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Examination of Ashford Local Plan 2030- Issue 16

The following is a response to a **new matter** raised by a representor at the session dealing with Issues 2&3 where the Inspector's attention was drawn to the examination of the Maidstone Local Plan and the Inspector's view that a local planning authority (LPA) only has a duty of "regard" to the "purposes of conserving and enhancing" an Area of Outstanding Natural Beauty (AONB) rather than an actual duty to "conserve and enhance". We do not agree with that position for the following reasons:

1. s. 85 CRow Act 2000 imposes a general duty on a very wide range of relevant authorities to *"have regard to the purpose of conserving and enhancing the natural beauty of the AONB"*.
2. The statutory duty imposed by the Act however goes above and beyond that general duty in the particular case of a relevant local authority with land designated AONB and any relevant conservation board. The greater statutory duty imposed upon such a local authority would stand alone and remain intact regardless of whether s.85 had been enacted or not.
3. Consider the case where the provisions of s.85 are momentarily omitted from the Act:-
 - s. 89 (2) CRow Act 2000 directs that the relevant local authority shall: *"prepare and publish a plan which formulates their policy for the management of the AONB and for the carrying out of their functions in relation to it."*
 - s. 82 CRow Act 2000 has already stated that the statutory purpose of an AONB is for *"conserving and enhancing the natural beauty of the area."*
 - responsibility for this designated purpose is concentrated in the LPA, and this has been reaffirmed by s.84 CRow Act 2000 in which LPAs are empowered to *"take all such action as appears to them expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of the AONB....."*
 - the s.85 "duty of regard" is therefore superseded in the case of LPAs because positive action is required to produce a Management Plan - a statutory document formulating their policy for the management of the AONB and their functions in relation to it - which they are statutorily bound to create and adhere to.

- integral to the Management Plan is the statutory purpose of actually “conserving and enhancing the natural beauty of the area” (s.82). The LPA is accordingly directed to take action to “*conserve and enhance*” the AONB - to do something positive about it - rather than merely have a duty of regard to AONB purposes.
- therefore an LPA has the heightened duty to “*conserve and enhance*” the AONB under ss. 82 and 89(2) combined, empowered for action by s. 84,(and irrespective of the provisions of s.85.)
- the lesser duty of having “regard ” to the purpose of conserving and enhancing the natural beauty of AONBs is the baseline statutory duty at s.85 for the wider class of relevant authorities and constitutes the full duty for the majority of those authorities which includes Ministers of the Crown, public bodies, statutory undertakers and any person holding public office. Notably this is not the full duty in the case of an LPA.

We maintain then that any local planning authority whose area includes any part of an AONB does indeed have a statutory duty to conserve and enhance the natural beauty of the area.