

Case Officer: Alex Stafford
Ashford Borough Council

Sent by email to:
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30 November 2022



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Dear Alex

22/00668/AS: Land south of M20, Church Lane, Aldington, Kent

Installation of a solar farm with a generating capacity of up to 49.9MW comprising: ground mounted solar panels; access tracks; inverter/transformers; substation; storage, spare parts and welfare cabins; underground cables and conduits; perimeter fence; CCTV equipment; temporary construction compounds; and associated infrastructure and planting scheme.

Thank you for your consultation on the above application. The following comments are made on behalf of the Kent Downs AONB Unit and as such are at an officer level and do not necessarily represent the comments of the whole AONB partnership. The legal context of our response and list of AONB guidance is set out at Appendix 1 below.

The application site lies in the setting of the Kent Downs AONB, by virtue of the scale of the proposal and its proximity to the AONB which wraps around the application site and the fact that the site is visible in multiple locations from the Kent Downs AONB. The application should therefore be tested against the purpose of the AONB designation, to conserve and enhance the natural beauty of the AONB, in line with paragraph 176 of the NPPF.

The primary legislation relating to AONBs, which underpins national planning policy, is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act requires that in exercising any functions in relation to land in an AONB, relevant authorities, which includes local authorities, shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. This is known as the 'Duty of Regard'.

Under the Countryside and Rights of Way Act, local authorities are required to prepare an AONB Management Plan which must "formulate the policies for the management of the AONB and for carrying out their functions in relation to it". The Kent Downs AONB Unit produces a Management Plan on behalf of the local authorities within the AONB. The Management Plan has been formally adopted by the local authorities in Kent in which the AONB occurs, including Ashford Borough Council. The national Planning Policy Guidance

Anglesey
Arnside and Silverdale
Blackdown Hills
Cannock Chase
Chichester Harbour
Chilterns
Clwydian Range
Cornwall
Cotswolds
Gower
Cranbourne Chase and
West Wiltshire Downs
Dedham Vale
Dorset
East Devon
Forest of Bowland
Howardian Hills
High Weald
Isle of Wight
Isles of Scilly
Kent Downs
Lincolnshire Wolds
Llyn
Malvern Hills
Mendip Hills
Nidderdale
Norfolk Coast
North Devon
North Pennines
North Wessex Downs
Northumberland Coast
Quantock Hills
Shropshire Hills
Solway Coast
South Devon
Suffolk Coast and
Heaths
Surrey Hills
Tamar Valley
Wye Valley

Enhancing landscapes and life in the Kent Downs

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confirms that Management Plans can be a material consideration in planning decisions.

The new Kent Downs Management Plan, Third Revision 2021 to 2026 has recently been adopted, replacing the 2014 to 2019 Management Plan. The Management Plan sets out the policy for the conservation, enhancement and management of the AONB in a series of aims, actions and Principles. It can be downloaded at:

<https://explore-kent-bucket.s3.eu-west-1.amazonaws.com/uploads/sites/7/2021/11/16141210/The-Kent-Downs-AONB-Management-Plan-2021-2026-Adopted.pdf>

The following principles from the Management Plan are considered to be of particular relevance to the current application:

MMP2 The Kent Downs AONB is a material consideration in plan making and decision taking, and so local authorities will give a high priority to the AONB Management Plan vision, aims, principles and actions in Local Plans, development management decisions, planning enforcement cases and in taking forward their other relevant functions.

SD5 Renewable and sustainable energy initiatives and energy efficiency measures will be pursued where they help to conserve and enhance the natural beauty and landscape character of the Kent Downs AONB and bring environmental, social and economic benefits to local people and ensure proposals conform with the Kent Downs AONB Renewable Energy Position Statement and resisted where they do not.

SD8 Ensure proposals, projects and programmes do not negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the Kent Downs AONB.

The National Planning Policy Framework (NPPF) paragraph 176 requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. A recent Appeal decision has confirmed that where a proposal is outside of an AONB, the effect on views outside of the AONB, but gained from within the AONB would result in NPPF paragraph 176 being relevant.¹

Amendments to the NPPF in July 2021 included reference to setting now being incorporated '*...while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.*'

Advice on how to approach development within an AONB setting is expanded on in the nPPG at [Paragraph: 042 Reference ID: 8-042-20190721](#). This advises:

Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important, or where the landscape character of land within and adjoining the designated area is complementary. Development within

¹ Appeal Ref: APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.

