

South Worcestershire Development Plan Review Issues and Options Consultation November / December 2018

Response Form

Please return by **5.00pm on Monday 17th December 2018** to:

South Worcestershire Development Plan Team
Civic Centre
Queen Elizabeth Drive
Pershore
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or email contact@swdevelopmentplan.org

Ref:

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SUMMARY

Question 1 (Evidence Base): The Cotswolds Conservation Board's key recommendation is that there should be an additional study that specifically addresses the two Areas of Outstanding Natural Beauty (AONB) in the Plan area – the Cotswolds AONB and the Malvern Hills AONB. This study should:

1. Identify how the statutory duty to have regard to the purpose of AONB designation (the 'duty of regard') has been carried out.
2. Assess the housing need arising from within the South Worcestershire section of each AONB.
3. Identify if potential allocations in the AONBs would constitute major development.
4. Identify how great weight has been given to conserving and enhancing the landscape and scenic beauty of the AONBs.
5. Identify how the AONB Management Plans and associated guidance have been taken into account.

Questions 2 and 3 (Vision and Objectives): The Board suggests some amendments to the Vision and Objectives relating primarily to biodiversity and climate change.

Option 10 (Affordable Housing): The Board supports prioritising affordable homes for rent

Question 10 (Historic Environment): The Board supports the proposed approach to protecting the historic environment.

Option 25 (Design Policy): The Board recommends that the Design Policy should require development in the Cotswolds AONB to accord with the Cotswold Design Code (Appendix D of the Cotswold District Local Plan 2011-2031). We support the requirement for all new housing to achieve Building for Life requirements.

Option 27 (Biodiversity): The Board supports all of the proposed options relating to biodiversity but with a stronger emphasis on requiring development to deliver significant net-gains in biodiversity.

Option 29 (Areas of Outstanding Natural Beauty): The Board recommends that part (c) of Policy SWDP Policy 23 should be amended to: *'Development proposals will be required to be consistent with the most up-to-date approved AONB Management Plans'*.

QUESTION 1 (EVIDENCE BASE). Do you agree that the above list of technical studies is appropriate and sufficient to inform the SWDPR? If not, what is missing, and why are these additional studies necessary?

AONBs

The Cotswolds Conservation Board recommends that there should be an additional study that specifically addresses the two Areas of Outstanding Natural Beauty (AONB) in the Plan area – the Cotswolds AONB and the Malvern Hills AONB.

This study should:

1. Identify how the statutory duty to have regard to the purpose of AONB designation (the ‘duty of regard’) has been carried out.
2. Assess the housing need arising from within each AONB.
3. Identify if potential allocations in the AONBs would constitute major development.
4. Identify how great weight has been given to conserving and enhancing the landscape and scenic beauty of the AONBs.
5. Identify how the AONB Management Plans and associated guidance have been taken into account.

Further justification for these steps – and advice on how the implications of these steps should be addressed - is provided below.

Duty of Regard

Local planning authorities (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^{1,2,3}. 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 undertaking - and making publically available - an assessment of how their local plans are likely to affect relevant AONBs.

Producing a bespoke study that specifically identifies and addresses the potential impacts of the Development Plan on the AONBs - and the measures taken to avoid or minimise any adverse impacts - would be an important step in demonstrating the duty of regard.

Housing Need

The AONB study should include an assessment of the housing needs arising specifically within each AONB, including within individual settlements within the South Worcestershire section of the AONBs. The need for affordable housing, particularly social rented housing, should be a primary focus of this assessment.

¹ Defra (2005) *Duties on relevant authorities to have regard to the purposed of National Parks, Areas of Outstanding Natura Beauty and the Norfolk and Suffolk Broads*. Defra Publications, London.

² Natural England (2010) *England’s statutory designated landscapes: a practical guide to your duty of regard*.

³ Cotswolds Conservation Board (2018) *Cotswolds AONB Management Plan 2018-2023. Appendix 4*.

