

# Applying the CRoW Act section 85 duty to 'seek to further the purpose' in National Landscapes (AONBs)



## Guidance for Local Planning Authorities

National Landscapes Association, with the National Landscapes Planning and Placemaking Panel

Briefing November 2024

## Purpose of this Briefing

This Briefing has been produced to provide guidance to planning teams (for example, officers and committee members) in Local Planning Authorities, on meeting the strengthened duty in the Countryside and Rights of Way (CRoW) Act 2000 (section 85) in any policy-making, decision-making or actions that affect Areas of Outstanding Natural Beauty (AONBs) in England.<sup>1</sup> It should be considered in parallel with any future guidance from the Department for the Environment, Food and Rural Affairs (Defra) on this matter.

The Briefing aims to offer practical, easy-to-follow guidance tailored specifically to plan-making and decision-making in Local Planning Authority (LPA) functions, and includes:

- ❖ **Legislative context and broad approach** – an overview.
- ❖ **Use of the relevant AONB Management Plan.**
- ❖ **Local Planning Authority decision-making process.**
- ❖ **CRoW Act 2000 s.85 duty in planning policy plan-making** (including Local Plans, Strategic Housing Land Availability Assessment/Housing and Economic Land Availability Assessment and site allocations, Supplementary Planning Documents and Neighbourhood Plan consideration).
- ❖ **S.85 duty in development management decision-making** (including planning applications, tree preservation order decisions, and enforcement).
- ❖ **Information sources** that have been used in the preparation of this Briefing.

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<sup>1</sup> From November 22<sup>nd</sup> 2023, [all AONBs in England are known as National Landscapes](#). The statutory designation remains an area of outstanding natural beauty (AONB) and is currently referred to as such in policy and legislation. For this reason, this document still uses the term AONB.

## Legislative context and broad approach

- Section 85 of the Countryside and Right of Way Act 2000 (CRoW Act) (as amended by the Levelling-up and Regeneration Act<sup>2</sup> in December 2023) requires 'relevant authorities', in exercising or performing any function that affect AONBs in England, to "**seek to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty.**"<sup>3</sup>
- This is a **statutory duty**, which has been in force since December 26, 2023. The use of the word 'duty' in the legislation means that it is something all 'relevant authorities' must do; it is not discretionary.
- The duty is considered to be a **strengthening** of the previous s.85 'duty of regard' and seeks positive outcomes for the natural beauty, in its holistic sense, of our AONBs.
- Within the planning context, **relevant authorities** are the Local Planning Authorities, the Planning Inspectorate and the Secretary of State (e.g., for called-in decisions), along with Parish Councils producing Neighbourhood Plans. The duty applies to all aspects of the development management process and the plan-making process: e.g., planning application decisions, enforcement, and decisions relating to planning policies and site allocations in Local Plans, etc.
- The duty is considered to require a **pro-active approach by the decision-maker**; relevant authorities are expected to be able to demonstrate that they have fulfilled the duty, and how compliance with the duty has been embedded in the plan-making and decision-making process. Natural England have advised that relevant authorities must take **all reasonable steps** to explore how the statutory purposes of the Protected Landscape can be furthered.<sup>4</sup>
- The duty applies to plan-making and decision-making '*in relation to, or so as to affect, land in an AONB*', not only in considering proposals within an AONB, but also, for e.g., **affecting its setting**.
- It is important to ensure that **'to conserve and enhance' is treated as a singular purpose**: consider both parts together, in every relevant decision.
- The statutory duty needs to be considered **in tandem with the National Planning Policy Framework (NPPF)**, in particular paragraphs 11, 182 and 183.<sup>5</sup>
- Paragraph 182 of the NPPF (2023) sets out that '**great weight**' should be given to conserving and enhancing landscape and scenic beauty in AONBs, whereas conservation and enhancement of wildlife and cultural heritage are 'important considerations'.
- However, it is important to remember that 'natural beauty' is holistic. **'Natural beauty' is not just the look of the landscape, but includes landform and geology, plants and animals, landscape features, and the rich history of human settlement over the centuries.**<sup>6</sup> It includes landscape and scenic quality, natural heritage (species, habitats, geology and physical

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<sup>2</sup> Levelling-up and Regeneration Act 2023 ([section 245](#)).

<sup>3</sup> Countryside and Rights of Way Act 2000 ([section 85](#)).

<sup>4</sup> Natural England (2023) 'Natural England's addendum to our Deadline 9 response in relation to the enhanced duty in relation to Protected Landscapes including the Kent Downs Area of Outstanding Natural Beauty' ([Annex 2, para 2.1.3](#)). 'Protected Landscapes' in this document refers to National Landscapes (AONBs) and National Parks: Natural England's advice applies to both.