The importance of AONB setting is also recognised in the Ashford Borough Local Plan (adopted 2019). Policy ENV3b requires that regard is had to the purpose of conserving and enhancing the Kent Downs Area of Outstanding Natural Beauty and advises that permission for proposals within, **or affecting the setting of**, the AONB will only be granted where amongst other things, the proposals location, form, scale, materials and design would conserve and where appropriate enhance or restore the character of the landscape, the development would enhance the special qualities, distinctive character and tranquillity of the AONB and it has regard to the relevant AONB management plan and any associated guidance. In respect of setting, it is advised:

9.40 'Generally speaking, the settings of AONBs within the borough are of a high scenic quality, are of importance for rarity, tranquillity, representativeness and variety of local landscapes, and are unspoilt by large-scale intrusive development. Their characters are common with the AONBs, including topographic and visual unity, with a clear sense of place, and usually aspects of historical, wildlife and/or architectural conservation interest.

9.41 Scale, height, siting, use, materials and design are factors that will determine whether a development affects the natural beauty and special qualities of the AONB. Compatibility with surroundings, movement, reflectivity and colour are important in considering impact on setting. Generally, the further away a development is from the AONB boundary, the less the impact on this designation.

9.42 Within the setting of the AONBs, priority will be given over other planning considerations to the conservation or enhancement of natural beauty, including landscape, wildlife and geological features, while recognising that landscape considerations carry less weight than within these designations. At the same time, due regard will be had to the economic and social well-being of the area.'

The setting of the AONB from the escarpment of the Kent Downs has enormous value. It was a principal reason why the AONB was designated in this area. The importance of setting has been supported by the Planning Inspectorate in several recent dismissed appeal decisions. These include a proposed housing development at Harrietsham and commercial developments at Waterside Park, adjacent to Junction 8 of the M20 near Maidstone. In respect of the appeal at Harrietsham, the Inspector concluded that "*the unacceptable effects of the proposal on the landscape character of the area, including its SLA categorisation and its position at the edge of the AONB significantly and demonstrably outweigh the benefits that would arise from the proposal*". (APP/U2235/W/15/3119223).

In respect of the Waterside Park appeals it was concluded that "considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and Rights of Way Act 2000". (APP/U2235/A/14/2224036 & APP/U2235/A/14/2229271).

Further guidance on Setting is provided in the Kent Downs AONB Units adopted [Position Statement on Setting](#).

Enhancing landscapes and life in the Kent Downs

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Impacts on the Kent Downs AONB

The proposal would produce 49.5 MW which could make a notable contribution towards the production of energy from renewable sources and help contribute towards the UK's net zero emission target and Ashford Borough Council's 2030 carbon neutral target. We recognise that the Kent Downs Area of Outstanding Natural Beauty (AONB) must play its part in reducing emissions and the AONB Unit is keen to support proposals for renewable energy. As such, the AONB Unit is taking a pragmatic approach to trying to accommodate proposals for renewable energy, particularly within its setting. However, it is imperative that any proposals in the AONB and its setting are consistent with the primary purpose of AONB designation, i.e. the conservation and enhancement of the natural beauty of the area.

While the proposed site lies outside of the AONB designated area and some distance from it - approximately 1.2 km at its closest to the south and 3 km to the north, the scale and nature of the proposal is such that there is likely to be intervisibility of some of the site from the AONB and the proposal could also impact on views towards the AONB. As such, the site is considered to lie partially within the setting of the Kent Downs AONB.

With regards to planning policy and guidance on assessing landscape impacts of renewable energy proposals, the importance of local topography in assessing whether large scale solar farms could have a damaging effect on the landscape is specifically addressed in the nPPG on Renewable Energy which recognises that '*The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes.*' (Para 013 Reference ID: 5-013-20150327). The nPPG (at Paragraph: 012 Reference ID: 5-012-20140306) also specifically notes that a factor to consider in assessing the acceptability of planning applications for solar energy proposals is the impact on protected areas such as Areas of Outstanding Natural Beauty. This provides an additional layer of detail to the NPPF which, in respect of applications for renewable energy, states that applications should be approved 'if its impacts are (or can be made) acceptable'. The Ashford Local Plan also provides policy on how proposals for renewable energy should be assessed in ENV10. Here it is stated that in order to be acceptable, proposals should not result in significant adverse impacts on the landscape, natural assets or historic assets, having special regard to nationally recognised designations and their setting, such as AONBs.

