

Examination of the Tunbridge Wells  
Borough Local Plan

**Tunbridge Wells Borough Council**  
**Hearing Statement**

**Matter 13: Landscape, Local  
Green Space and Open Space,  
Sport and Recreation (Policies  
STR8, EN8, EN15, EN16, EN17,  
EN18, EN19, OSSR1 and OSSR2)**  
**Issue 4: The High Weald Area of  
Outstanding Natural Beauty ('AONB')**

Document Reference: TWLP/071



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# Matter 13 – Landscape, Local Green Space and Open Space, Sport and Recreation (Policies STR8, EN8, EN15, EN16, EN17, EN18, EN19, OSSR1 and OSSR2)

## Issue 4 – The High Weald Area of Outstanding Natural Beauty (‘AONB’)

### Inspector’s Question 1: [re. regard to the AONB Management Plan]

***What is the justification for requiring development proposals to demonstrate how they meet the objectives of the AONB Management Plan? Do the objectives form part of the development plan for the area?***

### **TWBC response to Question 1**

1. Relevant local authorities have a statutory requirement under the Countryside and Rights of Way Act 2000 (sections 89 and 90) to publish a Management Plan which *‘formulates policy for their management of their area of outstanding natural beauty and to assist those with responsibility for it in carrying out of their functions in relation to it’*.
2. The High Weald AONB Management Plan [[CD 2.1](#)] provides a set of objectives for each component of natural beauty that represent the agreed long-term aims for the High Weald. The achievement of these aims will ensure that the purpose of AONB designation is achieved and the AONB is conserved. Each objective is supported by proposed actions that will help deliver the objectives.
3. The Council adopted the current AONB Management Plan in March 2019 through a Cabinet report (Appendix 1) with the following recommendations:

- “1. That the Borough Council adopt the High Weald AONB Management Plan 2019-2024 (4th Edition), required by Section 89 of the Countryside and Rights of Way Act 2000, for that part of the High Weald Area of Outstanding Natural Beauty that falls within the Borough.*
- 2. That the High Weald Joint Advisory Committee (JAC) be informed that the Borough Council confirms that it wishes the JAC to publish and submit the Plan to the Secretary of State on the Council’s behalf”*
4. Within the report Cabinet were advised (para 4.2) that Management Plan can, when adopted, *“be used to inform policies and actions of the Council and help to ensure that it is meeting the statutory duty and adopted policy to conserve and enhance the AONB. The Management Plan and supporting guidance can also continue to be used to inform strategic and development control planning decisions”*.
5. The Planning Practice Guidance is clear however that AONB Management Plans in themselves do not *“form part of the statutory development plan, but they help to set out the strategic context for development”* (Paragraph:040 Reference ID: 8-040-20190721 revised 21 07 2019) and advises that *“they may contain information which is relevant when preparing plan policies, or which is a material consideration when assessing planning applications”*.
6. The Management Plan and the objectives are then material considerations and the Plan has been adopted by the Council on that basis. The Management Plan advises that *“the objectives for each component in particular, acts as a checklist or set of criteria against which policy and actions can be assessed for compliance with Section 85 of the CROW Act 2000”* [[CD 2.1](#) page 15 How to use the Plan].
7. The AONB Unit has produced a helpful document [Legislation and Planning Policy in the High Weald AONB](#) which provides an assessment template for each objective and advises that it *“should be used at an early stage in the planning process to demonstrate how a proposal contributes to meeting the objectives of the High Weald AONB Management Plan”* (Appendix 1, page 1).

8. An assessment of a development proposal in terms of the extent to which is able to support the Objectives in the AONB Management Plan is then material to judgements reached as to the acceptability of a scheme in the AONB. This is well illustrated by the Inspector's letter for a recent appeal at Hawkhurst [APP/M2270/W/21/3282908] where the Inspector considered the assessment of the scheme against the objectives in some detail (paragraphs 15 to 24) to assist him with his overall assessment with regard to effects on the AONB and the planning balance.
9. The Council considers it important to draw applicants' attention to the Objectives and the need to assess their scheme against them. To this end the supporting text for Policy EN19 advises at paragraph 6.238 that:

*“All proposals for major development in the AONB should be accompanied by a landscape and visual impact assessment and an assessment of the proposal against all relevant AONB Management Plan objectives”.*
10. Wording within the policy is that development “*should demonstrate a positive contribution to the objectives*”. Development is then not required to fully comply with any or all objectives but should, where possible, make a positive contribution to relevant objectives. Given the wide range of actions across the objectives, this does not necessarily represent an impediment to development, but its inclusion will ensure that applicants engage with the objectives and consider where they can make a positive contribution and so, it should result in improved outcomes for development in terms of conserving and enhancing natural beauty.
11. In summary, the AONB Management Plan, nor the objectives within it, **do not** form part of the Development Plan, but they are a material consideration appropriately highlighted with Policy EN 19.
12. The requirement for applicants to assess their proposals against the Management Plan objectives and where possible show a positive contribution is fully justified and supported by the legislative framework for the AONB Management Plan itself.

