

DEVELOPMENT IN AND AFFECTING AREAS OF OUTSTANDING NATURAL BEAUTY



Green Balance
for
The National Trust



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Cover image:

Harwell Campus in the North Wessex Downs Area of Outstanding Natural Beauty, from Hagbourne Hill with The Ridgeway behind on the left. The Vale of the White Horse Local Plan currently proposes to allocate land for 1,400 houses on the fields around the research buildings, including 850 in front of the major line of trees in the middle distance.

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Table of Contents

	Page
Summary	3
1 Introduction	4
2 Law and policy on development in and affecting AONBs	6
Legislation	
Policy	
Interpretation by the Courts	
The tests to apply in AONBs and their settings	
3 Case studies	16
1. Hill Hay Close, Fowey, Cornwall	
2. North of Police Station, Heathfield, East Sussex	
3. Station Road, Bourton-on-the-Water, Gloucestershire	
4. Timber Hill, Lyme Regis, Dorset	
5. Salisbury Road, Marlborough: Wiltshire Core Strategy	
6. Odd Down, Bath: Bath and North East Somerset Core Strategy	
7. Canada Farm, Winterbourne Stickland, Dorset	
8. Corfton Farm, Craven Arms, Shropshire	
9. Lea Quarry, Wenlock Edge, Shropshire	
10. Duckhaven, Westward Ho!, Devon	
11. Reydon, Waveney, Suffolk	
12. Gretton Road, Winchcombe, Gloucestershire	
13. Penland Farm, Haywards Heath, West Sussex	
14. CABI site, Wallingford, Oxfordshire	
15. Headlands Hotel, Port Gaverne, Cornwall	
4 Review of experience in planning for AONBs	33
Was the duty of regard to 'conserve and enhance' natural beauty applied?	
Did each case study evaluate whether or not the proposal was 'major'?	
Were the correct tests applied to assess 'major' proposals?	
Was the need to give 'great weight' to AONBs correctly identified and applied?	
Was the Development Plan found to be satisfactory, prior to analysis?	
Were the correct AONB tests applied in accordance with NPPF paragraph 14?	
Other limitations in the handling of AONB cases identified by AONB Units	
Limited non-AONB sites available	
Incremental and cumulative development	
Limited emphasis on the impact of development on AONBs	
Overview	
Multiple shortcomings at individual sites	
Recurrent difficulties across cases in AONBs	
5 Recommendations	47

SUMMARY

A series of planning decisions in Areas of Outstanding Natural Beauty (AONBs) raised the concern of the National Trust that these nationally protected landscapes were not receiving the level of protection from inappropriate development indicated by Government policy in the National Planning Policy Framework published in 2012. The National Trust asked Green Balance to identify and review examples of where planning decisions may not have properly represented AONB interests since the adoption of the NPPF in March 2012.

The report summarises the legislation and policy on AONB as it affects land use planning, and provides a brief commentary on how these have been interpreted by the Courts. It identifies nine tests which should be applied by decision makers in AONB cases, relevant variously to planning applications and plan preparation, and to land within AONBs and to land in the setting of AONBs. These tests provide a brief practical tool to assist local planning authority officers, elected Members and Planning Inspectors.

The centrepiece of the report is fifteen case studies highlighting the shortcomings experienced around AONBs in the way that planning decisions are reached in practice: by not applying the correct tests, applying the correct tests inappropriately, or omitting tests, the decision in each case slipped away from representing AONB interests properly. The cases chosen all indicate discernible problems with paying proper regard to AONBs, and are not believed to be matters simply of differences between the parties in ‘reasonable views honestly held’. In five of the cases local authority planning officers had recommended refusal of the proposals, indicating that the AONB Units were not alone in their judgement on the issues. The case studies involved housing in eight cases, solar arrays in two cases and five other development types. Most cases were planning applications, but two were land allocations in local plans. Most were proposals inside AONBs, but two were in AONB settings. Most were on greenfield sites, but two were controversial brownfield proposals. The cases arose around the country, in thirteen local planning authorities.

Each of the relevant tests identified in the report are applied to the fifteen case studies, showing that there are significant and often multiple failings in individual planning cases to apply the appropriate tests correctly. The analysis draws on details from officer reports, Committee minutes and Inspectors’ reports to identify the exact shortcomings in the procedures applied. In particular, the analysis shows that in ten, or arguably twelve, of the fifteen case studies the outcome failed properly to apply the primary requirement to give ‘great weight’ to AONB interests in planning decisions. In addition to the main tests, the analysis identifies that AONB interests sometimes failed to take precedence when:

- few alternative sites were available (or so claimed);
- previous permissions prompted allowing incremental or cumulative development;
- landscape interests were given limited weight, elevating relative development benefits.

The report concludes with recommendations for stiffening the resolve of decision-makers in planning to give the full intended weight to the interests of Areas of Outstanding Natural Beauty. Most involve steps to make the application of the proper tests more reliable.

1. INTRODUCTION

1.1 Areas of Outstanding Natural Beauty (AONBs) are designated nationally and given the highest status of protection for their landscape and scenic beauty, alongside National Parks and the Norfolk and Suffolk Broads. The statutory purpose of AONBs is to conserve and enhance the natural beauty of their area. So far as land use planning is concerned, the Government's National Planning Policy Framework (NPPF) is the principal source of policy advice: this gives "great weight" to AONBs' protection.

1.2 The NPPF also includes "a presumption in favour of sustainable development" and in particular policies "to boost significantly the supply of housing". However, Ministers have been clear from the outset that protection from inappropriate development remains the priority in AONBs, as the following extracts from speeches show (with emphasis added).

On 10th January 2013 Nick Boles, Minister for Planning, told a Policy Exchange conference on housing:

"Nothing that I have said and nothing that this Government has done will undermine the protection of National Parks, SSSIs, AONBs and the Green Belt. Or stop good agricultural land being used for farming. Or prevent councils from identifying ancient woodland and green spaces that local people want to protect."

On 11th July 2013 the Rt. Hon. Eric Pickles, Secretary of State for the Environment, spoke at the Royal Town Planning Institute Annual Planning Convention, saying:

"You can plan for growth but not at any price. So we have been very clear that we must have secure safeguards to protect the green belt. That vital green lung which prevents urban sprawl. Sometimes I feel politicians in particular forget that it is there, not simply for the beautiful landscapes, but to keep conurbations from running into each other. To protect the nature of what we call home. And the protections are there too for our great natural heritage. Our areas of outstanding natural beauty. And other important environmental designations."

1.3 The National Trust has nevertheless been concerned from varied experience¹ that these assurances are not reliably finding expression in planning decisions issued by local planning authorities, Planning Inspectors and the Secretary of State himself, or in land allocations for development approved by Planning Inspectors examining local authorities' Local Plans. Various significant developments have been permitted within and in the setting of AONBs around England, raising the concern that this has been with insufficient regard to AONB purposes and planning policies. To establish the scale of the problem, Green Balance was commissioned to report on decisions to allow significant development, in cases where the local AONB Unit (charged with supporting the purposes of each AONB)

¹ E.g.: CPRE, November 2013, *Going, going, gone? England's disappearing landscapes*; URS for Natural England, April 2014, *Housing Development and AONBs*; Cotswold Conservation Board, May 2014, Written Evidence to the House of Commons Communities and Local Government Committee's *Operation of the NPPF* inquiry; High Weald AONB Unit, May 2014, Written Evidence to the House of Commons Communities and Local Government Committee's *Operation of the NPPF* inquiry.

had objected to the scheme. The National Trust asked Green Balance to identify and review examples of where planning decisions may not have properly represented AONB interests. Only decisions taken since the publication of the NPPF in March 2012 are included. Proposed developments currently under consideration, including at Judicial Review, have also been omitted.

1.4 Section 2 summarises the legislation and policy on AONB as it affects land use planning, including a brief commentary on how these have been interpreted by the Courts. It concludes with our suggested list of nine tests which should be applied by decision makers in AONB cases. These tests are intended as a brief practical tool to assist local planning authority officers and Members and also Planning Inspectors acting on behalf of the Secretary of State.

1.5 Section 3 introduces and presents fifteen case studies which illustrate difficulties which can arise in AONBs from the handling of planning applications and strategic land allocations in development plans. In each case development was permitted or land allocated contrary to the advice of the local AONB Unit.

1.6 Section 4 reviews the experiences firstly from the fifteen case studies and then from the commentaries and additional cases reported by AONB Units. This shows that there are widespread and extensive problems in the way in which planning powers are exercised in and affecting AONB, and that these cannot be treated as incidental failings but collectively have wider significance. Our recommendations follow.

2. LAW AND POLICY ON DEVELOPMENT IN AND AFFECTING AONBS

Legislation

2.1 AONBs were originally established under the National Parks and Access to the Countryside Act 1949, though the legislation was reformulated in 2000 through the Countryside and Rights of Way Act. There is a general duty on all relevant authorities to have regard to the purposes of AONBs, set out in section 85 of the 2000 Act (Box 1). This ensures that relevant authorities take account of these purposes when coming to decisions or carrying out their activities relating to or affecting land within these areas. This ‘duty of regard’ recognises that a wide range of bodies have a direct influence over the future of these protected landscapes in terms of policy, programme and project implementation, casework decisions, land ownership and management. This duty applies to any decisions or activities a relevant authority may take affecting land in these areas, not just to those that relate to narrowly-defined environmental or ‘countryside’ issues. The duty is intended to ensure that the purposes for which AONBs have been designated are recognised as an essential consideration in reaching decisions or undertaking activities that impact on these areas.

Box 1 Section 85 of the Countryside and Rights of Way Act 2000

Subsection (1): “In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving or enhancing the natural beauty of the area of outstanding natural beauty.”

Subsection 2 specifies relevant authorities as Ministers, public bodies, statutory undertakers and persons holding public office (which are then further defined).

2.2 Activities and developments outside the boundaries of AONBs may have an impact within the designated areas. In such cases, section 85 of the Countryside and Rights of Way Act 2000 (Box 1) clearly requires that relevant authorities must have regard to the purposes of AONBs in these cases, (using the words “in relation to, or so as to affect” AONBs – emphasis added). The Government’s Planning Practice Guidance draws attention to this obligation and specifically mentions proposals “which might have an impact on the setting of” AONBs (Natural Environment paragraph reference ID 8-003-20140306).

Policy

2.3 The National Planning Policy Framework (NPPF) is the principal document setting out the Department for Communities and Local Government’s national policies on land use planning. Local planning authorities are expected to give considerable weight to this when preparing their own local policies and when deciding planning applications. The NPPF contains policies specific to protected landscapes (including AONBs) at paragraphs 115 and 116 (Box 2). These make a distinction between the approach to planning proposals applicable in all cases (paragraph 115) and the additional approach applicable in the case of ‘major’ developments (paragraph 116). The identification of development that is ‘major’ (as distinct from ‘not major’) is a matter of judgement for the decision-taker “taking into

account the proposal in question and the local context” as the Department’s Planning Practice Guidance expresses it (Natural Environment paragraph Reference ID: 8-005-20140306).

Box 2 NPPF policy on AONBs

“115. 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.

116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

2.4 In addition there is indirect reference to AONBs (as nationally designated landscapes) in NPPF paragraph 113 (Box 3). This applies to plan preparation.

Box 3 NPPF paragraph 113

Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.

2.5 Other key points emphasised by the NPPF include that policies in the local development plan are the starting point for deciding planning applications, and that it is highly desirable that local planning authorities should have an up-to-date plan in place. Central purposes of plan-making and decision-taking are set out in NPPF paragraph 14 (Box 4), which explains how the ‘key presumption in favour of sustainable development’ will normally apply. On decision-taking, paragraph 14 makes a distinction between circumstances “where the development plan is absent, silent or relevant policies are out-of-date”, and (by implication, therefore) where the development plan is satisfactory. In the latter case, planning authorities should approve development proposals that accord with the development plan, without delay. However, where the plan is unsatisfactory for one or more of the reasons stated, there are different arrangements which have specific significance for AONBs.

2.6 Where development plans are unsatisfactory, paragraph 14 expects planning permission to be granted (unless material considerations indicate otherwise) unless one or

other of two cases arise. The second case applies in AONBs. The ‘unless’ clause here states: “specific policies in this Framework indicate development should be restricted”. Critically, Footnote 9 at this point explains that policies relating to AONBs are one such group of policies to which this applies. This means that, where the development plan is unsatisfactory, planning authorities in AONBs should apply the NPPF policies on AONBs rather than simply apply the sustainable development principles of the NPPF. Paragraph 14 with its Footnote 9 in effect transfers the starting point for assessment of planning applications to paragraphs 115 and (if appropriate) 116.

Box 4 The NPPF’s presumption in favour of sustainable development

“14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking [emphasis in original].

For **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - 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.⁹

For **decision-taking** this means:¹⁰

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - 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.⁹

⁹ For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

¹⁰ Unless material considerations indicate otherwise.

2.7 Also of significance here is that the other case identified in paragraph 14 (when faced with an unsatisfactory development plan), when planning authorities should not grant permission, never arises in an AONB. This is the ‘unless’ clause which states “any adverse impacts of doing so [granting permission] would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”. This is never an applicable test in AONBs because the other case applies in AONBs – i.e. “specific policies in this Framework indicate development should be restricted”, and the cases are alternatives (separated by ‘or’ in paragraph 14).

2.8 As an example, the policy position concerning paragraph 14 was explained in a planning appeal decision soon after the NPPF was issued, and remains appropriate. In the case of land at Hunting Butts Farm, Cheltenham (appeal APP/B1605/A/11/2164597), the Inspector explained (paragraph 56) that this was a case where “the final part of Paragraph 14 makes it clear that (again, unless material considerations indicate otherwise) where specific policies, including Green Belt policies, indicate that development should be restricted then the presumption in favour of granting permission does not apply. That is the case here”. (This was in a Green Belt location, to which Footnote 9 also applies).

2.9 Many statements in the NPPF are supportive of development, such as policies in paragraph 47 to “boost significantly the supply of housing”. These are given particular traction by the NPPF which supports housing supply where Local Plans are out-of-date: paragraph 49 states: “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.” Paragraph 14 then provides that the NPPF’s presumption in favour of sustainable development will normally apply and planning permission normally be granted, as set out in paragraph 2.5 above. In AONB’s, however, the second ‘unless’ clause will apply, and decisions be taken in line with paragraphs 115 (and perhaps 116) of the NPPF. The impact of paragraph 47 is therefore significantly reduced within AONBs. See also paragraph 2.16 below.

2.10 Neither the NPPF nor Planning Practice Guidance offers any planning policy on the treatment of development within the setting of AONBs to supplement the legal position noted in paragraph 2.2 above. Prior to the NPPF, many emerging Regional Plans included policies endorsed by their examining Panels which gave appropriate protection to settings, and on that basis local authority Plans at the time had no need to duplicate such policies. With the abolition of Regional Plans by the Coalition Government 2010-15, those settings policies disappeared, and the inclusion of replacement policies in newly emerging Local Plans has been fragmentary.