The proposed solar array is of a significant scale, occupying some 104 ha of agricultural land that is currently mainly arable and pasture fields. The arrays are proposed within the existing landscape structure, with existing woodland, hedgerow and field boundaries largely retained and supplemented.

Much of the proposed site area would not be readily visible in views from the AONB, both from the north and south, due to the topography of the site, which is generally relatively low lying relative to surrounding topography, situated within the East Stour River Valley and as a result of screening from existing vegetation and distances involved. However, within the site there is a mound of higher ground that rises from a surrounding ground level of 50m upto a high point of 73m (Bested Hill). As such, it is much more prominent in the surrounding landscape, including in views from the AONB and the positioning of solar panels on this part of the site may adversely impact on views from the AONB.

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We are concerned that the potential impacts of the proposed installation of solar arrays on the AONB, particularly in respect of this higher ground at Bested Hill, have yet to be adequately considered within the application submission. While the LVIA includes viewpoints from the AONB (VPs 8,9,10,11 and 12), those from the north do not include visualisations. The LVIA in respect of the nearby Stone Street Green Solar proposal considers the cumulative impacts of that scheme with the proposals included in this application by EDF at Aldington and specifically raises the issue that the land at Bested Hill 'is notably more prominent in views from the Kent Downs AONB' (from the escarpment to the north). We also consider a wider consideration of potential impacts on views from the AONB from the south would be helpful, and suggest an additional Viewpoint, with visualisations, is provided from where PRoW AE496 joins Roman Road, to the west of Fostums, (approx. grid ref 608402 135501).

It is therefore requested that an update to the LVIA is provided that addresses these issues so that potential impacts on the AONB can be properly assessed. We would also comment that it is generally regarded as best practice for baseline photography to be taken as winter views (or to include both winter and summer), however only summer views are provided.

A further point for consideration is the impact of the proposals from outside of the AONB but that impact on views towards it. As demonstrated in the VP7 photomontages, the installation of solar arrays on land on the south side of Bested Hill would impact on views towards the AONB from the south, such as from PRoW AE474 to the west of Aldington Church. From here, there are panoramic views toward the escarpment of the Kent Downs which forms a notable and prominent feature in the landscape; the panels proposed on the south side of Bested Hill would be clearly visible and result in a detractor in these views towards the AONB. As demonstrated in the photomontages, mitigation would be largely ineffectual from this Viewpoint.

I hope this is of assistance to you. I would be happy to discuss further if this would be helpful.

Yours sincerely



Katie Miller
Planning Manager, Kent Downs AONB Unit

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APPENDIX 1

Planning consultations with the Kent Downs AONB Unit

Background and context:

The Kent Downs Area of Outstanding Natural Beauty partnership (which includes all the local authorities within the AONB) has agreed to have a limited land use planning role. In summary this is to:

- Provide design guidance in partnership with the Local Authorities represented in the AONB.
- Comment on forward/strategic planning issues-for instance Local Development Frameworks.
- Be involved in development management (planning applications) in exceptional circumstances only, for example in terms of scale and precedence.
- Provide informal planning advice/comments on development control (planning applications) at the request of a Kent Downs AONB Joint Advisory member and /or Local Authority Planning Officer.

The Countryside and Rights of Way Act 2000

The primary legislation relating to AONBs is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act requires that in exercising any functions in relation to land in an AONB, or so as to affect land in an AONB, relevant authorities, which includes local authorities, shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. This is known as the 'Duty of Regard'. The Duty of Regard can be demonstrated by testing proposals against the policies set out in the Kent Downs AONB Management Plan and its supporting guidance (see below).

Relationship of the AONB Management Plan and Development Management

The CRoW Act requires that a management plan is produced for each AONB, and accordingly the first Kent Downs AONB Management Plan was published in April 2004. The third revision Management Plan (2021-2026) has been formally adopted by all the local authorities of the Kent Downs. The Management Plan may be viewed on the Kent Downs website.

