annex below.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the proposals are not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not the proposals are consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of sites and the impacts of development proposals to assist the decision making process. We advise local planning authorities to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend that local planning authorities use Natural England's Site of Special Scientific Interest Impact Risk Zones (available on [Magic](#) and as a downloadable [dataset](#)) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at:

<https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>

<https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>

<https://www.gov.uk/guidance/consulting-on-neighbourhood-plans-and-development-orders>

Kind regards

Natural England Consultations Team

Annex - Generic advice for LPAs from Natural England on the natural environment impacts and opportunities of development proposals

This advice may also be useful for neighbourhood planning bodies and developers.

Sites of Special Scientific Interest (SSSIs)

Local authorities have responsibilities for the conservation of SSSIs under s28G of the Wildlife and Countryside Act 1981 (as amended). The [National Planning Policy Framework](#) (NPPF) (paragraph 175c) states that development likely to have an adverse effect on SSSIs should not normally be permitted.

Natural England's SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the [Natural England Open Data Geportal](#). If a development proposal triggers an Impact Risk Zone, local planning authorities should request sufficient information from the developer to assess the impacts likely to arise and consider any mitigation measures that may be necessary.

Biodiversity duty

The local planning authority has a [duty](#) to have regard to conserving biodiversity as part of planning decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).

Biodiversity Net Gain

Development provides opportunities to secure a net gain for biodiversity, in line with the NPPF (paragraphs 174 and 175) and [Planning Practice Guidance](#). Biodiversity net gain can be calculated using the [biodiversity metric](#). We advise local planning authorities to follow the mitigation hierarchy, as set out in paragraph 175 of the NPPF, and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. This may include creating new ponds, planting native trees and plants and incorporating green roofs into the design of new buildings. Where onsite measures are not possible, consideration should be given to off-site measures.

Protected Species

Natural England has produced [standing advice](#) to help local planning authorities understand the impact of particular developments on protected species. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Local sites and priority habitats and species

Local planning authorities should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 171 and 174 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geo-conservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. The list of priority habitats and species can be found [here](#). Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land- see further information in the [open mosaic habitats inventory](#).

Ancient woodland, ancient and veteran trees

Local planning authorities should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 175 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a SSSI or in exceptional circumstances.

Protected landscapes

For developments within or within the setting of a National Park or Area of Outstanding Natural Beauty (AONB), we advise local planning authorities to apply national and local policies, together with local landscape expertise and information to determine the proposal. The NPPF (paragraph 172) provides the highest status of protection for the landscape and scenic beauty of National Parks and AONBs. It also sets out a 'major developments test' to determine whether major developments should be exceptionally be permitted within the designated landscape. We advise local planning authorities to consult the relevant AONB Partnership or Conservation Board or relevant National Park landscape or other advisor who will have local knowledge and information to assist in the determination of the proposal. The statutory management plan and any local landscape character assessments may also provide valuable information.

Public bodies have a duty to have regard to the statutory purposes of designation in carrying out their functions (under (section 11 A(2) of the National Parks and Access to the Countryside Act 1949 (as amended) for National Parks and S85 of the Countryside and Rights of Way Act, 2000 for AONBs). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

Heritage Coasts are protected under paragraph 173 of the NPPF. Development should be consistent the special character of Heritage Coasts and the importance of its conservation.

Landscape

Paragraph 170 of the NPPF highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. Local planning authorities may want to consider whether any local landscape features or characteristics (such as ponds, woodland or dry stone walls) could be incorporated into the development in order to respect and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape and Visual Impact Assessment should be provided with the proposal to inform decision making. Please see the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 170 and 171). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 98 and 170 of the NPPF highlights the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way, coastal access routes and coastal margin in the vicinity of the development and the scope to mitigate any adverse impacts. Consideration should also be given to the potential impacts on any nearby National Trails, including the England Coast Path. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer

Environmental gains

The NPPF (paragraphs 72, 102, 118 and 170) encourages developments to seek wider environmental gains, in addition to biodiversity net gain. Developers and local planning authorities could consider how the proposed development can enhance the wider environment, help adapt to the impacts of climate change and implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in the area. Opportunities for environmental gains, including nature based solutions to help adapt to climate change, might include:

- Identifying opportunities for new multi-functional green and blue infrastructure
- Managing existing and new public spaces to be more wildlife friendly (e.g. by sowing wild flower strips) and climate resilient
- Planting trees, including street trees, characteristic to the local area to make a positive contribution to the local landscape
- Improving access and links to existing greenspace, identifying improvements to the existing public right of way network or extending the network to create missing footpath or cycleway links
- Restoring neglected environmental features (e.g. a hedgerow or stone wall or clearing away an eyesore)
- Designing lighting to encourage wildlife

[Ends]