

**B&NES LOCAL PLAN PARTIAL REVIEW –
REGULATION 19 CONSULTATION
COTSWOLDS CONSERVATION BOARD COMMENTS RELATING TO
POLICY CP3 (RENEWABLE ENERGY)¹**



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¹ https://beta.bathnes.gov.uk/sites/default/files/2021-08/Schedule%20of%20changes_combined.pdf. Digital pages 16-19.

1.0 POLICY CP3 (RENEWABLE ENERGY)

1.1 Consultation questions

Do you consider that the Plan is:

- Legally compliant? No
- Sound? No

However, we consider that the Plan can be made legally compliant and sound, in this regard, by implementing the modifications recommended in Section 1.3, below.

We wish to participate in hearing sessions in order to ensure that our proposed modifications are adequately addressed.

1.2 Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate

1.2.1 Context

The Cotswolds Conservation Board has long recognised the need to mitigate and adapt to the impacts of climate change, as demonstrated by the adoption of the Board’s Climate Change Strategy in 2012 and the inclusion of policies relating to climate change mitigation and adaptation in the Cotswolds AONB Management Plan.

The Board recognises that the issue of climate change is now a ‘climate emergency’ requiring a step-change in the way that we address this issue. In the context of Areas of Outstanding Natural Beauty (AONBs) and their settings, specifically the Cotswolds and the Mendips AONBs, the challenge will be to address this climate emergency in a way that is compatible with the statutory purpose of AONB designation (i.e. to conserve and enhance the natural beauty of AONBs).

With these points in mind, we strongly support many of the proposed amendments to Policy CP3 (Renewable Energy) and the associated supporting text and evidence base. In particular, we support:

- using a Renewable Energy Landscape Sensitivity Assessment (RELSA)² as the basis for identifying suitable areas for wind and solar energy development;
- the inclusion of a band / threshold for wind turbines smaller than 25m (i.e. ‘Band A’);
- the explicit consideration, in Policy CP3, of landscape and visual impacts, impacts on special qualities, impacts on biodiversity, impacts on heritage assets, biodiversity net-gain, and community led energy schemes.

However, there are some aspects of Policy CP3 that we consider are:

- **not legally compliant** because they do not adequately fulfil the statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB), under Section 85 of the Countryside & Rights of Way Act 2000;³
- **unsound** because:
 - they are not consistent with the National Planning Policy Framework (NPPF), in particular, paragraphs 176 and 177;
 - they would result in the Local Plan not being effective / deliverable.

² <https://beta.bathnes.gov.uk/sites/default/files/2021-08/B%26NES%20Renewable%20Energy%20Landscape%20Sensitivity%20Assessment%20-%20combined.pdf>

³ <https://www.legislation.gov.uk/ukpga/2000/37/section/85>

In particular, we consider that:

- the policy does not adequately address the implications of paragraph 177 of the NPPF with regards to major development proposals in AONBs;
- there should be a more restrictive approach to wind energy proposals in ‘moderate-low potential’ areas and to solar energy proposals in ‘moderate-low’ and ‘low’ potential areas;
- we consider that there should be an additional, smaller band for solar energy proposals of one hectare or less.

Supporting information on these topics is provided below.

1.2.2 Major development in AONBs

Policy CP3 states that:

- *Proposals for all renewable and low carbon energy-generating and distribution networks will be supported ... where:*
 - a) *They balance the wider environmental, social and economic benefits of renewable electricity, heat and / or fuel production and distribution; and...*
[N.B. Underlining added for emphasis].

