

Case Officer: Mr Ethan Bonthron
Gravesham Borough Council

Sent by email to:
Planning.reps@gravesham.gov.uk

16th October 2024

Dear Ethan

20240544: Application to determine if prior approval is required for a proposed; Erection of a winery building and hardstanding for Agricultural or Forestry use of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 6.

Land At Cobham House Vineyard, Gold Street, Cobham, Gravesend

Thank you for your recent consultation on the above. The following comments are on behalf of the Kent Downs National Landscape (NL) Unit and as such are at an officer level and do not necessarily represent the comments of the whole Kent Downs NL partnership. The legal context of our response and list of National Landscape/AONB guidance is set out at Appendix 1 below.

On 22 November 2023, all designated Areas of Outstanding Beauty (AONBs) in England and Wales were renamed 'National Landscapes' (NLs). Accordingly, the Kent Downs AONB is now the Kent Downs National Landscape. Its legal designation and policy status remain the same.

Also of note is the changes introduced through the Levelling-Up and Regeneration Act 2023, which came into force on 26/December 2023. The Act amends the Countryside and Rights of Way Act, which is the primary legislation relating to AONBs and replaces the previous Duty of Regard to AONBs set out at S85 with a new, strengthened requirement that:

'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'. (Part 12 - Miscellaneous; Section 245. Protected Landscapes; paras (5) - (10).

This clearly places a much stronger duty on relevant authorities, which includes local authorities, to ensure that their actions and decisions seek to conserve and enhance AONBs, marking a significant change to the legal context of AONB policy.

Further advice is provided in Appendix 2.



**Kent Downs
National
Landscape**

**Kent Downs
National Landscape**

The Granary
Penstock Hall Farm
Canterbury Road
East Brabourne
Ashford, Kent TN25 5LL
01303 815170
mail@kentdowns.org.uk
kentdowns.org.uk

Anglesey
Arnside and Silverdale
Blackdown Hills
Cannock Chase
Chichester Harbour
Chilterns
Clwydian Range
Cornwall
Cotswolds
Gower
Cranbourne Chase and
West Wiltshire Downs
Dedham Vale
Dorset
East Devon
Forest of Bowland
Howardian Hills
High Weald
Isle of Wight
Isles of Scilly
Kent Downs
Lincolnshire Wolds
Llyn
Malvern Hills
Mendip Hills
Nidderdale
Norfolk Coast
North Devon
North Pennines
North Wessex Downs
Northumberland Coast
Quantock Hills
Shropshire Hills
Solway Coast
South Devon
Suffolk Coast and Heaths
Surrey Hills
Tamar Valley
Wye Valley

On 22nd November 2023, all AONBs in England and Wales were renamed National Landscapes. The Kent Downs National Landscape is the new name for the Kent Downs AONB.

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National Planning Policy

The application site lies within the Kent Downs National Landscape. The application therefore needs to be tested against the purpose of the designation, to conserve and enhance natural beauty and the way that this purpose is represented in national and local policy. Section 85 of the Countryside and Rights of Way Act 2000, as amended by the Levelling Up and Regeneration Act, requires that local authorities 'must seek to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty' in making decisions that affect the designated area.

The National Planning Policy Framework (NPPF) paragraph 182 requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas. The scale and extent of development within these designated areas should be limited.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date (for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

- "i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant policy in the Framework is paragraph 182. A court of appeal case¹ confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or 'tilted balance' expressed in ii) above should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF paragraph 182.

The national PPG revised in 2019 provides additional guidance on new development in National Parks and AONBs (Paragraph: 041 Reference ID: 8-041-20190721). This specifies that 'all development within nationally protected landscapes needs to be located and designed in a way that reflects their status as landscapes of the highest quality'.

Major Development

In the event that the decision-maker concludes that development is 'major' in terms of its impact on the AONB, paragraph 183 of the NPPF states that "Planning permission should be refused for major development⁶⁴ other than in exceptional circumstances, and where it can

¹ Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Footnote ⁶⁴ states: "For the purposes of paragraphs 182 and 183, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined".

The Kent Downs National Landscape Team does not consider the proposal to represent a 'major development'.

Local Planning Policy

Adopted Gravesham Local Plan Core Strategy policy CS12 seeks to conserve, restore and enhance the landscape character of the Borough and requires that the greatest weight is given to the conservation and enhancement of the landscape and natural beauty of the Kent Downs AONB and its setting.