## Inspector's Question 2: [re. landscape and visual impact assessments]

***Is it clear to decision-makers, developers and local communities when a landscape and visual impact assessment is required? What is the expected outcome from this requirement?***

### **TWBC response to Question 2**

13. The term Landscape and Visual Impact Assessment (LVIA) is commonly used to describe an appraisal of a development proposal in terms of its effect on landscape and visual resources, which will in terms of method and outputs be tailored to the project. Strictly speaking, the term LVIA applies to a formal process usually associated with Environmental Impact Assessment (EIA) but commonly applies to assessment outside of the EIA process and to more limited assessments that might also be referred to as Landscape and Visual Appraisals. Whether formal EIA or not, the assessment is referred to as an LVIA within the industry standard guidance (Guidelines for Landscape and Visual Impact Assessment Third Edition) and follows the same principles and components of project description, baseline studies, identification and description of effects and how they might be mitigated.
14. The expected outcome is that, through the application of a rigorous professional study of landscape and visual amenity, the likely adverse and positive effects will have been identified, adverse effects will have been avoided where possible, and appropriate mitigation will have been identified and included within the development proposal.
15. The work itself can make an important contribution to achieving sustainable development and enables decision makers to understand and apply appropriate weight to identified harm and benefits of a proposal on landscape and visual resources.
16. The use of LVIAs is supported by the Planning Practice Guidance which advises that in order to “*demonstrate the likely effects of a proposed development on the landscape, a Landscape and Visual Impact Assessment can be used*” (Paragraph 037 Reference ID: 8-037-20190721 Updated 21 07 2019). The specific inclusion of a reference to LVIAs in the policy was requested by Natural England [[CD 3.69](#) page 148].

17. Given the great weight attached to the AONB by the NPPF (paragraph 176), it is felt appropriate that all major development should be informed by an LVIA and to that end the supporting text for Policy EN 19 (paragraph 6.238) requires that “*development in the AONB should be accompanied by a landscape and visual impact assessment*”.
18. While this paragraph does not specify what is meant by ‘major’ development, the preceding paragraph in the supporting text for the policy does refer to ‘major’ in the context of paragraph 172 of the NPPF and the guidance in footnote 55 (now paragraph 177 and footnote 60) which is a judgment to be made by the decision maker.
19. As part of its discussions with Natural England on this Policy, it was agreed that the supporting text at paragraph 6.238 be altered and in so doing this provided greater clarity by advising what nature of development would require and LVIA in reference to a likely “*significant impact on the AONB*” regardless of whether it is in the AONB or within its setting and irrespective of whether it was major or not. The current and proposed wording for paragraph 6.38 is set out below:

#### Current

*All proposals for major development in the AONB should be accompanied by a landscape and visual impact assessment and an assessment of the proposal against all relevant AONB Management Plan objectives.*

#### Proposed

*All proposals for major **or other** development **either** in the AONB **or its setting, where they are expected to significantly impact the AONB**, should be accompanied by a landscape and visual impact assessment and an assessment of the proposal against all relevant AONB Management Plan objectives.*

20. The trigger then for an LVIA is all **major or other development** whenever a development proposal is likely to give rise to a **significant impact** on the AONB regardless of whether it is major or not. This policy change is now accepted by Natural England. (See the response to Question 3 below).

## Inspector's Question 3: [re. changes to Policy EN 19 supporting text]

***What are the reasons for the suggested changes to the text supporting Policy EN19? Why are they necessary for soundness?***

### **TWBC response to Question 3**

21. The proposed changes to this Policy are set out in the Schedule of Proposed Additional (Minor) Modifications [[CD 3.127](#) Item 129 page 47] under Item 129 and so are not considered necessary for the purpose of Soundness of the Plan but rather to provide greater clarity.
22. The change proposed is that the sentence in the supporting text at paragraph 6.238 in relation to the requirement for a landscape and visual Impact assessment (LVIA) has additional wording to make it clear that the requirement applies to development both within the AONB and within the setting of the AONB where it is expected to significantly impact the AONB. The current and proposed wording are shown below with the additions highlighted as bold underlined:

#### Current

*All proposals for major development in the AONB should be accompanied by a landscape and visual impact assessment and an assessment of the proposal against all relevant AONB Management Plan objectives.*

#### Proposed

*All proposals for major **or other** development **either** in the AONB **or its setting, where they are expected to significantly impact the AONB**, should be accompanied by a landscape and visual impact assessment and an assessment of the proposal against all relevant AONB Management Plan objectives.*

23. This approach is consistent with paragraph 176 of the NPPF which states in relation to AONBS that development “*within their setting should be sensitively located and designed to avoid or minimize adverse impacts on the designated areas*”.



