



**Determination Statement under Article 9 of
the**

**Environmental Assessment of
Plans and Programmes Regulations
2004**

In response to the

**Strategic Environmental Assessment and
Habitat Regulations Assessment Screening
Report**

for the

**Flood Risk Supplementary Planning
Document**

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1. Introduction

- 1.1 Elmbridge Borough Council has produced a Flood Risk Supplementary Planning Document (SPD) as part of its Local Plan.
- 1.2 The [Planning and Compulsory Purchase Act \(2004\)](#) and associated Regulations made all Local Plan documents subject to a Sustainability Appraisal (SA), which met the requirements of the European Community (EC) Directive on [Strategic Environmental Assessment \(SEA\) Directive \(2001/42/EC\)](#). However, the [Planning Act \(2008\)](#) removed the requirement for sustainability appraisals of SPDs. Therefore, in line with the current regulations, the Council will not carry out a SA for the SPD.
- 1.3 However, the SEA Directive and associated [Environmental Assessment of Plans and Programmes Regulations \(2004\)](#) still requires Local Authorities to carry out an environmental assessment of their plans and programmes before adoption. There are exceptions to this and it is the responsibility of the Local Authority to assess whether the plan is likely to have significant effects on the environment and to make these conclusions public.
- 1.4 In addition, Article 6 of the [Habitats Directive](#) and Regulation 102 of the [Conservation of Habitats and Species Regulations \(2010\)](#) also state the need to determine if the SPD is likely to have significant effects on the integrity of internationally designated sites of nature conservation importance and whether an Appropriate Assessment (AA) is required.
- 1.5 This statement sets out the Council's assessment of the SPD to ascertain whether a SEA and / or AA is required.

2. Scope of the Flood Risk SPD

- 2.1 The Flood Risk SPD is being written to assist applicants and the public in understanding how the Council will implement planning policies and consider flood risk as part of the planning application process. The first part of the document sets out the context and policies that affect flood risk in the Borough to enable users of the SPD to understand the environment in which they may be working, or planning on developing. The second part of the document is designed to assist applicants in preparing a Flood Risk Assessment (FRA) which is used to assess the flood risk to and from a proposed development, and is submitted alongside a planning application. Its principal aim is to ensure that as far as possible development is directed to areas of lowest flood risk and that where development does take place in areas at risk of flooding, appropriate mitigation is incorporated to ensure that it is safe and does not increase flood risk elsewhere.
- 2.2 The SPD will support the implementation of [Core Strategy \(2011\)](#) Policy CS26: Flooding, as well as Policies DM6: Landscape and Trees and DM13: Riverside Development Uses of the [Development Management Plan \(2015\)](#), and operate

alongside the [Design and Character SPD \(2012\)](#) and the [Strategic Flood Risk Assessment \(SFRA\) \(June 2015\)](#).

3. Strategic Environmental Assessment

- 3.1 Local Authorities must conduct a SEA of all Local Plan documents and SPDs in accordance with the SEA Directive (2001/42/EC) and associated Environmental Assessment of Plans and Programmes Regulations 2004. However, there are circumstances when a SEA is not required.
- 3.2 The SEA Directive requires a SEA for plans which (i) “determine the use of small areas at a local level” or which are (ii) “minor modifications” to plans, only when these are determined to be likely to cause significant environmental effects. The publication '[A Practical Guide to the Strategic Environmental Assessment Directive \(2005\) OPDM](#)' outlines how plans should be 'screened' to determine whether exceptions may apply.
- 3.3 In accordance with the provisions of the SEA Directive and the Environmental Assessment of Plans and Programmes Regulations (2004) (Regulation 9 (1)), the Council must determine if a plan requires an environmental assessment. Where the Council determines that a SEA is not required, under Regulation 9(3) the Council must prepare a statement setting out the reasons for this determination. A determination cannot be made until the three statutory consultation bodies have been consulted: The [Environment Agency](#), [Natural England](#) and [Historic England](#).
- 3.4 Within 28 days of making its determination the authority must publish a statement, such as this one, setting out its decision. If it determines that an SEA is not required, the statement must include the reasons for this. The relevant SPD may not be adopted before the determination has been made under Regulation 9(1).