Kent Downs AONB Management Plan

Under the Countryside and Rights of Way Act, local authorities are required to prepare an AONB Management Plan which must "formulate the policies for the management of the AONB and for carrying out their functions in relation to it". The Kent Downs National Landscape Team produces a Management Plan on behalf of the local authorities within the National Landscape. The Kent Downs Management Plan, Third Revision 2021 to 2026 has been adopted by all the local authorities in the Kent Downs, including Gravesham Borough Council. The Management Plan sets out the policy for the conservation, enhancement and management of the National Landscape in a series of aims, actions and Principles.

The national Planning Policy Guidance, 2019, confirms that Management Plans can be a material consideration when assessing planning applications ([Paragraph: 040 Reference ID: 8-040-20190721](#)) and this view is confirmed in previous appeal decisions, including APP/U2235/W/19/3232201, Cossington Fields Farm North, Bell Lane, Boxley, Maidstone where at paragraph 5 of the Inspectorate's decision letter it is stated that "I am mindful of the policies contained within the Kent Downs AONB Management Plan (2014-2019) requiring development to conserve and enhance natural beauty of AONB to which I attach substantial weight." The decision can be downloaded at: <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3232201>

The following principles from the Management Plan are considered to be of particular relevance to the application:

MMP2 The Kent Downs AONB is a material consideration in plan making and decision taking, and so local authorities will give a high priority to the AONB Management Plan vision, aims,

principles and actions in Local Plans, development management decisions, planning enforcement cases and in taking forward their other relevant functions.

SD1 Ensure that policies, plans, projects and net gain investments affecting the Kent Downs AONB take a landscape led approach are long term, framed by the Sustainable Development Goals appropriate to the Kent Downs, cross cutting and recurrent themes, the vision, aims and principles of the AONB Management Plan.

SD2 The local character, qualities, distinctiveness and natural resources of the Kent Downs AONB will be conserved and enhanced in the design, scale, siting, landscaping and materials of new development, redevelopment and infrastructure and will be pursued through the application of appropriate design guidance and position statements.

SD3 Ensure that development and changes to land use and land management cumulatively conserve and enhance the character and qualities of the Kent Downs AONB rather than detracting from it.

SD7 New projects, proposals and programmes shall conserve and enhance tranquillity and where possible dark night skies.

SD8 Ensure proposals, projects and programmes do not negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the Kent Downs AONB.

LLC1 The protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB will be supported and pursued.

FL6 The production, supply and marketing of Kent Downs AONB produce derived from environmentally sensitive management will be encouraged and supported.

FL7 Proposals for conversion from agricultural land to leisure use and the creation of both agricultural and non-agricultural structures must demonstrate that there will be no individual or cumulative negative impact on the landscape character and qualities of the Kent Downs AONB.

Landscape Character

The site lies within the Luddesdown sub-area of the West Kent Downs Character Area as identified in the 2020 Landscape Assessment Update of the Kent Downs AONB. Within this landscape character area, key characteristics are identified as a dip-slope landform of dry valleys running roughly north-south, interspersed with broad undulating ridges and plateaux, extensive blocks of woodland, as well as strips of woodland on valley sides, luxuriant hedgerows and (in places) parkland trees add to the sense of enclosure and of a well-treed landscape. Arable agriculture is the predominant land use, with some pasture. Fields vary in shape and size but are generally hedged. A strongly historic landscape, much of which has seen relatively little landscape change, historic settlements and churches are linked by a network of ancient lanes, within a setting of fields, woodland and historic parkland. Main roads are limited to the periphery, and the lanes which run through it are generally narrow,

quiet and lined with trees or hedges. Some are sunken, particularly where they cut through valley sides.

Relevant Landscape Management Recommendations include:

- Protect the deeply rural character of the area, resisting development which gives it a more urbanised character. This includes retaining the character of rural lanes.
- Manage the extensive new vineyard areas to maximise the potential to enhance landscape and biodiversity.
- Manage hedgerows, including alongside roads, encouraging replanting rather than repair where they have become gappy
- Ensure that any new development around historic villages respects the scale, layout, massing and materials of existing buildings, and also their relationship with the landform. Landscape proposals should reflect local character, using appropriate form, structure and species.
- Restrict further suburbanisation of rural lanes resulting from linear or ad-hoc development.

The application site and its immediate environs are considered to be largely reflective of these identified characteristics and to make a positive contribution to the landscape and scenic beauty of the Kent Downs AONB.

Prior Approval Process

The application is made under the Prior Approval process for an agricultural building. While we recognise that the Council has previously accepted that the proposed building does comprise an agricultural use, we would query this position. The vast majority of the building is proposed for the manufacture of wine, with just a very small proportion proposed to be used in connection with the tending of the vineyard (Tractor and Vineyard equipment). While we agree that viticulture is a legitimate form of agriculture for the purposes of planning legislation, we would comment that the position on whether wineries for the manufacture of wine constitute agricultural buildings is less clear.

