

Case Officer: Alex Stafford
Folkestone & Hythe District Council

Sent by email to:
planning@folkestone-hythe.gov.uk

13th March 2024



**Kent Downs
National
Landscape**

**Kent Downs
National Landscape**
The Granary
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Dear Alex

24/0125/FH: Land adjoining 385 Canterbury Road, Densole, Folkestone

Outline planning application with all matters reserved (except for access and layout) for a proposed residential development of 41 no. dwellings (Use Class C3).

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.

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

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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 176. 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".

Local Planning Policy

The District's Spatial Strategy, as set out in Policy SS1 of the Core Strategy Review advises that in respect of the North Downs Area, within which the application site lies:

'Within the Kent Downs AONB development will be limited to consolidating Hawkinge's growth and sensitively meeting the needs of communities at better-served settlements. Major development will be refused within the AONB other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest, in accordance with the National Planning Policy Framework.'

Policy CSD4 of Folkestone and Hythe's adopted Core Strategy Review requires planning decisions to have close regard to the need for conservation and enhancement of natural beauty in the AONB, which will be given the highest status of protection in relation to these issues. This is also reflected in policy NE3 of the Places and Policies Local Plan which requires the natural beauty and locally distinctive features of the AONB and its setting to be conserved and enhanced and proposals to reinforce and respond to the distinctive character and special qualities of the AONB, as well as for development to meet the policy aims of the AONB Management Plan.

Policy ND8 of the Places and Policies Local Plan allocates the site for residential development.

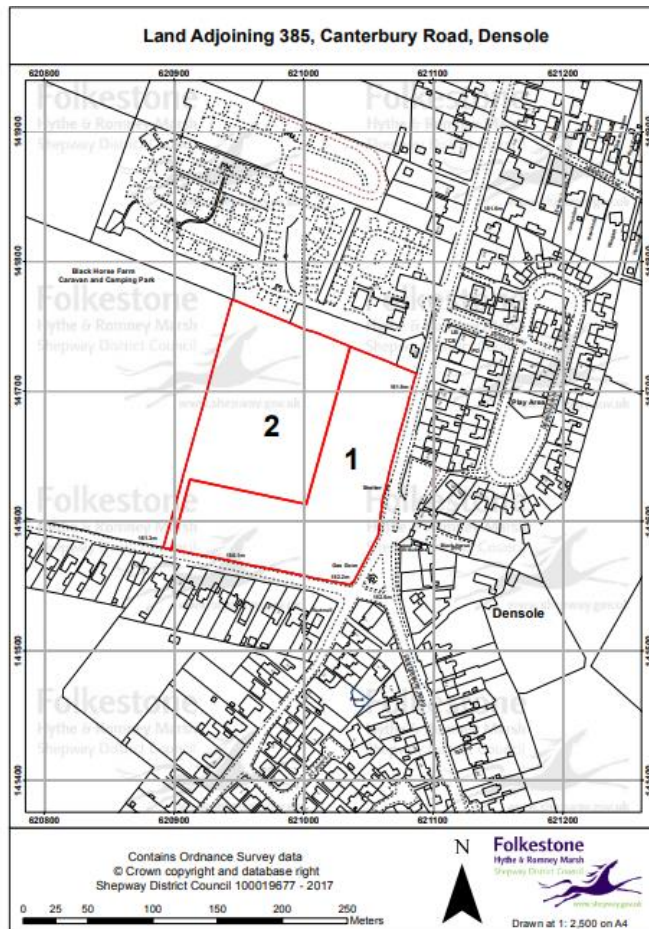
Relevant extracts of the background text to the allocation include:

7.90 As the site will provide a frontage onto Canterbury Road, development should facilitate a speed limit reduction, footway improvements and a gateway feature as part of its contribution to highway improvements. The site promoter will be required to enter into discussions with Kent County Council and Kent Police as part of the planning application process.

7.91 The site is divided into two parcels; Site 1 is 1.5 ha in size and is considered suitable for 25 dwellings, depending on the size and layout. Development here is proposed at a low density because of its setting in the Kent Downs AONB. The design of proposals should reflect the guidelines set out in the Kent Downs AONB Landscape Design Handbook and Rural Streets and Lanes Design Handbook. In addition it is particularly important that within the AONB the

design is inspired by the local character (Policy HB2: Cohesive Design) and new lighting should also be controlled to help conserve dark night skies (Policy NE5: Light Pollution and External Illumination).

7.93 Site 2 is proposed for allotment gardens, subject to demand and discussions with the parish council regarding management and adoption. If there is no demand for allotments then Site 2 should remain as agricultural land.