2.11 The need for a planning response to development proposed in the setting of AONBs has of course not disappeared. Local planning authorities, planning inspectors and the Secretary of State have continued to acknowledge the relevance in principle of development in the setting of AONBs to the purposes of those AONBs. The impact of development proposals on views into and out of an AONB is often discussed. AONB boundaries were usually carefully drawn to cover only the landscape considered ‘outstanding’, recognising that normal planning policies in the areas around would need to be applied with sympathy to the interests of the AONB. The weight to be given to setting is a matter for the decision-taker’s discretion. Whether or not a proposal is ‘major’ is not a consideration in the setting of an AONB, as paragraph 116 of the NPPF on the application of an ‘exceptional circumstances’ test to evaluate ‘major’ development is limited to cases ‘in’ an AONB. The case of the Kent International Gateway, a very large development adjacent to the Kent Downs AONB, illustrates an application of the approach to settings (Box 5).

2.12 Decisions on planning applications and on the preparation of local authority development plans should take into account AONB Management Plans. These management plans are statutorily required by the Countryside and Rights of Way Act 2000 (section 89)

Box 5 Kent International Gateway in the setting of an AONB

This was a proposal for a road/rail freight interchange covering 112 hectares on the eastern outskirts of Maidstone, separated along its 2.5km northern boundary from the Kent Downs AONB only by the M20 motorway, and therefore in the immediate setting of the AONB.

Paragraph 20 of the Secretary of State's decision letter on 5 August 2010 stated:

"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 (Inspector's Report 18.45). 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 (IR 18.52)."

In rejecting the appeal, the Secretary of State concluded in his paragraph 36:

"A number of factors weigh against the proposal, including the loss of a large area of open countryside, substantial harm to the setting of the Kent Downs AONB, serious damage to the attractiveness and amenity value of the bridleways and footpath that cross the site, failure to preserve or enhance the character of the Holy Cross and Bearsted Green Conservation Areas and the cumulative adverse impact on Bearsted."

and are formally adopted by local authorities which have AONBs in their areas. The Planning Practice Guidance explains at paragraph ID 8-004-20140306 that "local planning authorities and neighbourhood planning bodies should have regard to management plans for National Parks and Areas of Outstanding Natural Beauty, as these documents underpin partnership working and delivery of designation objectives. The management plans highlight the value and special qualities of these designations to society and show communities and partners how their activity contributes to protected landscape purposes. National Parks and Areas of Outstanding Natural Beauty management plans do not form part of the statutory development plan, but may contribute to setting the strategic context for development by providing evidence and principles, which should be taken into account in the local planning authorities' Local Plans and any neighbourhood plans in these areas. National Parks and Areas of Outstanding Natural Beauty management plans may also be material considerations in making decisions on individual planning applications, where they raise relevant issues."

2.13 Local planning authorities should of course also take into account development plan policies and other material considerations when deciding planning applications. This study has not examined the implementation of this part of the development management process.

Interpretation by the Courts

2.14 The detailed interpretation of planning policy on AONB by the Courts since the publication of the NPPF in 2012 has been infrequent. The following cases report the

interpretation of the law as it stands at present, though future decisions by the High Court, and especially by the Court of Appeal or the Supreme Court, could amend this. The most thorough review is probably in the case of *Mevagissey Parish Council vs. Cornwall Council*, issued on 27th November 2013. This case involved a proposal for 31 houses (21 being affordable) on the edge of the village, recommended by officers for refusal primarily on AONB grounds, but approved by Members. The whole village is in the Cornwall AONB. The scheme was treated by all parties as a 'major development' for NPPF paragraph 116 purposes. The Parish Council successfully argued that the decision should be set aside because it was made on a materially incorrect construction of the relevant policies in relation to AONB.

2.15 Justice Hickinbottom set out the approach by which decision-takers should address paragraph 116 of the NPPF: "In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest" (paragraph 51). He found that the summary reasons for the Committee's decision suggested "that the Committee found that the need for affordable housing outweighed the harm to the AONB that the development would cause, on the basis of a simple balancing exercise. However, they were not performing a simple balancing exercise. They could only approach the application on the basis of the paragraphs 115-116 of the NPPF: they had to find exceptional circumstances, and then, giving the conservancy of the AONB great weight, determine whether other factors (including of course the need for affordable housing) meant that the public interest was nevertheless in granting permission for the development" (paragraph 58). In his view even "an assumption that the Planning Committee gave the conservancy of the AONB 'great weight' cannot be made" (paragraph 61).

2.16 The judge also advised on how 'exceptional circumstances' might be demonstrated. He drew a distinction between a pressing case for the development (in this case the frequently-arising issue of affordable housing) and a genuinely 'exceptional' need "in the sense of unusual or rare". In any event, "any assessment of 'exceptional circumstances' must be done in respect of a specific proposed development". He explained "Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape" (paragraph 52). The judge found that "The Committee members appear not to have considered alternative sites at all: there is no mention of them in their reasons, nor in the recorded debate". He added: "we do not know what 'exceptional circumstances' they found and why. We do not know whether they disagreed with the officer that there were other deliverable sites that would result in less harm to the AONB, and, if they did, whether that was because they disagreed with her as to the relative harm caused by the various alternative sites including the Site or whether they disagreed with her views on deliverability of the other sites" (paragraph 64).

2.17 AONB issues were also considered in the Cherkley Court case in Surrey, where Mole Valley DC granted permission against officers' advice to permit a golf course in a sensitive and important location both in the Green Belt and in small part in the Surrey Hills AONB. The Court of Appeal reviewed the application of paragraph 116 of the NPPF on 'major' development. Did the paragraph apply just to major developments inside the AONB (as the developer argued), or did it apply when the whole development was 'major' even if only in small part within the AONB (as the objectors argued)? The Court ruled that it applied only to cases where the development (or part of it) that was proposed 'in' an AONB was itself 'major'. As only one fairway and one tee of the development would be inside the AONB, the Court held that this could not be considered 'major' development, so the tests in paragraph 116 of the NPPF should not be applied to the proposal. The other AONB-related issues decided in this case were site-specific rather than of general applicability, and not summarised here. (Two were on the interpretation of development plan policies and the other on whether the Council's conclusion that overall landscape character 'would not be compromised' was so irrational as to be unlawful.)

2.18 Another Judicial Review considered the grant of two planning permissions for housing in the Cotswolds AONB at Tetbury, Gloucestershire. Cotswold District Council challenged the permissions granted by the Secretary of State in February 2013 on appeal following the Council's refusal of the two applications. In these cases the grounds of challenge mostly concerned the interpretation of housing policy aspects of the NPPF, but one aspect related to AONB policy. The Highfield Farm case had been deemed 'major' by the Inspector and paragraph 116 had been applied. Cotswold DC did not have a five year supply of housing land. The Inspector concluded (paragraph 14.69):

"I have not been provided with any evidence to suggest that there is anything other than very limited scope indeed to provide housing within the District on sites that are not part of the AONB. Moreover, there is a clear and pressing need for more housing; locally, in terms of the severe shortfall that currently exists in the Cotswold District, and nationally, in terms of the need to get the economy growing. In my view, these amount to exceptional circumstances, where permitting the proposed development can reasonably be considered to meet the wider "public interest", in the terms of the framework."

This interpretation of paragraph 116 was challenged in the High Court by Cotswold DC, but Justice Lewis ruled that the Inspector "correctly interpreted the paragraph and applied it to the facts. Her judgment on those matters was accepted by the Secretary of State. There was no misinterpretation or unlawful application of paragraph 116 of the Framework."² This outcome is particularly damaging to AONBs, suggesting that a pressing need for housing can as a matter of principle be used to override the landscape protection that AONB policy normally provides when there is 'very limited scope indeed to provide housing within the District on sites that are not part of the AONB'. In the Highfield Farm, Tetbury case, the Inspector accepted (paragraph 14.2) that "The proposed development would fundamentally conflict with adopted Development Plan policies aimed at restricting residential development on land which, like the appeal site, lies outside any settlement

² Citation No.: [2013] EWHC 3719 (Admin), dated 27th November 2013

boundary and inside an AONB.” In effect, the lack of a sufficient immediate land supply for development in the short term can in these circumstances take priority both over protecting the long term integrity of the AONB and over the option, at plan preparation stage, of deciding upon a lower overall development requirement.

2.19 Finally, a Judicial Review of a planning permission for 150 houses in the setting of the Cotswolds AONB at Leonard Stanley, Gloucestershire was decided on 6th February 2015. Stroud District Council had refused planning permission for the development but an appeal was successful. The Inspector’s decision was challenged in the High Court by the Council, focusing on AONB-related issues. One ground was the policy basis for the consideration of views towards the AONB but from outside it. On paragraph 115 of the NPPF, Justice Ouseley concluded that “It seems to me that it would be unduly restrictive to say that it could not cover the impact of land viewed in conjunction with the AONB from the AONB. But to go so far as to say that it must also cover land from which the AONB can be seen and great weight must be given to the conservation of beauty in the AONB by reference to that impact reads too much into paragraph 115. [That] would be to give very widespread protection to land outside the AONB and not significant in views from the AONB” (paragraph 26). (The other grounds of challenge also failed, relating to: compliance with a development plan policy on major development in the setting of AONBs; whether the Inspector had ignored initially significant harm to views from the Cotswolds Way; and the Inspector’s approach to ‘valued landscapes’ within the meaning of NPPF paragraph 109.)

The tests to apply in AONBs and their settings

2.20 It is important that local authority planning officers properly understand the correct approach to applying the law and policy to AONBs in particular circumstances. This can help to avoid the risk that elected Members will take decisions which are exposed to challenge in the High Court subsequently. It will also help to explain to developers, local people and interested parties how decisions were reached, confident that this was in line with the Government’s intended approach. The following paragraphs summarise what we consider to be the main matters for decision, across development plan preparation and development management. They do not provide a detailed handbook but do clarify the main topics and how to address them.

1) *Has the duty to have regard to the statutory purposes of AONBs to ‘conserve and enhance the natural beauty of their area’ been carried out?*

Local planning authorities must have regard to these purposes as a legal requirement of the Countryside and Rights of Way Act 2000 (see paragraph 2.1-2 above). This applies when preparing policies in a development plan, in making land allocations in a development plan, and in assessing development proposals. The duty is relevant when considering development proposals that are situated outside AONB boundaries, but which might have an impact on the setting of, and implementation of, the statutory purposes of these protected areas. This is a significant requirement about which local planning authorities are reminded in the Planning Practice Guidance (Natural Environment paragraph reference ID 8-003-20140306). The requirement is to enquire whether an AONB will be ‘enhanced’ by a proposal as well as ‘conserved’ by it, and often overlooked.

2) *Has the AONB Management Plan been taken into account?*

As a statutory document which each local authority covered by an AONB must adopt, an AONB Management Plan is likely to be a material consideration in planning decisions in or affecting an AONB and in development plan preparation. Policies in these Plans will need to be taken into account according to circumstances (see paragraph 2.12 above). This study has not examined this level of detail in the case studies reviewed in section 3.

3) *NPPF paragraph 115 requires that in any decision “great weight should be given to conserving landscape and scenic beauty” in AONBs. This applies not only to developments proposed within an AONB but if proposed in its setting such that the AONB would be affected.*

Fundamentally important is that this ‘great weight’ applies in the evaluation of the merits of a proposal in all cases. There are likely to be other material considerations to take into account in a decision in addition to landscape and scenic beauty, but those other matters would have to be still more weighty than landscape and scenic beauty if they were to take priority in a decision. The height of the hurdle to be crossed by the ‘great weight’ requirement is clearly a matter of judgement in individual cases, but the High Court decision in the case of *Mevagissey Parish Council vs. Cornwall Council* shows that it is expected to be taken very seriously: failure of Members to give ‘great weight’ to the AONB was a key issue in the successful challenge to a permission in that case.

4) *Would the development be ‘major’ development within the AONB for the purposes of applying NPPF paragraph 116?*

There is no definition of ‘major’ development. Whether a development is major must be decided as a matter of judgement in the circumstances of the case. Reasons for the choice should be given, especially where the matter is in dispute between parties.

5) *If the development is ‘major’, permission should be refused unless the two requirements in paragraph 116 have been met. These are that there are ‘exceptional circumstances’ to justify permission and that the development is ‘in the public interest’.*

Neither of these two separate terms is defined. Paragraph 116 states three tests which should be applied by way of assistance in addressing the two key requirements (see Box 2). Paragraph 115 of the NPPF still applies even if a development is ‘major’, so test (3) above on giving ‘great weight’ to the AONB must additionally be applied in these cases.

6) *Is the local planning authority’s Development Plan sufficient as the primary basis for evaluating development proposals (principally that it is up-to-date)?*

This is the first of a pair of related tests. A clear decision is required on the appropriateness of the development plan before choosing the correct path of analysis. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. NPPF paragraph 12 states that “Proposed development that accords with an up-to-date Local Plan should be

approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise”. This reinforces the importance of adopting suitable development plan policies on AONBs and then applying them. NPPF paragraph 14 explains the procedures in cases “where the development plan is absent, silent or relevant policies are out-of-date” (emphasis added). The NPPF is clear at paragraph 49 that if there is an inadequate supply of land for house building (in the way it defines at paragraphs 47-48), then the development plan is to be treated as out-of-date and paragraph 14 should be applied. However, for other issues and cases the planning authority must decide whether their plan is satisfactory.

7) *Is the decision arising from test (6) above that “the development plan is absent, silent or relevant policies are out-of-date”?*

If so, for proposals in or affecting AONBs, the usual NPPF paragraph 14 policy to grant permission (unless material considerations indicate otherwise) does not apply. Instead, an exclusion takes effect because “specific policies in this Framework indicate development should be restricted”. Footnote 9 is clear that AONB policies are amongst these ‘specific policies’. Therefore AONB policies apply, as set out in NPPF paragraph 115 and, if appropriate, 116. Paragraph 2.6 above explains this. (Procedurally this creates a significant difference between the approach to development proposals in or affecting an AONB and to proposals not affecting an AONB. Even when the development plan is unsatisfactory, paragraph 115 (and if appropriate 116) of the NPPF still apply to AONB-related proposals. Development should *only be permitted* in AONB cases if there are sufficiently compelling arguments to outweigh the ‘great weight’ given to AONBs. Where the ‘specific policies’ do not apply, the priorities to be demonstrated are reversed: development should *only be refused* permission if the adverse impacts of that development significantly and demonstrably outweigh the benefits.)

