



**Kent Downs
National
Landscape**

Kent Downs National Landscape Setting Position Statement



**An advice note produced by the
Kent Downs National Landscape
Joint Advisory Committee
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1. Introduction

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. In national policy and legislation, the term Area of Outstanding Natural Beauty is still used.

In certain locations, the setting of the Kent Downs National Landscape has great value and was a principal reason for the original designation of the Kent Downs as an Area of Outstanding Natural Beauty. Legislation and guidance as well as appeal decisions confirm that it is appropriate to consider setting in respect of AONBs.

The importance of the Kent Downs National Landscape setting has been recognised in the Kent Downs AONB Management Plan and its subsequent revisions. This position statement is produced as an advisory document, intended to provide further guidance on issues of setting for local planning authorities, land owners and other interested parties. It has been prepared in consultation with and approved by the Joint Advisory Committee for the Kent Downs National Landscape. The statement focuses on ensuring avoidance of harm and the conservation and enhancement of the setting of the National Landscape, through good design and the incorporation of appropriate mitigation measures.

2. The legislative/policy basis for considering questions of setting

National policy

AONBs are designated by the Government to ensure that the special qualities of our finest landscapes are conserved and enhanced. Section 82 of The Countryside and Rights of Way Act (CROW) 2000 confirms that the purpose of AONB designation is to conserve and enhance the natural beauty of the area.

Section 85 of the CROW Act placed a statutory duty on all relevant authorities requiring them to have regard to the purpose of AONBs when coming to decisions or carrying out their activities relating to or affecting land within these areas. This was known as the 'duty of regard'. However changes introduced through the Levelling-Up and Regeneration Act 2023 amends the Countryside and Rights of Way Act, replacing 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 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, including impacts in their setting, marking a significant change to the legal context of AONB policy.

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. An Appeal decision has confirmed that where a proposal is outside of an AONB, the effect on views outside of the AONB, but gained from within the AONB would result in NPPF paragraph 182 being relevant.¹

The NPPF specifically refers to setting in paragraph 182, stating:

'...while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.'

Advice on how to approach development within an AONB setting is expanded on in the Planning Practice Guidance (PPG). This confirms that the previous Duty of Regard is relevant in considering proposals located outside of AONB boundaries, but which might have an impact on their setting or protection², but has not yet been updated to refer to the new Duty to 'seek to further'. The PPG also refers to guidance produced by Defra on the 'Duty of Regard'. Defra's guidance confirms that this can be relevant outside of the AONB boundary³:

"Additionally, it may sometimes be the case that the activities of certain authorities operating outside the boundaries of these areas may have an impact within them. In such cases, relevant authorities will also be expected to have regard to the purposes of these areas".

The PPG goes on to state that:

Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important, or where the landscape character of land within and adjoining the designated area is complementary. Development within

¹ Appeal Ref: APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

² [Planning Practice Guidance Paragraph 039 Reference ID 8-039-20190721, revised 21/07/2019](#)

³ [Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty \(AONBs\) and the Norfolk and Suffolk Broads. Defra \(2005\)](#)

*the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.*⁴

The views out from the chalk scarp of the Kent Downs over its setting was a key reason for the designation of the Kent Downs AONB back in 1968. This feature has remained critical to its value and to public enjoyment ever since and today is recognised as one of its special characteristics and qualities. Section 1.2. of the AONB Management Plan, on 'The special components, characteristics and qualities of the Kent Downs AONB' states:

"The Kent Downs dramatic and diverse topography is based on underlying geology. Key features comprise impressive south-facing steep slopes (scarps) of chalk and greensand....Breath-taking, long-distance panoramas are offered often across open countryside, estuaries and the sea from the scarp, cliffs and plateaux..."

By virtue of the tightly drawn boundaries of the Kent Downs National Landscape, these views are clearly to land beyond the designated area and views from the National Landscape over land lying outside of it are critical to the value of the National Landscape and are central to the reasons why people appreciate it so much.

Further detail on the legislative basis in respect of setting is provided in Appendix A, including specific reference to proposals for renewable energy.

The Kent Downs AONB Management Plan

The Countryside and Rights of Way Act 2000 sets out a requirement for a Management Plan to be prepared and published for AONBs. The Kent Downs AONB Management Plan, third revision 2021 – 2026 sets out the policy for the conservation, enhancement and management of the AONB in a series of aims, actions and principles. Compliance with the Management Plan assists in helping to demonstrate that public bodies have complied with their new duty to 'seek to further'. Setting is a recurrent theme in the Kent Downs AONB Management Plan 2021 – 2026 and is specifically referred to in principle 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."

