

**B&NES LOCAL PLAN PARTIAL REVIEW –
REGULATION 19 CONSULTATION
COTSWOLDS CONSERVATION BOARD COMMENTS RELATING TO
POLICY NE2 (CONSERVING AND ENHANCING THE LANDSCAPE AND
LANDSCAPE CHARACTER)¹**



1.0 POLICY NE2 (CONSERVING AND ENHANCING THE LANDSCAPE AND LANDSCAPE CHARACTER)

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

The current Policy NE2 makes no explicit reference to the Cotswolds or Mendip Hills Areas of Outstanding Natural Beauty (AONBs) and provides no standalone AONB policy. This has been a significant omission in the Local Plan given the national significance of these protected landscapes.

We are therefore pleased to see the proposed addition of the following sentence to Policy NE2:

- *Great weight will be afforded to conserving and enhancing landscape and scenic beauty of designated Areas of Outstanding Natural Beauty (AONBs), and with particular reference to their special qualities.*

This reflects the requirements of the first part of paragraph 176 of the National Planning Policy Framework (NPPF).

However, the AONB-related policies of the NPPF (primarily paragraphs 176 and 177) cover a wider range of issues including major development within AONBs and development in the setting of AONBs. It is not clear why the proposed additional wording for Policy NE2 only reflects one component of these policies.

We acknowledge that the policies of the B&NES Local Plan should avoid unnecessary duplication of NPPF policies. However, the lack of policy-level reference to the issue of major development in AONBs in the B&NES Local Plan is of particular concern, as is the lack of reference to development in the setting of the AONBs.

The decision as to whether a proposed development in an AONB constitutes major development is a fundamental consideration that significantly affect how a proposed development should be dealt with. For example, case law has clarified that for major development proposals in an AONB, a local

¹ https://beta.bathnes.gov.uk/sites/default/files/2021-08/Schedule%20of%20changes_combined.pdf. Digital page 30.

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.²

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.³

Development in the setting of AONBs is also a vitally important consideration in the context of the Cotswolds and Mendip Hills AONB, particularly in the vicinity of the City of Bath where there is extensive urban development directly adjacent to the Cotswolds AONB. For example, case law has clarified that great weight should be given to the adverse effects that development outside an AONB might have on views from the AONB.⁴

We consider that failing to explicitly address these issues in Policy NE2 would be unsound as it would not adequately address the policy requirements of paragraphs 176 and 177 of the NPPF. It follows that Policy NE2 would also not be legally compliant as it would not fulfil the statutory duty to have regard to the purpose of AONB designation (i.e. to conserve and enhance the natural beauty of AONBs), under Section 85 of the Countryside and Rights of Way Act 2000.

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.

In order to address the issues outlined in Section 1.2, above, we recommend that, in addition to the new sentence regarding 'great weight', the following sentences should also be added to Policy NE2:

- *Permission should normally be refused for major development proposals within the Cotswolds and Mendip Hills AONBs other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.*
- *Development within the setting of the Cotswolds and Mendip Hills AONBs should be sensitively located and designed to avoid or minimise adverse impacts on these AONBs.*

Within the policy, or in the supporting text, it may also be appropriate to provide additional context / guidance on the topic of major development by, for example, referencing or quoting:

- the relevant case law that is outlined in Section 1.2, above;
- the Cotswolds AONB Management Plan 2018-2023 (Policy CE11 and Appendix 9);⁵ and

² R (Mevagissey Parish Council) v Cornwall Council [2013] EHC 3684 (Admin) ([link](#)), paragraph 51.

³ R (Advearse) v Dorset Council v Hallam Land Management Ltd [2020] EWHC 807 ([link](#)), paragraph 35.

⁴ Please refer to the Cotswolds Conservation Board's 'Development in the Setting of the Cotswolds AONB' Position Statement ([link](#)) for further guidance on this issue.

⁵ Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023* ([link](#)).

- the Cotswolds Conservation Board’s ‘Landscape-led Development’ Position Statement (Section 7.3 and Appendix 5, which includes a checklist of the factors to be taken into account when deciding if a proposal constitutes major development).⁶

Similarly, with regards to development in the setting of AONBs, it may be appropriate to reference of quote:

- Planning Practice Guidance on development within the setting of AONBs;⁷ and
- the Cotswolds Conservation Board’s ‘Development in the Setting of the Cotswolds AONB’ Position Statement.⁸

⁶ Cotswolds Conservation Board (2021) *Landscape-led Development Position Statement* ([link 1](#) – main document, [link 2](#) – appendices).

⁷ <https://www.gov.uk/guidance/natural-environment#landscape>. Paragraph 042.

⁸ Cotswolds Conservation Board (2016) *Development in the Setting of the Cotswolds AONB Position Statement* ([link](#)).