8) *Has the development plan included criteria-based policies which reflect the highest level of landscape protection afforded to AONBs, in line with NPPF paragraph 113?*

The NPPF expects development plans to contain appropriate AONB policies (see Box 3 above). This is the principal opportunity for local authorities to set out appropriate policy for protecting the setting of an AONB, in addition to development management and detailed policies to apply within AONBs. Assessing this is beyond the scope of this study.

9) *Have development plan policies been applied?*

This is necessary when the development plan is up-to-date (see NPPF paragraphs 12 and 14 and test (6) above). This study has not examined this level of detail in the case studies reviewed in section 3.

2.21 Of the nine tests above:

- tests 1, 2, 3, 4, 5, 6, 7 and 9 apply to development management decisions within AONB boundaries;
- tests 1, 2, 3, 6, 7 and 9 apply to development management decisions within the settings of AONBs; and
- tests 1, 2, 3, 4, 5 and 8 apply to development plan preparation.

3. CASE STUDIES

3.1 From their engagement with planning applications and development plan land allocations which would have a significant effect on AONBs, AONB Units around England have identified numerous cases where they considered that treatment of the AONBs has been deficient. The fifteen case studies in this section highlight the kinds of problems encountered. The number presented and the spread of cases around the country indicates that this is not an occasional problem but more deep-seated. In each case, AONB issues were (or should have been) a key issue in the decision. There were other cases that could have been chosen too.

3.2 The cases presented have all been finally approved. This means that there is no opportunity left to challenge the decisions, either on planning merits or on a point of law. The damage to AONBs which concerned the AONB Units can only be avoided if any of the recent permissions are not ultimately implemented. (AONB Units are aware of numerous other pending threats to AONBs where satisfactory resolution to protect the AONB is far from assured.) Some of the cases presented were decided by Planning Inspectors or the Secretary of State (two Local Plan examinations and three arising from planning appeals). The difficulties AONBs face are therefore not limited to problems in local government but more fundamentally need to be addressed by central government too.

3.3 In every case there was obviously a difference of viewpoint between the AONB Unit and the decision-making authority. The case studies aim to show in outline how this arose. In many examples we consider there was a failure to follow the correct procedures: by not applying the correct tests, applying the correct tests inappropriately, or omitting tests, the decision slipped away from representing AONB interests properly. In some cases the local planning authority had such strong support for development, particularly for helping the local economy or for the provision of affordable housing, that other interests like AONB protection were given very little weight (sometimes coupled with a failure to follow the correct procedures). Differences of perception and expectation are of course legion in the world of planning judgements, but in some cases the difference of view between the AONB Unit and the decision maker was so profound that the Unit struggled to understand it at all. The cases chosen all indicate discernible problems with paying proper regard to AONBs, and are not believed to be matters simply of differences between the parties in 'reasonable views honestly held'. In five of the cases local authority planning officers had recommended refusal of the proposals, indicating that the AONB Units were not alone in their judgement on the issues.

3.4 Eight of the case studies involved housing, representing the most frequently arising issue in dispute in AONBs. Of the seven non-housing cases, two were solar arrays. The 15 selected cases appeared in 13 local planning authorities, with only Cornwall and Shropshire Councils featuring twice. However, there was a greater concentration of examples by Area of Outstanding Natural Beauty, with three cases in the Cotswolds and two each in the High Weald, Cornwall and Shropshire Hills.

3.5 The examples chosen represent a cross-section of development circumstances. Four are planning applications for housing on greenfield sites within AONBs. Two are strategic

land allocations in development plans for housing on greenfield sites within AONBs. Five are planning applications for non-housing developments on greenfield sites within AONBs. Two are planning applications for housing on greenfield sites within the settings of AONBs. Two are for the redevelopment of previously used land within AONBs (normally acceptable but in these cases inappropriate in various ways in the AONB Units' views), one for offices, care home and housing on a site partially used for offices, and the other a replacement hotel.

3.6 The summary description of each case has been limited to one page as preferable for readers. This can only pick out the main points at issue, concentrating often substantial volumes of paperwork and argument into a very small number of words. It fails to convey the depth of feeling in AONB Units (and elsewhere) about the decisions in a number of instances, and cannot address the circumstances surrounding cases or the nuances which help explain why decisions turned out the way they did. Application numbers are provided and local authorities stated, allowing ready interrogation of the Planning Portal and local authority websites to follow up the summaries for far more information on each case.

The case studies

Greenfield housing developments within AONBs:

1. Hill Hay Close, Fowey, Cornwall
2. North of Police Station, Heathfield, East Sussex
3. Station Road, Bourton-on-the-Water, Gloucestershire
4. Timber Hill, Lyme Regis, Dorset

Strategic housing land allocations on greenfield sites in Development Plans:

5. Salisbury Road, Marlborough: Wiltshire Core Strategy
6. Odd Down, Bath: Bath and North East Somerset Core Strategy

Greenfield non-housing developments within AONBs:

7. Canada Farm, Winterbourne Stickland, Dorset (solar array)
8. Corfton Farm, nr. Craven Arms, Shropshire (poultry units)
9. Lea Quarry, Wenlock Edge, Shropshire (woodchip business)
10. Duckhaven, Westward Ho!, Devon (tourism business)
11. Reydon, Waveney, Suffolk (solar array)

Greenfield housing developments in the setting of AONBs:

12. Gretton Road, Winchcombe, Gloucestershire
13. Penland Farm, Haywards Heath, West Sussex

Brownfield redevelopment sites within AONBs:

14. CABI site, Wallingford, Oxfordshire (offices, care home and housing)
15. Headlands Hotel, Port Gaverne, Cornwall (replacement hotel)

1 Hill Hay Close, Fowey, Cornwall (application PA12/05016). Cornwall Council.

Proposed development

In the Cornwall AONB. 82 dwellings (50% affordable) proposed on 4.3ha at a 'gateway' entrance on the north-west edge of Fowey 0.8 miles from the town centre, on ground rising away from the town. There would be a variety of dwelling types, but predominantly two-storey.

Grounds for AONB Unit objection

The proposal did not have sufficient regard to the sensitivity and capacity of the protected landscape for this form of development, so it would not conserve and enhance the AONB and would conflict with NPPF paragraph 115. Nor would it have sufficient regard to the landscape setting of Fowey (a key aspect of the local landscape character assessment). The local character area is identified to have a 'very high' sensitivity, but the Landscape and Visual Impact Assessment accompanying the application stated that "when assessed under landscape character has been determined to have a low sensitivity and magnitude of assessed impact as small, the significance of effect will remain as negligible. With mitigation measures which would have a positive change to the environment, the quality of change would be beneficial." The Unit argued instead that appropriate boundary treatment had not been achieved on the northern side, and that the visual impact of different parts of the development had not been fully assessed. There were also AONB-related objections from Fowey Town Council, the Fowey Town Forum, the local MP, CPRE and amongst the 258 letters of objection.

The planning response

The officer's report argued that "It is considered that in the absence of a county-wide 5 year land supply this development should be considered in the context of the presumption in favour of sustainable development as set out in paragraph 49 of the NPPF" – without drawing attention to paragraph 14 and its Footnote 9. A reference was made to paragraph 115 of the NPPF, but qualified: "However the NPPF does state that new development within such areas can be permitted where there is exceptional need". (That may be a reference to paragraph 116, but at no point was consideration given to whether or not the scheme was 'major'.) The report did not consider whether there was an exceptional need, but advised that there was a pressing need for housing, especially affordable housing. No further reference was made in the assessment to the need to give 'great weight' to the AONB. Under a heading 'Reasons for overriding public interest', the report stated "There are a number of benefits that the proposal would generate for local communities and the surrounding area. These include the opportunities for provision of affordable housing, as well as providing a sustainable location for housing development within close proximity to the town centre and range of local facilities." An assessment by the developer that 10 other possible development sites in Fowey, all in the AONB, had considerable constraints on delivery and would be more visible from in and beyond the AONB was accepted by officers.

Reasons for the approval

The conclusion of the officer's report was that "In the context of the need for housing including affordable housing; the lack of a 5 year housing land supply for Cornwall; the proximity of the site to Fowey Town Centre and local facilities; this application would be a logical extension to Fowey and would constitute sustainable development in line with the National Planning Policy Framework, and the impact on the AONB and Heritage Coast Scheduled Ancient Monument/Listed Building would be outweighed by the provision of housing and the 41 affordable homes which would be secured to meet an identified local need." The extensive debate at the Central Sub-Area Planning Committee on 10th December 2012 broadly reflected this range of arguments and the scheme was approved on the balance of the issues with the casting vote of the Chairman.

2 North of Police Station, Heathfield, East Sussex (application WD/2013/0635/MEA). Wealden DC.

Proposed development

Mostly inside the High Weald AONB. 115 dwellings (40% affordable) proposed on 4.94ha mostly outside the Heathfield development boundary but near the town's shops and services. The site had been proposed by the Council for housing in the Wealden Core Strategy but rejected (notably for want of evaluation of alternative sites). Most of the site was in two fields in semi-improved grassland divided by a prominent belt of mature trees. Ancient woodland bounded much of the site.

Grounds for AONB Unit objection

The development would affect the grassland and ancient woodland components of natural beauty identified by the High Weald AONB Management Plan 2004. Together with its historic field boundaries, banks and ditches and some veteran trees, the features on the site together formed a distinct character and quality highly representative of the High Weald landscape. The development would have a significant impact on the AONB through the physical loss of, and complete change of character to, this area of the AONB, in a sensitive urban edge location on the AONB boundary, and to the detriment of the wider AONB landscape. The over-engineered road and poor suburban design would be detrimental also. The Landscape and Visual Impact Assessment was challenged on numerous matters, including its claim that "over time effects on both the AONB and the landscape character of the area surrounding Heathfield are considered to be beneficial". The development would be contrary to the development plan: it was a greenfield site, within the AONB, and in the open countryside, where a policy of constraint applied. The district housing supply was found sound by the Core Strategy Inspector so no argument regarding housing need applied. The need for affordable housing alone did not justify such a land release in these circumstances. That Inspector had stated that the assessment of alternative sites should be undertaken by the Council in a subsequent plan, thereby allowing public consultation and examination, i.e. not by an applicant.

The planning response

All parties accepted that the development was 'major' for NPPF paragraph 116 purposes. On housing need, the District had a 5-year housing land supply but a future DPD was intended to provide a housing allocation to Heathfield, where there was a recognised affordable housing shortage. The officer's report heavily promoted the site's local affordable housing contribution, stating simply that "Heathfield's affordable housing needs represent the exceptional circumstances in which a major development within the High Weald may be permitted", without being site-specific. Attention focused on alternative sites. The officer's report concluded that "A wide range of sites including those that are capable of providing affordable housing have been assessed using the Council's adopted SHLAA methodology for their development potential. Together with the Council's independent review of the viability of sites with a larger affordable housing potential, it has been demonstrated that the application site is deliverable and viable with no meaningful alternative, particularly where affordable housing is concerned." The AONB designation was plainly treated as an impediment to affordable housing delivery rather than a matter to which 'great weight' was given in practice. The report accepted that "there would be harm to this part of the AONB", but emphasised the view of the Inspector that the site "occupies a less scenic part of the AONB" (even though the site "benefits from an attractive AONB setting against the ridgetop urban form of the town"). On mitigation, the report concluded that "Application details have shown that the proposed level of development can be readily accommodated at the site without detriment to the urban or rural environments through mitigation and enhancement", directly contradicting AONB Unit advice.

Reasons for the approval

Officer advice to approve the scheme was accepted at the Planning Committee North on 26th September 2013, without any indication of additional issues having affected the decision.

3 Station Road, Bourton-on-the-Water, Gloucs (application 12/03616/OUT). Cotswold DC.

Proposed development

In the Cotswolds AONB. 100 dwellings (50% affordable) proposed on 4.38ha just outside the western boundary of Bourton-on-the-Water (washed over by AONB). Beyond the A429 (Fosse Way) on the western boundary, the flat land of the settlement changes abruptly to steeply rising ground.

Grounds for AONB Unit objection

The site consisted of land of agricultural character with evidence of former ridge and furrow, surrounded and divided by mature native hedgerows. Its character and appearance were entirely in accord with the landscape character of the AONB. The significant degree to which views of the landscape setting of Bourton on the Water would be lost was clear from the Landscape and Visual Impact Assessment; this also showed that the view of Clapton Hill and other parts of the landscape setting of Bourton-on-the-Water would be substantially reduced if not hidden by the proposed development. The proposals for the western boundary of the site towards open countryside were completely inadequate to mitigate the visual intrusion of the scheme, which would consist of two storey dwellings. The lack of more suitable sites outside the AONB had not been proved.

The planning response

The officer's report argued that the expanse of suburban-type development would significantly impact on the rural character of the AONB within which the site is located and would fail to conserve the 'landscape and scenic beauty' which the NPPF states should be given great weight in development control decisions. The proposal would result in the encroachment of residential development into the countryside that would dominate the important and otherwise rural approach to the town from Fosse Way. The site would also be visible from public right of ways and longer distance viewpoints to the village. A consultancy study of Land Surrounding Key Settlements made specific reference to Bourton and the application site, stating that development would not be suitable on land south of Station Road and east of the Fosse Way because these areas are essential to the village setting. In 2004 the Local Plan Inspector had declined to allocate the site for housing. Amongst other reasons, he considered development of sites he studied "would have some impact on the landscape of the AONB", but at the site he chose instead this "would be significantly less in this respect than that of the Station Road site". The officer's report concluded that the scheme "would have a significant adverse impact on the character of the AONB within which it is located and the setting of the village". The application was refused under delegated powers.

Reasons for the approval

The applicants appealed against the refusal and a Planning Inspector granted permission on 15 January 2014 after a public inquiry. The Inspector gave substantial weight to the absence of a 5-year housing land supply. Bourton was a village identified for some growth. Further, the application site was well-related to the built-up area, close to the town centre, and enclosed by the town on three sides. The Fosse Way acted as a clear visual and physical divide at the appeal site, and the site was more strongly associated with the town than with the countryside. The Inspector disagreed comprehensively with the Cotswolds Conservation Board, the District Council and the 2004 Local Plan Inspector on a series of issues concerning character and visual impact. The Inspector concluded that "none of the views of either the town or the countryside are particularly significant, especially in the context of the AONB as a whole. Consequently, any actual harm to the AONB and its scenic beauty would be very limited." The housing supply and other advantages would outweigh this. Regarding paragraph 116 of the NPPF, "The lack of a 5-year supply of housing land is an exceptional circumstance, and the urgent need to rectify that situation is very much a matter of public interest. Given also the development's positive economic effect, the lack of alternatives, and the lack of environmental harm, the conditions for major development in the AONB are therefore met."

4 Timber Hill, Lyme Regis, Dorset (application WD/D/14/003254). West Dorset DC.

Proposed development

In the Dorset AONB. 15 dwellings (100% affordable) proposed on 0.62ha as a rural exception site about 2km from the town, on high ground adjacent to the South West Coast Path.