In addition, setting is relevant to principles SD1, SD2, SD3, SD7, SD9, SD10, SD11 and SD13 of the Management Plan which are reproduced in Appendix B.

⁴ [Planning Practice Guidance Paragraph: 042 Reference ID: 8-042-20190721, revised 21 07 2019](#)

3. High Court/Appeal decisions

There have been various High Court judgements and appeal decisions that confirm that setting of AONBs can be a relevant consideration. Details of these are included at Appendix C.

4. The setting of the Kent Downs National Landscape

The Kent Downs National Landscape comprises a dramatic and diverse landscape that is based on its underlying geology. Landscape features of particular note include south facing steep slopes of chalk and greensand; scalloped and hidden dry valleys, expansive open plateaux, broad steep-sided river valleys and the dramatic, iconic white cliffs and foreshore.

The upland nature of the scarp makes it a prominent feature in the wider landscape, particularly in views towards the scarp from the south. Long distance panoramas are offered across open countryside, particularly from the scarp, primarily in a southerly direction. The Kent Downs National Landscape was designated in part because of these views beyond it into its setting and these views have remained critical to its value and to public enjoyment ever since. The setting of the chalk scarp has long been held to be integral to the experience of the National Landscape and a particularly important element of it that merits protection.

The setting of the Kent Downs National Landscape does not have a geographical border. In most cases, the setting comprises land outside the National Landscape but which is visible from it and from which the National Landscape can be seen. The setting may be wider however, for example when affected by features such as noise and light. In some cases the setting area will be compact and close to the National Landscape boundary, perhaps because of natural or human made barriers or because of the nature of the proposed change. However, the setting area may be substantial for example where there is a contrast in topography between higher and lower ground.

Locations where development and changes to the landscape where the setting of the Kent Downs National Landscape may be more keenly felt include views to and from the:

- Scarp of the Kent Downs to the Vale of Holmesdale - the valley that lies at the foot of the North Downs and incorporates the A20/M20, M26 and M25 corridors
- Views from the Lympne escarpment to the Romney Marsh
- Views from the Greensand Ridge, particularly those over the Weald of Kent and towards the North Downs;

- The highest and most open parts of the National Landscape to the Greater Thames Estuary, the Romney Marsh and Greater London;
- Dover White Cliffs, the English Channel and French coast;
- High Weald National Landscape; and
- Land which has landscape character linked to the Kent Downs such as dry valleys.

Setting can also affect views within the National Landscape, such as where other landscapes are visible constituting part of the view however it may be difficult to distinguish between differences in landscape character. Similarly, development in the setting could detract from associated views within the National Landscape, for example polytunnels could be visible from a distance within the National Landscape, affecting the integrity of internal views of the Kent Downs landscape.

5. Development likely to affect the setting of the National Landscape

Scale, height, siting, use, materials and design are factors that will determine whether a development affects the natural beauty and special qualities of the Kent Downs National Landscape. Incompatibility with surroundings, movement, reflectivity and colour are also likely to affect impact. In most cases, the further away a development is from the Kent Downs National Landscape boundary, the more the impact is likely to be reduced, however a very large or high development may have an impact even if some considerable distance from the National Landscape boundary.

A development may avoid direct physical effects, but introduce other impacts, such as a greater level of traffic, noise and the characteristics of built development or be located outside of the Kent Downs National Landscape but increase urban fringe pressures on land in the National Landscape, potentially affecting land management and the Public Right of Way network.

Examples of adverse impacts on the setting of the Kent Downs National Landscape include:

- development which would have a significant impact on views in or out of the National Landscape;
- loss of tranquillity through the introduction or increase of lighting, noise, or traffic movement or other environmental impact including dust, vibration and reduction in air quality;
- introduction of abrupt change of landscape character;

- loss or harm to heritage assets and natural landscape, particularly if these are contiguous with the National Landscape;
- development giving rise to significantly increased traffic flows to and from the National Landscape, resulting in erosion of the character of rural roads and lanes; and
- increased recreational pressure as a result of development in close proximity to the National Landscape.