<https://explore-kent-bucket.s3.eu-west-1.amazonaws.com/uploads/sites/7/2021/11/16141210/The-Kent-Downs-AONB-Management-Plan-2021-2026-Adopted.pdf>

Under the CRoW Act, the Management Plan is required to 'formulate the (Local Authority) policies for the management of the AONB and for carrying out their

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functions in relation to it'. The policies of the Kent Downs AONB Management Plan are therefore the adopted policies of all the Local Authorities in the Kent Downs.

The national Planning Policy Guidance, 2019, confirms that Management Plans can be a material consideration when assessing planning applications ([Paragraph: 040 Reference ID: 8-040-20190721](#)) and this view is confirmed in previous appeal decisions, including APP/U2235/W/19/3232201, Cossington Fields Farm North, Bell Lane, Boxley, Maidstone where at paragraph 5 of the Inspectorate's decision letter it is stated that "I am mindful of the policies contained within the Kent Downs AONB Management Plan (2014-2019) requiring development to conserve and enhance natural beauty of AONB to which I attach substantial weight." The decision can be downloaded at:

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3232201>

Any Kent Downs AONB Unit response to consultations on planning applications will reflect the policies of the Management Plan along with other Kent Downs AONB produced guidance which help support the delivery of the principles of the Management Plan, as set out below.

Other Kent Downs AONB Guidance

[Kent Downs AONB Guidance on the selection and use of colour in development – Guidance](#)

The purpose of this guidance is to provide guidance on the selection and use of colour for building development within the AONB and its setting. 'Development' includes any building work, ranging from home extensions and conversions through to house building, agricultural and industrial premises, and retail and office buildings. It also includes infrastructure developments associated with transport, flood defences, power generation and distribution, communications and other utilities.

[Kent Downs Landscape Design Handbook](#)

Design guidance based on the 13 landscape character areas in the Kent Downs. Guidance is provided on fencing, hedges, planting, gateways etc. to help the conservation and enhancement of the AONB.

[Kent Downs Renewable Energy Position Statement](#)

Provides a clearly articulated position for the Kent Downs AONB partnership with regards to renewable energy technologies. It recognises that each Local Planning Authority must balance the impact of proposals for renewables on the AONB with all the other material planning considerations.

[Kent Rural Advice Service Farm Diversification Toolkit](#)

Guidance on taking an integrated whole farm approach to farm developments leading to sound diversification projects that benefit the Kent Downs.

[Kent Downs Land Manager's Pack](#)

Detailed guidance on practical land management from how to plant a hedge to creating ponds and enhancing chalk grassland.

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[Rural Streets and Lanes - A Design Handbook](#)

Guidance on the management and design of rural lanes and streets that takes the unique character of the Kent Downs into account. This document discusses the principle of shared space and uses examples from around the UK and Europe. The Handbook has been adopted by Kent County Council as policy.

[Managing Land for Horses](#)

A guide to good practice on equine development in the Kent Downs, including grassland management, fencing, trees and hedges, waste management and basic planning information.

[Kent Farmstead Guidance and Kent Downs Farmstead Guidance](#)

Guidance on the conservation, enhancement and development change of heritage farmsteads in the Kent Downs based on English Heritage's Kent and National Character Area Farmstead Statements. Includes an Assessment method and Design Guidance.

[Kent Downs Setting Position Statement](#)

An advisory document providing guidance on issues of setting including the legislative basis for considering setting, identification of where setting is likely to be an issue and provision of advice on how to mitigate potential impacts.

The NPPF and AONBs

National planning policies are very clear that the highest priority should be given to the conservation and enhancement of Areas of Outstanding Natural Beauty. The NPPF confirms that AONBs are equivalent to National Parks in terms of their landscape quality, scenic beauty and their planning status.

Paragraph 176 of the revised NPPF specifies that 'great weight should be given to conserving and enhancing 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 these issues.' It is advised that the scale and extent of development within AONBs should be limited. Paragraph 177 of the NPPF states that major developments should be refused in AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. No definition is given as to what constitutes major development within an AONB, however a footnote to this paragraph states that this is 'a matter for the relevant decision taker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date (for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

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- “i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
- ii. 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”.

Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant policies in the Framework are paragraphs 176 and 177. A recent court of appeal case² confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or ‘tilted balance’ expressed in ii) above) should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF paragraph 176.

² Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

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