

**Consultation on the B&NES Local Plan  
Options Document (November 2018)**

**COMMENTS  
FORM**

**You are strongly encouraged to make your comments on-line via the  
Local Plan consultation portal [www.bathnes.gov.uk/localplan2016-2036](http://www.bathnes.gov.uk/localplan2016-2036)**

However, if you are using this form, please complete the form by filling in Part 1 with your contact details and use Part 2 for your response to the questions in the Options document.

Please complete a separate form for each **proposed policy approach/option** you are commenting on using the **unique reference numbers** as set out in Chapters 3 - 8.

Please send your completed form(s) using email to [local\\_plan2@bathnes.gov.uk](mailto:local_plan2@bathnes.gov.uk).  
Alternatively you can post the form to Planning Policy, Bath & North East Somerset Council, Lewis House, Manvers Street, Bath BA1 1JG.

**Your comments must be received by 7 January 2019**

Your comments will be used to inform the next stage of the Local Plan preparation.

<b>Part 1: Contact details</b>			
Email is the Council's preferred method of communication and enables us to contact you quickly and efficiently. Please also provide a postcode with details of your address.			
Personal Details		Agent Details (if applicable)	
Title	Mr	Title	
First Name	John	First Name	
Surname	Mills	Surname	
Job Title <i>(only if applicable)</i>	Planning and Landscape Officer	Job Title	
Organisation <i>(only if applicable)</i>	Cotswolds Conservation Board	Organisation	
Email	<a href="mailto:john.mills@cotswoldsaonb.org.uk">john.mills@cotswoldsaonb.org.uk</a>	Email	
Address	The Old Prison	Address	
	Fosse Way		
	Northleach		
Postcode	GL54 3JH	Postcode	
Date	07/01/19	Date	

*Please tick*

**I would like to be on the Planning Policy Mailing List and receive updates about future consultations on Planning Policy documents including the Local Plan. I am aware that I can unsubscribe at any time.**

√
---

**Please note that names and comments will be published**

## Part 2:

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** SS3 Option 3 (Combination of locations outside and within the Green Belt) .....

Of the three options that are being put forward for the location of the 700 dwellings classed as 'non-strategic growth' within Bath and North East Somerset, **Option 3 is the Cotswolds Conservation Board ('the Board')'s least preferred option.** This is because Option 3 leaves the Cotswolds Area of Outstanding Natural Beauty (AONB) the most vulnerable to new housing development.

Options 1 and 2 propose that the majority of the non-strategic growth is located in specific locations, which happen to be well away from the Cotswolds AONB. From an AONB perspective Option 1 is probably the most preferable option as this leaves the fewest number of dwellings to be allocated on smaller sites in other villages.

Option 3, on the other hand, specifically promotes '*opportunities around the edge of Bath*'. Given that '*the edge of Bath*' already extends to the AONB boundary on three sides (north, east and south), Option 3 implies that the AONB (and its setting) would be a focal point for accommodating the 700 'non-strategic growth' dwellings.

Having the AONB as a focal point for such development would be extremely inappropriate. The National Planning Policy Framework (NPPF) provides a high level of protection for AONBs, primarily through paragraph 172, which, inter alia, explicitly states that development in AONBs should be limited and that major development should not normally be permitted. Paragraph 11 and Footnote 6 of the NPPF also indicate that the requirement to meet objectively assessed needs does not apply in AONBs.

Paragraph 172 of the NPPF refers to major development in the context of planning applications. However, **the issue of major development should also be addressed by the local planning authority (LPA) at the 'plan-making' stage.** This is because if a site that is allocated in a local plan is subsequently considered to be major development, it should not be permitted<sup>1</sup> and the site would be undeliverable. A local plan which allocates such undeliverable sites would be unsound. Making an assessment, at the plan-making stage, of whether an allocation constitutes major development would help to resolve this issue. This approach to the major development issue reflects the legal opinions provided to the South Downs National Park Authority by Toby Fisher<sup>2</sup> and, separately, by James Maurici QC<sup>3</sup>, both of Landmark Chambers. It is worth noting that Mr Fisher's legal opinion concluded that:

- *It would arguably amount to an error of law to fail to consider paragraph 116<sup>4</sup> at the site allocations stage of plan making.*

<sup>1</sup> Unless exceptional circumstances applied and the development was shown to be in the public interest.