It is not only built development or proposals requiring planning permission that can adversely impact on the setting of the National Landscape. Changes in land use and/or land management can also fail to conserve and enhance setting, especially where a change of use of land is of a significant enough scale to cause harm to landscape character. Harm can also occur due to loss of habitat and the resultant impact on biodiversity; the unique landscapes of the Kent Downs and its environs create and contain a rich and distinctive biodiversity which contributes greatly to the natural beauty. Impact would be more severe where habitats or species of importance to the National Landscape are affected. Farm diversification and development activities such as equine facilities, shooting and field sports, alternative crops and non-agricultural enterprises can also have detracting impacts on the characteristics and qualities of the Kent Downs, the harm from which can often be managed by appropriate design and mitigation.

6. Cumulative impacts upon National Landscape setting

Cumulative impacts can also arise from multiple developments within the setting of the National Landscape. Each development may not be harmful in isolation, but taken in conjunction with others proposed, they may result in significant harm. Cumulative impact can occur as a result of increased traffic, noise, vibration, lighting as well as landscape and visual impacts.

Cumulative impacts are a particular concern in the views to and from the scarp of the North Downs to the Vale of Holmesdale. The juxtaposition of the dramatic landform with the transport corridor and the settlements around them on the lower ground mean it is a focus of attention for new development.

Environmental Impact Assessment (EIA) can be an effective tool in helping to assess cumulative impacts of development within the setting of the National Landscape. Where applicable, EIA should consider the in-combination impacts of:

- built and operational development;
- development under construction;
- application(s) permitted but which are not yet implemented;
- submitted applications not yet determined, and which, if permitted, would affect the proposed development; and
- development identified in the adopted and emerging development plan.

Many developments may not be subject to EIA but could still result in cumulative impacts. The Kent Downs National Landscape Team will continue to monitor applications/permissions within the setting to the National Landscape and will support local authorities in understanding the potential cumulative impacts of development upon the National Landscape setting, particularly where impacts may potentially spread across several local authority borders.

7. Conserving and enhancing the setting of the Kent Downs National Landscape

The best way to minimise adverse impacts on the setting of the National Landscape is through avoidance of harm in the first place by making sure that schemes conserve and enhance the setting of the Kent Downs National Landscape. Many issues can be resolved through careful design and incorporation of appropriate mitigation and/or management measures, such as:

- care over orientation, site layout, height, scale and massing of structures and buildings to minimise impact when viewed from the National Landscape;
- appropriate densities to allow for significant tree planting between buildings;
- consideration not just of the site but also the landscape, land uses and heritage assets around and beyond it;
- careful use of colours, materials and non-reflective surfaces;
- restraint and care over the installation and use of external lighting including street lighting, to prevent harm to the dark night skies of the National Landscape. Where essential, lighting should be well-directed and full cut off and of low level in form and lumen intensity;
- the grouping of new structures and buildings close to existing structures and buildings to avoid new expanses of development that are visible and out of context; and

- detailed mitigation and management measures, for example including native landscaping that is locally appropriate (and contributes to Biodiversity Net Gain) and noise reduction.

Further advice on design principles can be found in the Kent Downs AONB publication [‘The Landscape Design Handbook’](#).

Specific advice on appropriate colour choice to assist in new development integrating into the setting of the Kent Downs landscape can be found in the Kent Downs AONB publication [‘Guidance on the use and selection of colour’](#), page 32.

In addition, measures to consider impact on the setting of the National Landscape, such as through Landscape and Visual Impact Assessments should be utilised where appropriate.

8. Conclusions

- Where appropriate, local authorities should take into consideration the setting of the Kent Downs National Landscape when determining planning applications in accordance with their duties under Section 85 of the 2000 CROW Act (as amended by the LURA 2023).
- The Kent Downs National Landscape Team will monitor and comment as appropriate on significant planning applications that impact on the setting of the National Landscape in accordance with the agreed planning protocol. Development likely to result in a negative impact on the setting of the National Landscape will not be supported, unless it can be satisfactorily be mitigated.
- The Kent Downs National Landscape Team will support local authorities in both determining whether a proposal would impact upon the setting of the National Landscape and provide them with evidence, including, if necessary, representation at appeals.
- The Kent Downs National Landscape Team will encourage landowners to adopt practices to ensure protection and enhancement of the setting of the Kent Downs AONB.
- The Kent Downs National Landscape Team will positively support environmental enhancement schemes that improve the setting of the National Landscape Team where all other environmental matters have also been addressed.
- The National Landscape Team will seek to ensure all Local Plans include reference to the importance of protection and enhancement of the setting of the Kent Downs National Landscape within relevant policies.