Grounds for AONB Unit objection

The detached and isolated development on a hillside would be uncharacteristic of its countryside location and wider setting, and widely visible. The siting was at odds with the rural character of the AONB, which weighed heavily against the proposal to the extent that the development might be considered 'major' in this context, in the light of previous cases. The claimed lack of alternative sites was not compellingly made, while the claim that the development of affordable housing on sites better related to Lyme Regis would be non-viable appeared to be largely unsupported.

The planning response

Rural exceptions sites beyond local development boundaries are acceptable in local planning policy. As West Dorset DC did not have a 5-year housing land supply, the officer's report referred to NPPF paragraph 14 (but not Footnote 9). However, the scheme failed the environmental aspect of the sustainable development test. A larger area of which the site was part had been proposed previously but rejected, most recently in the 2014 SHLAA when it was not accepted on grounds of:

- distance from the town centre;
- detached from the built-up area;
- projecting into unspoilt AONB landscape;
- elevated, open and visually prominent;
- breaching currently undeveloped hilltop as seen from the west;
- breaking away from containment of the town in the valley, with unacceptable landscape impacts.

The officer's report concluded: "a major concern for officers on this site is the visual impact; it is considered to be a site which is poorly related to the built-up town; it is a prominent and elevated site – the development of which would be seriously harmful to the character of the AONB." For this reason and due to the narrow steep access on foot to the town, officers recommended refusal of the application. The officer's analysis did not decide whether or not the development was 'major' for NPPF purposes, did not refer to the need to give 'great weight' to the AONB or to the legal objective of conserving and enhancing the area; nor did it address whether there were realistic alternative sites. These points had all been highlighted within the AONB Unit's submission.

Reasons for the approval

The need for affordable housing in Lyme Regis and the support of the Town Council were felt by Members to outweigh the recommendation for refusal in its decision on 16th April 2015. Members "also suggested that appropriate landscaping could be implemented to mitigate the visual impact that the development would have in that location."

5 Strategic site allocation – Salisbury Road, Marlborough (Wilts Core Strategy). Wiltshire Council.

Proposed development

In the North Wessex Downs AONB. Core Policy 2 of the Wiltshire Core Strategy proposed a series of strategic development sites around Wiltshire, one being for 220 dwellings on the southern edge of Marlborough, a town washed over by the AONB designation and allocated 610 dwellings in total.

Grounds for AONB Unit objection

A landscape assessment of the proposed allocation commissioned by the AONB Unit concluded: “Summary of compliance with NPPF paragraphs 115 and 116: Development would extend into open countryside and would impact on a rural valley characteristic of the Savernake Plateau. Development would not conserve the special qualities and natural beauty of the AONB.” It advised that the site should not be released. A landscape assessment for the Council had considered two sites on the edge of Marlborough and advised that both were likely to considerably impact on biodiversity and landscape designations in the area, but accepted the Salisbury Road site. The AONB Unit was critical of that for not questioning the principle of proceeding with the proposed strategic housing location, viewing the sites as alternatives, and being over-reliant on design to mitigate adverse impacts. The Plan made no distinction between land within or outside AONBs when deciding its development land allocations, especially for housing. Also, the Sustainability Appraisal had said in considering three options for a variety of housing allocation levels in Core Policy 2 that “Large scale housing development should not be located in areas with specific landscape designations, e.g. AONB”. There was no evidence that the allocation to Marlborough had been adjusted in any way to reflect its AONB location or that there had been any consideration of alternatives either outside the AONB or distributed more sympathetically within it.

The planning response

The Inspector examining the Plan agreed “the effect of potential development upon the landscape character of the locality and the AONB should not be underestimated. Whilst the site is reasonably well related to the town in terms of road access and proximity, the undeveloped nature of the fieldscape, the undulating public approaches and longer distance views from the west all increase the potential for notable adverse visual effects. However... whilst I agree in part with the landscape assessment of the Salisbury Road site undertaken on behalf of the North Wessex Downs AONB Unit, specifically in the evident loss of arable land, the effect on the views from a footpath to the south and the development beyond the existing settlement, the effect appears capable of being contained into the immediate locality.” He restated a number of arguments by the Council for releasing the site, including the preference for the Salisbury Road site over the alternative, agreeing with them all.

Reasons for the approval

The Inspector concluded: “I note the concerns raised, the national importance of the AONB and its purposes of designation but ultimately do not disagree with the Council’s approach.... a balance needs to be struck between the statutory purposes of AONB designation and other factors. In this instance, I agree with the Council’s interpretation of the evidence which indicates that a limited degree of development upon the Salisbury Road site is... justified.... [with ‘some capacity for change’.] The undue limitation of housing for an existing market town, such as would be secured by not having a modest degree of growth, would not satisfy the strategic objectives of the Core Strategy as a whole.” He did not review other ways of supplying the 220 dwellings with less impact on the AONB or challenge the allocation in principle (unlike Examining Inspectors in West Berkshire UA and Wealden DC, drawn to his attention). Instead, he continued “Nonetheless, the figure of 220 new homes should not be considered a minimum and any development must have regard to any appropriate site specific Landscape and Visual Impact Assessment which should inform the final scheme that is promoted.” He also raised the allocation to Marlborough from 610 to 680 dwellings.

6 Strategic site allocation – Odd Down, Bath (BANES Core Strategy). Bath & NE Somerset Council.

Proposed development

In the Cotswolds AONB. The Core Strategy was subject to a series of proposed changes after its original submission in December 2010. Objectively assessed housing need was progressively raised from 11,000 to 13,000 over a shorter Plan period. Various additional land releases were proposed in response. In November 2013 the Composite Plan Policy B3A proposed 300 houses at Odd Down on the SW edge of Bath (a small plateau between Avon Valley in which Bath sits and open countryside further south and west, and also within the Green Belt and World Heritage Site). The Council reported that the site was one arising from a careful assessment of the options, which would cause the least harm to the City's sensitive environment and sought to minimise the scale of the impact.

Grounds for AONB Unit objection

The Cotswolds Conservation Board objected in December 2013 to the land allocation at Odd Down: the 'exceptional circumstances' required by NPPF paragraph 116 for its release had not been demonstrated. In any event, the Board would prefer to see the release of land from the Green Belt at Hicks Gate and Whitchurch instead of at Odd Down (and Weston), both outside the AONB (and WHS) and considerably less sensitive. NPPF policies may result in not all housing needs being met.

The planning response

The Inspector examining the Local Plan considered the Council's assessment of the impacts on the AONB reasonable: "there would be a moderate adverse impact on the special qualities of the AONB. This assessment took into account the existing visual intrusion of built development on the landscape of the plateau, the fact that the plateau exhibits only some of the qualities that make the AONB special... and that built development would be pulled back from the more sensitive parts of the plateau where it could have a wider adverse impact. The land within the Odd Down plateau proposed for allocation is a much less dramatic and distinctive landscape than that to the south. Whilst there would be a loss of the existing farmed landscape, resulting in harm, this harm would be contained largely within the plateau on the basis of the Council's approach to where built development should take place." The allocation area was particularly close to the village of South Stoke on the south side, on the southern lip of the plateau. The existing fields adjoining South Stoke Lane would be protected from development to minimise impacts on the AONB, World Heritage Site, Green Belt and South Stoke Conservation Area. The allocation would be much larger than the area suitable for built development, reflecting the sensitivity of the site in a number of respects and that development would require particular care in its design and layout.

Reasons for the approval

The Inspector recognised that exceptional circumstances had to be demonstrated for Odd Down to be allocated (in relation to both Green Belt and the AONB). However, the requirements of the NPPF paragraph 116 were analysed only briefly. Nor were they reviewed in the principal document from the Council on which the Inspector relied to come to his conclusions ('WHS Setting and AONB Landscape and Visual Impact Assessment for Land Adjoining Odd Down'). Hicks Gate and Whitchurch were found unsuitable for promotion independently of Bristol's wider growth needs. Other sites were assessed for their merits, but comparison with sites in the AONB was very limited. The Inspector nonetheless did correctly apply NPPF paragraph 115: "I consider that there are the exceptional circumstances to justify removing land from the Green Belt and for major development within the AONB. The need for housing and the benefits of additional housing in this location at Bath outweigh the harm that would arise, taking into account the great weight that must be given to protecting the AONB and heritage assets. The Council's decision to allocate this site represents positive planning and is justified. This allocation is needed to make the plan sound."

7 Canada Farm, Winterborne Stickland, Dorset (application 2/2013/0770/PLNG). North Dorset DC.

Proposed development

In the Dorset AONB. A proposal for a 15.3ha solar array (34,600 panels) producing up to 8.7MW of electricity, together with associated supporting buildings, inverters, transformer, access, CCTV and chain-link fencing. The site was on high ground within chalk downland, sloping downwards to the SE.

Grounds for AONB Unit objection

The special qualities of the Dorset AONB would be challenged by a large solar park: its undeveloped rural character, uninterrupted panoramic views and a sense of tranquillity and remoteness; here particularly, in the Upper North Winterborne Valley, there was a strong sense of rural tradition associated with the settlement pattern. There would be views into the site from high ground. The scheme should be considered a 'major' development, but the policy tests relating to 'exceptional circumstances' had not been satisfied, including assessment of alternatives. The claimed 'limited visibility' into the site did not justify the development in landscape terms. CCTV poles and the construction and duration of the project would have negative impacts. There were significant deficiencies in the Landscape and Visual Impact Assessment (LVIA), which did not demonstrate a clear understanding of the basis for the Dorset AONB's designation.

The planning response

The officer's report took a strongly AONB-related approach to the assessment of the application's impacts. It noted that the site would be open to view from locations on higher ground to the south east towards Compton Marshall 3-4km away. Notwithstanding the distance, this and other viewpoints would expose the full width of the panel arrays (400-500m) to full view. The impact of the regular, engineered form across such a width would not relate to the scale of any other landscape impact within the area. The development was likely to take on an unnatural appearance of a large expanse of black roofing. The report also accepted all the AONB Unit's points noted (other than expressing no concern about the scheme's construction, duration and CCTV poles). The AONB guidance implied a presumption against this form of development to conserve the AONB's special qualities, with field-scale development on agricultural land being the least appropriate. The report considered that overall the proposal would have an unacceptably harmful impact on the strong and clearly identified landscape character in this sparsely-developed area. It would introduce uncharacteristic new elements into a landscape which it considered to be particularly sensitive to change. The report considered that the LVIA underestimated the effect of the scheme on landscape character, which would be moderate to significant adverse. It recommended refusal of the application on AONB grounds alone (including impacts from local footpaths, which was an objection raised by Natural England), highlighting conflict with saved policies from the North Dorset Districtwide Local Plan on landscape and renewable energy as well as from the NPPF paragraphs 115 and 116. Despite the significant benefit of energy proposed to be generated, the harm to the AONB landscape was overriding.

Reasons for the approval

In his presentation to the Development Management Committee on 4th March 2014, the officer again referred to the policy basis for considering this major development. Members nonetheless broadly aimed to balance the benefits of the scheme with what most of them viewed as limited local harm. They considered the local visual impacts well-contained and that "views from the south would perceive the solar farm within a wider patchwork of fields and woodlands such that it would not particularly dominate this wider landscape". Noting local support, they granted permission with only one clearly dissenting voice. They did not address whether the scheme was major or the scope for siting outside the AONB, and so did not give full reasons for disagreeing with their officer.

8 Corfton Farm, nr. Craven Arms, Shropshire (application 14/00784/EIA). Shropshire Council.

Proposed development

In the Shropshire Hills AONB. A proposal to construct four poultry sheds, each 110m x 24m x 6m at the ridge (for approx. 185,000 birds combined), five feed bins, ancillary works, amended vehicular access, biomass building (with four boilers, storage, hoppers and flues) and associated landscaping. The 3.4ha site sloped down from NW to SE, west of Corfton village by the B4368 through Corvedale. Material from site levelling would be used as screening bunds on the NW and SW boundaries.

Grounds for AONB Partnership objection

The AONB Partnership felt that the applicant had taken no account of the national policy tests for protecting the AONB and that “the Landscape and Visual Impact Assessment is flawed, seeking at every opportunity to downplay the AONB and its impact on the proposed development.” The LVIA implied that being near the AONB boundary weakened the protection of designation. The AONB Management Plan 2014-2019 highlighted the challenge from this kind of scheme: “Development pressures are the highest here of any part of the AONB... More intensive methods, alternative crops and large agricultural buildings therefore have particular potential to cause harm to the landscape quality of the area.” This EIA Schedule 1 development should unequivocally be treated as a ‘major’ development, though the application neither acknowledged nor addressed the tests of the NPPF paragraph 116. The Council’s Scoping Opinion on the EIA also failed to mention likely effects of the development on the AONB. The proposal was contrary to an adopted Core Strategy Policy and three policies in an emerging Local Plan, dealing with AONB, design, locally distinctive landscapes and the general management of development in the countryside. The existence of other modern farm buildings in this part of the AONB did not mean that the change caused by this development would not be significant, as the application claimed: that approach would cause creeping industrialisation.

The planning response

The applicant produced photomontages in response to the AONB Partnership’s concerns about visual impact. The officer’s report considered these supported the conclusion that the proposed site would not give rise to an unacceptably adverse impact in the local landscape, even though the poultry units would be quite large structures (taking into account the low profile of the buildings, their setting, proposed landscaping measures, the proximity of existing buildings and that they would only be viewed from a distance). With landscaping, surface treatment and colour-control of the buildings the resulting landscape impacts would be limited and outweighed by agricultural and rural economy benefits. Furthermore, “The proposed development would make little significant impact on the setting or character of the AONB.” The development was ‘major’ but met the ‘exceptional circumstances’ requirement. There was a need nationally for additional poultry production, with processing companies seeking sites in the Shropshire area. In terms of cost/scope of developing the proposals elsewhere, that would not be realistic as the development needed to be next to the existing farm unit: the holding was “all within the AONB and there are no other sites which are as well suited to accommodate the development”. The proposals would have significant local benefits for rural vitality. The Core Strategy policy quoted by the AONB Partnership was given relatively little attention in the officer’s report, a different feature of it quoted, and the scheme found to comply with it. There was also compliance with two emerging policies – different from the three noted by the AONB Partnership. The proposals were an appropriate form of diversification.

Reasons for the approval

The local Member noted that this was a very large application in a sensitive area located within the AONB. Members had differing views on the impact of the proposals on the landscape, following a site visit. The majority of the South Planning Committee accepted the officer’s recommendation of approval at their meeting on 24th June 2014. AONB policy issues appear not to have been reviewed.

