

Case Officer: Matt Duigan
Swale Borough Council

Sent by email to:
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01 October 2024



**Kent Downs
National
Landscape**

**Kent Downs
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Dear Matt

21/503914/EIOUT: Southern Site. Outline Planning Application for the phased development of up to 577.48 hectares at Highsted Park

Land South and East Of Sittingbourne, Kent

AMENDED PLANS submitted July 2024

Thank you for your recent re-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 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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The Kent Downs National Landscape Team has previously provided a response to the original proposal in a letter dated 8th September 2021 and in response to subsequent amended plans/information on 21st December 2022 and 25th March 2024. The application has now been amended again revised plans and an ES Addendum received.

Amended scheme/supporting documentation

The amended scheme proposes relatively minor changes to the proposal in terms of potential impacts to the Kent Downs National Landscape. The proposed creation of a new motorway junction within the Kent Downs remains unchanged and we are still of the view that this comprises 'major development' for the purposes of assessment under paragraph 183 of the NPPF and Swale Local Plan policy DM24.

No changes are proposed in respect of the employment development but there have been changes to the building heights, densities and parameter plans in respect of the proposed development comprising Highsted Village immediately north of the motorway and therefore close to the Kent Downs National Landscape boundary. These include an enlargement of the sports area adjacent to the NL boundary, a reduction in extent of residential building heights up to 15m, with generally lower heights now proposed on the outer edges of the residential areas in Highsted Village East and West and corresponding lower-density residential development identified here on the density parameter plans.

An ES Addendum submitted in July 2024 seeks to respond to the changes made to the scheme and also to address comments made in the LUC Review of the ES. The proposed amendments to the scheme have not resulted in any change in the assessment of landscape and visual effects within the applicant's amended LVIA within the ES. In response to comments made in the LUC review, no changes in the levels of effect for the landscape receptors are made, however changes to eight visual receptors are noted, including one within the Kent Downs National Landscape, where a significant effect at year 15 (for pedestrians / local residents on Bexon Lane / footpath ZR185) is now reported. This was previously assessed as moderate to moderate/slight adverse and has been amended to substantial to moderate/substantial adverse. We welcome the acknowledgement that the impact was previously considerably underassessed and consider the revision to be a more accurate assessment.

However overall we remain of the view that the conclusions reached in the LVIA in respect of impacts to the Kent Downs National Landscape remain substantially under-assessed for the reasons set out in our original detailed response to the application and assessment of the LVIA dated 8th September 2021.

New Duty to Seek to Further

As noted in our previous consultation response (dated 25/03/2024) and detailed on the front page of this letter, a new statutory duty has been placed on relevant authorities, introduced as an amendment to the Countryside and Rights of Way Act 2000 through the Levelling Up and Regeneration Act. This requires relevant authorities to now *seek to further the purposes of conserving and enhancing National Landscapes* in all their actions. This is applicable to Swale Council in determining the application. We consider that the proposal fails to further

the conservation or enhancement of the Kent Downs National landscape for the reasons set out in our previous consultation responses and we note that this position is accepted by the Applicant, at paragraph 6.135 of the Planning Statement, where it is noted that the impacts of the proposal on the Kent Downs National Landscape would be a '*negative component in the overall planning balance*'. It goes without saying that granting consent for a scheme which causes such an extent of residual harm to the National Landscape *prima facie* does not serve to further the purpose of conserving and enhancing the natural beauty of the National Landscape.

It is important to note that the wording of section 85(A1) is directed solely at the conservation and enhancement of the National Landscape; no other interests are mentioned in that section. Accordingly, it is wrong to suggest that, when considering the mandatory, active duty imposed by section 85(A1), any other, wider benefits of the scheme can be considered. The focus must be solely on the impact of the scheme on the natural beauty of the National Landscape.

While some mitigation measures to reduce the impact of the proposal on the National Landscape are included, such as woodland planting around the proposed new motorway junction and structural planting along the southern boundary of the proposed employment development, this is proposed as necessary mitigation and the proposal as a whole would neither conserve, nor result in any net enhancement of the Kent Downs National Landscape. Therefore, should the Council be minded to approve the application, it is considered that additional measures would need to be secured to ensure compliance with the new duty. In line with advice provided by Natural England on compliance with the new duty¹, this 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. The National Landscape Team would welcome the opportunity to explore what measures might be appropriate to help demonstrate compliance with the duty in the event of the principle of the development being found acceptable by the Council. While we remain of the view the proposal would not further the purposes of conserving and enhancing natural beauty, securing compensatory enhancement could help demonstrate that the Council is complying with its statutory duty to *seek to further* the conservation and enhancement of natural beauty. In view of the significant overall scale of the proposals, which includes an element of 'major development' within the Kent Downs National Landscape, any such measures would need to be of an appropriate corresponding substantial scale in order to meet the statutory requirement. It is suggested that this could include the provision of an appropriate financial sum to be provided to enable investment in the enhancement of the Kent Downs National Landscape elsewhere, potentially to be delivered by the Kent Downs Landscape Team. An alternative measure could be the acquisition/provision and future maintenance of a suitable area of land elsewhere within the Kent Downs, of a size to enable landscape scale enhancement along with the provision of public access. Investments should be made as close as possible to the application site.

Conclusion

The proposed amendments would not result in any reduction of the harm identified to the Kent Downs National Landscape in our original consultation response letter dated 8th

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](#)

September 2021. The introduction of substantial new highways infrastructure within the NL itself and major scale development within its immediate setting, including particularly harmful employment provision, the scale of which would not be capable of being fully mitigated, would fail to meet the key planning policy tests of refusing major development within National Landscapes other in than in exceptional circumstances and conserving and enhancing the landscape and scenic beauty of the Kent Downs.

The Kent Downs National Landscape Team therefore maintains its objection to the application.

I hope the above is of assistance to you. I would be happy to discuss further if this would be of assistance.

Yours sincerely



Katie Miller
Head of Planning and Place, Kent Downs National Landscape Team

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 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".

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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](#)