APPENDIX A

The legislative basis for considering questions of setting

Areas of Outstanding Natural Beauty (AONBs), renamed National Landscapes in 2023, are designated by the Government for the purpose of ensuring that the special qualities of our finest landscapes are conserved and enhanced. In planning policy terms they have the same status as National Parks.

Section 82 of The Countryside and Rights of Way Act 2000 confirms that the primary purpose of AONB designation is to conserve and enhance the natural beauty of the area.

Section 85 places a statutory duty on all relevant authorities requiring them to have regard to the statutory purpose of AONBs when coming to decisions or carrying out their activities relating to, or affecting land within these areas. Guidance on how the implication of this duty and how it may be discharged was issued by Defra in 2005⁵ :

"Additionally, it may sometimes be the case that the activities of certain authorities operating outside the boundaries of these areas may have an impact within them. In such cases, relevant authorities will also be expected to have regard to the purposes of these areas".

Natural England's published spatial planning position considers the protection and enhancement of protected landscapes⁶ :

"Spatial planning policies and decisions should ensure the highest levels of protection and enhancement for England's protected landscapes, habitats, sites and species." The explanatory text states: "Natural England interprets the protection and enhancement of all sites, habitats and landscapes widely. This includes safeguarding their character, qualities and features, including where appropriate, their settings..."

The NPPF, as amended in December 2023 specifically refers to setting in the context of AONBs, stating at paragraph 182:

"..... The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."

The Planning Practice Guidance, at paragraph 039 Reference ID: 8-039-20190721 confirms that the previous Duty of Regard applies to AONB setting (but has yet to be updated to reflect the new Duty to seek to further):

" This duty is particularly important to the delivery of the statutory purposes of protected areas. The duty applies to all local planning authorities, not just national park authorities. The duty is relevant in considering development proposals that are situated outside National Park or Area

⁵ Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Norfolk and Suffolk Broads. Defra (2005)

⁶ Natural England's Spatial Planning Position (2009)

http://www.naturalengland.org.uk/Images/PlanningPosition_tcm6-16604.pdf

of Outstanding Natural Beauty boundaries, but which might have an impact on the setting of, and implementation of, the statutory purposes of these protected areas."

The Planning Practice Guidance was revised in 2019, and now includes advice on how development within the setting of AONBs should be dealt with⁷:

"Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important, or where the landscape character of land within and adjoining the designated area is complementary. Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account."

Paragraph 180 of the National Planning Policy Framework (NPPF 2023) emphasises the importance of protecting and enhancing valued landscapes. A High court ruling (Stroud DC v SSCLG and Gladman Ltd)⁸ establishes that it is not only landscapes protected by legislation such as AONBs or those which are locally designated in a development plan that can be 'valued landscapes'. This is also confirmed in an appeal decision in 2018⁹. Other appeal decisions have also confirmed that land in the setting of an AONB can constitute a valued landscape¹⁰.

For plan making, paragraph 181 of the NPPF 2023 requires allocations to be made on land with the least environmental or amenity value, where consistent with other policies in the Framework.

Paragraphs 10 and 11 of the revised NPPF set out the presumption in favour of sustainable development and what this means for plan makers and decision takers. Paragraph 11 makes clear that this would normally mean approving development proposals that accord with the development plan or where the development plan is absent, silent or relevant policies are out of date granting permission except where:

"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"

or where

"the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed".

Footnote 7 to paragraph 11 confirms that that this includes policies relating to AONBs.

Proposals for renewable and low carbon energy

Proposals of this type can raise particular issues for AONB setting. The Planning Practice Guidance for Renewable and low carbon energy states¹¹:

⁷ Paragraph: 042 Reference ID: 8-042-20190721 Revision date 21 07 2019

⁸ Neutral Citation Number: [2015] EWHC 488 (Admin)

⁹ APP/X2410/W/17/3190236 Land at Melton Road, Rearsby, Leicestershire, LE7 4YR

¹⁰ APP/B1605/W/14/3001717],

¹¹[Paragraph 007 Reference ID:5-007-20140306](#)

"Proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration."