4. SEA Screening Determination and Reasons

- 4.1 The responses received are set out in Table 1 below. The Council considers that the Flood Risk SPD represents an exceptional case to which the SEA Directive refers and has screened the SPD accordingly. In coming to this conclusion the Council has reviewed the criteria for determining the likely significance of effects as listed in Schedule 1 Regulations 9(2)(a) and 10(4)(a) of the Environmental Assessment of Plans and Programmes Regulations 2004 (See Appendix 1).
- 4.2 The three consultation bodies were consulted on a draft screening report from 20 August until 18 September 2015, with an extension agreed with Natural England until 25 September 2015. The responses are set out in Table 1 below.

Table 1- Comments Received by Consultation Bodies

Consultation Body	Comments
Historic England	No comments received.
Environment Agency	As your adopted Local Plan has a Sustainability Appraisal we would not expect an SEA to be undertaken for the Flood Risk SPD. We have no comments to make on the HRA, please make sure you have consulted Natural England with regards to this.
Natural England	Natural England was satisfied as regards the contents of the SPD and that no SEA/HRA assessment is required.

4.3 Having reviewed the criteria in this manner and consulted with the three statutory bodies, the Council concludes that the Flood Risk SPD is unlikely to have significant environmental effects, and therefore does not require a SEA for the following reasons:

- a) The SPD is based on Policy CS26 in the Core Strategy and Policies DM6 and DM13 of the Development Management Plan, which have been subject to a full SA/SEA
- b) The SPD provides an interpretation of existing policy and only supplements current guidance
- c) The SPD will have no significant environmental effects

5. Habitats Regulations Assessment

5.1 Local Authorities must also determine whether or not the contents of a plan will result in significant impacts on the integrity of internationally designated sites of nature conservation importance, or European sites.

5.2 The need for Habitats Regulations Assessment (HRA) is set out within the [Habitats Directive \(92/43/EEC\)](#) and an appropriate assessment is required by Regulation 102 of the [Conservation of Habitats and Species Regulations \(2010\)](#) (as amended) for all plans and projects which may have likely significant effects on a European site and are not directly connected with or necessary to the management of the European site. A screening assessment is necessary to determine whether a plan or project would have significant adverse effects upon the integrity of [European sites](#) and if further AA is required.

5.3 European sites include [Special Areas of Conservation \(SAC\)](#), [Special protection Areas \(SPAs\)](#) and [listed Wetlands of International Importance \(Ramsar sites\)](#). A HRA is also required as a matter of UK Government policy for potential SPAs, candidate SACs and proposed Ramsar sites for the purposes of considering plans and projects which may affect them.

5.4 The stages of the HRA process are:

- Stage 1 – Screening: To test whether a plan or project either alone or in combination with other plans and projects is likely to have a significant effect on an international site;
- Stage 2 – Appropriate Assessment (AA): To determine whether, in view of an international site's conservation objectives, the plan (either alone or in combination with other projects and plans) would have an adverse effect (or risk of this) on the integrity of the site with respect to the site structure, function and conservation objectives. If adverse impacts are anticipated, potential mitigation measures to alleviate impacts should be proposed and assessed;
- Stage 3 – Assessment of alternative solutions: Where a plan is assessed as having an adverse impact (or risk of this) on the integrity of an international site, there should be an examination of alternatives (e.g. alternative locations and designs of development); and,
- Stage 4 – Assessment where no alternative solutions remain and where adverse impacts remain: In exceptional circumstances (e.g. where there are imperative reasons of overriding public interest), compensatory measures to be put in place to offset negative impacts.

5.5 The Regulations require consultation with the appropriate nature conservation body on any screening report.

6. Previous HRA Work

6.1 A HRA has been produced for the Core Strategy in relation to all European sites within 15km of the Borough boundary (see Appendix 2). The Screening Report from June 2011 either screened policies out or in. A full AA was then produced for those policies screened in and appropriate avoidance and mitigation measures suggested. It was deemed that for the relevant policies that the Flood Risk SPD supports (CS26: Flooding), an AA was not required. This also applies to the relevant policies (DM6 and DM13) of the Development Management Plan. Please see the relevant HRAs for the full account of the process.