<sup>2</sup> <https://www.southdowns.gov.uk/wp-content/uploads/2018/04/Core-11-Major-Development-Advice-2017.pdf>

<sup>3</sup> <https://www.southdowns.gov.uk/wp-content/uploads/2015/01/Guidelines-on-Significance-for-SDNP-Planning-Applications---Supplementary-Advice-October-2014.pdf>

<sup>4</sup> The paragraph 116 referred to here is now paragraph 172 in the NPPF published in July 2018.

**Please note that names and comments will be published**

If allocations in the AONB are retained in the Plan after the issue of major development has been considered at the plan-making stage, the issue of major development should still be a consideration at the planning permission / decision-taking stage of the planning process as well. This is because the planning application stage provides a significant level of detail (e.g. design, layout, etc.) that is not available at the plan-making stage and which could still significantly influence whether or not the development would constitute major development.

Footnote 55 of the NPPF clarifies that the decision as to whether a proposal should be considered as 'major development' should take into account its nature, scale and setting, and whether it *could* (i.e. has the potential to) have a significant adverse impact on the purposes for which the area has been designated or defined. Therefore, **the major development assessment at the plan-making stage should explicitly identify whether or not AONB allocations have the potential to have a significant adverse impact on the purpose of AONB designation** (i.e. to conserve and enhance the natural beauty of the AONBs).

'Natural beauty' has a much wider remit than just landscape and scenic beauty / visual impact<sup>5</sup>. The major development assessment should reflect this wider remit by addressing issues such as the special qualities of the Cotswolds AONB, tranquillity, natural heritage (including biodiversity) and cultural heritage (including the historic environment). **It should also address the three major development 'tests' specified in paragraph 172 of the NPPF**, including the scope for locating the proposed allocation outside the AONB (either within the local authority area or, through the duty to cooperate, in other local authority areas). If the allocations *do* constitute major development, these sites should not be allocated unless the LPA can demonstrate that exceptional circumstances apply *and* that the allocations would be in the public interest. The nation-wide drive to build more homes should not be considered to be an exceptional circumstance, as this situation reflects the national 'norm', not the 'exception'.

The consultation document makes multiple references to the 'exceptional circumstances' that must be demonstrated in order to remove land from – and allocate sites in – the Green Belt but makes no mention of the 'exceptional circumstances' that must be demonstrated in relation to major development in AONBs. **The Plan should give at least equal weight to the 'exceptional circumstances' that apply to AONBs as it does to the 'exceptional circumstances' that apply in the Green Belt.** In circumstances where the AONB is not also Green Belt, allocating sites in the AONB should not necessarily be considered as a preferable option to allocating sites in the Green Belt.

LPAs have a statutory duty to have regard to the purpose of AONB designation, under Section 85 of the Countryside and Rights of Way (CROW) Act 2000. This 'duty of regard' is intended to ensure that the purpose of AONB designation is recognised as an essential consideration in any decisions or activities that impact on the AONB, with the expectation that adverse impacts will be avoided or mitigated, where possible<sup>6,7,8</sup>. LPAs are expected to be able to demonstrate that they have fulfilled the duty of regard. This should include written evidence that they have had regard to the purpose of AONB designation and

<sup>5</sup> Further information on 'natural beauty' is provided in the Cotswolds AONB Management Plan 2018-2023, particularly in Appendix 2.

<sup>6</sup> Defra (2005) *Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty and the Norfolk and Suffolk Broads*. Defra Publications, London.

<sup>7</sup> Natural England (2010) *England's statutory designated landscapes: a practical guide to your duty of regard*.

<sup>8</sup> Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023*. Appendix 4.

**Please note that names and comments will be published**

undertaking - and making publically available - an assessment of how their local plans are likely to affect relevant AONBs.