Picture 7.13 Land adjoining 385 Canterbury Road, Densole

Policy ND8 Land adjoining 385 Canterbury Road, Densole

Site 1 is allocated for residential development with an estimated capacity of 25 dwellings; Site 2 is considered suitable for allotments if there is demand or to remain as agricultural land. Development proposals will be supported where:

1. The proposal achieves the highest quality design of both buildings and surrounding space and reinforces local rural distinctiveness through layout, design, scale and the use of high quality materials to help maintain the Kent Downs Area of Outstanding Natural Beauty as a special place;
2. Existing trees and hedgerows within and around the site boundary are retained and enhanced unless required for access;
3. The western building edge is fragmented and softened with a sensitive landscape buffer;

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4. Open spaces and planting are used to provide a visual link to the countryside and an attractive backdrop to development;
5. The proposal complements the surrounding street pattern and urban grain, fronting dwellings onto existing streets, that are set back from the existing built line with front gardens (similar to those in the immediate area) and following the existing built edge;
6. Developments fronts onto Coach Road and Canterbury Road with a single access point onto each road;
7. The development includes a 'green corner' on the south east corner of the site that builds a focal point for Densole. This 'green space' should acknowledge the existing triangular road island and include sensitive planting to soften the development and provide interest. The new dwellings adjacent to this green space should address it;
8. The public right of way is retained and enhanced;
9. At least 1-2 self-build or custom build plots are provided on site in accordance with Policy HB4: Self-build and Custom Housebuilding Development;
10. Traffic calming measures, new footpaths and crossing points are provided to link in with the existing public rights of way network;
11. The archaeological potential of the land is properly considered and measures agreed to monitor and respond to any finds of interest;
12. Measures are taken to avoid pollution to groundwater;
13. A connection is provided to the local sewerage system at the nearest point of adequate capacity, in collaboration with the service provider; and
14. Access is maintained to the existing underground sewerage infrastructure for maintenance and up-sizing purposes.

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 Unit 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 Folkestone and Hythe District 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.

SD9 The particular historic and locally distinctive character of rural settlements and buildings of the Kent Downs AONB will be maintained and strengthened. The use of sustainably sourced locally-derived materials for restoration and conversion work will be encouraged. New developments will be expected to apply appropriate design guidance and to be complementary to local character in form, siting, scale, contribution to settlement pattern and choice of materials.

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.

Landscape Character

The site lies within the the East Kent Downs Landscape Character Area, one of the 13 character areas identified in the Landscape Character Assessment of the Kent Downs, recently updated and within this in the Alkham sub-area. Summary characteristics of this LCA are identified as including the rounded chalk plateau, dissected by a series of parallel narrow dry valleys, extensive woodland blocks particularly on ridge tops and strips of woodland on valley sides, shaves, copses and hedgerow trees throughout, a dominant land uses of arable agriculture with variable field patterns – generally larger on ridges than in the valleys, scattered historic buildings including churches, manors, country houses, farms and cottages, relatively sparse settlement of scattered farms and occasional nucleated villages, often of brick and flint construction, a dense network of historic roads and tracks, including Prehistoric routeways, Roman roads medieval drove roads and Turnpikes, sunken single-track lanes are also characteristic. A relatively tranquil part of the Kent Downs AONB, with a strongly rural feel, views are often linear and channelled by landform; there are long views from high ground, overlooking adjacent valleys.

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Landscape Management Recommendations for this area include:

- protecting non-designated historic landscape features such as lanes and field patterns, particularly where they are threatened with highways works or other development,
- protect the small scale, isolated pattern and rural character of settlements within this LCA,
- protect the isolated nature of farmsteads, protect open views and long views along valleys, avoiding the introduction of new developed elements into these views,
- protect tranquillity, resisting developments which increase levels of noise and movement in the landscape, and maintain the remote, undeveloped qualities of the valleys
- continue to promote best practice with regard to equine management, work with Local Authorities to require and condition best practice, where planning permission is granted for a change of use from agricultural to equine management.
- promote high design standards for rural developments to ensure that they make a positive contribution to landscape character, for example through careful choice of materials, and an appropriate scale and massing of building. Seek the sympathetic use of local materials – brick, tile and flint.
- Ensure that high quality design of settlement edges is integrated into any plans for development within the LCA or on its periphery.
- Promote landscape enhancements and the mitigation of effects in and around recreational facilities (e.g. golf courses, caravan sites and Lydden motor circuit) to aid their integration into the landscape

