



Cotswolds  
National  
Landscape

## COTSWOLDS NATIONAL LANDSCAPE BOARD ADVICE REGARDING THE STATUTORY DUTY ON RELEVANT AUTHORITIES TO SEEK TO FURTHER THE STATUTORY PURPOSE OF THE COTSWOLDS NATIONAL LANDSCAPE, SECTION 245 OF THE LEVELLING UP AND REGENERATION ACT 2023

Section 245 of the Levelling Up and Regeneration Act (LURA) 2023<sup>1</sup> places a duty on relevant authorities<sup>2</sup> to seek to further the statutory purposes of protected landscapes<sup>3</sup> (the 'seek to further' duty). With regards to national landscapes, this requirement has been incorporated into Section 85 of the Countryside and Rights of Way (CROW) Act, which now states:

- *In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.*<sup>4</sup>

This replaces the previous version of Section 85 of the CROW Act, which required relevant authorities to have regard to the statutory purpose of national landscapes.

Section 245 was inserted into the Levelling Up and Regeneration Bill by the House of Lords as it made its way through Parliament. The Government's Explanatory Notes on the Lords Amendments to the Bill for this Act provide that (emphasis added):

- *The clause strengthens the duty on certain public authorities when carrying out functions in relation to these landscapes to seek to further the statutory purposes and confers a power to make provision as to how they should do this.*<sup>5</sup>

The 'seek to further' duty is, therefore, clearly intended to impose new and more onerous requirements with respect to the statutory purposes than existed before.<sup>6</sup>

In this regard, the Government's press release, when the Levelling Up and Regeneration Bill became law in October 2023, stated that (emphasis added):

- *The Act will enhance our national network of beautiful, nature-rich protected landscapes that can be enjoyed right across the country.*<sup>7</sup>

The 'seek to further' duty is, therefore, clearly intended to ensure that the natural beauty of protected landscapes (including national landscapes) will be enhanced as a result of relevant authorities exercising or performing their functions.

The LURA confers powers on the Secretary of State to make provisions for how a relevant authority is to comply with the 'seek to further' duty, including what the authority may, must or must not do to comply with the duty. It is also anticipated that the Government will provide guidance on how the duty should be applied in due course. However, the duty is not dependent on these provisions or on this guidance – it is

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<sup>1</sup> Section 245 of the Levelling Up and Regeneration Act 2023 ([link](#)).

<sup>2</sup> 'Relevant authority', in this context, includes any Minister of the Crown, public body, statutory undertaker or person holding public office.

<sup>3</sup> 'Protected landscapes' means national parks, the Broads and national landscapes.

<sup>4</sup> Section 85 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>5</sup> UK Parliament (2023) *Levelling Up and Regeneration Bill – Explanatory Notes on Lords Amendments*. Updated version, 12 October 2023. ([Link](#)). Page 35.

<sup>6</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks. ([Link](#)). Paragraph 6.

<sup>7</sup> <https://www.gov.uk/government/news/new-laws-to-speed-up-planning-build-homes-and-level-up>

in force now, and must be complied with as part of any decision or course of action that has implications for these protected areas.<sup>8</sup>

At the present time, the two most useful reference points relating to the 'seek to further' duty are the advice produced by Natural England<sup>9</sup> and the legal opinion obtained by Campaign for National Parks (CNP)<sup>10</sup>.

The Natural England advice states that:

- *The duty to 'seek to further' is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered.*
- *The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose. If it is not practicable or feasible to take those measures the relevant authority should provide evidence to show why it is not practicable or feasible.*
- *The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.*

The CNP's legal opinion sets out a number of principles to help ensure compliance with the 'seek to further' duty:<sup>11</sup>