The Overarching Energy National Planning Statement (NPS) EN-1 (November 2023) states:

"5.10.8 The duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. In these locations, projects should be designed sensitively given the various siting, operational, and other relevant constraints. The Secretary of State should be satisfied that measures which seek to further the purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development."

Footnote 58 of the revised NPPF states:

"Except for applications for the repowering and life-extension of existing wind turbines, a planning application for wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan or a supplementary planning document; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been appropriately addressed and the proposal has community support".

Natural England has published Making Space for Renewable Energy: assessing on-shore wind energy development (NE254)¹². This includes the statement *"Natural England regards the setting of protected landscapes as being potentially influential on the conservation of the special qualities of the National Park or AONB concerned."*

This guidance continues *"Spatial plans should include policies that take into account the sensitivity of the setting of protected landscapes." ... "The potential for developments to dominate the setting of protected landscapes requires careful consideration."*

¹² <http://publications.naturalengland.org.uk/publication/38006>

Appendix B

Kent Downs Management Plan 2021 - 2026

Setting is a recurrent theme in the Kent Downs AONB Management Plan 2021-26 and particularly relevant to the following principles:

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.

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.

SD10 Positive measures to mitigate the negative impact of existing infrastructure and growth on the natural beauty and amenity of the Kent Downs AONB will be pursued.

SD11 Major development should avoid the Kent Downs AONB in line with NPPF guidance. Where it is decided that development will take place that will have a negative impact on the landscape character, characteristics and qualities of the Kent Downs AONB or its setting, mitigation and or compensatory measures appropriate to the national importance of the Kent Downs landscape will be identified, pursued, implemented and maintained. The removal or mitigation of identified landscape detractors will be pursued.

SD13 A strategic, landscape led approach to green infrastructure and net gain investments is taken to ensure the recovery, conservation and enhancement of the special characteristics and qualities of the Kent Downs AONB and its setting. The Kent Downs AONB takes a key role in

accommodating net gain investments derived from growth elsewhere where the intended gain cannot be delivered locally.

The Management Plan can be downloaded from the Kent Downs AONB 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>

APPENDIX C –

High Court/Appeal Decisions

The potential for development to impact on the setting of the Kent Downs AONB has been affirmed by the High Court, Planning Inspectorate and the Secretary of State in a number of appeal decisions.

Stroud District Council v Secretary of State for Communities and Local Government, February 2015

A High Court judgement in February 2015 (Stroud District Council v Secretary of State for Communities and Local Government, February 2015)¹³ has confirmed that the landscape and scenic beauty of an AONB can be affected by views out from the designated area. The judgement concludes that paragraph 115 of the NPPF can cover the impact of land viewed in conjunction with the AONB from the AONB:

Para 115 NPPF

'Great weight should be given to conserving 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 landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas and should be given great weight in National Parks and the Broads'

The effect of this judgement is to extend the meaning of the word 'in' to include land outside of designated areas but which can be seen in views from within it.

The 'Kent International Gateway' (APP/U2235/A/09/2096565)

Following a Public Inquiry, the Secretary of State refused a road-rail freight interchange in 2010 in the immediate setting of the Kent Downs scarp at Bearsted. Here, a key reason for the appeal dismissal was substantial harm to the AONB setting:

"The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR18.29–18.52, regarding the impact of the proposed development on the countryside, Special Landscape Area and the AONB. He agrees that the majority of the appeal site is attractive open countryside and that, whilst the noise of the M20/HS1 is a negative feature of the area, the site nonetheless has a strongly rural character and atmosphere (IR18.31). He further agrees that, overall, the proposal would cause substantial harm to the open countryside character and appearance of the site and would be in conflict with relevant development plan policies (IR18.34). The Secretary of

¹³ EWHC 488 Stroud District Council v Secretary of State for Communities and Local Government, February 2015 (CO/4082/2014)

State agrees with the Inspector's conclusion that the appearance and scale of the development would be alien and out of character with the countryside and the existing built-form of neighbouring settlements, and that it would cause substantial harm to the setting of the AONB (IR18.45). Given the importance and value of the open countryside which currently forms the appeal site and of the AONB which adjoins it, and given the harm the proposal would cause to them, the Secretary of State agrees that substantial weight should be given to these matters in the determination of the appeal (IR18.52)."