If the assessment identifies that these needs are already met by existing commitments, further sites should not be allocated in the AONBs. If allocations are still proposed in the AONBs under these circumstances, robust justification should be provided for such allocations. If development needs cannot be met wholly within the Development Plan area, as a result of AONB-related constraints, consideration should be given to working with other LPAs to determine whether this development need can be met elsewhere, outside of the AONBs⁴.

The justification for these recommendation is outlined below.

Paragraph 11 and Footnote 6 of the NPPF make it clear that the general requirement for local planning authorities to meet objectively assessed needs (OAN) for housing does not apply in AONBs⁵. In addition, paragraph 172 of the NPPF specifies that the scale and extent of development within AONBs should be limited.

With this in mind, Policy CE12 (paragraph 1) of the Cotswolds AONB Management Plan 2018-2023 states that:

- *Development in the Cotswolds AONB should be based on robust evidence of local need arising from within the AONB.*

Lack of evidence of the housing need arising from within the Cotswolds AONB (including the needs of individual settlements within the AONB) was one of the key reasons for all of the proposed housing allocations in the Rural Service Centres of Burford and Charlbury (and the neighbouring villages) being removed from the West Oxfordshire Local Plan, which was adopted on 27th September 2018. Maintaining these allocations without this evidence base would have made the plan unsound. The Planning Inspector's report for the West Oxfordshire Local Plan stated that:

- *There is little case for the plan to provide for more [dwellings] than the already completed / committed 774 dwellings in the Burford–Charlbury sub-area (either the site allocations or a reliance on future windfalls) simply to ensure that the district-wide housing needs are met. Moreover, in the absence of a specific housing need figure for the sub-area, it is not possible to identify that new dwellings, over and above existing completions and commitments, are as a matter of principle, necessary specifically in the context of the AONB or the Burford–Charlbury sub-area' ... 'the allocation in the plan of housing sites, and the reliance on additional windfall housing development, in the Burford – Charlbury area, over and above existing completions and commitments, would not be sound'.*

If the South Worcestershire Development Plan allocates sites in the AONBs without demonstrating this evidence of need arising within the AONBs, the Development Plan could also be deemed to be unsound.

It is also worth noting that the adopted West Oxfordshire Local Plan sets additional criteria relating to housing developments in the Cotswolds AONB, including:

⁴ This reflects paragraph 26 of the NPPF.

⁵ For example, paragraph 172 of the NPPF, which relates to AONBs, clearly meets the criteria set out in paragraph 11(b)(i), which specifies the circumstances in which the requirement to meet objectively assessed needs does not apply.

- for any housing development that is considered in the Burford-Charlbury sub-area, 'it will need to be convincingly demonstrated that a scheme would give rise to benefits to the specific settlement or the sub-area' (paragraph 9.6.29);
- 'within the Cotswolds AONB, windfall housing proposals on undeveloped land adjoining built up areas will be particularly closely scrutinised and will only be supported where there is convincing evidence of a specific local housing need such as needs identified through a neighbourhood plan or affordable housing needs specific to a particular settlement, for example through a rural exception site' (paragraph 5.39).

It would be appropriate to include similar criteria in the Development Plan.

Major Development

The AONB study should include an assessment of whether or not the potential allocations in the AONBs, both individually and collectively, would constitute 'major development' in the context of paragraph 172 and Footnote 55 of the NPPF. This assessment should explicitly identify whether or not these allocations *could* (i.e. 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). The assessment should address the full context of 'natural beauty' - including the special qualities of the Cotswolds AONB, tranquillity, natural heritage (including biodiversity) and cultural heritage (including the historic environment) - not just landscape and visual impact⁶. It should also address the three major development 'tests' specified in paragraph 172 of the NPPF. If the allocations *do* constitute major development, these sites should not be allocated unless the Council 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 justification for these recommendations is outlined below.

Paragraph 172 of the NPPF states that '*planning permission should be refused for major development [in an AONB] other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest*'. Although consideration of planning permission is part of the 'decision-taking' process, the issue of major development should still be considered at the 'plan-making' stage, rather than left until the decision-taking 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 permitted⁷ 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 Fisher⁸ and, separately, by James Maurici QC⁹, both of Landmark Chambers. It is worth noting that Mr Fisher's legal opinion concluded that:

⁶ Further information on 'natural beauty' is provided in the Cotswolds AONB Management Plan 2018-2023, particularly in Appendix 2.