9 Lea Quarry, Wenlock Edge, Shropshire (application 12/03034/MAW. Shropshire Council.

Proposed development

Mostly in the Shropshire Hills AONB. Proposal (retrospective) for a change of use of 6ha of land and buildings at a former quarry to a woodchip business, with processing, storage (4.5ha) and ancillary uses, erection of two storage buildings and extension of another, and reuse of the quarry office. Restoration of the quarry to a greenfield state would in other respects be implemented. The 65ha former quarrying area would be managed sympathetically for informal access and the environment.

Grounds for AONB Partnership objection

The AONB Partnership objected strongly to an inappropriate use in a highly sensitive location, which would result in huge loss of existing and potential public benefits in terms of conservation value, access, amenity and recreation, and potential employment through tourism. It would prevent quarry restoration to recreate a largely greenfield site with geological, heritage, and limestone grassland interest in line with the AONB Management Plan and the comprehensive vision for local quarries supported by the local community. There would be adverse impacts on visual amenity, landscape character and tranquillity. Wenlock Edge was one of the strongest elements in Shropshire's environmental networks. There were many alternative locations for the business where the impacts would be minimal. The site should not be viewed as a brownfield site suitable for industrial use. The Chairman wrote a third time to the Council stating that "The nature of this application has led the AONB Partnership to take unprecedented steps in opposition to the proposal", asking to address the Committee, highlighting shortcomings in the officer's report, liaising with the National Trust (who had a 5,000 signature petition) and Natural England as other objectors, and challenging assertions by the applicant about failure to co-operate.

The planning response

The officer's report agreed with the AONB Partnership that this was a 'major' proposal in terms of NPPF paragraph 116. It considered the first test on need and impact of refusal was satisfied, citing extensive renewable energy and economic benefits. On alternative sites, the report emphasised the benefits of the application site, identifying nine advantages down to the very detailed ("The site is served by a high voltage electrical supply"). It disputed that alternative sites were available at all or that the need could be met in some other way. Regarding detrimental effects on the environment and their moderation, and on the AONB in particular, the report considered that visual impact (assisted by the applicant's photographic survey, not LVIA) was capable of being satisfactorily mitigated, including localised planting and the recladding and/or painting of degraded buildings otherwise to be removed in quarry restoration. Also the proposals would not have an unacceptably adverse impact on the local noise environment or tranquillity within the AONB: noise from wood chipping had been measured at up to 85dBA from a footpath at 110m, but chipping would be relocated within a building. All three AONB tests would be satisfied. The benefits and disbenefits were finely balanced, but since the recent acquisition of the quarry the applicant had agreed to carry out generously funded wildlife enhancement and land management beyond the terms of the quarry restoration conditions: this tipped the advantage to granting permission. Business uses had been permitted in similar local contexts in the recent past – but without such mitigation benefits.

Reasons for the approval

The South Planning Committee agreed to permit the majority of the development, specific to the applicant, except a temporary permission for open storage to allow time for a separate application with a Great Crested Newt survey (29th January 2013). Despite pressure from the AONB Partnership and National Trust, the decision gave little weight to AONB issues, noting that, if the application was refused, the status quo would remain and the area would lie dormant; this was the right type of business for this site; and the proposal would provide employment and local economic benefits.

10 Duckhaven, Westward Ho!, Devon (application 1/1036/2014). Torridge DC.

Proposed development

In the North Devon Coast AONB. Proposal for a single storey office building.

Grounds for AONB Unit objection

The Duckhaven site occupies a prominent clifftop location above the village of Westward Ho! It is one of the few remaining undeveloped parts of the hillsides surrounding Westward Ho! Parts of the site are visible on the skyline. The Duckhaven site was farmland for many years, but in recent times its use had changed from that of horse stud to holiday / tourist accommodation beginning in 2009 with a change of use from groom's accommodation to holiday use (APP 1/1028/2009/FUL). Since then, there had been more than a dozen applications for new development, change of use and removal of planning conditions. Not all consents had been implemented and some superseded earlier consents. If all existing consents were to be implemented there would be a substantial increase in the area of built development on site, much of which was in the AONB (see Table).

Table: Summary of development proposals decided at Duckhaven (source: Dave Edgcombe)

Figures taken from application forms unless stated otherwise (as at November 2014)

App No.	Status	Increase in building (m ²)	Site area (ha)	Additional residential units
1028/2009	Consented	0	0	0
1030/2009	Consented	0	-	4
0158/2010	Consented	280	0.2	4
0163/2010	Consented	100	0.1	0
1126/2010	Consented	0	0.33	0
0417/2011	Consented	144	-	0
0518/2011	Consented	30	0.6	0
0218/2012	Consented	0	0.3	3
0741/2012	Consented	160 (Design & Access statement)	0.13	1
0524/2014	Dismissed on appeal	21 (from plan)	0.1	0
1041/2014	Consented on appeal	240	0.25	0
1042/2014	Consented on appeal	120	0.06	0
1036/2014	Consented	80 (scaled from drawing)		0
Total		1175	2.07	12

The AONB Unit objected to application 1036/2014 on grounds of cumulative development, as this would result in a large scale new development in a sensitive area of the AONB. The character of the landscape locally would be changed adversely, so that it would come to be dominated by the overall development, associated car parking and infrastructure. Such a change would be harmful to the defined landscape qualities of peace, tranquillity and low levels of development, and would add to the significant influence of the urban area of Westward Ho! on the landscape.

The planning response

The case officer agreed that the building would expand Westward Ho! into open countryside, and that this had so far been by unplanned incremental decisions, but she reported that due to the topography of the site this building would not be seen from the coastal path or any public access points within the AONB or from Westward Ho! or Hartland. Where visible it would be seen in the context of the whole complex causing no material landscape harm, not as an imposing individual building. It conformed with Local Plan policies on design, tourist need and the local economy.

Reasons for the approval

The delegated report recommended approval: there were clear benefits and no landscape harm.

11 Reydon, Waveney, Suffolk (application DC/13/0269/FUL). Waveney BC.

Proposed development

In the Suffolk Coast and Heaths AONB. A proposal for a solar array covering 10.7ha, producing up to 4.4MW of electricity from 18,000 panels, together with associated facilities including a substation, 4 transformers, access track and 2m high deer fence. Permission would be for 25 years.

Grounds for AONB Unit objection

Industrial scale development would be introduced into the protected landscape, having an effect on the enclosure landscape with its pattern of straight hedges that was greater than the 'neutral' claimed by the applicant. The visual impact even with the intended hedgerow screening would be moderate adverse, but the achievement of the intended height and bulk of hedgerows on the poor sandy soil within the timescale needed was questioned. The deer fence would also have an adverse visual impact. This was a major development that did not meet the tests of NPPF paragraph 116, or 115. The scheme was not limited to this location but could be sited elsewhere, which was also contrary to a development plan policy on AONBs, and was not of overriding national interest.

The planning response

The officer's report was clear that the solar array would contribute towards the District's energy targets, but considered that impact on the AONB was a primary consideration. All the points raised by the AONB Unit were accepted to some degree. Assessed against NPPF paragraph 116, the impact on the local economy was not explained in the application, and despite the national interest in renewable energy generation there was no overriding reason why the solar array should be located within the AONB as locations outside were feasible. The report advised the "proposal constitutes a conspicuous feature that is alien to the character and appearance of the local landscape." It would have a degree of localised impact in the surrounding landscape, but, of pivotal importance, could be located in alternative locations which would have no impact on the designated landscape.

Reasons for the approval

The officer recommendation of refusal was not accepted. After presentations to the Development Control Committee on 14th May 2013, Members received apparently satisfactory answers to their questions on matters such as the visibility of the mesh fence, noise from the transformers, speed of tree growth, ecological monitoring, impact on flood risk, and glint and glare. The Minutes recorded the Members' debate principally as follows: "Members discussed the need for renewable energy whilst balancing the need to protect the unique landscape of the Area of Outstanding Natural Beauty. A Member raised further concerns about the view from the Wangford Road direction and suggested that the screening and hedging ought to be even higher. There followed some discussion and it was confirmed that if the application site was at another location within the Area of Outstanding Natural Beauty it was unlikely to be approved and the proposed site was the most suitable location for a solar farm in the local area." Members resolved to grant permission. The debate therefore appeared to have omitted any explanation of whether the proposal was viewed by Members as 'major' development, or whether the tests were met. They adopted a 'balancing' approach rather than follow the 'great weight' policy in NPPF paragraph 115 (emphasised by officers on three occasions). No reasons were given for departing from the officer recommendation (based on accurate advice on AONB policy), while the comparison with alternative sites within the AONB, rather than outside, was not one recognised in national or local policy.

12 Gretton Road, Winchcombe, Gloucestershire (application 12/00464/OUT). Tewkesbury BC.

Proposed development

In the setting of the Cotswolds AONB. 120 dwellings (35% affordable) proposed on land on the north side of Winchcombe with sports facilities provided on a separate parcel (approx. 10ha in all).

Grounds for AONB Unit objection

The Cotswolds Conservation Board agreed with the Inspector at the Tewkesbury Borough Local Plan (adopted March 2006) who had rejected a housing allocation at the site proposed by the Council. She had concluded that “I consider that the site is in a particularly prominent, open location between two important approaches to the settlement. Also, it is overlooked by many viewpoints on the higher ground to the east and west of the site that is within the AONB. From these it would appear as a very significant and incongruous protrusion of new development into the landscape setting of Winchcombe, and it is unlikely that this harmful effect could be overcome by sensitive landscaping or layout planning.” The Board additionally considered the design and layout were not of an appropriate standard for the site. (Housing had been refused here in 1974, 1980 and 2008.)

The planning response

The officer’s report noted that the application was in a Special Landscape Area (SLA) of high landscape quality worthy of protection in its own right, which also aimed to protect the foreground setting of the AONB where the topography of the area was a continuation of the AONB or had vegetation characteristic of it. The site, adjacent to the AONB, was clearly visible from elevated public vantage points on the Cotswold escarpment. The site was very open and exposed, with hedgerows and hedgerow trees as the predominant landscape elements. Together with rough grassland this created its open attractiveness characteristic of the surrounding rural farmland and AONB, which would be lost. The dwellings would be located on the more elevated parts of the site to the west and would form an unnatural extension to the town. The report concluded that in landscape terms the proposed development would have a significant harmful adverse impact upon the landscape in conflict with the NPPF and development plan policies. It also concluded that the design was acceptable but that the layout did not respect the form and character of the adjacent area. As the Council did not have a 5-year housing land supply, the case should be considered in line with paragraphs 49 and 14 of the NPPF: the proposal failed to satisfy the environmental aspect of sustainable development and was recommended for refusal on landscape and layout grounds. The applicant appealed against non-determination. The Council said it would have refused permission.

Reasons for the approval

The Inspector considered that the harm to the setting of the AONB arising from housing on the elevated part of proposed site was of greater importance than its impact on the SLA. The site “plays a role in providing the foreground setting to Langley Hill within the adjoining AONB with which it shares a number of topographic and landscape features in common. The appeal development would interrupt westerly views thus adversely affecting the setting of the AONB. Furthermore views would be impeded in an easterly direction towards the Cotswold escarpment on the other side of the valley. These impacts would be limited to those public viewpoints close to the east and west site boundaries. Nevertheless there would be significant harm to the setting of the AONB.” However, she identified Winchcombe as a sustainable settlement where housing could be expected to take place. The scale of the land supply shortfall meant that this was likely to take place beyond existing settlement boundaries, probably in the northern area in the SLA rather than in the AONB covering the rest of the town. Having granted planning permission for another housing scheme, the only remaining land contiguous to the settlement and outside the AONB was the proposed site. The context had therefore changed since the Local Plan Inspector reported. The important contribution to housing land supply was a substantial benefit which outweighed the harm to the AONB’s setting.

13 Penland Farm, Haywards Heath, West Sussex (application 13/03472/OUT). Mid Sussex DC.

Proposed development

In the setting of the High Weald AONB. 210 houses (30% affordable) and associated infrastructure proposed on 21.75ha outside the built-up area within the Strategic Gap between Haywards Heath and Cuckfield. The undulating site falls from 88m to 55m AOD from north (AONB adjacent) to SE.

Grounds for AONB Unit objection

The development would extend the built edge of Haywards Heath out to the boundary of the AONB. This would introduce an abrupt change of landscape character and directly affect the context and setting of the AONB. There would be additional effects on tranquillity (lighting, noise, vibration, dust, etc.), traffic flows and pollution and on the relative wildness which characterises the AONB. It was notable how remote the site felt and how distant and unobtrusive was the town. The impacts of localised visual exposure would not be mitigated: this scenic impact was 'Low' to 'Moderate'. The proposed roundabout and heavy road engineering would be near the highest point of the site close to the AONB: they would be a very alien and intrusive feature dramatically changing the character of the whole area, with a 'Moderate' to 'High' scenic impact. The 50m buffer to the northern edge would provide additional screening and help retain the character of the lane marking the AONB boundary. Individually, the noise, traffic or habitat impacts may be moderate or low, but overall the combination of them all to the broader landscape character was cumulatively important to the AONB's integrity. "Essentially the closing of this gap between the AONB and the urban area of Haywards Heath is the principal issue as it is this separation that retains the rural open character of the AONB." With mitigation the change in character in the AONB's setting would be 'Moderate'.

The planning response

The Inspector's report on the Mid Sussex Local Plan in 2003 rejected 11ha of housing on part of the site for reasons including "the development would be a highly intrusive and obvious outward expansion of Haywards Heath into an attractive area of open countryside causing serious damage to the character and appearance of the area... the substantial changes to the landscape that a development of this size would cause would be dramatic." The officer's report agreed that the site potentially affected the setting of the AONB. The proposed roundabout would result in an obvious incursion within the landscape, adjacent to the AONB, where great weight should be given to conserving natural beauty. However, even if the AONB Unit's assessment of overall landscape impact (taken as 'moderate to low') was accepted, the harm could not be termed significant and was not sufficient to sustain an objection. In the overall planning balance the Council did not have a 5-year housing land supply so NPPF paragraphs 49 and 14 applied. The report argued that the housing proposed attracted significant weight and was not significantly or demonstrably outweighed by the adverse impacts. However, the recommendation was not accepted by Members, who refused permission on 3rd April 2014 on AONB setting and other grounds.

Reasons for the approval

The Inspector allowed the appeal on 12th January 2015. The highways infrastructure would cause a complete change in the character of this part of Balcombe Road but be visible only from one point on the edge of the AONB with negligible overall effect on its wider landscape. Although visually very attractive this part of the AONB was neither remote nor tranquil. It was close to the urban area of Haywards Heath and busy roads, where the extra traffic flows would not be significant. On the 'buffer' to the urban area, the perceived edge of the town would move out to the new roundabout. However, overall there would be no material harm to the landscape and scenic beauty of the AONB, and the development was sustainable. The Council had a substantial shortfall in housing land supply, particularly for affordable housing, so the housing would be a significant benefit attracting substantial weight. Adverse effects did not significantly and demonstrably outweigh this.

