



**Kent Downs  
National  
Landscape**

**NEW DUTY TO FURTHER  
ADVICE NOTE  
FOR  
LOCAL PLANNING AUTHORITIES IN THE  
KENT DOWNS NATIONAL LANDSCAPE  
January 2026**

## **Background**

In December 2023, a [new statutory duty](#) was placed on ‘relevant authorities’ 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, available on the Kent Downs website.

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

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## 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

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....’*. This has also been accepted in a High Court decision (The New Forest case<sup>1</sup>). The new duty is intended to facilitate better outcomes for National 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. No such regulations have yet been published.

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<sup>1</sup> [New Forest National Park Authority v SSHCLG \[2025\] EWHC 726 \(Admin\)](#)

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## Guidance on complying with the new duty

Guidance on complying the new duty was published by DEFRA in December 2024 [\[link\]](#)<sup>2</sup>. The Guidance confirms that the new duty is relevant to planning matters, including:

- the preparation of Development Plans and associated assessments and documents
- decision making in respect of development management, planning applications and nationally significant infrastructure projects
- development undertaken through permitted development rights where prior approval on relevant planning matters is required when considering the appropriateness of avoidance, mitigation, and compensation measures
- planning appeals and public inquiries.

The National Landscapes Association has also published guidance for Local Planning Authorities on meeting the strengthened duty in any policy-making, decision-making or other actions that affect National Landscapes. This can be viewed [here](#)<sup>3</sup>.

## High Court Judgements

In 2025, two high court judgements considered the application of the new duty in the context of the development management function and have established some points of principle .

### The New Forest case

This case challenged the Secretary of State's decision to allow a planning appeal for a residential extension and included a ground relating to an alleged

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<sup>2</sup> **Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes**, Defra  
Published 16 December 2024

<sup>3</sup> Applying the CRoW Act section 85 duty to 'seek to further the purpose' in National Landscapes (AONBs)  
National Landscapes Association, November 2024 [\[link\]](#)

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failure to discharge the amended duty in deciding the planning appeal<sup>4</sup>. In considering the challenge, Justice Mould clarified that:

- the duty is a strengthened one
- the duty is expressed in qualified terms – “must seek to further” and as such does not mandate fulfilment of the statutory purposes
- however, the duty requires a decision-maker to do more than merely weigh a development’s effect on the purposes in the overall planning balance
- to discharge the duty, a decision-maker must first reach a view as to whether a development is consistent with the furthering of the statutory purposes. If it is not, they must then consider whether a decision to grant could be justified. Such a justification may include mitigation or compensation secured by planning conditions and obligations.

The case also considered whether the new duty requires a decision-maker to address both the conservation and enhancement of a protected landscape’s natural beauty. Notwithstanding the fact that the wording used in the legislation setting out the statutory purposes for Protected Landscapes all adopt the term “conserving and enhancing”, Mould J found no requirement for a decision-maker to expressly consider enhancement in circumstances where they are satisfied that relevant attributes are unharmed by a development.

### The CPRE Kent case

In the second case<sup>5</sup>, also determined by Justice Mould, the application of the duty was considered in the context of a major housing development within the High Weald National Landscape. The challenge was dismissed and Mould J confirmed the principles previously enunciated in the New Forest case. He reinforced that the new duty is not a bar to development, even where some harm is caused, however it does require a decision maker to properly consider and record how the duty has been considered and complied with.

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<sup>4</sup> New Forest National Park Authority v SSHCLH [2025] EWHC 726 (Admin) [\[link\]](#)

<sup>5</sup> R (CPRE Kent) v SSHCLG [2025] EWHC 1781 (Admin) [\[link\]](#)

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## **Expectations on Local Planning Authorities**

The new duty is intended to ensure that the purposes for which a National Landscape has been designated as an area of outstanding natural beauty are recognised as an essential consideration and pro-actively progressed in reaching decisions. Local planning authorities 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 way in which the duty has been complied with should be recorded and open to scrutiny.

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 considered. A range of further guidance documents produced by the Kent Downs National Landscape and published on the website may also be of help. Details of these are provided at Annex A. It is the clear expectation, as set out in the Defra Guidance, that local planning authorities should consider the Management Plan and its supporting guidance when exercising the new duty.

## **Development Management**

The new duty introduces a requirement that, as far as is reasonably practical, planning authorities should seek to ensure that proposals avoid harm to the Kent Downs National Landscape.

As set out in the High Court judgements referenced above, in order to discharge the duty, local planning authorities must determine whether development proposals are consistent with the purpose of conserving and enhancing the national landscape. Where they do not, the local planning authority must consider whether granting permission would be in accordance with the duty. In such cases, the LPA ought to consider whether, and to explain and record why, they have decided that planning permission may justifiably be granted. Consideration of these matters will be informed by the circumstances of the given case, including the nature of the development and the conflict with the purposes 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

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to do so, should be open to scrutiny and for example recorded in any delegated or committee report.

Where conflict with the purpose is identified, the planning authority should also consider whether and if so, how, the proposed development may be mitigated in order to address the identified conflict with the statutory purposes. It may be appropriate to consider whether any compensatory measures are available which might offset the identified conflict with the statutory purposes. The imposition of conditions or the need to obtain planning obligations to secure such measures will also need to be considered.

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 consider, 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.

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 site allocations 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**

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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](https://kentdowns.org.uk) or email us at [mail@kentdowns.org.uk](mailto:mail@kentdowns.org.uk)



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## **ANNEX A - Relevant Kent Downs National Landscape documents**

### [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 \(LCA\) 2020 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](#)

#### [The Kent Downs Farmsteads Design Guidance](#)

#### [Kent Downs Setting Position Statement](#)

#### [Kent Downs Renewable Energy Position Statement](#)

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