7. HRA Screening Assessment and Reasons

7.1 The proposed document will provide additional detail and guidance to supplement Policy CS26: Flooding of the Core Strategy and Policies DM6 and DM13 of the Development Management Plan. It will not contain any new policies or proposals, or influence the delivery or spatial distribution of development. It will give advice and guidance to applicants about the Council's approach to development and flood risk. Natural England was consulted on a draft screening report as the appropriate nature conservation body between 20 August and 25 September 2015. Their response is set out in Table 1.

- 7.2 On this basis, the Council considers that the Flood Risk SPD alone is not likely to have a significant adverse effect on any European site. In considering whether the document could work in combination with other plans and programmes, it is reasonable to conclude that the potential effects of the document 'in combination' have been considered through the Council's previous HRA work for the Core Strategy and the Development Management Plan. Any in combination effects identified were screened out for the policies relevant to this SPD.
- 7.3 The Flood Risk SPD will therefore have no significant impacts alone or in combination on the integrity of any European sites.

Appendix 1: Screening Assessment for the Flood Risk SPD

SCHEDULE 1 Regulations 9(2) (a) and 10(4) (a) of the Environmental Assessment of Plans and Programmes Regulations 2004 - CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1. The characteristics of plans and programmes, having regard, in particular, to-

Criteria	Elmbridge Borough Council response	Is there a significant effect on the environment?
(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	The SPD does not set the framework for development with regard to its location, size, nature or operating conditions. The document provides information about flood risk in the Borough as well guidance on how to prepare a FRA as part of a planning application. It supports the implementation and adds detail to the higher level policies in the Core Strategy (Policy CS26: Flooding) and Development Management Plan (Policies DM6 and DM13). These set the framework for development and have been subject to SA/SEA.	No
(b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy	The SPD does not influence other plans or programmes. It provides supplementary guidance on policies already outlined in the Core Strategy (Policy CS26) and Development Management Plan (Policies DM6 and DM13), which have been subject to SA / SEA.	No
(c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development	The SPD supports the integration of environmental considerations by encouraging the early assessment and consideration of flood risk in the design of developments. This will promote sustainable forms of development by avoiding, managing and mitigating the impact of flood risk both to and from new developments. It will not have any significant effects over and above those covered by higher level policies.	No