The recommendations outlined above would help the LPA to demonstrate that it has complied with this 'duty of regard'. Additional measures that the LPA should undertake to demonstrate compliance include:

- Assessing the housing need arising from within the Bath and North East Somerset section of the AONB.
- Identifying how great weight has been given to conserving and enhancing the landscape and scenic beauty of the AONB (including the impact of development in the setting of the AONB).
- Identifying how the AONB Management Plan and associated guidance have been taken into account.

**If development *is* permitted in the AONB, the LPA should give consideration to securing funding from the development that specifically contributes to conserving and enhancing the natural beauty of the AONB.** This could potentially take the form of paying a sum of money to the Board in continuing support of AONB Management Plan objectives. This type of funding has been secured through planning obligations elsewhere in the Cotswolds AONB, for example, for Charlbury Solar Farm in West Oxfordshire.

The same principles would apply to development in – or within the setting of – the Mendip Hills AONB.

See our website for more information and to make your comments online: [www.bathnes.gov.uk/localplan](http://www.bathnes.gov.uk/localplan)

**Part 2:**

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** BTH2 Proposed policy approach for housing .....

Bath is surrounded, on three sites, by the Cotswolds Area of Outstanding Natural Beauty (AONB). Therefore, when identifying and allocating sites to accommodate the 300 dwellings that are required in Bath, the local planning authority (LPA) should ensure that it:

- fulfils its statutory duty to have regard to the purpose of AONB designation;
- complies with the policies of the National Planning Policy Framework that relate to AONBs (primarily paragraph 172);
- sets policies and identifies and allocates sites in a way that is consistent with the policies of the Cotswolds AONB Management Plan and associated guidance produced by the Cotswolds Conservation Board ('the Board').

Further information on these issues is provided in the Board's response to SS3 (Option 3).

**Part 2:**

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** BTH7 Proposed policy approach for Bath University Claverton Campus .....

The south-eastern section of Claverton Campus lies within the Cotswolds Area of Outstanding Natural Beauty (AONB) and the remainder of the Campus is within the setting of the AONB. Therefore, when developing its policy approach to the Claverton Campus, including identifying the scale and location of new development, the local planning authority (LPA) should ensure that it:

- fulfils its statutory duty to have regard to the purpose of AONB designation;
- complies with the policies of the National Planning Policy Framework that relate to AONBs (primarily paragraph 172);
- sets policies and identifies and allocates sites in a way that is consistent with the policies of the Cotswolds AONB Management Plan and associated guidance produced by the Cotswolds Conservation Board ('the Board').

Further information on these issues is provided in the Board's response to SS3 (Option 3).

The Campus is located in Landscape Character Type (LCT) 9B (High Wold Dip Slope – Bathampton and Claverton Downs) and is in close proximity to LCT 4 (Enclosed Limestone Valley). As such, the LPA should have particular regard to the Board's Landscape Character Assessment and Landscape Strategy and Guidelines for these LCTs.

Given that a key component of the AONB section of the Campus is sports related development, lighting is likely to be a key issue. To address this issue, the LPA should ensure that light pollution is avoided and minimised, where possible, and that existing sources of light pollution should be reduced or removed (in line with Policy CE5 of the Cotswolds AONB Management Plan 2018-2023).

## **Part 2:**

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** BTH9 Policy options for Bath Park and Ride provision.....

The Cotswolds Conservation Board ('the Board') has no particular preference between Option 1 and Option 2. However, we would like to make the following comments.

BTH9 (Option 2) proposes the provision of a new Park and Ride to the east of Bath and the expansion of the existing sites at Lansdown and Odd Down. The Area of Search for the East of Bath Park and Ride lies partly within the Cotswolds Area of Outstanding Natural Beauty (AONB). Lansdown Park and Ride is located within the AONB and Odd Down Park and Ride is directly adjacent to the AONB.

Therefore, when considering development at these sites (or other sites that might come forward under Option1, which are in – or within the setting of – the AONB), the local planning authority (LPA) should ensure that it:

- fulfils its statutory duty to have regard to the purpose of AONB designation;
- complies with the policies of the National Planning Policy Framework that relate to AONBs (primarily paragraph 172);
- sets policies and identifies and allocates sites in a way that is consistent with the policies of the Cotswolds AONB Management Plan and associated guidance produced by the Cotswolds Conservation Board ('the Board').