Impacts on the Kent Downs National Landscape

The site is allocated for residential development in the Local Plan, the policy unequivocally states that built development is only appropriate on the part of the site adjoining the two street frontages, with the land to the rear to be either developed as Allotments, or if there is no need for this, then the land should remain undeveloped. The policy is also clear that dwellings should be sited so as to front onto Canterbury Road and Coach Road with criterion 5 specifying the requirement that *'The proposal complements the surrounding street pattern and urban grain, fronting dwellings onto existing streets, that are set back from the existing built line with front gardens (similar to those in the immediate area) and following the existing built edge.'*

The application proposal is wholly in conflict with these policy requirements, proposing new development on the part of the site that is identified in the policy to remain devoid of development and failing to provide a development that complements the surrounding street pattern and grain, instead proposing a more suburban form of layout that fails to respect the traditional street pattern of the Kent Downs National Landscape, nor that of Densole, where only more recent developments that has taken place follows a 'cul de sac' pattern that fails to contribute to the local distinctiveness of settlement pattern and should therefore, not be used as justification for replication and a further deterioration in local distinctiveness. This is recognised in the LVIA submitted in support of the application, where it is noted that in terms of local character *'Linear development of villages along access roads is also characteristic. The site is at the confluence of local arterial roads and at a nexus in the established settlement pattern.'*

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Furthermore, the proposed increase in site area over and above that allocated for built form in the Local Plan and subsequent significant uplift in proposed housing numbers to 41 in our view now represents 'major development' for the purposes of assessing the proposal under NPPF paragraph 183 as well as policy SS1 of the Core Strategy, given the current undeveloped nature and countryside character of the site.

NPPF paragraph 183 requires permission to be refused for major development other than exceptional circumstances and where it can be demonstrated that the development is in the public interest. This requirement is also repeated in Folkestone and Hythe's Core Strategy, policy SS1. As indicated in paragraph 183 of the NPPF, consideration of the exceptional circumstances and public interest tests for major development applications should include an assessment of:

1. the need for the development;
2. the cost of – and scope for – developing outside the AONB or meeting the need in some other way;
3. detrimental effects.

The requirement for major development to be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest clearly sets a very high bar. This matter is not addressed in the Planning Statement accompanying the planning application and we do not consider that the proposal does represent either exceptional circumstances or is in the public interest; both tests need to be met.

However, if not withstanding the above concerns, the Council reaches a different view and does not consider the scale of development to represent major development and accepts the principle of the development of both sites 1 and 2, while we remain concerned that the proposed layout fails to reinforce local distinctiveness by comprising a suburban layout that does not reflect the local traditional settlement pattern, the relative low density across the site, potential range and mix of unit types and sizes and incorporation of significant areas of open space within the site is welcomed. While recognising that the application is made in outline at the moment, with design deferred to a later stage, the extent of frontage parking illustrated on the masterplan to the front of units 26 to 36 is however of concern as it would result in this part of the development appearing to be dominated by car parking due to the provision of the majority of parking spaces to the front of the proposed houses. This is not a traditional parking layout in the Kent Downs and alternative, more appropriate solutions such as parallel roadside parking or appropriately located parking courtyards should be sought.

The use of buff brick and grey slate tiles put forward in the palette of materials in the Design and Access Statement is considered wholly inappropriate. Bricks in the Kent Downs are predominantly rich hues of reds and oranges with occasional use of burnt headers. The roofscape of settlement in the Kent Downs is one of its key defining built characteristics and in order to embed a sense of place in the redevelopment it is critical for the new roofscapes to reflect and contribute to this. Clay rooftiles are the prevalent roofing material in the Kent Downs. Artificial grey tiles/slate are therefore inappropriate. Any weatherboarding should be timber. It is not considered (as suggested in the D & A Statement) that 'convincing timber

look alike' is appropriate. Fibre cement cladding boards do not retain the traditional local characteristics of natural timber weatherboard and its use dilutes the local distinctiveness of the Kent Downs and results in a generic appearance and would not comply with the requirements of criterion one of policy ND8 for '*the use of high quality materials to help maintain the Kent Downs Area of Outstanding Natural Beauty as a special place*'.

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 Unit

APPENDIX 1

Planning consultations with the Kent Downs National Landscape Unit

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.

<https://explore-kent-bucket.s3.eu-west-1.amazonaws.com/uploads/sites/7/2021/11/16141210/The-Kent-Downs-AONB-Management-Plan-2021-2026-Adopted.pdf>

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.

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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>

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

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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.

[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 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 proposed⁶; 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.

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.

^[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](#)