<sup>5</sup> "Planning policies and decisions must also reflect relevant international obligations and statutory requirements." [NPPF \(2023\), para. 2.](#)

<sup>6</sup> Countryside Commission (2001) [Areas of Outstanding Natural Beauty: A guide for AONB Partnership members. CA24.](#)

geography), wildness, tranquillity and dark skies, and cultural heritage (including cultural traditions and the historic and other built environment that makes the area unique).<sup>7</sup> Historic England make clear that the historic environment is fundamental to the distinctive character, sense of place and natural beauty of each AONB.<sup>8</sup>

- It is the conservation and enhancement of **all** this natural beauty (usually defined in the specific statutory AONB Management Plan) that is the primary purpose of designation, and that Local Planning Authorities must consider in discharging their duty under CRow Act (2000) s.85.
- **LPA's are advised to ensure internal Local Authority legal teams are aware of the s.85 duty.**

## Use of the relevant AONB Management Plan

- The Management Plan for the specific AONB is a statutory document, which will have been adopted by the Local Authority (or by the relevant Conservation Board) and which '**formulates their policy for the management of the area and for the carrying out of their functions in relation to it**'.<sup>9</sup> It is the principal vehicle for ensuring that the statutory purposes of the AONB are met, and is a material consideration in the planning process.
- Conserving and enhancing the natural beauty of the specific AONB will normally mean, as a minimum:
  - **conserving and enhancing the character components or special qualities identified in the Management Plan;**
  - **supporting the Management Plan Objectives, Policies and/or Principles (as applicable) as set out for each of these; and**
  - **following any Management Plan actions set out for each.**

## Local Planning Authority decision-making process

Local Planning Authorities must be able to demonstrate that they have complied with the strengthened duty in any decision or action that impacts or could potentially impact on the AONB.

To demonstrate that they have sought to further the purpose of designation in making decisions regarding planning policies, site allocations, and development management (including planning enforcement), it is considered LPA's will need to:

- **Establish the facts about the natural beauty of the area, especially with reference to the statutory Management Plan for the specific AONB.** Identify what comprises the natural beauty, using:
  - descriptions of natural beauty, including Statements of Significance, description of key characteristics and special qualities, as set out in AONB Management Plans; and

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<sup>7</sup> The 'natural beauty criterion'. Natural England (2017) [Areas of outstanding natural beauty: designation and management](#); Natural England (2021) [Guidance for assessing landscapes for designation as National Park or AONB in England](#).

<sup>8</sup> Joint Statement on the Historic Environment in Areas of Outstanding Natural Beauty, [Historic England website](#) (2022); Historic England and AONBs sign joint statement, [National Landscapes Association website](#) (2022).

<sup>9</sup> Countryside and Rights of Way Act 2000, [s.89\(2\)](#).

- the reasons for designation as an AONB.
- **Understand the key objectives in the statutory Management Plan for the specific AONB,** which give an indication which actions or approaches will further the purpose of designation. These objectives:
  - relate to the applicable legislative purposes;
  - are evidence-based;
  - have been agreed between local partners, in a process convened by the AONB team;
  - include, but are not limited to, national or locally apportioned government targets and outcomes.

AONB Management Plans are often supported by additional guidance documents that provide more detailed advice and position statements relating to subjects such as design, dark skies, rural roads and public realm, renewable energy infrastructure, and the setting of the AONB, and these should also be considered in the decision-making process, as should any Landscape Character Assessments / Historic Character Assessments that inform Management Plans.

## CRoW Act 2000 s.85 duty in planning policy plan-making

The duty to seek to further the purpose of conserving and enhancing the natural beauty of AONBs applies to the full range of aspects of the plan-making process. An LPA will need to be able to demonstrate how it has, throughout all stages of the preparation of the Local Plan, sought to further the purpose of conserving and enhancing the natural beauty of the AONB. This includes at examination stage, addressing the s. 85 duty actively in responses to Inspector's Findings and in any proposed modifications to Local Plans.

Each of the following apply both to an LPA's own Local Plan work, including Mineral & Waste Plans and Supplementary Planning Documents (SPDs), and to the LPA's consideration of Neighbourhood Plans.

- **For setting the Local Plan vision and overall development strategy:**
  - Ensure the overall vision and development strategy would align with the objectives/principles/policies of the relevant AONB Management Plan.
  - Identify how much of a district's objectively assessed need can be met without harming the natural beauty of the relevant AONB, particularly where meeting the need would require allocations that would not further the purposes of AONB designation (see below). (N.B. this may involve setting a lower Local Plan housing requirement figure).<sup>10</sup>
- **For decisions relating to the drafting of planning policies (all Local Plan /SPD policies, not just those policies specifically dedicated to the AONB):**
  - Assess the degree to which each policy would align with the objectives/principles/policies of the relevant AONB Management Plan.
  - Assess the degree to which each policy would help deliver any actions/outcomes of the relevant AONB Management Plan.