14 CABI site, Wallingford, Oxfordshire (application P12/S0436). South Oxfordshire DC.

Proposed development

In the Chilterns AONB. Proposal to redevelop CABI's 3.7ha Wallingford site with the demolition of existing offices and creation of new offices mainly for use by CABI, comprising: 3,108m² CABI offices; 'extra care' retirement development up to 17,165m² including up to 49 extra care units, and care home comprising up to 64 bed spaces; up to 56 retirement units; up to 24 key worker flats; a community/ leisure use building up to 375m²; and open space, footpaths and landscaping.

Grounds for AONB Unit objection

The Chilterns Conservation Board argued that the site was remote from services and its scale would increase traffic. The scheme would more than double the floor area of buildings on the site, and also the height of the buildings would be considerable. This would neither conserve nor enhance the AONB. The proposal needed a detailed landscape and visual impact assessment. (The increase in size of the landscape buffer to the bridleway was welcomed.)

The planning response

The care village was proposed as enabling development to fund the replacement of CABI's existing offices on site, which were in a poor condition. The 135 staff (mainly highly skilled) and 220 jobs anticipated at the care village offered significant local economic benefits. The officer's report commented that "The existing buildings are not attractive but they do sit well within the site and are largely screened from surrounding vantage points due to existing tree screening and the contour of the land. The existing complex has little impact on the surrounding countryside other than the access point. None of the proposed buildings are significantly higher than existing buildings*, but it is accepted that the density of development on the site will increase. The increase in density is mitigated as much as possible by having the higher buildings to the south of the site where land levels are lower. In addition a significant landscaped buffer, which would supplement the existing tree screening, would be provided around the new complex." The 3.7ha site would be far more intensively used, with the existing floor area of 5,690m² replaced overall by over 20,000m² and 80 dwellings. The site was in a rural location about 2km from Wallingford, described in the officer's report either as 'relatively sustainable' (with a half-hour bus service and cycle access to Wallingford) or 'fairly isolated'. The report concluded this was "not a location where we would normally wish to encourage new housing", and "the density of development is higher than normally appropriate in this area, somewhere in the region of 57dph". The report considered that the care village was not acceptable here in its own right, and would only be acceptable as a mechanism to secure the redevelopment of the new offices for CABI. It nevertheless considered the detrimental effects of the scheme were not significant and could be mitigated to an acceptable degree; the harm would not outweigh the significant economic benefits. Regarding AONB tests, there was no overt affording of 'great weight' to the AONB or review of whether the proposal would 'conserve and enhance' it. The scheme was treated as a 'major' development for AONB purposes, but the tests – though listed – were not actively applied. There was no consideration of alternatives other than reporting the applicant's proposed two fall-back options. The review of the 'need' for the scheme in this location, and the case for enabling development, both appeared to give considerable weight to the charitable nature of CABI's work. The final evaluation was treated as a balance between competing issues rather than an assessment against the tests of NPPF paragraphs 115 and 116. Encouraging sustainable economic growth and helping to retain a local business took precedence.

*Building heights in the indicative masterplan were variously referred to as 'maximum' or 'indicative'.

Reasons for the approval

The recommendation to grant outline permission subject to the completion of agreements was accepted by Members on 17th October 2012 and final approval granted on 27th January 2014.

15 Headlands Hotel, Port Gaverne, Cornwall (application PA14/05464). Cornwall Council.

Proposed development

In the Cornwall AONB. Proposal to demolish the existing derelict 11-bedroom Headlands Hotel and construct a 14-bedroom hotel on the site of the existing building and adjacent lower land on a 0.76ha site. Two buildings would be constructed in a contemporary design, with a 50% larger footprint and 27% greater floor area, but a building height 2.9m lower. Access would be unchanged.

Grounds for AONB Unit objection

A replacement for the existing Victorian building and its extensions was supported. However, the proposal was a long way from achieving a design that would appropriately integrate into the landscape. Local buildings were characterised by spacious surroundings and their materials, form, proportions and gable elevations, but the proposal was completely alien to these in its materials, fenestration, form and two distinct linked sections. Considerable illumination could be introduced into the cove through the large expanse of first floor glazing. By jarring with its surroundings and eroding the character of the landscape it would fail to conserve the landscape and scenic beauty of the AONB. It would harm rather than protect and enhance natural beauty. A Landscape and Visual Impact Assessment found an earlier proposal to have 'a high adverse effect from westerly viewpoints' and a 'major adverse' effect on landscape character. No LVIA accompanied the current proposal, which was needed. The proposal should be considered a 'major' development (NPPF para. 116) due to its greater size and its prominent location on a coastal headland (beside the South West Coast Path). The National Trust, Natural England & Parish Council also objected, on similar grounds.

The planning response

The officer's report reviewed the case for the proposal being considered 'major' development, advising against this as the building would be a replacement and it would be seen in a semi-urban context from some viewpoints. The applicant had explained that the linear design in form allowed views of the sea from the main bedrooms and rooms along the western elevation, and that this was important for the business model to work. Two buildings were required to provide a sufficient number of bedrooms whilst not exceeding two stories in height. The proposed 14 bedrooms were the minimum level of accommodation required for the hotel to function. The officer's report commented "Policy confirms that the principle of contemporary design is acceptable. The key is to ensure that it is high quality and suitable to the site. Whether or not the contemporary design itself is acceptable is subjective. My opinion is that it is, on balance. The proposed articulation and roof design would successfully soften the appearance of bulk, particularly when compared to the existing building on the site, and the use of Cornish vernacular and vertical emphasis to fenestration detailing provides a reference to traditional vernacular." The report agreed with the concerns of the AONB Unit except that there was no policy requirement for the design to reflect neighbouring development, and the increased building footprint may be necessary for the development to be viable. On the key considerations, the proposal would have a positive impact on economic growth objectives, the design was acceptable on balance and it would have a negative impact to the AONB. Considerable weight needed to be given to both protection of the AONB and economic growth benefit. The proposal was likely to draw more visitors and generate local investment and employment whereas the harm to the protected landscape was not considered to be high as it was partly alleviated by the proposed design and an existing built context created by the nearby dwellings. The officer judged that any adverse impacts of granting permission did not significantly and demonstrably outweigh the benefits when assessed against NPPF policies as a whole.

Reasons for the approval

Members granted permission on 5th January 2015 by 7 votes to 5 after a full debate developing the arguments in the officer's report. Later, an application for Judicial Review was rejected.

4. REVIEW OF EXPERIENCE IN PLANNING FOR AONBS

4.1 The case studies reported in section 3 above show that issues which are important for the correct application of AONB policy were not always addressed clearly. Members were sometimes asked to make decisions based on incomplete advice and inadequate attention to whether policies had been properly applied. On occasion, the Members themselves failed to give adequate explanation for their decisions in AONB terms, particularly when departing from their officers' advice. The National Planning Policy Framework and Planning Practice Guidance appear frequently to have been applied inadequately. In cases where there was a failure by Members to use the language of policy to explain decisions, a judgement must be made whether Members were applying different tests from those they should have used, or whether their decisions were within a correct framework – perhaps set in an officer report – but not explicitly stated. To show the scope for departure from policy, this section identifies where the correct language was not used. The correct application of policy, or otherwise, has become less transparent since 25th June 2013, from which date the requirement to give a summary of reasons for the grant of permission was repealed.

4.2 This section reviews the case study decisions primarily against the main national tests set out in paragraph 2.20 above (tests 1, 3, 4, 5, 6 and 7), which are our understanding of the correct requirements. It subsequently considers additional issues which AONB Units have identified as frequently arising problems in AONB decisions, and ends with a brief overview of difficulties which AONB Units have experienced with local planning authorities' general approach to AONBs.

Was the duty of regard to 'conserve and enhance' natural beauty applied?

4.3 This duty was not formally considered in planning reports in ten of the fifteen cases reviewed ([1], [2], [4], [5], [6], [8], [10], [12], [14], [15]), though it was occasionally noted in consultee responses where these were repeated verbatim. In a further case at Wenlock Edge [9] the issue was noted from the AONB Management Plan but not reviewed.

4.4 The five cases in the fifteen where the decision-maker disagreed with the planning report (including 'setting' cases) can be further considered. At Lyme Regis [4] and Winchcombe [12] the duty was not mentioned either in the officer report or by the decision-maker. In the latter case, this was, significantly, by an Inspector (on appeal against non-determination by Tewkesbury BC). The Inspector at Bourton-on-the-Water [3] did consider the issue, however. The officer reports on the solar arrays at Winterborne Stickland [7] and Reydon [11] both addressed the duty of regard, but, in overturning their recommendations of refusal, the Members did not refer to the duty in either case. Taken together, the duty of regard was not formally exercised in the decisions on thirteen of the fifteen cases reviewed. However, simply noting AONB issues in each case may have been technically adequate, as only an absence of any reference to AONB in a decision would demonstrate a failure to meet the legal requirement.

Did each case study evaluate whether or not the proposal was ‘major’?

4.5 In the thirteen cases where the development was within the AONB (and the issue of whether or not the proposal was ‘major’ therefore arose), the judgement was obvious in many cases, so there was no need for a detailed evaluation. For example, the development was simply assumed to be ‘major’ and no evaluation carried out at Odd Down [6], Winterbourne Stickland [7], Wenlock Edge [9], Reydon [11] and Wallingford [14]. This was even the approach taken where the applicant had ignored the issue of whether their scheme was ‘major’ (notably Corfton [8]). In another case the planning report³ properly evaluated whether the schemes were ‘major’ even though the issue had previously been addressed by a Local Plan Inspector (Heathfield [2]). The principal marginal case at which the officer report properly reviewed whether or not the development was ‘major’ was at Port Gaverne [15]. However, there were two cases where the matter was not reviewed at all (82 dwellings at Fowey [1] and 15 dwellings at Lyme Regis [4]), even though in the latter case the AONB Unit had specifically argued that the development should be treated as ‘major’. These striking omissions inevitably resulted in no assessment subsequently being carried out of either scheme against the tests in NPPF paragraph 116.

4.6 In the four cases inside AONBs where the decision-maker disagreed with the planning report and granted permission, the question of whether the development was ‘major’ was not in front of Members at Lyme Regis [4] – see above – and not disputed by the Inspector on appeal at Bourton-on-the-Water [3]. Members did not consider the question at Winterbourne Stickland [7] or Reydon [11], and therefore did not apply the tests in paragraph 116 of the NPPF: in these two cases there is a significant lack of clarity about the basis for Members’ disagreement with their officers.

4.7 We conclude that in four of the thirteen case studies the final decision was made without properly addressing whether or not the development was ‘major’ for the purposes of paragraph 116 of the NPPF ([1], [4], [7], [11]).

Were the correct tests applied to assess ‘major’ proposals?

4.8 Developments within AONBs were considered in planning reports to be ‘major’ in nine cases. As all the developments were approved, AONB Units were naturally inclined to disagree with judgements made on whether the tests of NPPF paragraph 116 were met. Nonetheless, the effort put into applying the tests can be assessed, without necessarily implying agreement with the view reached. In most cases our assessment is that the need to show ‘exceptional circumstances’ and that the development was ‘in the public interest’, including applying the three specific tests mentioned in the NPPF, was most often carried out only weakly.

4.9 Some of the assessments against NPPF paragraph 116 were in our view procedurally incorrect, a selection of which follow. Numerous other arguments, not presented here, were remarkably weak in our view.

³ ‘Planning report’ is used in this report to refer to professional assessment reports. It includes both officer reports prepared by local planning authority officers for their Members and reports prepared by Planning Inspectors (whether on planning appeals or Examinations of development plans).

(a) The Inspector considering a possible allocation of land for 220 dwellings at Marlborough for housing in the Wiltshire Plan [6], appeared to accept the view of the AONB Unit and Council that this was major development. He reported the Council's argument that a strategic allocation at Marlborough was exceptionally necessary, on the basis of satisfying NPPF paragraph 116. His response (paragraph 273) was:

"In essence, the Council cites the particular need for an adequate housing land supply for the eastern Housing Market Area and to serve the town, the limited availability of previously developed land within Marlborough itself and the capacity of the landscape to accommodate change in the Salisbury Road location. In the interests of ensuring sustainable and balanced development for the town over the plan period, I note the concerns raised, the national importance of the AONB and its purposes of designation but ultimately do not disagree with the Council's approach."

However, in his analysis (paragraph 276) he misrepresented the policy approach required:

"As indicated by the Framework (para 116), a balance needs to be struck between the statutory purposes of AONB designation and other factors. In this instance, I agree with the Council's interpretation of the evidence which indicates that a limited degree of development upon the Salisbury Road site is both justified and clearly preferable to alternative locations such as Chopping Knife Lane in sustainability terms. The undue limitation of housing for an existing market town, such as would be secured by not having a modest degree of growth, would not satisfy the strategic objectives of the Core Strategy as a whole."

His characterisation of paragraph 116 of the NPPF in the opening sentence as striking a balance between AONB purposes and other factors differs from the way the policy is expressed. His comparison with one other alternative site on a different edge of Marlborough also in the AONB was a very limited consideration of alternatives (though there had been studies of site options in the Housing Market Area to which he did refer). If his argument on the need for the town to grow was 'exceptional' in some way, he did not explain why. Overall it is far from clear that the Inspector applied the correct policy tests from NPPF paragraph 116 to Marlborough town. It is noteworthy that in the other case study of an allocation within an AONB, at Odd Down [6], the Inspector accepted that exceptional circumstances needed to be demonstrated and briefly sought to do this.

(b) The officer report at Corfton [8] tried to apply the tests in NPPF paragraph 116, but made errors of kinds which frequently concern AONB Units. A national need for additional poultry production was identified and assumed to satisfy the first of the three tests (see Box 2). However, there was no need demonstrated for this particular development on this site in the AONB (see Justice Hickinbottom's approach noted in paragraph 2.16 above). The review of 'alternatives' instigated by the planning officer (as none was proposed by the applicant) was unsatisfactory on many levels:

- the matter was viewed from the applicant's point of view, not the AONB's, in that most alternative locations were held to be unrealistic because the applicant's farm was in the AONB;

- the claim was made that “there are no other sites which are as well suited to accommodate the development” on the farm, but no evidence was presented to support that view; if true, the argument could have carried some weight in a location entirely dominated by AONB, but that was not the case here;
- no assessment was made of alternative sites outside the AONB even though the AONB boundary was close by (a point emphasised by the applicant apparently hinting that this weakened the effect of designation), and other sites had been accepted for poultry sheds in the area by the Council.