As far as we are aware, this assertion is based solely on case law established in *Millington V Secretary of State for Environment, Transport and Regions V Shrewsbury and Atcham Borough Council*: CA 25 June 1999. The scale of the enterprise considered in this case was small, more of a hobby farm scale, not the large, commercial scale that is being proposed at Gold Street. The *Millington* judgement was qualified and states '*the making of wine or cider or apple juice on the scale with which we are concerned is a perfectly normal activity for a farmer engaged in growing wine grapes or apples*' (my emphasis). We are therefore concerned at the interpretation that the judgement is applicable to all scales of winemaking as constituting agricultural development, and would query whether this is based on any other information or whether it has been the subject of a legal opinion?

We would also comment that while the application is made under the Prior Approval process, the application is accompanied by a much greater level of detail than would usually be submitted with such an application, and provides details usually associated with a full planning

application, including detailed plans showing proposed elevational treatments, landscaping and an LVIA.

Impacts on the Kent Downs National Landscape

The proposed building would be located within a relatively recently planted vineyard (that was previously an orchard) on high ground adjacent to Gold Street, a small collection of buildings to the east of the larger settlement of Sole Street. From Gold Street heading east and south to the railway line, the area is remarkably rural in character with no permanent buildings apparent. While the Chatham to London railway is located to the south, this is largely contained within a cutting and is not readily apparent, other than when trains are traversing on the line. A high voltage overhead power line crosses the landscape approximately one kilometre to the east, however this, in our view, has limited detracting influence on the landscape character of the application site.

As identified in the Kent Downs LCA Update, the Luddesdown Sub-area of the West Kent Downs in which the application site lies is generally a tranquil, complex and distinctive landscape, with a peaceful remote feel, strong sense of place and few detracting features. It has a strong sense of time-depth, and the structure of the landscape has remained largely unchanged since the late nineteenth century although recent vineyard planting is generating a notable change to the agricultural patterns of the landscape.

The proposed siting of the building is adjacent to the existing built form at Gold Street. While this is on high ground, and is not associated with any existing agricultural structures, given the wholly undeveloped nature of the surrounding landscape, we consider the proposed siting, adjacent to existing built form, rather than in a location that is more remote from existing structures, to be the most appropriate location for new built form within the available landholding, should the principle be found to be acceptable. While large, the scale and form of the proposed structure is agricultural in nature, and the use of black vertical timber cladding on the walls and black metal sheeting roof are considered appropriate materials in this location with the dark tone helping to assimilate the building into the landscape in longer distance views, particularly from the south, given the treed backdrop. Such materials would also reflect the use of barn tar on traditional agricultural buildings in the Kent Downs.

Activity associated with the manufacture of wine, staff movement, transportation of materials to the site and of the finished product off the site have potential to impact on the relative tranquillity of the Kent Downs National Landscape, one of its identified special qualities, although as the site is located adjacent to a road, albeit a rural lane, and existing built form, this is not a truly isolated location. The proposed building also has potential to impact on the dark night skies of the Kent Downs National Landscape, from the introduction of light into a currently unlit site and in an elevated location. It will therefore be imperative that the recommendations contained in the Lighting Report prepared by Alan Tulla Lighting in June 2024 are adhered to. This includes the recommendations that roof lights should be fitted with automatic blackout blinds which operate when darkness falls and lights on all the building faces should be controlled by movement sensors, meaning all external lighting would be off unless required for safe movement of staff.

The application proposes additional planting as visual mitigation for the new building. This provides for a woodland belt along the northern boundary, additional trees to be incorporated to the proposed hedgerow along the west boundary and two 'woodland belts' or

clumps of trees to the south of the building. While we are supportive of additional planting to help assimilate the building into the landscape and provide for biodiversity net gain, we would comment that the proposed clumps of trees to the south of the building, unrelated to field boundaries or changes in land levels, do not appear to be reflective of the local landscape character and, being unconnected to other trees/hedgerows, fail to maximise opportunities for ecological connectivity.

LVIA

An LVIA has been submitted to accompany the application, produced by Terra Firma. We are in general agreement with the majority of the Assessment.

It is our view however, that the Assessment overplays the impacts of alleged detractors (3.6.2) and their role in reducing the value of the site for perceptual qualities, given that agricultural machinery is not unusual or unexpected in this location, the railway line is largely located within a cutting and the overhead powerlines are not readily visible from much of the site, as borne out in the site photos within the LVIA figs 7 to 10 where the OH line is only just visible in one of the images (Fig 8) and therefore exerts minimal influence over the site.