This indicates that the planning decision should weigh these material considerations in a balance. However, for major development in AONBs (in the context of paragraph 177 of the NPPF), case law has clarified that a local authority should not simply weigh all material considerations in a balance, but should 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 and enhancing the landscape and scenic beauty in the AONB, the development is in the public interest.⁴

Case law has further clarified that no permission should be given for major development save to the extent the development:

- iii. was needed in the public interest;
- iv. met a need that could not be addressed elsewhere or in some other way; and
- v. met that need in a way that to the extent possible, moderated detrimental effect on the environment, landscape and recreational opportunities.⁵

We acknowledge that Policy CP3 specifies criteria that must be complied with in order for renewable energy / low-carbon proposals to be supported. Whilst we support the inclusion of these criteria, they do not adequately address all of the considerations, outlined above, that need to be taken into account when assessing major development proposals.

We also acknowledge that the section of Policy CP3 relating to wind energy sets a presumption against wind energy development proposals in low potential areas. However, we do not consider that this goes far enough, as outlined in Section 1.2.2, below.

Policy CP3 would, therefore, potentially be supportive of renewable energy proposals that would constitute major development, by virtue of their nature, scale and setting and / or their potential to

⁴ R (Mevagissey Parish Council) v Cornwall Council [2013] EWHC 3684 (Admin) ([link](#)), paragraph 51.

⁵ R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807 ([link](#)), paragraph 35.

have a significant adverse impact on the purpose of AONB designation (i.e. to conserve and enhance the natural beauty of AONBs).

As such, Policy CP3 is unsound because it is not consistent with the requirements of paragraph 177 of the NPPF. As it is not consistent with the AONB-related policies of the NPPF, it follows that it is also not legally compliant as it does not adequately fulfil the statutory duty to have regard to the purpose of AONB designation, under Section 85 of the Countryside and Rights of Way Act 2000.

Our recommendations relating to this issue are provided in Section 1.3.1, below.

1.2.3 A more restrictive approach

1.2.3.1 Wind energy

Policy CP3, in principle, supports wind energy development proposals in landscape areas that have high, moderate-high, moderate and low-moderate potential to accommodate such proposals and sets a presumption against such proposals in landscape areas that have low potential.

We support the presumption against wind energy development proposals in low potential landscape areas. This is because it is highly likely that such proposals in the Cotswolds and Mendip Hills AONBs are likely to constitute major development, in the context of paragraph 177 of the NPPF (see Section 1.2.2, above, for further comments on the issue of major development).

However, we also consider that a more restrictive approach should be taken to wind energy development proposals in landscape areas with low-moderate potential.

The Renewable Energy Landscape Sensitivity Assessment (RELSA) indicates that the potential to accommodate developments in landscape areas with low-moderate potential without significantly changing landscape character is very limited. As such, it is likely that proposals in landscape areas with low-moderate potential in the Cotswolds and Mendip Hills AONBs would constitute major development in the context of paragraph 177 of the NPPF. The only exceptions to this might be the circumstances that are specified in the detailed guidance and recommendations for each landscape area in the RELSA.

In this context, we consider that Policy CP3 is unsound and is not legally compliant for the reasons outlined in Section 1.2.2, above, relating to major development.

Our recommendations relating to this issue are provided in Section 1.3.2, below.

1.2.3.2 Ground mounted solar energy

Policy CP3 encourages ground mounted solar energy proposals in landscape areas with high, moderate-high and moderate potential and allows for such proposals in landscape areas with moderate-low or low potential.

It is not clear why a less restrictive approach has been taken for solar energy proposals in landscape areas with low potential than for wind energy, given that the landscape implications are just as significant (i.e. likely to result in a significant change in character). Such proposals in the Cotswolds or Mendip Hills AONBs are highly likely to constitute major development, in the context of paragraph 172 of the NPPF (see Section 1.2.2, above, for further comments on the issue of major development).

As outlined in Section 1.2.3.1, above, proposals in landscape areas with low-moderate potential in the Cotswolds and Mendip Hills AONBs are also likely to constitute major development. The only

exceptions to this might be the circumstances that are specified in the detailed guidance and recommendations for each landscape area in the RELSA.

