

**NATIONAL PLANNING POLICY FRAMEWORK CONSULTATION
NEW PARAGRAPHS 175 AND 176
COTSWOLDS CONSERVATION BOARD
24 MARCH 2021**



SUMMARY – NEW PARAGRAPHS 175 AND 176

The National Planning Policy Framework (NPPF) policy relating to major development in designated landscapes should apply at the plan-making stage as well as at the development management stage.

The new requirement for development in the setting of designated landscapes to be sensitively located and designed is welcomed but should also apply within designated landscapes.

The wording of new paragraphs 175 and 176 should be amended to reflect these recommendations, using the suggested wording provided in Appendix 1 of this response.

Proposed Amendment 1 – Major Development (New Paragraph 176)

The consultation documents state that new paragraph 176 has been separated from the preceding paragraph in order to clarify that this policy, relating to major development, applies at the development management stage only.

The Cotswolds Conservation Board strongly objects to this proposed revision. We believe that the major development policy should be applied at the plan-making stage, as part of the site allocation process, as well as at the development management stage. This is because failing to consider the major development policy for designated landscapes at the site allocations stage would:

- arguably amount to an error of law;¹
- conflict with relevant legal opinion;^{2,3}
- potentially:
 - conflict with other NPPF policies;⁴
 - risk allocating sites at the plan-making stage which are then undeliverable;⁵
 - slow down housing delivery and / or lead to a shortfall in housing land supply;
 - result in allocations that have a significant adverse impact;
 - conflict with the Government's assertion that meeting housing need is never a reason to cause unacceptable harm to protected landscapes.⁶

Proposed Amendment 2 – Location and Design of Development (New Paragraph 175)

The consultation documents state that new paragraph 175 has been amended to clarify that the scale and extent of development within the settings of National Parks and Areas of Outstanding should be sensitively located and designed so as to avoid adverse impacts on these designated landscapes.

The Cotswolds Conservation Board strongly supports this amendment. Explicitly addressing development in the setting of designated landscapes would be consistent with relevant legislation⁷, case law⁸, planning practice guidance⁹ and the Board's own guidance on development in the setting of the Cotswolds National Landscape¹⁰.

However, we believe that this requirement should also be explicitly applied to development *within* designated landscapes. This would help to ensure that development within designated landscapes is sensitively located and designed so as to avoid adverse impacts. Our suggested wording would also be more consistent with the Government's own planning practice guidance.¹¹

APPENDIX 1. RELEVANT EXTRACTS FROM THE NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

Cotswolds Conservation Board suggested wording (N.B. Changes from the proposed wording in the consultation draft are shown in red text)

175. 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. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited, while any development within these designated areas and their settings should be sensitively located and designed to avoid adverse impacts on the designated landscapes.

176. Major development should not be allocated or permitted ~~When considering applications for development~~ within National Parks, the Broads and Areas of Outstanding Natural Beauty ~~permission should be refused for major development~~ other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of...

The Government's proposed wording ([link](#)) (N.B. Changes from the current NPPF are shown in red text)

175. 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. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited, while any development within their settings should be sensitively located and designed to avoid adverse impacts on the designated landscapes.

176. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, ~~planning~~ permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of...

Current NPPF wording ([link](#))

172. 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. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of...

N.B. In all three cases, the current footnote 55 of the NPPF would apply (i.e. 'whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purpose of which the area has been designated'). It is worth noting that some of the references in the endnotes of this response refer to paragraphs 115, 116 and / or 172 of the NPPF. Paragraphs 115 and 116 of the original NPPF (i.e. the 2012 version) were combined into paragraph 172 of the 2018 and 2019 versions of the NPPF. In the current consultation draft, paragraph 172 is split into paragraphs 175 and 176.

ENDNOTES

¹ Toby Fisher (2017) *In the matter of South Downs National Park and in the matter of paragraph 116 of the NPPF. Opinion*. Landmark Chambers ([link](#)). Paragraph 5: *In my opinion, it would arguably amount to an error of law to fail to consider paragraph 116 at the site allocations stage of plan making.*

² See endnote 1.

³ James Maurici QC (2014) *In the matter of the National Planning Policy Framework and in the matter of the South Downs National Park Authority* ([link](#)). Paragraphs 14 and 15.

⁴ In particular, paragraph 11b of the NPPF, which makes it clear that the NPPF policies relating to designated landscapes may mean that it is not possible to meet objectively assessed needs in full through the plan-making process. Please refer to the previous endnote for additional context. (N.B. What was paragraph 14 in the 2012 version of the NPPF became paragraph 11 in the 2019 version).

⁵ As per endnote 1, paragraph 5: *'The consequence of [failing to consider paragraph 116 at the site allocations states of plan making] would be to risk allocating land for major development that was undeliverable because it was incapable of meeting the major development test in the NPPF'*.

⁶ [Government response to the local housing need proposals in "Changes to the current planning system" - GOV.UK \(www.gov.uk\)](#)

⁷ Section 85 of the Countryside and Rights of Way (CROW) Act 2000 ([link](#)). Section 85 states that *'in exercising any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority [including local planning authorities and the Planning Inspectorate] shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'*. Given that development outside the boundary of an AONB has the potential to adversely affect land within it, section 85 also applies to such development (as well as to development within AONBs).

⁸ Case law has confirmed that paragraph 172 of the NPPF applies to the impacts of development outside a designated landscape on views from the designated landscape (i.e. great weight should be given to such impacts) (as per *Stroud DC v Secretary of State (SoS) for Communities and Local Government* – [link](#)). Case law has also confirmed that the first part of paragraph 172 (as well as the second part) is capable of providing a freestanding reason for refusal under paragraph 11di of the NPPF (as per *Monkhill Ltd v SoS* – [link](#)). As such, the impact of development outside a designated landscape on views from the designated landscape is also capable of providing a freestanding reason for refusal.

⁹ [Natural environment - GOV.UK \(www.gov.uk\)](#). Paragraphs 042: *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 ... Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.*

¹⁰ Cotswolds Conservation Board (2016) *Development in the Setting of the Cotswolds AONB Position Statement* ([link](#)).

¹¹ [Natural environment - GOV.UK \(www.gov.uk\)](#). Paragraphs 041: *All development in National Parks, the Broads and Areas of Outstanding Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality.* (N.B. Underlining added for emphasis).

If you have any queries regard the Board's consultation response, please contact:

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