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<sup>10</sup> As provided for by NPPF (2023) [para. 11 \(b\) \(i\)](#).

- Consider if the range and scope of the policies is sufficient to fully deliver the Management Plan's objectives/action/outcomes, i.e. are any additional policies /policy areas needed? (In this regard, a stand-alone policy closely aligned to the Management Plan objectives/principles/policies is recommended, though this is not considered sufficient to demonstrate compliance with the strengthened duty.)
- If a draft planning policy would *not* align with the duty to seek to further the applicable legislative purpose (e.g. if it would conflict with any of the Management Plan's objectives/principles/policies), then consider amending the policy such that you could confidently say the decision does seek to further the relevant purpose.

- **For decisions relating to site allocations:**

- Assess what impact the proposed site allocation would have on the natural beauty of the AONB, considering its scale, location and landscape setting with reference to the character components/special qualities set out in the AONB Management Plan. (In this regard, consider including a specific criterion regarding 'natural beauty' within the Strategic Housing Land Availability Assessment (SHLAA)/Housing and Economic Land Availability Assessment (HELAA), and within the Sustainability Appraisal).
- Consider how the natural beauty of the AONB might be affected, were the site to be allocated for development. Remember to consider the holistic concept of natural beauty.
- Consider whether this would cause harm to the natural beauty of the AONB. Consider the objectives/principles/policies of the AONB Management Plan. Natural England have advised that the strengthened duty underlines the importance of avoiding harm to the statutory purposes of Protected Landscapes.<sup>11</sup>
- Ensure clear differentiation between any proposed measures that seek to *mitigate* or *compensate* for harm (e.g., like-for-like replacement), and those that *further* the conservation and enhancement of the natural beauty of the AONB. Natural England have advised that measures that further the purposes are required in addition to mitigation.<sup>10</sup>
- If the measures would have a neutral effect, consider what modifications would help further the purpose of conserving and enhancing the natural beauty.
- If promoting a site allocation would not align with the duty to seek to further the conservation and enhancement of natural beauty, then consider amending or deleting a site allocation such that you could confidently say the decision does seek to further the statutory purpose. (For example, choosing *not* to allocate a particular site within or close to the AONB boundary could demonstrate compliance, where this results in avoiding harm.)
- Evidence how the LPA has sought to further the purpose of conserving and enhancing the AONB in its decision, with reference to aligning with AONB Management Plan objectives/principles/policies.

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<sup>11</sup> Natural England (2023) ([Annex 2, para. 2.1.3](#)).

## S.85 duty in development management decision-making

The s.85 duty to seek to further the purpose of conserving and enhancing the natural beauty of AONBs applies to the full range of development management decision-making, including considering applications for outline, full and reserved matters, listed building consent, applications for works to protected trees, and prior notifications, along with enforcement work on planning breaches. An LPA should also ensure that local validation checklists require the submission of sufficient, specific information to enable them to fulfil the s.85 duty in their decision-making.

The following apply to decision-making at both officer and planning committee level.

- **For decisions relating to planning applications:**

- Assess what impact the proposal would have on the purpose of designation. Consider how the natural beauty of the area might be affected, were the proposal to go ahead (remember to consider the holistic concept of natural beauty), and consider how the proposal would align with the AONB Management Plan objectives/principles/policies.
- Consider whether this would cause harm to the natural beauty of the area. Natural England have advised that the strengthened duty underlines the importance of avoiding harm to the statutory purposes of Protected Landscapes.<sup>12</sup>
- Remember that where harm is identified, 'enhancements' themselves, including biodiversity net gain (BNG) provision, are unlikely to be sufficient to align with the duty, which has the dual consideration of conserving and enhancing natural beauty. Also, ensure that any 'enhancements' within the proposal do genuinely align with, and help deliver, the objectives, principles and/or policies and resulting actions of the specific AONB Management Plan, by way of scope and location. Natural England have advised that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory Management Plan.<sup>11</sup>
- Ensure a clear differentiation between any proposed measures that seek to *mitigate* or *compensate* for harm (e.g. like-for-like replacement), and those that *further* the conservation and enhancement of the natural beauty of the AONB. Natural England have advised that measures that further the purposes are required in addition to mitigation.<sup>11</sup>
- If the measures would have a neutral effect, consider what amendments would help further the purpose of conserving and enhancing the natural beauty. Could any conditions attached to any permissions help to conserve and enhance the natural beauty?
- As part of this assessment, consider the degree to which the effect on natural beauty has been articulated by the applicant (e.g. through LVIA's, heritage statements, ecology and arboricultural assessments, lighting statements and transport assessments); scrutinise the submission against the Management Plan in this regard.
- If supporting an application would *not* align with the duty to seek to further the conservation and enhancement of natural beauty, then consider seeking amendments or refusing permission, such that you could confidently say the decision does seek to further the statutory purpose.