In this context, we consider that Policy CP3 is unsound and is not legally compliant for the reasons outlined in Section 1.2.2, above, relating to major development.

Our recommendations relating to this issue are provided in Section 1.3.2, below.

1.2.4 Bands for ground mounted solar energy development

In the Renewable Energy Landscape Sensitivity Assessment (RELSA), the smallest threshold for solar PV development is an area of 5 hectares or less.

This does not take account of guidance on the scale of solar PV installations that may be appropriate in a protected landscape. For example, the Board's Renewable Energy Position Statement states that *'it is extremely unlikely that [solar farms larger than 1 hectare] would not have a significant adverse impact on the landscape, sense of remoteness, tranquillity, natural beauty and landscape character for which the AONB is valued'*. The Position Statements add that *'such installations would directly conflict with the purpose of designation'* and would be 'major development', in the context of paragraph 172 of the NPPF.⁶

Schedule 2 of the Environmental Impact Assessment (EIA) Regulations also provides a useful threshold of 0.5 hectares for 'industrial installations for the production of electricity'.⁷ The Town and Country Planning (Development Management Procedure) (England) Order 2015 defines major development as development carried out on a site having an area of 1 hectare or more.⁸ These thresholds are relevant considerations in determining whether proposed development in an AONB constitutes major development in the context of paragraph 172 of the NPPF (albeit not a deciding factor).⁹

We acknowledge that the RELSA is only part of the evidence base, rather than part of the Local Plan itself. However, the RELSA, in effect identifies the 'suitable areas' for renewable energy that are covered in Policy CP3. As such, in order for Policy CP3 to be legally compliant and sound, the 'suitable area' mapping on which it is based must also be sound.

As the 'suitable area' mapping does not have regard to the guidance in the Board's Renewable Energy Position Statement, we consider that Policy CP3 fails to adequately fulfil the statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of AONBs.¹⁰ As such we consider that it is not legally compliant in this regard.

1.3 Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified.

1.3.1 Major development in AONBs

Based on the information outlined in Section 1.2.2, above, we recommend that there should be an additional criteria for part 1 of Policy CP3:

⁶ Cotswolds Conservation Board (2014) *Renewable Energy Position Statement* ([link](#)). Paragraph 34.

⁷ <https://www.legislation.gov.uk/ukxi/2017/571/schedule/2/made>. Development type 3(a).

⁸ <https://www.legislation.gov.uk/ukxi/2015/595/article/2/made>

⁹ Maurici, J., QC (2014) *In the matter of the National Planning Policy Framework and in the matter of the South Downs National Park Authority – Opinion* (commonly referred to as one of the 'Maurici Opinions') ([link](#)). Paragraph 28.

¹⁰ <https://www.legislation.gov.uk/ukpga/2000/37/section/85>

- (h) They do not constitute major development in an AONB, in the context of paragraph 177 of the National Planning Policy Framework.

Please also have regard to our recommendations relating to Policy NE2 (Conserving and Enhancing the Landscape and Landscape Character).

1.3.2 A more restrictive approach

Based on the information outlined in Section 1.2.3, above, we recommend that the wording of paragraph 2a of Policy CP3 (relating to wind energy) should be amended as follows (N.B. Additional text is shown in red and deleted text has a strikethrough):

2) *Wind energy development proposals will be supported where they:*

a) *Lie within a landscape area identified as being potentially suitable for this type of development (high, moderate-high **and** moderate ~~and low-moderate~~ potential areas set out in the Wind Energy Assessment Report (WEAR) and shown on the Policies Map). **Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR.** There will be a presumption against wind energy development proposals in low potential landscape areas...*

Based on the information outlined in Section 1.2.3, above, we recommend that the wording of paragraph 3 of Policy CP2 (relating to ground mounted solar energy) should be amended as follows:

3) *The Council particularly encourages ground mounted solar energy development proposals on land which is not functionally linked to national protected sites (SACs, SPAs, SSSIs) in the high, moderate-high, **and** moderate potential areas set out in the solar Assessment Report and shown on the Policies Map (subject to the other criteria in this policy). **Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR.** There will be a presumption against ground mounted solar energy development proposals in low potential landscape areas. ~~Proposals will be acceptable in other areas (of lower potential) provided that applicants clearly demonstrate that adverse impacts on the landscape can be satisfactorily mitigated (as set out in 1b)...~~*

Please refer to Appendix 1 for a comparison of the current text, the suggested changes and the proposed text.