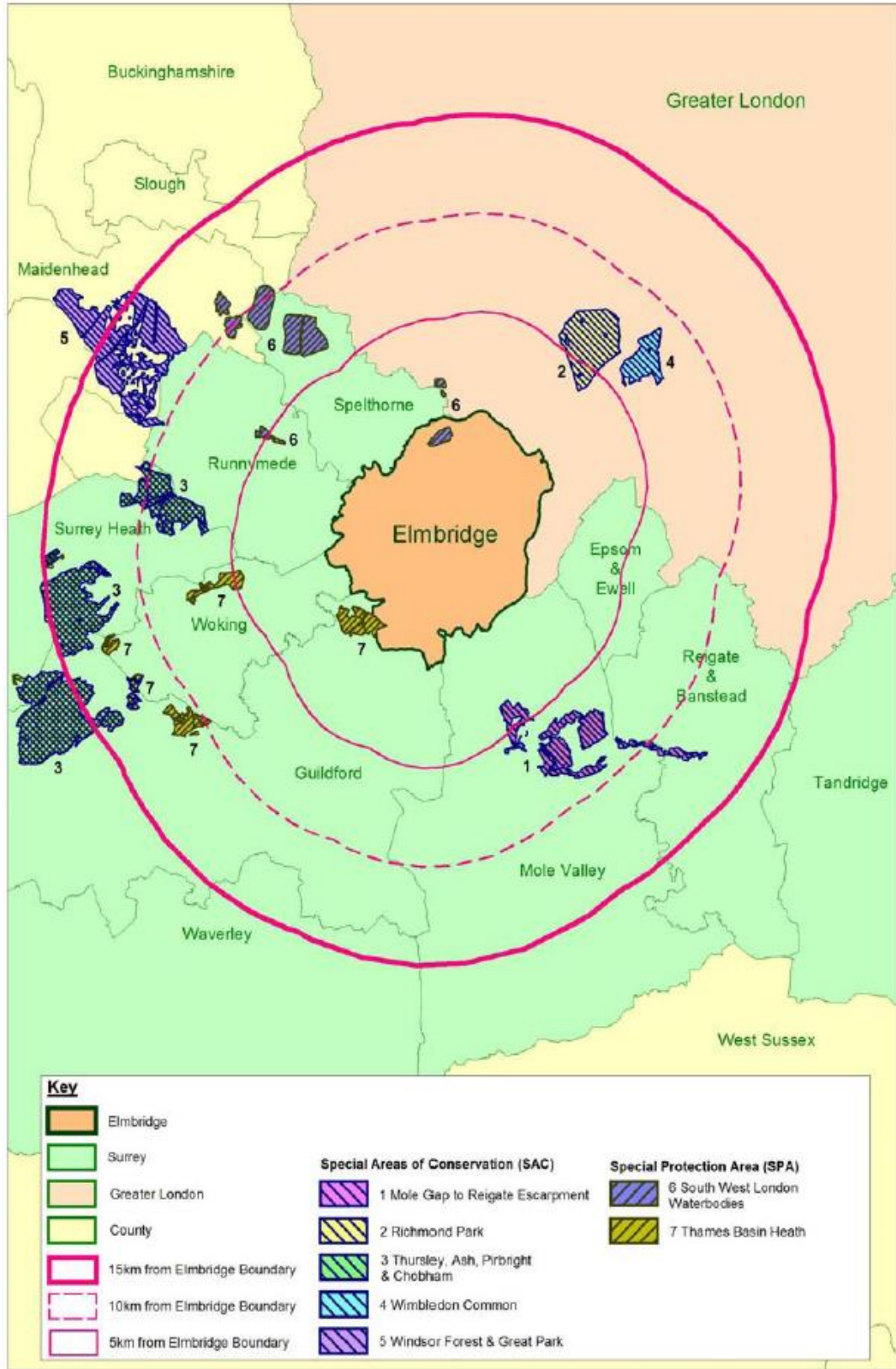
(d) environmental problems relevant to the plan or programme	Any environmental problems associated with flood risk have been addressed in higher level policies and the SPD seeks to provide additional guidance to support implementation.	No
(e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection)	The SPD has no direct relevance for Community legislation on the environment.	No

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to-

Criteria	Elmbridge Borough Council response	Is there a significant effect on the environment?
(a) the probability, duration, frequency and reversibility of the effects	The SPD will have a positive effect in relation to reducing the risk of flooding to and from new developments through the planning process.	No
(b) the cumulative nature of the effects	The SPD aims to assist in the combating of cumulative effects of new development on flood risk.	No
(c) the transboundary nature of the effects	The SPD provides guidance for developments within the boundaries of Elmbridge Borough. However, it is likely that it will contribute to a reduction in flood risk in the wider area.	No
(d) the risks to human health or the environment (for example, due to accidents)	The SPD seeks to ensure that risk to human health is minimised through the incorporation of appropriate mitigation techniques to ensure that developments are safe and do not increase flooding elsewhere.	No

Criteria	Elmbridge Borough Council response	Is there a significant effect on the environment?
(e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected)	The SPD relates only to new development over the plan period to 2026 and to those areas of the Borough affected by flooding.	No
(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; or (iii) intensive land-use	The SPD will assist in limiting the impact of flooding but will not have any significant effect on the natural characteristics of the area or environmental quality standards.	No
(g) the effects on areas or landscapes which have a recognised national, Community or international protection status	The SPD will not directly affect any national, Community or international areas or landscapes.	No

Appendix 2: European sites within 15km of Elmbridge Borough boundary



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