



MAIDSTONE BOROUGH COUNCIL LOCAL PLAN EXAMINATION IN PUBLIC

RESPONSE FROM THE KENT DOWNS AONB UNIT

SESSION 4 – ENVIRONMENTAL CONSTRAINTS

3. Policy for the Kent Downs AONB and its setting.

Q 4.5 Does the reasoned justification at paragraph 5.81 and 5.82 accurately reflect the statutory duty and also that the National Planning Policy Framework is national policy and not guidance as stated.

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 primary purpose of AONB designation is to conserve and enhance the natural beauty of the area.

Section 85 of the CROW Act places 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 is known as the 'duty of regard'.

Although the National Planning Policy Framework (NPPF) does not specifically refer to setting in the context of AONBs, the national Planning Practice Guidance (NPPG) confirms that the Duty of Regard is "*relevant in considering development proposals that are situated outside National Park or Area 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.*"¹

The PPG also refers to guidance produced by both Defra and Natural England on the 'Duty of Regard'. Defra's guidance confirms that this can be relevant outside of the AONB boundary² :

¹ Planning Practice Guidance Paragraph 003 Reference ID 8-003-20140306, revised 06/03/2014

² 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)

“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”.

Similarly, Natural England confirms that the conservation of protected landscapes should include safeguarding their setting³ :

“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 importance of the setting of the Kent Downs AONB in respect of land in the foreground of the scarp slope in Maidstone Borough has recently been accepted in three recent appeal decisions:

- APP/U2235/A/14/2224036 and APP/U2235/A/14/2229271, Land south of A20/M20 Link Road Roundabout (Waterside Park), Ashford Road, Hollingbourne, Kent. Hybrid applications for a new industrial estate (alternative schemes). The Inspector concluding that considerable environmental harm through the combined impact on the landscape setting of the AONB and to heritage assets and that the developments would fail to protect the setting of the AONB and therefore would conflict with the aims of S85 of the CRoW Act 2000. The appeals were dismissed.
- APP/U2235/W/15/3119223, Land South of Court Lodge, Court Lodge Road, Harrietsham, Outline application for 40 dwellings. The Inspector concluded that the site forms part of the immediate setting of the AONB and the loss of character and openness of part of the site would have a clear and negative effect on the setting of the AONB and be contrary to advice set out in the PPG. The appeal was dismissed.
- APP/U2235/W/15/3131945, Land west of ham Lane, Lenham, Maidstone. Outline application for 82 dwellings. Here, while allowing an appeal, the Inspector recognised that the sites relative proximity and resulting relationship with the AONB “is a significant consideration for the assessment of any future development of the appeal site”

Therefore, despite there being no specific reference to setting in the context of AONBs in the NPPF, it is considered entirely appropriate and consistent with the statutory duty under S85 of the CRoW Act which underpins national planning policy, as well as the PPG, that both policy and reasoned justification include appropriate levels of protection for the setting of, in addition to, land within the AONBs.

Q.4.6 The Kent Downs AONB Unit seeks that the relevant policy references be to ‘conserved and enhanced’ to be consistent with national policy and the statutory duty in respect of the AONB, why has the word maintained been inserted and what is its purpose?

The AONB Unit is concerned that the incorporation of the word ‘maintain’ implies no improvement or change; removing this implies a much more proactive approach and includes an element of acceptability to change. The original purpose of designating AONBs was to ‘conserve and enhance’ natural beauty. Neither the Duty of Regard at S85 of the 2000 CRoW Act, nor the NPPF or NPPG makes reference to a requirement for ‘maintenance’ of scenic beauty in AONBs. Use of the word ‘conserve’ would be consistent with Para 115 of the NPPF and the CRoW Act 2000.

³ Natural England’s Spatial Planning Position (2009)
http://www.naturalengland.org.uk/Images/PlanningPosition_tcm6-16604.pdf

Q 4.7 Is the policy consistent with national policy for the AONB and should there be reference to national policy for major development in the policy or supporting text?

Subject to deletion of the word ‘maintained’ the AONB Unit considers the policy to be consistent with para 115 of the NPPF that great weight should be given to conserving landscape and scenic beauty in AONBs and confirms that they have the highest status of protection in relation to landscape and scenic beauty. Para 113 of the NPPF requires that distinction should be made between the hierarchy of international, national and locally designated sites so it is right that the AONBs are given stronger protection than the locally designated ‘Landscapes of Local Value’.

There is however no mention of major development in either the policy wording or supporting text. Para 116 of the NPPF is clear that major development should only be allowed in AONBs in exceptional circumstances and where it is in the public interest. It is unlikely that major development would meet the requirements of criterion 5 of policy SP17, however in order to be fully compliant with the NPPF and for clarity, the AONB Unit would support a reference to major development needing to comply with the requirements of para 116 of the NPPF in either the policy or supporting text.

Q4.8 Does policy SP17 (5) seek to provide exactly the same policy to the setting of the AONB as to the designated AONB itself and is that justified?

The AONB Unit agree with the statement contained in para 5.81 that “proposals which would affect the setting of the AONB are not subject to the same level of constraint as those which would affect the AONB itself.” This is reflected in the NPPF at para 116 where the general presumption against major development is applicable in respect of proposals within AONBs only. While it is important that the setting of the AONBs is given an appropriate level of protection, as set out in the Kent Downs AONB Units response to Qn 4.5, a differentiation in policy SP17 between proposals within the AONB and those having the potential to impact on setting would be justified.

Suggested amended wording:

The distinctive character of the Kent Downs Area of Outstanding Natural Beauty and the extent and openness of the Metropolitan Green Belt will be rigorously conserved and enhanced and high priority will be given to the conservation and enhancement of the setting of the Kent Downs and High Weald AONBs

Q 4.9 How would the setting of the AONB be defined?

The setting of the Kent Downs AONB does not have a geographical border. In most cases, the setting comprises land outside the AONB which is visible from the AONB and from which the AONB can be seen. In some cases the setting area will be compact and close to the AONB boundary, perhaps because of natural or human made barriers or because of the nature of the proposed change. However, the setting area maybe substantial for example where there is a contrast in topography between higher and lower ground.

Scale, height, siting, use, materials and design are factors that will determine whether a development affects the setting of the AONB. Incompatibility with surroundings, movement, reflectivity and colour are also likely to affect impact. In most cases, the further away a development is from the AONB 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 AONB boundary.

Locations where development and changes to the landscape where the setting of the Kent Downs AONB may be more keenly felt include views to and from the scarp of the North Downs to the Vale of Holmesdale i.e. the A20/M20 corridor which makes the setting issue particularly relevant to Maidstone Borough, as demonstrated in the recent appeal decisions referred to under Q4.5.

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 AONB but increase urban fringe pressures on land in the AONB, potentially affecting land management and the PRow network.

Examples of adverse impacts on the setting of the Kent Downs AONB include:

- development which would have a significant impact on views in or out of the AONB;
- 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 biodiversity, heritage assets and natural landscape, particularly if these are contiguous with the AONB; and
- development giving rise to significantly increased traffic flows to and from the AONB, resulting in erosion of the character of rural roads and lanes.

Taking these factors into consideration, it is not considered possible to provide an absolute definition for setting of the AONBs, rather proposals would have to be assessed on a case by case basis taking into account both location and the characteristics of the development under consideration. It is considered by the AONB Unit that the text in paras 5.80 and 5.81 adequately deals with this matter.