



# **Capel St Mary Neighbourhood Plan 2018 - 2037**

## **Habitats Regulations Screening Determination**

**September 2022**

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# CAPEL ST MARY NEIGHBOURHOOD PLAN

## HABITATS REGULATIONS DETERMINATION

### 1. Introduction

This assessment relates to a draft version of the Capel St Mary Neighbourhood Development Plan 2018 - 2037' [version 3.0, dated 16 August 2021], which was made available for screening purposes. It is hereafter referred to as the Capel St Mary NP.

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 Capel St Mary NP. In doing so, it refers to:

- The HRA Screening Report (July 2022) prepared by Land Use Consultants, which can be found online at:  
<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/CStM-NP-HRA-Screening-Report-July22.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 Capel St Mary NP sets out the following vision, along with 11 objectives that are presented throughout the various chapters of the Plan:

*That Capel St Mary retains its rural quality whilst meeting local housing needs and protecting and developing the infrastructure, including essential services, to provide a sustainable future.*

The draft Plan then sets out 21 policies (CSM1 to CSM21) to realise and deliver this vision. Each policy is linked to a particular objective under the following nine themes: Housing & Design, Localised Flooding, Transport, Infrastructure, Community & Heritage Assets, Environment, Conservation of Flora & Fauna, Enriching our Lives, Local Green Space, Economy & Employment.

Twelve Habitats Sites were identified as lying within 20km of the Capel St Mary NP Area:

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

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. However, it is expected that any windfall development which the Capel St Mary NP supports and is within the plan boundary [meaning the designated area] will be required to undertake an individual project-level HRA to determine impacts.”*

The report goes on to say that, while no changes to the Capel St Mary NP are assumed in reaching the above conclusion, it does set recommendations to amend and strengthen the wording at Policy CSM1: Spatial Strategy to refer to project level HRAs and financial mitigation and, at Policy CSM5: Green Infrastructure in New Developments, to include a reference to greenspace requirements on residential developments to avoid adverse effect effects on the integrity of the Stour & Orwell Estuaries SPA and Ramsar site.

Consultation on the Screening Report was carried out with Natural England. In their response (see Appendix 1) they agreed with the overall conclusion reached in the Screening Report. They also made a further recommendation regarding the wording of Policy CSM5.

#### **5. Determination**

In light of the HRA Screening Report (July 2022) prepared by LUC, and the response to this from the statutory consultee, it is determined that the Capel St Mary Neighbourhood Plan [version 3.0, dated 16 August 2021] is **‘screened-out’** for further assessment under the Habitats Regulations 2017 and that an Appropriate Assessment is not required.

Furthermore, the District Council will work with the Parish Council to implement the recommendation regarding appropriate additional wording.

Date: 29 July 2022  
 Our ref: 399791  
 Your ref:



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**BY EMAIL ONLY**

Dear Paul Bryant,

**Planning Consultation: Strategic Environmental Assessment screening opinion and Habitats Regulations Assessment for the Capel St Mary Neighbourhood Plan**

Thank you for your consultation on the above dated 07 July 2022 which was received by Natural England on the same date.

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 previously provided advice on the Strategic Environmental Assessment (SEA) screening report (our ref: 368679, dated 28 September 2021). Your authority has since revised its SEA screening report and issued a new HRA, which forms the basis for this consultation. Natural England provides the following advice in response to the revised documents:

**Habitats Regulations Assessment**

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has screened the proposal to check for the likelihood of significant effects.

Your assessment concludes that the proposal can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination. On the basis of the information provided, Natural England concurs with this view.

The HRA indicates that there are no policies which will result in development, as there is no set target for residential housing growth or allocations for residential housing in the plan. Whilst the plan is therefore unlikely to result in a significant effect on any European site as a result of recreational disturbance, the plan provides policies for windfall development. Therefore, section 5.2 of the HRA screening report (prepared by LUC, June 2022) provides positive recommendations "to strengthen the protection for European sites provided by Capel St Mary Neighbourhood Plan policies governing windfall development." The HRA currently recommends the following amendment (3) to Policy CSM5: "this policy should be amended to refer to Suffolk Coast RAMS which provides advice on greenspace for residential development to avoid adverse effect on integrity on the Stour & Orwell Estuaries SPA and Ramsar site."

Whilst it is not a requirement of the HRA, we recommend that the policy text for 'CSM5: Green Infrastructure in New Developments' is further refined for larger scale residential developments within the 13 km Suffolk Coast RAMS zone of influence (50 units +, or equivalent, as a guide). This is because the Suffolk Coast RAMS

strategy does not provide recommendations on “green space” requirements as stated in the suggested amendment. We advise that the policy text should align with Natural England’s minimum open space/green infrastructure recommendations for developments of this size. As a minimum, we advise that such provisions should include:

- High-quality, informal, semi-natural areas
- Circular dog walking routes of 2.7 km<sup>1</sup> within the site and/or with links to surrounding
- public rights of way (PRoW)
- Dedicated ‘dogs-off-lead’ areas
- Signage/information leaflets to householders to promote these areas for recreation
- Dog waste bins
- A commitment to the long term maintenance and management of these provisions

These provisions should be provided proportionate to the scale of the development, as well as a proportionate financial contribution to the Suffolk Coast RAMS. Such open space/green infrastructure provisions can help minimise any predicted increase in recreational pressure to the European sites by containing the majority of recreation within and around the development site boundary away from European sites.

### **Strategic Environmental Assessment draft screening opinion**

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.

Natural England agrees with your conclusion that an SEA is not required.

### **Other comments on the Neighbourhood Plan**

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.

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

Further general advice on neighbourhood planning and the natural environment, including natural environment information sources is provided in Annex I.

Yours faithfully

Sam Kench  
Lead Adviser, Norfolk and Suffolk Team

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<sup>1</sup> Taken from *Jenkinson, S., (2013), Planning for dog ownership in new developments: reducing conflict – adding value. Access and greenspace design guidance for planners and developers*

## 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/>