- (a) The new duties are very broad in scope, applying to "any functions" in relation to, or so as to affect, land in the protected areas. Relevant authorities would do well to assume that if their decision touches in any way upon an AONB, National Park or the Broads, the relevant duty is engaged.*
- (b) The duties are pro-active, and not merely an afterthought: the authority must "seek to further" the stated purposes in the exercise of their functions. That means that the duties should be pro-actively considered as part of any decision to which the duty applies. A failure to consider those duties, or a failure to understand their pro-active and mandatory nature, would be an error of law.*
- (c) An authority must factor in the relevant duty before the adoption of a proposed policy and not merely as a "rearguard action", following a concluded decision.*
- (d) It will be important for relevant authorities to record the steps taken by the decision maker in seeking to meet the statutory requirements and demonstrate how the decision complies with the duty.*
- (e) While there is no obvious requirement to expressly reference the new duties in every decision, they are not merely a box-ticking exercise, and they must be rigorously applied as part of any relevant decision.*
- (f) General regard to the benefit of protecting these landscapes is not the same as having specific regard to the statutory purposes, by way of conscious approach to the statutory criteria.*
- (g) These duties are outcome-based: they do not simply require "due regard" to be had to them. If, having considered the implications of a decision, an authority reaches the view that the decision does not "seek to further" the applicable legislative purpose, it would be hard to argue that the decision would in fact be open to the relevant authority: because it would appear to be in breach of the applicable duty. In those circumstances, the decision would need to either be withdrawn or*

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<sup>8</sup> Landmark Chambers (2024) Re: section 245 of the Levelling Up and Regeneration Act 2023. Instructed by the Campaign for National Parks. ([Link](#)). Paragraph 2a.

<sup>9</sup> This advice ([link](#) – Annex 2) was submitted, in December 2023, by Natural England, as a statutory consultee, to the Examining Authority for the examination of the Lower Thames Crossing, which is a Nationally Significant Infrastructure Project (NSIP).

<sup>10</sup> Landmark Chambers (2024) Re: section 245 of the Levelling Up and Regeneration Act 2023. Instructed by the Campaign for National Parks. ([Link](#)).

<sup>11</sup> Landmark Chambers (2024) Re: section 245 of the Levelling Up and Regeneration Act 2023. Instructed by the Campaign for National Parks. ([Link](#)). Paragraph 17.

*modified such that the relevant authority could confidently say that it did seek to further the relevant purpose.*

- (h) To be clear, however, this does not mean that the duty precludes decisions that are “net harmful” to an AONB, National Park of the Broads: if that were so, the duty would be to “further the purpose” rather than to “seek to further the purpose.” But what is required is positive evidence that the relevant authority has, in all the circumstances, sought to further the purpose: not merely through mitigation of harm but by taking all reasonable steps to further the purpose.*
- (i) As to whether a decision or course of action in fact seeks to further the relevant purpose ... this is a question for the relevant authority in the first instance, subject to challenge on Wednesbury principles. But a positive conclusion that the decision or course of action does seek to further that purpose is clearly required.*

The legal opinion goes on to pose a number of questions that a relevant authority should ask itself when considering whether it has complied with the duty.<sup>12</sup>

- i. What are the required statutory purposes my decision must seek to further?*
- ii. Does my decision in fact pro-actively seek to further those purposes? If so, how does it do so? If not, how can my decision be modified so that I can confidently conclude that it does seek to further the relevant purposes?*
- iii. As a matter of best practice, have I recorded how I have concluded that my decision seeks to further the required purposes, which I can produce in the event of a subsequent legal challenge?*

The legal opinion makes the following additional points:<sup>13</sup>

- [Relevant authorities] would be well-advised not treat the new duties as “business as usual” and to consider the pro-active duties now placed on them to seek to further the purposes of AONBs, National Parks and the Broads. I agree with Natural England that this means that relevant authorities should ensure, with evidence, that their decisions do all they reasonably can to further the statutory purposes, including going beyond merely mitigating harm. This could include, for example, delivering enhancements to the natural beauty of the area, or creating new opportunities for the understanding and enjoyment of the special qualities of national parks by the public (rather than merely maintaining or supporting existing opportunities). Moreover, if there is an obvious alternative approach that better furthers the statutory purposes and the relevant authority cannot evidence (1) why it cannot reasonably adopt that approach or (2) that its chosen approach also seeks to further the statutory purposes, the decision will be open to legal challenge.*

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<sup>12</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks. ([Link](#)). Paragraph 19.

<sup>13</sup> Landmark Chambers (2024) *Re: section 245 of the Levelling Up and Regeneration Act 2023*. Instructed by the Campaign for National Parks. ([Link](#)). Paragraph 21.