⁷ Unless exceptional circumstances applied and the development was shown to be in the public interest.

⁸ <https://www.southdowns.gov.uk/wp-content/uploads/2018/04/Core-11-Major-Development-Advice-2017.pdf>

⁹ <https://www.southdowns.gov.uk/wp-content/uploads/2015/01/Guidelines-on-Significance-for-SDNP-Planning-Applications—Supplementary-Advice-October-2014.pdf>

- *It would arguably amount to an error of law to fail to consider paragraph 116¹⁰ at the site allocations stage of plan making for the National Park.*

Factors that might lead to the conclusion that the allocations *could* have a significant adverse impact on the purpose of AONB designation – and, therefore, constitute major development – include the nature, scale and setting of the proposal allocations.

Even if the allocations 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.

Great Weight

The AONB study should identify how ‘great weight’ has been given to conserving and enhancing the landscape and scenic beauty of the AONBs. This assessment should relate to potential allocations in the setting of the AONBs as well as within the AONBs. It should incorporate relevant aspects of the Landscape and Visual Sensitivity Studies that are carried out for relevant, potential allocations and relevant aspects of the Development Plan’s Sustainability Appraisal. It should also consider ways in which developments in the AONBs (and their settings) could further enhance the landscape and scenic beauty - and wider natural beauty - of the AONBs, including potential financial contributions from developments for this purpose.

This assessment is necessary to demonstrate compliance with paragraph 172 of the NPPF, which states that ‘*great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs*’.

AONB Management Plans

The AONB study should identify how the Cotswolds AONB Management Plan and the Malvern Hills AONB Management Plan – and associated guidance - have been taken into account in preparing the Development Plan. For example, the study should identify the extent to which the policies and potential allocations of the Development Plan are consistent with the policies of the AONB Management Plans.

For the Cotswolds AONB, the associated guidance that should be taken into account includes the:

- Cotswolds AONB Landscape Character Assessment (LCA).
- Cotswolds AONB Landscape Strategy and Guidance (LSG).
- Cotswolds AONB Local Distinctiveness and Landscape Change.
- Cotswolds AONB Position Statements.

For example, the LCA and LSG should be referred to in any Landscape and Visual Sensitivity Studies for potential allocations in the Cotswolds AONB (and its setting) and should be a key tool for helping to identify the significance of the potential impact of these allocations on the AONB.

¹⁰ The paragraph 116 referred to here is now paragraph 172 in the NPPF published in July 2018.

The justification for this recommendation is provided by the Government's Planning Practice Guidance (PPG), which states that:

- *Local planning authorities ... should have regard to management plans for ... Areas of Outstanding Natural Beauty, as these documents underpin partnership working and delivery of designation objectives.*
- *Areas of Outstanding Natural Beauty management plans ... may contribute to setting the strategic context for development by providing evidence and principles, which should be taken into account in the local planning authorities' Local Plans ... in these areas.*

QUESTION 2 (VISION): The vision set out above is that which is set out in the adopted SWDP. Is it appropriate to continue with this vision? If not, what changes should be made?

No, the Cotswolds Conservation Board does not consider it appropriate to continue with this vision.

The vision contains a number of very positive aspirations. In the context of AONBs, the Board is particularly pleased to see, in paragraph 6.7:

- the Cotswolds and Malvern Hills AONBs being identified as '*highlights*' of '*the high quality natural and built environment*'
 - enshrining the '*need to protect these vital and sensitive landscape in the SWDP*';
 - recognising these landscapes as '*a cornerstone of south Worcestershire's continued success as a place in which to live, work and relax*'
- the emphasis given to affordable housing and securing and sustaining local communities

However, the vision does not adequately address climate change (including mitigation and adaptation). The vision should also separate the issues of green infrastructure and biodiversity. In relation to biodiversity, the vision should specifically promote the creation of coherent and resilient ecological networks and the need for development to deliver net-gains in biodiversity.

