



## **Kent Downs Area of Outstanding Natural Beauty**

# **Setting Position Statement**



**An advice note produced by the Kent Downs AONB Joint Advisory Committee**

**January 2018**

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## **1. Introduction**

In certain locations, the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB) has great value and was a principle reason for the Kent Downs AONB designation. 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 AONB 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 AONB. The statement focuses on ensuring avoidance of harm and the conservation and enhancement of the setting of the AONB, 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 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.*"<sup>1</sup>

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

The NPPG 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 boundary<sup>2</sup> :

*"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 setting<sup>3</sup> :

*"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..."*

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 also sets out a requirement for a Management Plan to be prepared and published for AONBs. The Kent Downs AONB Management Plan, second revision 2014 - 2019 sets out the aims, policies and actions for the conservation, enhancement and management of the AONB. Compliance with policies of the Management Plan assists in helping to demonstrate that public bodies have complied with their duty of regard. Setting is a recurrent theme in the Kent Downs AONB Management Plan 2014 - 2019 and is specifically referred to in Policy SD8:

*"Proposals which negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the AONB will be opposed unless they can be satisfactorily mitigated."*

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

## **3. High Court/Appeal decisions**

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<sup>2</sup> 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)

<sup>3</sup> Natural England's Spatial Planning Position (2009)

[http://www.naturalengland.org.uk/Images/PlanningPosition\\_tcm6-16604.pdf](http://www.naturalengland.org.uk/Images/PlanningPosition_tcm6-16604.pdf)

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 AONB**

The Kent Downs AONB 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 AONB 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 AONB and a particularly important element of the AONB that merits protection.

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. 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 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.

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 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, together with views from the Lympne escarpment to the Romney Marsh and from the Greensand Ridge;
- the highest and most open parts of the AONB to the Greater Thames Estuary, the Romney Marsh and Greater London;
- Dover White Cliffs, the English Channel and French coast;
- High Weald AONB; and
- Land which has landscape character linked to the Kent Downs such as dry valleys.

Setting can also affect views within the AONB, 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 AONB, for example polytunnels could be visible from a distance within the AONB, affecting the integrity of internal views of the AONB landscape.

## **5. Development likely to affect the setting of the AONB**

Scale, height, siting, use, materials and design are factors that will determine whether a development affects the natural beauty and special qualities 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.

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 Public Right of Way 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 heritage assets and natural landscape, particularly if these are contiguous with the AONB;
- development giving rise to significantly increased traffic flows to and from the AONB, 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 AONB.

It is not only built development or proposals requiring planning permission that can adversely impact on the setting of the AONB. 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 AONB 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 AONB setting**

Cumulative impacts can also arise from multiple developments within the setting of the AONB. 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 AONB. 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 AONB Unit will continue to monitor applications/permissions within the setting to the AONB and will support local authorities in understanding the potential cumulative impacts of development upon AONB setting, particularly where impacts may potentially spread across several local authority borders.

## **7. Conserving and enhancing the setting of the Kent Downs AONB**

The best way to minimise adverse impacts on the setting of the AONB is through avoidance of harm in the first place by making sure that schemes conserve and enhance the setting of the AONB. 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 AONB;
- 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 AONB. 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 (where possible contributing to Biodiversity Action Plan targets) and noise reduction.

Further advice on design principles can be found in the Kent Downs AONB publication 'The Landscape Design Handbook' which can be downloaded at:

<http://www.kentdowns.org.uk/guidance-management-and-advice/landscape-design-handbook>

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

The AONB Unit would welcome the opportunity to enter into any pre-application discussions/consultations to ensure full attention is given to these factors at the earliest opportunity.

## **8. Conclusions**

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

## APPENDIX A

### The legislative basis for considering questions of setting

Areas of Outstanding Natural Beauty (AONBs) 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 2005<sup>4</sup> :

*"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 landscapes<sup>5</sup> :

"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..."

Although the NPPF does not specifically refer to setting in the context of AONBs, the Planning Practice Guidance, at paragraph: 003 Reference ID: 8-003-20140306 states:

"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

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<sup>4</sup> 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)

<sup>5</sup> Natural England's Spatial Planning Position (2009)

[http://www.naturalengland.org.uk/Images/PlanningPosition\\_tcm6-16604.pdf](http://www.naturalengland.org.uk/Images/PlanningPosition_tcm6-16604.pdf)

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.”