(c) The officer report at Heathfield [2] argued that “Heathfield’s affordable housing needs represent the exceptional circumstances in which a major development within the High Weald may be permitted”, similarly without being site-specific. The pressing need for affordable housing here has a direct parallel with the Mevagissey case, where the decision of the High Court was handed down two months after the Heathfield decision. Justice Hickinbottom explained subsequently that he expected a genuinely ‘exceptional’ need “in the sense of unusual or rare” (paragraph 2.16 above), while a pressing need for affordable housing was not sufficient alone to meet the first test in NPPF paragraph 116.

(d) A similar difficulty arose with the officer report at Wenlock Edge [9] which reviewed the NPPF paragraph 116 tests but considered that the first test on need and impact of refusal was satisfied mainly due to the extensive economic benefits of the scheme and climate change benefits from a renewable energy business. The report was particularly supportive of the application regarding the unsuitability of alternative sites but included some dubious arguments. For example, “With respect to options for meeting the need in some other way (bullet point 2 of NPPF paragraph 116) Lea Quarry contains existing infrastructure which may not be available at another site and the cost of renting the required space at a dedicated industrial estate, if such space is available, would affect the economics of the business.” As the applicant had purchased Lea Quarry for the purposes of the development, this argument would always favour development by a landowner on their own land in an AONB, as alternative renting would always be financially unattractive.

4.10 Of the four cases inside AONBs where the decision-maker disagreed with the planning report and granted permission (see paragraph 4.6 above), there was only one in which NPPF paragraph 116 was addressed thoroughly, at Bourton-on-the-Water [3]. The Inspector who decided the proposal for 100 dwellings on appeal from Cotswold DC decided on the first test (paragraph 66) that “In the present case, one of the material considerations is the urgent need for more housing land. In principle, it seems to me that such a need is capable of satisfying paragraph 116’s requirements in these respects. I note that this is the approach taken by the SOS in the two Tetbury appeals, which were in the same AONB.” He concluded (paragraph 138) that “The lack of a 5-year supply of housing land is an exceptional circumstance, and the urgent need to rectify that situation is very much a matter of public interest.” However, the Inspector did not make clear that this is not a general proposition, as he failed to qualify his statement by applying an important consideration relevant in the Tetbury case. That was a lack of ‘any evidence to suggest that there is anything other than very limited scope indeed to provide housing within the District on sites that are not part of the AONB’ (see paragraph 2.16 above). (In the Bourton-on-the-Water case, no alternative sites outside AONBs had been put forward by the parties, so the

outcome might have been the same even if the full ‘Tetbury’ test had been applied, but the Inspector did not make the point that housing need cannot automatically generate ‘exceptional circumstances’ in AONB cases.)

Was the need to give ‘great weight’ to AONBs correctly identified and applied?

4.11 Most planning reports properly identified that paragraph 115 of the NPPF applied in principle to the case studies. However, the startling feature of eight of the case studies ([1], [2], [4], [5], [8], [9], [14], [15]) was that having identified the significance of the paragraph 115 approach this was not then applied in practice in the analysis of the proposal. This included a strategic housing land allocation at Marlborough by the Inspector for the Wiltshire Plan [5] – in contrast to the Inspector examining the Local Plan for Bath & North East Somerset who strongly emphasised the importance of paragraph 115 of the NPPF [6]. In addition, there was no mention of the paragraph 115 policy approach in the case of the small development at Westward Ho! [10] and it was clearly not applied in practice in that case. This means that in the majority of cases reviewed there was no formal assessment of planning applications by officers against the principal planning policy applicable in AONBs.

4.12 There were five cases in the fifteen where the decision-maker disagreed with the planning report (including ‘setting’ cases). The Inspector in the Bourton-on-the-Water case [3] properly addressed the paragraph 115 approach. The Inspector at Winchcombe [12] did not formally mention paragraph 115 but did note that ‘great weight should be given to conserving the landscape and scenic beauty in AONBs’. That approach was not then specifically applied in her report. She did, however, review the impact of the proposal on the setting of the AONB in some detail, and the AONB featured strongly in her report. Whether her decision would have been the same if NPPF paragraph 115 had been given full attention cannot be known. However, the Inspector concluded regarding the impact on the AONB setting (paragraph 29) that: “The adverse impacts on the setting of the AONB would be significant. Whilst these impacts would be confined to limited viewpoints it seems unlikely that they would diminish in time, even with the proposed landscaping.” Also “there would be significant harm to setting of the AONB. This would be contrary to development plan policy, including saved Policies S.6 and NHE.5 in the Structure Plan and saved Policy LND2 in the Local Plan” (paragraph 32). If ‘great weight’ had formally been given to this AONB interest, rather than it simply being considered in “the balance of considerations” in her overall conclusions (paragraph 70), there is a possibility that the outcome might have been different.

4.13 In the other three cases, where Members approved development proposals contrary to the recommendations of officers, there was no review of NPPF paragraph 115 policy by Members in any of them. At Lyme Regis [4] the policy basis had not been presented in the officer report. In both the solar array proposals at Winterborne Stickland [7] and Reydon [11], the officer reports had properly and carefully emphasised this policy, but it was neglected in the decision at Reydon and at best might be deemed to have been applied by Members at Winterbourne Stickland. Taken with the planning report cases, this means that ten, and arguably twelve, of the fifteen decisions failed to give proper attention to NPPF paragraph 115.

Was the Development Plan found to be satisfactory, prior to analysis?

4.14 Many of the planning reports were not entirely clear whether or not their local authority development plans were absent, silent, or relevant policies out-of-date. A Core Strategy may have been adopted but not land allocations, for example, or a plan may have reached submission stage but not yet been adopted. With Saved Policies from earlier Local Plans often a consideration, a judgement was often needed on whether the package of policies available was satisfactory, whether it complied with the NPPF, or whether NPPF policies should be used to fill gaps. Our assessment is that the planning reports analysed development proposals on the basis that their plans were sufficiently up to date in seven of the thirteen development management cases ([2], [7], [8], [9], [10], [11], [14]) and were out of date in the other six. (The issue did not apply to the two plans at examination.) In the case of housing developments there was usually greater clarity on whether the development plan was up-to-date according to whether or not the authority could demonstrate a five-year housing land supply, and therefore whether NPPF paragraph 49 applied. Of the six greenfield housing developments, only at Heathfield [2] was the development plan treated as up-to-date.

Were the correct AONB tests applied in accordance with NPPF paragraph 14?

4.15 Our assessment is that the development plan was not sufficiently up-to-date as a basis for deciding the non-housing case at Port Gaverne [15] or the five housing cases other than Heathfield ([1], [3], [4], [12], [13]). The expectation is therefore that these proposals would be reviewed for their AONB interests against paragraph 14 of the NPPF (Box 4 above), as noted in paragraph 2.20 test (7) above. Planning reports should have identified that, by virtue of Footnote 9, AONB policies were amongst the specific policies in the NPPF which needed to be assessed to establish whether development should be restricted. This would in effect have redirected the evaluation to NPPF paragraphs 115 and 116.

4.16 The correct approach was followed by Inspectors at Boughton-on-the-Water [3] and Haywards Heath [13]. The assessments of the other developments appear to have made procedural errors. The most frequently occurring mistake was to fail to identify Footnote 9 of the NPPF (or its intent). The following four cases illustrate difficulties that can arise from this error. In the first two, decision makers were instead incorrectly led to believe that they should be granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

4.17 The Inspector at Winchcombe [12] concluded as follows on this issue (paragraph 46):

“I have carefully considered the environmental harm against the advantages of the scheme, including helping to address the serious deficiency of housing land. I have come to the conclusion that taking the policies of the Framework as a whole the proposal represents a sustainable form of development. The policies for the supply of housing are out of date and the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits that would be gained. There are therefore material considerations that override the conflict with

the development plan, including saved SP Policy NHE.5 and saved LP Policy LND2 in this case” (emphasis added).

This was not the correct test, and it is possible that her overall conclusions might have been different if the emphasis had been the other way round, with a requirement to demonstrate that the benefits of the development were sufficiently compelling to outweigh the ‘great weight’ that should have been given to AONBs. Her report did not overtly apply the ‘great weight’ test (see paragraph 4.12 above), making the decision all the more questionable. (This was a development in the immediate setting of the AONB rather than within the AONB itself, so the weight to be given to the correct test would depend on the level of impact on the AONB: in this case the Inspector accepted that the impact would have been significant – see paragraph 4.12 above).

4.18 The officer report on the proposed Headlands Hotel, Port Gaverne, Cornwall [15] gave a clear indication that the adopted North Cornwall District Local Plan of 1999 was not sufficiently up-to-date, referring Members on three occasions to the text in NPPF paragraph 14 on the action to take when it was not. Only one of these references, in the body of the report, included the words on granting permission unless “specific policies in this Framework indicate development should be restricted”. At no point was Footnote 9 mentioned or quoted. In the concluding section on ‘Key issues/balance of considerations’, paragraph 99 of the officer report specifically advised Members to use the wrong test: “When balancing these considerations it is my opinion that this application complies with paragraph 14 of the NPPF in that any adverse impacts of granting permission do not significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole” (emphasis added). It is a matter of conjecture whether reference to Footnote 9 and application of the correct approach would have had an impact on the outcome of the case: permission was granted on the small margin of 7 votes to 5. The inadequacy of the handling of NPPF paragraph 14 was one of the grounds in the subsequent application to challenge the Council’s decision in the High Court, though this was rolled-up with a similar but less plausible argument on paragraph 116. The Judge refused permission to apply for Judicial Review, arguing that “The Officer’s Report properly directed members’ attention to the full provisions of paras 14 and 116 of NPPF. The terms of both were reasonably summarised.”

4.19 The officer report on the proposal for a ‘rural exceptions’ site for 15 affordable houses at Lyme Regis [4] twice referred to the need to apply paragraph 14 of the NPPF, but in neither case highlighted Footnote 9 and the correct procedural approach. The report contained very little analysis of any kind (preferring to reproduce the submissions of the various parties). Although the correct procedure for assessing the application was not used, neither was an incorrect procedure formally applied.

4.20 A particularly weak application of AONB policy was in the case of housing at Hill Hay Close, Fowey, Cornwall [1]. The officer report accepted that Cornwall Council did not have a 5-year housing land supply, so this would have put the Restormel Local Plan of 2001 out-of-date for NPPF purposes. As a result the development should have been considered in the context of the presumption in favour of sustainable development as set out in paragraph 49 of the NPPF. However, the report failed to refer to paragraph 14 or its contents, and

omitted reference to its Footnote 9. Instead the report conceptualised the decision for Members simply as a balancing process between competing interests: “The main issues are the principle of development and the provision of housing including 41 affordable dwellings balanced against the impact of the proposal on the local environment including issue such as landscape.” The report concluded that the proposal would “constitute sustainable development in line with the National Planning Policy Framework, and the impact on the AONB and Heritage Coast Scheduled Ancient Monument/Listed Building would be outweighed by the provision of housing and the 41 affordable homes which would be secured to meet an identified local need.” A single reference in the body of the report to the need to give ‘great weight’ to the AONB was omitted from the subsequent analysis, emphasising the simple balancing exercise undertaken instead.

4.21 The two strategic housing land allocations proposed in the case study development plans at Odd Down, Bath (by Bath & North East Somerset Council) and Marlborough (by Wiltshire Council) should also have considered paragraph 14 of the NPPF and its Footnote 9 (see Box 4 above). The Inspector at Bath applied the proper tests. He was prepared to accept a lower overall housing figure “if, for example, the exception in Framework paragraph 14 is met” (paragraph 11), but decided that at Odd Down [6] “The need for housing and the benefits of additional housing in this location at Bath outweigh the harm that would arise, taking into account the great weight that must be given to protecting the AONB” (paragraph 165). In contrast the Inspector at Marlborough did not refer to paragraph 14 or Footnote 9 of the NPPF in his report. As he did not review the proposed strategic housing land allocation in the AONB at Marlborough in terms of giving ‘great weight’ to AONB interests in line with NPPF paragraph 115 (see paragraph 4.11 above), we conclude that he did not in practice follow the correct procedure for applying NPPF paragraph 14 to the AONB.

Other limitations in the handling of AONB cases identified by AONB Units

4.22 AONB Units have identified a series of additional shortcomings in the planning reports and decisions reached where development proposals or land allocations affect AONBs. These are as much practical problems as procedural ones.

Limited non-AONB sites available

4.23 AONBs can suffer in cases where the availability of non-AONB sites for development is very limited. Recent case law has suggested that a pressing need for housing can as a matter of principle be used to override the landscape protection that AONB policy normally provides when there is very limited scope indeed to provide housing on sites that are not part of the AONB (see paragraph 2.18 above). The case law derived from an experience at Highfield Farm, Tetbury in Gloucestershire, but similar difficulties were reported in the case studies in this report at Fowey [1], Bourton-on-the-Water [3], Marlborough [5] and Winchcombe [12]. Arguing that there is a ‘lack of alternative sites’ can also be a soft option where little assessment has been carried out (e.g. at Corfton [8]). In each of these cases, as well as in a variety of additional cases identified by AONB Units, development has been authorised rather than AONB interests given priority. If AONBs are to be protected in the

long term, particularly in local authorities extensively covered by the AONB designation, then a procedure which more reliably supports them in such cases will be needed.

Incremental and cumulative development

4.24 A similar category of case which in some areas is challenging the integrity of AONBs and their settings is incremental and cumulative development. Applicants will often argue that the AONB has been degraded by previous development near their proposed scheme, as if this would make a new development less intrusive. This argument is usually rejected or ignored by the decision maker, as it was at Corfton [8]. As the AONB Unit put it to the Council in that case, “Such an argument would allow progressive destruction of the AONB landscape where one poor development justifies the next, and this bears no relation to national and local policy on AONBs. The reality is in fact quite the contrary, in that each development of large agricultural buildings contributes to a creeping industrialisation of the landscape, which in fact makes this part of the AONB highly sensitive to change resulting from further large buildings.”

4.25 However, some developments are allowed precisely on the basis that an area has suffered so much damage that a bit more damage would barely be noticed. For example, a wind turbine was allowed at Talbot Farm, Dyrham, Chippenham by an Inspector on appeal against a refusal by South Gloucestershire Council⁴. The Inspector reported that “The site of the proposed wind turbine is at an elevation of about 185 metres AOD, on the edge of the Cotswold Scarp, overlooking the M4 motorway. The site lies within the Cotswold Scarp Character Area of the South Gloucestershire Landscape Character Area. The vulnerability of the scarp, and the skyline in particular, to visual intrusion is highlighted in this document, and also in the Cotswold AONB Landscape Character Assessment. The wind turbine proposed, as a result of its height, and the elevated site, would figure prominently in the landscape, and would be visible, against the skyline, from an extensive area around it. The turning of the blades would tend to highlight that prominence” (paragraph 14). However, he went on to permit the turbine, arguing that “The impact of the motorway and the traffic it carries on the landscape of this part of the AONB is colossal. There are other roads in the vicinity too, notably the A46 to the east of the appeal site, and a minor road to the south that runs through Dyrham Camp, that I refer to further below. On top of that, there are two relatively tall telecommunications masts to the north-east of the appeal site, near the roundabout that forms Junction 18 of the M4, and a train of large electricity pylons that runs in an east-west direction to the south of the appeal site before crossing the M4 motorway and heading north-west.... However, the inescapable influence that mankind has already had on this part of the AONB means that the wind turbine would not look particularly incongruous and the harmful impact it would have on the natural beauty and scenic quality of the AONB, and the visual amenity of the Green Belt, would be very limited” (paragraphs 18-19, emphasis added).

