



**Kent Downs
National
Landscape**

NEW DUTY TO FURTHER

INTERIM ADVICE NOTE

FOR

LOCAL PLANNING AUTHORITIES IN THE KENT DOWNS

March 2024

Background

In December 2023, a [new statutory duty](#) was placed on all public bodies and statutory undertakers which requires 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 must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'*.

The new duty is applicable to all public and statutory bodies and other relevant authorities and it applies to all decisions and actions that may affect the Kent Downs National Landscape, not just those relating to planning, countryside and environmental issues. This Advice Note is however intended to provide specific guidance on the implication of the new duty for local planning authorities, and how they can ensure that they have complied with their statutory duty. More general guidance for other relevant authorities is provided in a separate Advice Note.

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The Legislation

The Levelling-up and Regeneration Act (2023), which became effective on 26th December 2023, amended section 85 of the Countryside and Rights of Way Act 2000, creating a new duty on public bodies.

The amendment, which only affects England, is as follows:

Countryside and Rights of Way (CRoW) Act 2000, Section 85 - General duty of public bodies:

“Any relevant authority exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”

The amendment replaces the previous ‘Duty of Regard’ set out at Section 85 of the CroW Act and is seen as a strengthening of this, as confirmed in the Government’s Explanatory Note to the Amendment to the Bill, where it is advised that ‘*the clause strengthens the duty on certain public authorities when carrying out their functions in relation to these landscapes....*’.

The Levelling Up Act (at s245) also includes a provision that allows the Secretary of State to issue regulations setting out how relevant authorities should comply with the new duty. However, this is a discretionary power, and compliance with the new duty is not dependent on those regulations being published, which it is understood will be unlikely to be until 2026 at the earliest.

Guidance on complying with the new duty

It is anticipated that interim 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]:

^[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](#)
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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.*

Expectations on Local Planning Authorities

Local planning authorities must be able to demonstrate that they have complied with the statutory new duty in all their functions. They should be able to clearly show how they have sought to further the conservation and enhancement of natural beauty in any decision or action that impacts or could potentially impact on the Kent Downs National Landscape. The new duty is intended to ensure that the purposes for which the Kent Downs has been designated as an Area of Outstanding Natural Beauty are both recognised as an essential consideration and pro-actively progressed in reaching decisions that impact on it.

The way in which the duty has been complied with should be recorded and open to scrutiny.

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In line with advice from Natural England (see below), the proposed measures to further the purposes should explore what is possible **in addition** to avoiding and mitigating the effects of any development or action.

As advocated by Natural England in the above guidance, assessing proposals against the aims, objectives and principles of the Kent Downs Management Plan, will assist local planning authorities in considering whether and how the duty is complied with. A component part of the Management Plan is the Kent Downs Landscape Character Assessment Update which should also be referred to. A range of further guidance documents produced by the Kent Downs National Landscape and published on the website may also be of help.

It is the clear expectation that local planning authorities shall make careful reference to the Management Plan and its supporting guidance when exercising the new duty.

[The Kent Downs AONB Management Plan](#)

The Management Plan describes the special qualities and components of the Kent Downs National Landscape, these being aspects of the landscape that are particularly important to the designation and are therefore likely to warrant particular consideration. It sets out the policy for the conservation, enhancement and management of the National Landscape in a series of aims, objectives and principles.

[The Kent Downs AONB Landscape Character Assessment \(LCA\) Update](#)

This document divides the Kent Downs National Landscape into 13 discrete character areas, describing the key characteristics that makes each of these unique. A set of landscape management recommendations are provided for each area which may provide assistance in considering how the purposes of designation can be furthered .

[Additional Guidance documents](#)

A number of additional guidance documents have been produced by the Kent Downs National Landscape Team that provide more specialist guidance on how the Kent Downs can be conserved and enhanced. These include:

[The Landscape Design Handbook](#)

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

[The Kent Downs Rural Streets and Lanes: a design handbook](#)

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[The Kent Downs Farmsteads Design Guidance](#)

[Kent Downs Setting Position Statement](#)

[Kent Downs Renewable Energy Position Statement](#)

Development Management

The new duty introduces an expectation of a higher level of satisfaction on planning authorities that proposals avoid harm to the Kent Downs National Landscape.

In line with the advice of Natural England set out above, planning authorities should be satisfied that measures to further the conservation and enhancement of natural beauty are incorporated in proposals, and that these go beyond simply avoiding or mitigating harm.

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 the Kent Downs 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 and for example recorded in any delegated or committee report.

Consultation of planning applications with the Kent Downs National Landscape Team by a local planning authority does not constitute compliance with the new duty. The Team does not have available capacity to advise on all planning applications within the Kent Downs and will normally only be able to advise on the most significant applications that impact on the National Landscape, in line with the agreed [Planning Protocol](#). It is the responsibility of planning authorities to assess and record how they have complied with the duty.

Planning policy

The new duty should be considered at the outset and throughout any new plan preparation.

It should be applied holistically throughout the plan, for example it could be included as one of the Plan's objectives; including a single policy on the National Landscape does not demonstrate compliance.

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The new duty may provide stronger justification for providing housing and employment land below the Objectively Assessed Need, where meeting the need requires allocations that would not further the purposes of AONB designation.

Promoters of sites that may impact on the Kent Downs National Landscape could be asked to provide evidence to demonstrate how their proposals would help to further the purpose of AONB designation.

The Plan should align with, and help deliver the aims, objectives and principles of the Kent Downs Management Plan.

Enforcement functions

The new duty is relevant in deciding whether or not to investigate potential planning breaches and in deciding whether to pursue breaches and take enforcement action.

It may be appropriate for local planning authorities to update their Planning Enforcement Plans or Protocols to take on board the new requirement for their actions to seek to further the conservation and enhancement of natural beauty of the Kent Downs National Landscape.

For further advice, visit kentdowns.org.uk or email us at mail@kentdowns.org.uk



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