Paras. 109 and 115 of the National Planning Policy Framework (NPPF) emphasise the importance of protecting and enhancing valued landscapes.

For Plan making, para. 110 of the NPPF requires allocations to be made on land with the least environmental or amenity value, where consistent with other policies in the Framework.

Paras. 13 & 14 of the NPPF set out what the presumption in favour of sustainable development means for plan makers and decision takers. Para. 14 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) grant permission. However, there are specific exceptions to paragraph 14, namely 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 specific policies in this Framework indicate development should be restricted”.

Footnote 9 to paragraph 14 advises that this includes policies relating to the protection of AONBs.

#### Proposals for renewable and low carbon energy

Proposals of this type can raise particular issues for AONB setting. Planning Practice Guidance for renewable and low carbon energy states<sup>6</sup>:

*“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 states:

*“5.9.12. The duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational, and other relevant constraints...”*

*5.9.13. The fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.”*

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<sup>6</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/225689/Planning\\_Practice\\_Guidance\\_for\\_Renewable\\_and\\_Low\\_Carbon\\_Energy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225689/Planning_Practice_Guidance_for_Renewable_and_Low_Carbon_Energy.pdf)

Footnote 17 of the NPPF states:

“In assessing the likely impacts of potential wind energy development when identifying suitable areas, and in determining planning applications for such development, planning authorities should follow the approach set out in the National Policy Statement for Renewable Energy Infrastructure (read with the relevant sections of the Overarching National Policy Statement for Energy Infrastructure).”

Natural England has published “Making Space for Renewable Energy” – Natural England’s approach to assessing on-shore wind energy development”<sup>7</sup>. 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.*”

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<sup>7</sup> [http://www.naturalengland.org.uk/Images/NEBPU1805Annex2\\_tcm-15152.pdf](http://www.naturalengland.org.uk/Images/NEBPU1805Annex2_tcm-15152.pdf)

## Appendix B

### Kent Downs Management Plan 2014 - 2019

Setting is a recurrent theme in the Kent Downs AONB Management Plan 2014-19 and particularly relevant to the following policies:

**SD1** The need to conserve and enhance the natural beauty of the Kent Downs AONB is recognised as the primary purpose of the designation and given the highest level of protection within the statutory and other appropriate planning and development strategies and development control decisions.

**SD2** The local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced in the design, scale, setting and materials of new development, redevelopment and infrastructure and will be pursued through the application of appropriate design guidance and position statements which are adopted as components of the AONB management Plan.

**SD7** To retain and improve tranquillity, including the experience of dark skies at night, careful design and the use of new technologies should be used. New developments and highways infrastructure which negatively impact on the local tranquillity of the Kent Downs AONB will be opposed unless they can be satisfactorily mitigated.

**SD8** Proposals which negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the AONB will be opposed unless they can be satisfactorily mitigated."

**SD9** The particular historic and locally distinctive character of rural settlement and buildings of the Kent Downs AONB will be maintained and strengthened. The use of locally-derived materials for restoration and conservation work will be encouraged. New developments will be expected to apply appropriate design guidance and to be complementary to local character in form, setting, scale, contribution to settlement pattern and choice of materials. This will apply to all development, including road design (pursued through the adoption and implementation of the AONB Rural Streets and Lanes Design handbook), affordable housing, development on farm holdings (pursued through the farmstead design guidance), and rights of way signage.

**SD10** – Positive measures to mitigate the negative impact of infrastructure and growth on the natural beauty and amenity of the AONB will be supported.

**SD11** – Where it is decided that development will take place that will have a negative impact on landscape character, characteristics and qualities of the Kent Downs AONB or its setting, mitigation 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.

**LLC1** – The protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB will be supported and pursued.

The Management Plan can be downloaded from the Kent Downs AONB website:

<http://www.kentdowns.org.uk/guidance-management-and-advice/management-plan>

## **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)<sup>8</sup> 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

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<sup>8</sup> EWHC 488 Stroud District Council v Secretary of State for Communities and Local Government, February 2015 (CO/4082/2014)

character and appearance of the site and would be in conflict with relevant development plan policies (IR18.34). The Secretary of 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 demonstrably 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".*