Given the current undeveloped nature of the site, we also consider that the assessed level of impact on Landscape and Settlement to be underassessed, as a result of the assigned 'low adverse to nil' magnitude of effect, which we consider to be an underassessment.

We also query the 'Definition of significance' reported in the Appendix to the Assessment. For both landscape and visual effects, the Assessment assigns a significant effect only where a Major adverse or Major/Moderate adverse effect is predicted, although at 1.3.1 it is recognised that 'significance may vary with location and context and with the type of proposal'. The GLVIA3 (6.44) advises that there 'there are no hard and fast rules about what makes a significant effect and there cannot be a standard approach since circumstances vary with the location and context and type of proposal'. In this case, given the high sensitivity of the receiving landscape and to recreational visual receptors, we would have expected a lower threshold for a 'Significant effect' than is provided in the Report. It is also important to note that adverse effects on a National Landscape do not have to be classed as 'significant' in order for the great weight required to be attached to their conservation and enhancement as set out in national and local planning policy to apply.

I hope this is of assistance to you. I would be happy to discuss further if this would be helpful.

Yours sincerely



Katie Miller
Planning and Place Manager, Kent Downs National Landscape Team

APPENDIX 1

Planning consultations with the Kent Downs National Landscape Team

Background and context:

The Kent Downs National Landscape partnership (which includes all the local authorities within the National Landscape) has agreed to have a limited land use planning role. In summary this is to:

- Provide design guidance in partnership with the Local Authorities represented in the National Landscape.
- Comment on forward/strategic planning issues-for instance Local Development Frameworks.
- Be involved in development management (planning applications) in exceptional circumstances only, for example in terms of scale and precedence.
- Provide informal planning advice/comments on development control (planning applications) at the request of a Kent Downs National Landscape Joint Advisory member and /or Local Authority Planning Officer.

The Countryside and Rights of Way Act 2000

The primary legislation relating to AONBs is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act, as recently amended by the Levelling Up and Regeneration Act, requires that in exercising any functions in relation to land in an AONB, or so as to affect land in an AONB, relevant authorities, which includes local authorities, must seek to further the purpose of conserving and enhancing the natural beauty of the AONB. Compliance with this requirement can be demonstrated in part by testing proposals against the policies set out in the Kent Downs AONB Management Plan and its supporting guidance (see below).

Relationship of the AONB Management Plan and Development Management

The CRoW Act requires that a management plan is produced for each AONB, and accordingly the first Kent Downs AONB Management Plan was published in April 2004. The third revision Management Plan (2021-2026) has been formally adopted by all the local authorities of the Kent Downs. The Management Plan may be viewed on the Kent Downs website [\[link\]](#).

Under the CRoW Act, the Management Plan is required to 'formulate the (Local Authority) policies for the management of the AONB and for carrying out their functions in relation to it'. The policies of the Kent Downs AONB Management Plan are therefore the adopted policies of all the Local Authorities in the Kent Downs.

The national Planning Policy Guidance, 2019, confirms that Management Plans can be a material consideration when assessing planning applications ([Paragraph: 040 Reference ID: 8-040-20190721](#)) and this view is confirmed in previous appeal decisions, including APP/U2235/W/19/3232201, Cossington Fields Farm North, Bell Lane, Boxley, Maidstone where at paragraph 5 of the Inspectorate's decision letter it is stated that "I am mindful of the

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policies contained within the Kent Downs AONB Management Plan (2014-2019) requiring development to conserve and enhance natural beauty of AONB to which I attach substantial weight." The decision can be downloaded at:

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3232201>

Any Kent Downs National Landscape Unit response to consultations on planning applications will reflect the policies of the Management Plan along with other Kent Downs National Landscape produced guidance which help support the delivery of the principles of the Management Plan, as set out below.

Other Kent Downs AONB/National Landscape Guidance

[Kent Downs AONB Guidance on the selection and use of colour in development – Guidance](#)

The purpose of this guidance is to provide guidance on the selection and use of colour for building development within the National Landscape and its setting. 'Development' includes any building work, ranging from home extensions and conversions through to house building, agricultural and industrial premises, and retail and office buildings. It also includes infrastructure developments associated with transport, flood defences, power generation and distribution, communications and other utilities.

[Kent Downs Landscape Design Handbook](#)

Design guidance based on the 13 landscape character areas in the Kent Downs. Guidance is provided on fencing, hedges, planting, gateways etc. to help the conservation and enhancement of the AONB.

[Kent Downs Renewable Energy Position Statement](#)

Provides a clearly articulated position for the Kent Downs AONB partnership with regards to renewable energy technologies. It recognises that each Local Planning Authority must balance the impact of proposals for renewables on the AONB with all the other material planning considerations.