Waterside Park, Ashford Road, Hollingbourne (APP/U2235/A/14/2224036 & 2229271)

Two appeals for industrial estates on the same site on an agricultural field, located close to junction 8 of the M20 were both dismissed following a Public Inquiry in 2015. The Inspector considered harm would arise both in terms of views northwards towards the AONB and in respect of views southwards from the AONB.

In views from the south towards the AONB, she considered that the scale of the development would appear significant, dominating the foreground such that views to the AONB would be interrupted. She concluded that "*this would have a detrimental impact on the setting of the AONB, that, in my view, would be 'moderate adverse'*".

In terms of the visual impact of the developments, it was considered that the rural character of the site would be lost and that the sensitivity of receptors, particularly walkers using public rights of way within the AONB, would be high and that this harm was a significant factor weighing against the proposals.

The Inspector advised that:

"considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and rights of Way Act 2000."

The conclusion was reached that the environmental harm would be greater than the identified economic advantages and that the adverse impacts would significantly and demonstrable outweigh the benefits.

Land south of Court Lodge Road, Harrietsham (APP/U2235/W/15/3119223)

Here, an appeal for a residential development of 40 dwellings on a site on the edge of Harrietsham, comprising an agricultural field abutting the Kent Downs AONB to the north and west was dismissed.

In considering the appeal, the Inspector noted that although the site was not in the AONB, the National Planning Practice Guidance sets out that the duty to have regard to the purposes of the AONB is relevant in considering proposals that are situated outside an AONB but which might impact on its setting. He felt that the proposal would have a significant and negative effect on landscape quality and that this would not be outweighed by the prospect of additional landscaping within the site. Furthermore, while not located within the AONB, he considered that the site formed part of the immediate setting of it and its openness and appearance gave a clear visual association with land within the AONB. The loss of character and openness as a result of the development would have a clear and negative effect on the setting of the AONB.

In dismissing the appeal, the Inspector concluded that, notwithstanding an undersupply of housing,

“the unacceptable effects of the proposal on the landscape character of the area, including its SLA categorisation and its position at the edge of the AONB, significantly and demonstrably outweigh the benefits that would arise from the proposal”.

Land At Brittain's Lane, Sevenoaks, Kent, TN13 2HL (Appeal Ref: APP/G2245/W/22/3308246)

The appeal was against the refusal of an outline application for up to 70 dwellings, immediately adjacent to the Kent Downs National Landscape. All parties agreed that the site comprised the setting of the Kent Downs AONB.

At paragraph 18, the Inspector advised *'Although the settlement edge reaches closer to the appeal site on three sides, its overall landscape character shares striking similarities with, and is complementary to, the adjoining AONB field..... The specific judgements made at the time the AONB boundaries were drawn, and the reasons for excluding the appeal site from its designation, are unclear. Even so, I consider the appeal site is of value to the landscape character and appearance of the locality, and as a part of its setting, it makes small but nonetheless important contribution to maintaining the natural beauty of the AONB'*

He went on to comment at paragraphs 26 and 27 that *'as the appeal site is in the setting of the AONB, new development is required by paragraph 176 of the Framework to be sensitively located and designed to avoid or minimise adverse impacts on the designated area. The PPG recognises that land within the setting of an AONB could make an important contribution to maintaining natural beauty, and where poorly located or designed, development can do significant harm. Notwithstanding the parameters plans show that the proposed development would be set back from the AONB boundary, there would still be an encroachment of housing, roads and domestic infrastructure to within some 20 metres of it. Consequently, the moderating effect the green and open appeal site provides as part of the AONB setting would be weakened.*

Bearing in mind the size of the AONB, the effect of the appeal scheme on its overall landscape and scenic beauty would be localised. Nonetheless, I do not consider that the appeal scheme would be sensitively located or designed within the AONB setting.

27. The proposed development would not successfully minimise adverse impact on the AONB designated area and would fail to contribute to and enhance the natural and local environment, contrary to paragraphs 174 and 176 of the Framework'.

His conclusion was that the proposal would cause harm to the landscape character of the site and locality and have an adverse impact on the setting of the Kent Downs AONB, albeit that harm would be localised and that the overall harm in terms of landscape character and appearance carried significant negative weight against the proposal.

The appeal was dismissed.