Further information on these issues is provided in the Board's response to SS3 (Option 3).

The Area of Search for the East of Bath Park and Ride is located in Landscape Character Type (LCT) 4 (Enclosed Limestone Valley). Lansdown Park and Ride is located in LCT 9C (High Wold Dip Slope – Lansdown) and is in close proximity to LCT 2A (Escarpment – Bath to Beech Farm) and LCT 4. Odd Down is adjacent to LCT 9A (High Wold Dip Slope – Sulis Manor Plateau) and in close proximity to LCT4. The LPA should have particular regard to the Board's Landscape Character Assessment and Landscape Strategy and Guidelines for these LCTs.

Given the nature of Park and Ride facilities, lighting and noise pollution are likely to be key issues. To address these issues, the LPA should ensure that light pollution and noise pollution is avoided and minimised, where possible, and that existing sources of light pollution and noise pollution should be reduced or removed (in line with Policies CE4 and CE5 of the Cotswolds AONB Management Plan 2018-2023).

As with other sections of the consultation document, this section emphasises the 'exceptional circumstances' that relate to removing land from – and allocating sites on – Green Belt but makes no mention of the 'exceptional circumstances' that must be demonstrated in relation to major development in AONBs. The Plan should give at least equal weight to the 'exceptional circumstances' that apply to AONBs as it does to the 'exceptional circumstances' that apply in the Green Belt.

**Part 2:**

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** BTH10 Options for the replacement Household Reuse and Recycling Facility for residents.....

The Cotswolds Conservation Board ('the Board') has no particular preference between Option 1 and Option 2. However, we would like to make the following comments.

BTH10 (Option 1) proposes the allocation of a waste facility at Odd Down. This would be directly adjacent to the boundary of the Cotswolds Area of Outstanding Natural Beauty (AONB). Therefore, when considering development at this site (or other sites that might come forward under Option 2, which are in – or within the setting of – the AONB), the local planning authority (LPA) should ensure that it:

- fulfils its statutory duty to have regard to the purpose of AONB designation;
- complies with the policies of the National Planning Policy Framework that relate to AONBs (primarily paragraph 172);
- sets policies and identifies and allocates sites in a way that is consistent with the policies of the Cotswolds AONB Management Plan and associated guidance produced by the Cotswolds Conservation Board ('the Board').

Further information on these issues is provided in the Board's response to SS3 (Option 3).

Given the nature of Park and Ride facilities, lighting and noise pollution are likely to be key issues. To address these issues, the LPA should ensure that light pollution and noise pollution is avoided and minimised, where possible, and that existing sources of light pollution and noise pollution should be reduced or removed (in line with Policies CE4 and CE5 of the Cotswolds AONB Management Plan 2018-2023).

As with other sections of the consultation document, this section emphasises the 'exceptional circumstances' that relate to removing land from – and allocating sites on – Green Belt but makes no mention of the 'exceptional circumstances' that must be demonstrated in relation to major development in AONBs. The Plan should give at least equal weight to the 'exceptional circumstances' that apply to AONBs as it does to the 'exceptional circumstances' that apply in the Green Belt.

**Part 2:**

**Which proposed policy approach/option in the Options document (November 2018) are you commenting on?** DM2 Emerging policy approach for harnessing wind energy

The Cotswolds Conservation Board ('the Board') supports the requirement to satisfactorily address impact on landscape and scenic beauty of the AONBs.

However, the local planning authority (LPA) has a statutory duty to have regard to the purpose of AONB designation (i.e. to conserve and enhance the natural beauty of the AONB). As outlined in our comments on SS3 (Option 3), 'natural beauty' has a much wider remit than just landscape and scenic beauty. Also, wind energy proposals in the Cotswolds AONB are likely to constitute major development. As outlined in our comments on SS3 (Option 3), assessing if a proposal constitutes major development involves assessing if the proposal *could* have significant adverse effects on the purpose of AONB designation.

Therefore, wind energy proposals in the AONB or its setting should also be required to demonstrate that they would not have a significant adverse effect on the purpose of conserving and enhancing the natural beauty of the AONB.