QUESTION 3 (OBJECTIVES): Are the existing SWDP objectives, as set out above, still appropriate? If not, what should be changed?

No, the Cotswolds Conservation Board considers that the existing SWDP objectives are not appropriate.

The objectives include a number of very positive aspirations. For example, the Board is pleased that there is an objective '*to ensure that the scale and type of new development does not compromise landscape character or south Worcestershire's built heritage*' (Objective 10). However, given that the NPPF gives AONBs '*the highest status of protection*' in relation to landscape, AONBs should be specifically mentioned as a priority in this objective.

Objective 11 identifies a number of measures to address climate change mitigation. However the objectives do not adequately or explicitly address climate change adaptation.

Objective 14 addresses biodiversity. However, the objectives should explicitly address the need to create coherent and resilient ecological networks.

OPTION 10 (AFFORDABLE HOUSING): Should affordable housing beyond the 10% home ownership products promoted in the NPPF:

a. Prioritise affordable homes for purchase, including shared ownership

b. Prioritise affordable homes for rent.

The preferred option for the Cotswolds Conservation Board is option b.

Lack of affordable housing is a key issue in the Cotswolds AONB, where the premium on house prices associated with the AONB's outstanding landscape makes the provision of affordable housing even more challenging. The shortage of truly affordable housing results in people who have grown up in the AONB having to move out of the AONB to find more affordable housing and those who work in the AONB not being able to live there.

Although the government's measures to encourage affordable homes for purchase make a positive contribution to addressing this issue, there are still many people who could not afford to purchase a house, even at a discounted rate or on a shared ownership basis. Also, schemes that promote 'affordable homes for purchase' do not provide affordable housing in perpetuity as these homes can be sold at market rates after a limited period of time. As such, there is an urgent need to provide homes for rent that are genuinely affordable, in perpetuity, for low-income households.

QUESTION 10 (HISTORIC ENVIRONMENT): Do you support the proposed approach to protecting the historic environment (policies SWDP6 and SWDP24)?

Yes, the Cotswolds Conservation Board supports the proposed approach to protecting the historic environment as this broadly reflects the requirements of Policy CE6 (Historic Environment and Cultural Heritage) in the Cotswolds AONB Management Plan 2018-2023.

OPTION 25 (DESIGN POLICY): Should the SWDPR:

- a. Continue with the adopted design policy (SWDP21) which sets out a number of requirements which developments should meet.**
- b. Require all new housing development to achieve Building for Life requirements.**
- c. Identify strategic sites and locations and include masterplanning and design codes for them within the SWDPR.**
- d. Identify strategic sites for which masterplans and design codes will be prepared as Supplementary Planning Documents once the Plan is adopted.**

With regards to option (a), the Cotswolds Conservation Board is broadly supportive of the adopted design policy. However, we recommend that the design policy should also require development in the Cotswolds AONB to accord with the Cotswold Design Code (Appendix D of the Cotswold District Local Plan). We support option (b). We do not take a view on options (c) and (d), as it would not be appropriate to identify strategy sites and locations in the Cotswolds AONB.

Good design is an essential consideration in the Cotswolds AONB where the unifying character of the limestone geology (including its use as a building material) and the distinctive settlements, developed in the Cotswold vernacular with high architectural quality and integrity, are key components of the special qualities of the AONB. The Cotswold Design Code provides a very good guide for how these issues should be taken into consideration in the design of new development to ensure that these special qualities are conserved and enhanced in the future.

This amendment would help to ensure that the design policy is more consistent with Policy CE3 (Local Distinctiveness) of the Cotswolds AONB Management Plan 2018-2023, which recommends that developments should be '*designed and, where relevant, landscaped to respect local settlement patterns, building styles, scale and materials*' and should use '*an appropriate colour of limestone to reflect local distinctiveness*'.

In line with Policy CE3, the design policy should also require development in the Cotswolds AONB to be compatible with the following Cotswolds Conservation Board documents:

- Landscape Character Assessment;
- Landscape Strategy and Guidelines; and
- Local Distinctiveness and Landscape Change.