It is worth noting that even if a landscape area is identified as having moderate (or better) potential to accommodate wind or solar energy development, the scale of the wind or solar energy proposal (e.g. Band B proposals) may mean that it still constitutes major development. As such, the additional criteria proposed in Section 1.3.1 should still apply even if this more restrictive approach to development in landscape areas with low-moderate or low potential is adopted.

1.3.3 Bands for ground mounted solar energy development

Based on the information outlined in Section 1.2.4, above, we recommend that the identification of 'suitable areas' for ground mounted solar energy development, which underpins Policy CP3, should include an additional band for ground mounted solar energy developments of one hectare or less.

APPENDIX 1. CURRENT WORDING OF POLICY CP3 v. PROPOSED WORDING FOR POLICY CP3

Current Wording	Suggested Changes	Proposed Wording
<p>2) Wind energy development proposals will be supported where they:</p> <p>a) Lie within a landscape area identified as being potentially suitable for this type of development (high, moderate-high, moderate and low-moderate potential areas set out in the Wind Energy Assessment Report (WEAR) and shown on the Policies Map). There will be a presumption against wind energy development proposals in low potential landscape areas...</p>	<p>2) Wind energy development proposals will be supported where they:</p> <p>a) Lie within a landscape area identified as being potentially suitable for this type of development (high, moderate-high and moderate and low-moderate potential areas set out in the Wind Energy Assessment Report (WEAR) and shown on the Policies Map). Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR. There will be a presumption against wind energy development proposals in low potential landscape areas...</p>	<p>2) Wind energy development proposals will be supported where they:</p> <p>a) Lie within a landscape area identified as being potentially suitable for this type of development (high, moderate-high and moderate potential areas set out in the Wind Energy Assessment Report (WEAR) and shown on the Policies Map). Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR. There will be a presumption against wind energy development proposals in low potential landscape areas...</p>
<p>3) The Council particularly encourages ground mounted solar energy development proposals on land which is not functionally linked to national protected sites (SACs, SPAs, SSSIs) in the high, moderate-high, moderate potential areas set out in the Solar Assessment Report and shown on the Policies Map (subject to the other criteria in this policy). Proposals will be acceptable in other areas (of lower potential) provided that applicants clearly demonstrate that adverse impacts on the landscape can be satisfactorily mitigated ...</p>	<p>3) The Council particularly encourages ground mounted solar energy development proposals on land which is not functionally linked to national protected sites (SACs, SPAs, SSSIs) in the high, moderate-high, and moderate potential areas set out in the Solar Assessment Report and shown on the Policies Map (subject to the other criteria in this policy). Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR. There will be a presumption against ground mounted solar energy development proposals in low potential landscape areas. Proposals will be acceptable in other areas (of lower potential) provided that applicants clearly demonstrate that adverse impacts on the landscape can be satisfactorily mitigated ...</p>	<p>3) The Council particularly encourages ground mounted solar energy development proposals on land which is not functionally linked to national protected sites (SACs, SPAs, SSSIs) in the high, moderate-high and moderate potential areas set out in the Solar Assessment Report and shown on the Policies Map (subject to the other criteria in this policy). Proposals in low-moderate areas will only be considered where they are in-line with the detailed guidance and recommendations for the relevant landscape area, as set out in the WEAR. There will be a presumption against ground mounted solar energy development proposals in low potential landscape areas.</p>