Land west of Northdown Business Park, Ashford Road, Lenham, Kent ME17 2DL (APP/U2235/W/22/3302571 and APP/U2235/W/23/3323246)

Two appeals were determined for the same site against refusal of outline permission for the construction of up to 2,600 and 1,687sqm of employment floor space (use classes B2 general industrial, B8 storage and distribution and E(g)(I-III) Offices to carry out any operational or administrative functions, research and development of products or processes and Industrial processes.

The Inspector considered the effect of the proposal on the character and appearance of the area, including having regard to the proximity and effect on the Kent Downs Area of Outstanding Natural Beauty (AONB) to be a main issue. He noted that the AONB boundary was opposite the appeal site and that the land in the AONB rose providing extensive views to the south, including over the appeal site as well as existing adjacent development. At paragraph 32 of the decision letter, the Inspector concluded '*The appeal site is discernible as an undeveloped space from this higher ground. It makes a modest but worthwhile contribution to the wider landscape and provides a green space adjoining the business development. There are three mature trees on the northern side of the A20 which, in conjunction with the front boundary planting, help to filter views of the site. However, especially in the autumn and winter months, when the leaves have fallen, the site would be more apparent, and the openness of the site would make a greater contribution to the character of the area.*'

'33. The area on the southern side of the A20 is experienced in conjunction with the land to the north and forms part of the setting to this part of the AONB. I am conscious of the Framework requirement that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. The Framework also requires that development

within their setting should be sensitively located and designed to avoid or minimise adverse impacts on AONBs.'

It was the Inspector's view that a scheme for the proposed extent of floorspace and height of buildings in both appeals was unlikely to be able to be accommodated on the site successfully at the reserved matters stage so as to not cause undue harm to the character and appearance of the area, when viewed from the AONB nor that either scheme would be able to incorporate substantial areas of internal landscaping within the site to provide an appropriate framework for the site to protect the setting of the Kent Downs AONB.

At paragraph 46, he concluded that '*For these reasons, the proposal under Appeal B (and Appeal A) would not comply with Principle SD8 of the AONB Management Plan 2021-2026 because the scheme would, in all likelihood and, despite any details at the reserved matters stage, negatively impact on the landscape character, and the setting and views to and from the Kent Downs AONB.'*

Both appeals were dismissed.

Land north of the A20, Ashford Road, Hollingbourne, Kent, ME17 1XE (Appeal Ref: APP/U2235/W/23/3329481)

This appeal, dealt with by public inquiry, established that it is not just views from the National Landscape that can be relevant, but also views towards the designated landscape.

The appeal was against the refusal of outline permission for the erection of a building for storage and distribution with a floorspace up to 10,788sqm. The effects on the character and appearance of the area, including the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB) was identified as a main issue.

At paragraph 46 of the decision, the Inspector commented that while '*some legibility of the AONB scarp would remain, there would be a deterioration in the quality of the views that would have an adverse impact on the setting of the AONB and the ability to appreciate its special qualities, critically the scarps that are a key reason for the designation. Screening designed to mitigate the impact and fixing the maximum height of buildings would reduce the effect, but there would continue to be an adverse residual impact.'*

The Inspector concluded that there would be adverse impacts on the setting of the AONB arising from the reduction in opportunity to appreciate the scarp slope and quality of views (paragraph 51) and that balancing the importance of the scarp slope to the AONB designation against the localised impacts, the adverse impacts identified would be significant and would generate conflict with the Local Plan. He advised, at paragraph 53 that in reaching this conclusion, he had '*paid regard to the duty in s.85*

Countryside and Rights of Way Act 2000 (CROW). There is no guidance on how the amended duty should be applied. However, the harm arising to setting and the importance of the scarps to the AONB designation leads me to conclude that the duty to 'seek to further the purpose of conserving and enhancing...' would not be met by a conclusion of no significant adverse impacts.'

He further expanded, at paragraph 96 that 'the conflict resulting from harm to AONB setting is significant. Whilst the effects are localised, the importance of scarp views to the designation and the relevant statutory duties are important considerations. I have considered the proposal in line with the amended duty at s85 CROW. For the avoidance of doubt, the overall outcome would have been the same had I been considering the duty pre-amendment.

While recognising and giving significant weight to the issues of need and wider economic and social benefits, alongside other benefits, the Inspector concluded that they were not of a level to outweigh the conflict with the development plan, which includes a significant departure from the strategy intended to direct the location of employment uses and the significant harm to the setting of the AONB and the appeal was dismissed.