[Kent Rural Advice Service Farm Diversification Toolkit](#)

Guidance on taking an integrated whole farm approach to farm developments leading to sound diversification projects that benefit the Kent Downs.

[Kent Downs Land Manager's Pack](#)

Detailed guidance on practical land management from how to plant a hedge to creating ponds and enhancing chalk grassland.

[Rural Streets and Lanes - A Design Handbook](#)

Guidance on the management and design of rural lanes and streets that takes the unique character of the Kent Downs into account. This document discusses the principle of shared space and uses examples from around the UK and Europe. The Handbook has been adopted by Kent County Council as policy.

[Managing Land for Horses](#)

A guide to good practice on equine development in the Kent Downs, including grassland management, fencing, trees and hedges, waste management and basic planning information.

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[Kent Farmstead Guidance and Kent Downs Farmstead Guidance](#)

Guidance on the conservation, enhancement and development change of heritage farmsteads in the Kent Downs based on English Heritage's Kent and National Character Area Farmstead Statements. Includes an Assessment method and Design Guidance.

[Kent Downs Setting Position Statement](#)

An advisory document providing guidance on issues of setting including the legislative basis for considering setting, identification of where setting is likely to be an issue and provision of advice on how to mitigate potential impacts.

[The Kent Downs Landscape Character Assessment Update 2020](#)

An update of the original Landscape Character Assessment of the Kent Downs that was published by the Countryside Commission, that identifies 13 different landscape character areas in the Kent Downs, describes their key characteristics and identifies recommended actions, investments and priorities to help with the conservation and enhancement of the Kent Downs National Landscape.

The NPPF and AONBs

National planning policies are very clear that the highest priority should be given to the conservation and enhancement of Areas of Outstanding Natural Beauty. The NPPF confirms that AONBs are equivalent to National Parks in terms of their landscape quality, scenic beauty and their planning status.

Paragraph 182 of the revised NPPF specifies that 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.' It is advised that the scale and extent of development within AONBs should be limited. Paragraph 183 of the NPPF states that major developments should be refused in AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. No definition is given as to what constitutes major development within an AONB, however a footnote to this paragraph states that this is 'a matter for the relevant decision taker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date (for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

- "i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

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Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant policies in the Framework relating to AONBs are paragraphs 182 and 183. A court of appeal case² confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or 'tilted balance' expressed in ii) above) should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF paragraph 182.

The national [Planning practice guidance](#) provides further information on how development within National Landscapes should be approached and advises that all development with Areas of Outstanding Natural Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality. (Paragraph: 041 Reference ID: 8-041-20190721, Revision date: 21 07 2019).

² Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

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APPENDIX 2 : ADVICE ON THE NEW STATUTORY DUTY ON RELEVANT AUTHORITIES, SECTION 245 OF THE LEVELLING UP AND REGENERATION ACT 2023

The Levelling-up and Regeneration Act (2023) amended section 85 of the CROW Act, to create a new duty on public bodies to '*seek to further the purpose of conserving and enhancing the natural beauty of the area*' when discharging their functions in Areas of Outstanding Natural Beauty (now known as National Landscapes). The single purpose of AONB designation is '*the conservation and enhancement of natural beauty*'.

It is anticipated that guidance on the new duty will be published by DEFRA soon. In the meantime, the following advice has been provided by Natural England in respect of the new duty^[1]:

Section 245 (Protected Landscapes) of the Levelling Up and Regeneration Act 2023 places a duty on relevant authorities in exercising or performing any functions in relation to, or so as to affect, land in a National Park, the Broads or an Area of Outstanding Natural Beauty ("National Landscape") in England, to seek to further the statutory purposes of the area. The duty applies to local planning authorities and other decision makers in making planning decisions on development and infrastructure proposals, as well as to other public bodies and statutory undertakers.

It is anticipated that the government will provide guidance on how the duty should be applied in due course. In the meantime, and without prejudicing that guidance, Natural England advises that:

- the duty to 'seek to further' is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered;*
- The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.*
- The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.*

In determining this application, the local planning authority must be able to demonstrate how they have actively sought to further the purpose of conserving and enhancing the natural beauty of this National Landscape. The way in which the purpose of designation might be furthered, or the evidence of the genuine attempt to seek to do so, should be open to scrutiny.

Further guidance can be found in our [Interim Advice Note](#) for LPAs on the new duty.

^[1] Advice provided by Natural England to the Lower Thames Crossing DCO Examining Authority on the implications of the new duty to further, Annex 2 of letter dated 15th December 2023 [link](#)