With regards to option (b), the Buildings for Life requirements help to address many of the policies of the Cotswolds AONB Management Plan 2018-2023, especially in relation to promoting locally distinctive character.

Option 27 (BIODIVERSITY): Should the SWDPR:

- a. Continue to protect all designated sites from development, including maintaining a buffer zone where appropriate.**
- b. Encourage the biodiversity enhancement of sites through development, for example, allocating sites which can deliver biodiversity enhancement.**
- c. Seek to identify opportunities for the restoration or creation of new habitat areas in association with planned development, as part of the wider biodiversity network.**
- d. Require, through policy, increased long-term monitoring of biodiversity mitigation and enhancement measures on development sites.**

The Cotswolds Conservation Board supports all four options (a-d), although option (b) should *require* development to deliver significant net-gains in biodiversity, rather than just *encouraging* biodiversity enhancement.

All of these options are consistent with Policy CE7 (Biodiversity) of the Cotswolds AONB Management Plan. They are also consistent with the aspirations set out in the Government's 25 Environment Plan.

In promoting these options, the Development Plan should explicitly refer to the principles that were set out in the 'Lawton Report'¹¹ - better, bigger, more and joined:

- **BETTER:** Existing wildlife sites¹² should be protected, in line with national policy and guidance, and be brought into good condition through effective and appropriate management.
- **BIGGER:** The size of existing wildlife sites should be increased.
- **MORE:** More wildlife sites should be created.
- **JOINED:** Connectivity between wildlife sites should be improved by creating new wildlife corridors and 'stepping stone' sites and the provision of green infrastructure. The pressure on wildlife should be reduced by improving the wider environment, including the provision of less intensively managed 'buffer zones' around wildlife sites.

¹¹ Lawton, J.H. et al (2010) *Making Space for Nature: a review of England's wildlife sites and ecological networks*. Report to Defra.

¹² 'Wildlife sites' include the hierarchy of nature conservation designations, nature reserves and other priority habitat.

OPTION 29 (AREAS OF OUTSTANDING NATURAL BEAUTY): Should the SWDPR:

a) Revise SWDP23¹³ in the light of the revised NPPF

b) Include a new policy regarding development within the setting of the AONB

With regards to part (a) of Option 29, the Cotswolds Conservation Board is broadly supportive of Policy SWDP23 as it provides a high level of protection for the AONBs. It should certainly not be weakened, given that the new NPPF is more restrictive for development in AONBs than the 2012 version (e.g. it now specifies that development in AONBs should be limited and gives great weight to enhancing, as well as conserving, landscape and scenic beauty).

However, we recommend that part (c) of Option 29 should be amended to say that '*development proposals will be required to be consistent with the most up-to-date approved AONB Management Plans*'. This would bring the AONB policy up to the same standard as the Cotswolds AONB policy (Policy SD7) in the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031.

Footnote 50 to Policy SWDP 23 should also be amended such that 'natural beauty' includes tranquillity and the special qualities of the AONBs. Also, although the current wording of Policy SWDP 23 negates the need to refer specifically to major development within the policy, the issue of major development (as per paragraph 172 of the NPPF) should still be addressed within the supporting text.

In response to part (b) of Option 29, there should be an additional policy on development within the setting of an AONB. The suggested wording for this policy is as follows.

- Development within the setting¹⁴ of an AONB should have regard¹⁵ to the purpose of AONB designation and give great weight to conserving and enhancing the landscape and scenic beauty of the AONB.

¹³ See Annex 1 of this document.

¹⁴ Development within the setting of an AONB is the area within which development and land management proposals, by virtue of their nature, size, scale, siting materials or design could be considered to have an impact, positive or negative, on the natural beauty and special qualities of the AONB. So, in addition to considerations such as landscape and visual impact, this would include issues such as impacts on tranquillity (e.g. increased traffic movements through the AONB) and dark skies (e.g. increased level of light pollution affecting the AONB).

¹⁵ 'Have regard to' means that there is an expectation that adverse impacts will be avoided or mitigated where possible. Written evidence should be provided of how the requirement to 'have regard' has been considered, including an assessment of potential impacts and any proposed mitigation measures.