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<sup>12</sup> Natural England (2023) ([Annex 2, para. 2.1.3](#)).



- Evidence how the LPA has sought to further the purpose of conserving and enhancing the AONB in its intended decision, with reference to aligning with AONB Management Plan objectives/principles/policies. It is recommended that this evidence is referenced in officer reports/committee reports.

N.B. Consultation on planning applications with the relevant AONB team by a Local Planning Authority does not in itself constitute compliance with the strengthened duty. (Generally, teams will not have available capacity to advise on all planning applications within the AONB and will normally only be able to advise on the most significant applications). It is the responsibility of relevant authorities themselves to comply with the duty, and to assess and record how they have complied with the duty, in exercising or performing any functions affecting an AONB.

- **For applications to make a tree preservation order (TPO), or when assessing applications for works to protected trees (those with a TPO or in a Conservation Area), actively consider the s.85 duty by:**
  - ensuring the impact on the natural beauty of the AONB forms part of the assessment of 'amenity' when considering whether to make a TPO; and
  - when making decisions on applications for works to protected trees, ensure the impact on the natural beauty of the AONB forms part of the assessment of the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area.
- **For enforcement cases:**
  - Ensure the s.85 duty is built into assessment criteria as to whether it is considered expedient to pursue enforcement action on a particular breach of planning control within, or affecting, an AONB.
  - Remember that s.84 of the CROW Act (2000) sets out that LPAs have power "*to take all such action as appears to them expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty, or so much of it as is included in their area*".
  - In considering the appropriate enforcement route, assess if the planning breach harms the natural beauty of the AONB, with regard to the Management Plan Statement of Significance and objectives, principles and/or policies.
  - Consider if any amendments could help further the purpose of conserving and enhancing the natural beauty. Ensure clear differentiation between any proposed measures that seek to *mitigate* or *compensate* for harm (e.g., like-for-like replacement), and those that *further* the purpose of conserving and enhancing the natural beauty of the AONB. Natural England have advised that measures that further the purposes are required in addition to mitigation.<sup>13</sup>

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<sup>13</sup> Natural England (2023) ([Annex 2, para 2.1.3](#)).

## Information sources used in the preparation of this Briefing

- Countryside Commission (2001) Areas of Outstanding Natural Beauty: A guide for AONB Partnership members. CA24. Available at <https://national-landscapes.org.uk/historical-papers>
- Countryside and Rights of Way Act 2000. Available at <https://www.legislation.gov.uk/ukpga/2000/37/section/85>
- Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Opinion, 29.1.24 (instructed by the Campaign for National Parks). Available at <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002426-Campaign%20for%20National%20Parks.pdf>
- Levelling-up and Regeneration Act 2023. Available at <https://www.legislation.gov.uk/ukpga/2023/55/section/245#section-245>
- Natural England (2017) Areas of outstanding natural beauty (AONBs): designation and management. Guidance. Available at <https://www.gov.uk/guidance/areas-of-outstanding-natural-beauty-aonbs-designation-and-management>
- Natural England (2021) Guidance for assessing landscapes for designation as National Park or AONB in England. Available at: [https://consult.defra.gov.uk/ne-landscape-heritage-and-geodiversity-team/yorkshire-wolds-designation/user\\_uploads/ne\\_guidance-on-assessing-landscapes-for-designation\\_june21-1.pdf](https://consult.defra.gov.uk/ne-landscape-heritage-and-geodiversity-team/yorkshire-wolds-designation/user_uploads/ne_guidance-on-assessing-landscapes-for-designation_june21-1.pdf)
- Natural England (2023) 'Natural England's addendum to our Deadline 9 response in relation to the enhanced duty in relation to Protected Landscapes including the Kent Downs Area of Outstanding Natural Beauty'. Available at <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-006179-Natural%20England%20-%20Deadline%20a%20Submission.pdf>

If you require general assistance in understanding or interpreting a specific AONB Management Plan, please contact the relevant **National Landscape (AONB) team**, who will be able to offer you further guidance.

### About National Landscapes Association

We are a registered charity that supports the mission to conserve and enhance natural beauty in National Landscapes and other protected areas. National Landscape teams across the UK work to achieve a sustainable balance of priorities at the landscape scale. One of our key aims is to support and develop a network of ambitious National Landscape teams and partnerships that have a strong collective voice and a positive impact on the places for which they care.

### About this Briefing

National Landscapes Briefings offer a summary of key findings and recommendations arising from National Landscapes' action and insight. This Briefing has been informed by the Planning and Placemaking specialist panel of representatives from across the National Landscape network.

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