4.26 Amongst the case studies summarised in this report, the effect of incremental development was most apparent in the case at Duckhaven, Westward Ho!, Devon. The AONB Unit argued for years against continual cumulative development at this site, which

⁴ Appeal reference: APP/P0119/A/12/2184201, decided on 16 July 2013.

put incremental pressure directly and indirectly on the AONB. The officer report on a small office building agreed that the concerns expressed by the Unit were valid and that development “has so far occurred as a series of unplanned incremental decisions rather than as a comprehensive scheme”, but recommended permission anyway and did nothing to promote a management scheme or development brief for the site or to indicate that such incremental growth would be resisted in future (e.g. through an informative). Still more recently, when Torridge DC did take a stand against further small incremental developments on the same site, appeals against three refusals were allowed by an Inspector (on 3 March 2015) and another dismissed⁵. He too sidestepped the problem of cumulative development: “The incremental nature of the applications here has not been straightforward or particularly conducive to a well co-ordinated and well planned redevelopment, and overall will have led to an increase in activity and built form within a sensitive landscape. However, the proposals before me, which to my mind represent a likely maximum extent of development here, are for holiday accommodation to support the tourism offer in the area. I consider they would be acceptable...” (paragraph 22).

4.27 In the case of proposed housing development at Station Road, Bourton-on-the-Water [3], the Inspector expressed the difficulty as follows: “In the case of the Cotswolds, the designated area is very extensive and washes over buildings and entire settlements, as at Bourton. Not every site within such a broadbrush area, either developed or undeveloped, can have equal importance to the AONB's purpose. Furthermore, in Cotswold District itself, the designated area covers the great majority of the local authority area. To confine development to those few settlements which are outside the AONB would be likely to unbalance the area's growth and put a considerable strain on those communities. In this context, it is worth re-stating that Bourton has been identified as a village for some growth” (paragraph 67). The Inspector went on to identify the development that had occurred in the last half-century on this side of Bourton, and then concluded “Policy 19 seeks to protect existing patterns of development and key open spaces from significant harm. But here, in the light of the development that now exists, it seems to me that the town's development pattern would not be significantly altered by further development at the appeal site. Indeed, it seems to me that development here would in fact now merely reflect and consolidate that pattern” (paragraph 81). He continued “I note the Council's view that a modern estate development would be alien to the town's character. But the existing development in this northern part of the town is generally suburban in character, and includes other estates, such as at Barnsley Way. In this context, a well laid out new development would not be out of place.” From an AONB perspective this consolidation would reinforce a kind of change alien to AONB purposes. Similar circumstances arose in the case at Winchcombe [12].

4.28 The survey of AONB Units identified a number of areas where concentrations of development were being allowed in or just beyond the edge of AONBs through a series of developments. These had each proved individually difficult to resist but together amounted to significant change and creeping impact on the landscape character and visual experience of AONBs and their settings. There were, for example:

⁵ Appeal references: APP/W1145/A/14/2219642, 2219709, 2224924 and 2225486.

- concentrations of approvals around the village of Welland in the Malvern Hills AONB (where appeals had been allowed in cases not already approved by Malvern Hills DC);
- approvals of 171 dwellings in four schemes in and around the Cotswold village of Broadway (the two largest granted on appeal, in one of which the Inspector commented “The proposed development would appear as a marginal expansion of a significant area of housing already in the scene, much of which has been developed since the AONB was originally designated”); and
- a spate of applications in the village of Chilton in the North Wessex Downs AONB to Vale of the White Horse DC (183 dwellings across five schemes).

Limited emphasis on the impact of development on AONBs

4.29 AONB Units provided numerous examples of cases where decision makers had given significantly less weight to the qualities of an AONB than the AONB Units would have expected. In some cases this was simply due to the decision maker having a substantially different perspective, such as on the impact on landscape character or on the visual impact of a scheme. For example, Case Study 3 on proposed housing development at Station Road, Bourton-on-the-Water outlines the profoundly different interpretation by the Inspector of the landscape and visual impacts of the scheme, compared with the Cotswolds Conservation Board (and Cotswold DC and a previous Local Plan Inspector).

4.30 In other cases, AONB interests were the casualty of the weight which decision makers gave to the benefits of the proposed scheme to the locality. AONB Units often discover that the promise of affordable housing provision is sufficient for decision makers to override AONB interests to a remarkable degree. This was apparent in cases such as Fowey [1], Heathfield [2], the rural exception site at Lyme Regis [4] and to some extent at Haywards Heath [13]. Likewise, the benefit of proposed developments to the local economy was clearly a key consideration which in local authorities’ minds outweighed AONB interests in cases such as those in Shropshire at Corfton [8] and Wenlock Edge [9], at Wallingford [14] and to some extent at Port Gaverne [15].

Overview

Multiple shortcomings at individual sites

4.31 The fifteen case studies show a wide variety of procedural and practical problems which challenge effective planning control over inappropriate development in Areas of Outstanding Natural Beauty. This section has for the most part commented on detailed aspects of cases which were controversial, picking out specific points which contributed to the approvals. Some decisions were worse than others, though, and for different reasons. For example, the solar array at Reydon in the Suffolk Coast and Heaths AONB [11] was presented to Members in an officer report which was for the most part excellent in its attention to AONB issues. Members, however, were far more interested in local issues than in the proper application of procedures and national AONB policies. Members failed to explain for the most part the basis on which they disagreed with their officer and did not apply the correct tests when reaching their decision. For example, they did not apparently

give 'great weight' to the AONB in line with NPPF paragraph 115, neglected to mention how their decision conformed with conserving and enhancing the AONB, considered alternative sites only within the AONB, and were unclear whether they viewed the development as 'major' (and if so if it met the appropriate tests). Members adopted an approach which 'balanced' the arguments on each side, as if the application was well outside rather than inside the AONB.

4.32 In some other cases the officer reports have been defective in the advice they provided to Members, presumably with Members being unaware of the correct basis for reaching planning decisions in the AONB. For example, at Hill Hay Close, Fowey, Cornwall [1] a single reference in the body of the report to the need to give 'great weight' to the AONB was omitted from the subsequent analysis; the analysis made no reference to the duty of regard to the AONB's purposes; there was a hint from the phraseology that the 82 dwellings in the AONB constituted 'major' development, but the matter was not reviewed and the tests in NPPF paragraph 116 were not applied; and no reference was made to NPPF paragraph 14 and Footnote 9 even though the Council acknowledged it lacked a five-year housing land supply. As the decision to grant planning permission was on the casting vote of the chairman, there is a real possibility that with correct advice on procedures to be followed the outcome could have been different.

4.33 The application at Lyme Regis [4] was poorly reported to Members in terms of AONB policy, even though the officer report described it as 'seriously harmful to the character of the AONB' and recommended refusal. The report properly recorded comments made by consultees and others, but its analysis did not decide whether or not the development was 'major' for NPPF purposes, did not refer in analysis to the need to give 'great weight' to the AONB or to the legal objective of conserving and enhancing the area; nor did it address whether there were realistic alternative sites. Members treated the matter as a balancing exercise, emphasising the affordable housing benefit and deciding that "appropriate landscaping could be implemented to mitigate the visual impact".

Recurrent difficulties across cases in AONBs

4.34 This section and the case studies in section 3 have shown clearly that the NPPF has not resulted in the protection of AONBs with the reliability that might have been expected from this national policy. Policy tests and procedures have frequently not been applied properly or at all. AONB interests have often been given limited weight compared with the benefits which development proposals would bring. There has been great variation in the level of attention paid to AONB Units' submissions in response to planning applications in or affecting AONBs, even when (as is often the case) these responses spell out to local authorities the correct procedures by which proposals should be assessed.

4.35 The fundamental problem facing planning decisions in or affecting AONBs is one of inadequate attention to national policy and procedure. This applied variously to officer reports, local authority Members' decisions and to Inspectors' decisions (following both Local Plan examinations and planning appeals). This study found little complaint that the NPPF policies themselves were misguided, unclear or otherwise inappropriate. There were intermittent suggestions that difficulty was caused by the lack of clarity about which

applications did or did not constitute 'major' development for the purposes of NPPF paragraph 116. However, these tended to generalise from particular disagreements with local authorities. There was, equally, clear advantage in having flexibility to argue that small developments in sensitive locations could be considered 'major' whilst larger ones in less sensitive places need not be. The likelihood of developers submitting schemes just below any chosen threshold sizes, or of sensitive locations being subject to significant development proposals that avoided the extra tests of being 'major', did not appear to have been contemplated. No case has been made from the evidence available to this study to change the NPPF's AONB policy in this respect.

4.36 There has, however, been one interpretation of policy by the Courts which AONB Units have found awkward. This was the decision of Justice Lewis in the Highfield Farm, Tetbury case that a pressing need for housing can as a matter of principle be used to override the landscape protection that AONB policy normally provides. The circumstances of that case included that there was 'very limited scope indeed to provide housing within the District on sites that are not part of the AONB', though this proviso has not always been taken into account by subsequent decision makers. The ruling has resulted in the loss of a number of sites to housing which AONB Units and, ordinarily, local planning authorities, would otherwise have expected to be protected from development. Even with Justice Lewis's proviso in place, the effect of the ruling can be expected to result in the triumph of housing development over AONB interests. Over a period of time, and with increasing difficulty in finding sites as the more appropriate ones are used up, the result can be expected to be the erosion of AONBs. At least in those local planning authorities extensively covered by the AONB designation, the approach would cause there to be little discernible difference between the approach to housing inside AONBs and outside AONBs, which cannot be right. Local authorities substantially covered by the AONB designation, in particular, should be able to limit the quantity of housing to be supplied in their areas, recognising the nationally important landscapes for which they are responsible in planning terms. This matter would merit review by a higher Court and a policy clarification by the Secretary of State.

4.37 Areas of Outstanding Natural Beauty were far from immune to the wider issues convulsing the planning system at present, though these issues had their greatest impact where national AONB policy was inappropriately applied. In respect of housing proposals, local authorities with less than five-year housing land supplies were the main cause of pressures to release land for development in sensitive locations in AONBs or their settings. More generally, local authorities without adopted Local Plans (in conformity with the NPPF) were triggering the application of NPPF policies instead, from which AONBs did not necessarily benefit. There was also a widely appreciated shift in the priorities of the planning system, with environmental interests being given less attention and economic ones more compared with a few years ago. Schemes that had been rejected previously either as land allocations or as planning applications were now being approved in some cases. Attention to design and using high quality materials had deteriorated. These changes were having damaging effects in these nationally important landscapes. A number of very modest settlements around England were being subjected to significantly disproportionate growth. As one AONB Unit lamented: "Most of our local authorities have no special regard at all for the AONB designation."

4.38 This study has highlighted significant difficulties which continue to arise in planning for AONBs since the issuing of the NPPF. It has included description of some of the worst decisions made and the reasons for them. The number of cases involved, and the omitted instances which could have been included, show that the problems cannot be dismissed as 'one-off' cases of planning practice in AONBs going awry. Nonetheless, some wider evidence on the representativeness of these cases would be helpful. A formal study of, say, a representative sample or of a comprehensive review of all proposals affecting selected AONBs has been beyond the capacity of this study. There have, of course, been plenty of occasions in which local authorities have refused inappropriate development in AONBs, just as there has been dismissal of a number of appeals. There have also been plenty of planning applications granted by authorities within AONBs (though some AONB Units have cautioned that even large schemes are being permitted by local authorities for fear of losing them on appeal, rather than because they believe the schemes will conserve and enhance the AONB). Defra advises from its list of more notable cases within AONBs and their settings in England (typically 40-50 cases annually) that in the last two years there have been approximately equal numbers of approvals and refusals in those cases finally decided. While many approvals amongst these significant cases may have been entirely consistent with AONB policy, the controversial approvals reported in the cases in this study are clearly not being substantially outweighed by refusals in other cases.

5. RECOMMENDATIONS

- i) Decision makers should apply eight tests identified in this study ([1], [2], [3], [4], [5], [6], [7], [9], paragraphs 2.20-21) when deciding planning applications for development within AONBs.
- ii) Decision makers should apply six tests identified in this study ([1], [2], [3], [6], [7], [9], paragraphs 2.20-21) when deciding planning applications in the settings of AONBs, (excluding two tests concerning developments that are 'major' for the purposes of the NPPF paragraph 116).
- iii) Six tests identified in this study ([1], [2], [3], [4], [5], [8], paragraphs 2.20-21) should also be used by decision makers when adopting development plans.
- iv) Professional advisers to decision makers should address each of these tests as appropriate, comprehensively and thoroughly.
- v) Defra and DCLG as the Government Departments with responsibility for applying legislation and policy on, respectively, AONBs and planning should take steps to improve the implementation of their own requirements and policies as they affect AONBs by training practitioners. This should include:
 - a brief joint publication clarifying these expectations;
 - training events in AONB planning practice, perhaps through the Planning Advisory Service;
 - liaison with the Planning Inspectorate.
- vi) The Government should reiterate its commitment to the proper protection of AONBs through a substantive Statement to Parliament, comparable in intent to the Ministerial Speeches made during the previous Government but with more formal status, so that decision makers appreciate better the great weight which should be given to AONB interests in all decisions which affect AONBs.
- vii) The Government should clarify that a pressing need for housing cannot as a matter of principle be used to override the landscape protection that AONB policy normally provides (in contrast to the outcome of a Judicial Review of a decision at Highfield Farm, Tetbury, Gloucestershire – albeit that that decision was more nuanced). If this cannot be achieved by amendment to the Planning Practice Guidance, then the NPPF should be revised.
- viii) Local authorities need sound professional advice on the proper application of AONB law and policy. Their own staff should provide this, supplemented by advice from AONB Units. AONB Units should employ professional planning staff to advise and to explain AONB interests in particular cases or, where development challenges to the AONB are relatively modest, should devote the resources necessary to employing contract planners for those purposes. This should be funded by Defra and contributing partners. The resources made available should be sufficient to enable AONB Units to make their case effectively as necessary in writing, and orally at public inquiries, hearings and Local Plan Examinations.