24. The change is a result of a long and detailed dialogue with Natural England which has resulted in a number of changes to policies and development proposals during the preparation of the Plan. The detail of those discussions is contained within the SoCG with Natural England SoCG [[CD 3.132c\(v\)](#) Appendices H to J pages 115 to 161]. Discussion on Policy EN19 begins in Appendix 1 paginated page 32 electronic (page 156) and record that Natural England supported the requirements for LVIA's but wanted to ensure that it applied to "*any non-major development proposals within the AONB, or its setting, where they are expected to significantly impact the AONB*".
25. The proposed change to the wording of paragraph of 6.238 of the supporting text is then felt to be helpful and accommodates a reasonable request from Natural England and so, is proposed as a minor modification that is agreed with Natural England.

## Inspector’s Question 4: [re. whether Policy EN 19 meets NPPF soundness tests]

***Is Policy EN19 positively prepared, justified, effective and consistent with national planning policy?***

### **TWBC response to Question 4**

26. Consideration of the tests of soundness of non-strategic policies should be done in a “proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area” (NPPF paragraph 36). Policy EN 19 falls under Strategic Policy STR 8, criterion 4:

*“4. Within the area designated as the High Weald Area of Outstanding Natural Beauty, and its setting, development will be managed in a way that seeks to conserve and enhance the natural beauty of the area, commensurate with the “great weight” afforded to Areas of Outstanding Natural Beauty within the NPPF. Applicants will be expected to demonstrate (through relevant documentation submitted as part of a planning application) how proposals have had regard to the objectives of the High Weald AONB Management Plan. Proposals for major<sup>1</sup> development in the High Weald Area of Outstanding Natural Beauty will only be allowed in exceptional circumstances and where it is in the public interest. In such instances, effective mitigation should form an integral part of the development proposals”*

27. It is considered that Policy STR 8 properly reflects National Policy and that Policy EN 19 goes on to provide the further detail that is required with regards the “relevant documentation” and the need to show “effective mitigation”. The specific tests of soundness as set out in the NPPF paragraph 35 for Policy EN 19 are considered below:

#### **(a) Positively prepared**

28. The Policy does not preclude development but seeks to limit development in accordance with the requirements of the NPPF paragraph 177. Rather, given the *great weight* attached by national policy to “conserving and enhancing landscape and scenic beauty” (NPPF paragraph 176) of the AONB, the Policy allows for some development, notably where it makes a *positive contribution to the objectives of the AONB Management Plan*.

### **(b) Justified**

29. Whilst reflecting national policy, the details within the policy reflect local circumstances and in particular the AONB Management Plan and the landscape features of the area. Given the great weight attached to AONBs it is appropriate for the policy to set out what information/assessments might be required and under what circumstances.

### **(c) Effective**

30. The AONB Management Plan applies to the whole of the designated High Weald AONB and is prepared by the Joint Advisory Committee (JAC) on behalf of the 15 affected Local Planning Authorities, including Tunbridge Wells Borough. This is an effective approach, based on cooperation. It is updated every five years. The Current Plan expires in 2024 but work has already begun on a review and so there is no reason to suspect that the policy will not endure for the life of the Plan and remain effective.

### **(d) Consistent with national policy**

31. Paragraph 176 of the NPPF requires great weight be given to AONBs and that “*the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas*”. The Policy uses the words “limited in scale and extent” and the opening sentence refers to development “within or affecting the setting of” the AONB to specifically reflect national policy.
32. The Policy criteria are directed at protecting and enhancing the components of natural Beauty as defined by the AONB Management Plan [CD 2.1 page 23] and supported by NPPF Paragraph 177(c) that requires an assessment of “*any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated*”.
33. The Policy wording, revised following discussion with Natural England (see question 3 above), is now accepted by them [SoCG [CD 3.132c\(v\)](#) Appendices H to J pages 115 to 161]. Discussions on EN19 begin in Appendix 1 paginated page 32 electronic (page 156) and the Council concludes that the Policy is considered “*justified, effective and consistent with national planning policy*”.

# Appendices

# **Appendix 1: 3. Cabinet report on the AONB Management Plan, March 2019**

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes****High Weald Area of Outstanding Natural Beauty (AONB) Management Plan 2019-2024**

<b>Final Decision-Maker</b>	Cabinet
<b>Portfolio Holder(s)</b>	Councillor Alan McDermott – Portfolio Holder for Planning and Transportation
<b>Lead Director</b>	Lee Colyer – Director of Finance, Policy and Development
<b>Head of Service</b>	Stephen Baughen – Head of Planning
<b>Lead Officer/Author</b>	David Scully – Landscape and Biodiversity Officer
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

**This report makes the following recommendations to the final decision-maker:**

1. That the Borough Council adopt the High Weald AONB Management Plan 2019-2024 (4th Edition), required by Section 89 of the Countryside and Rights of Way Act 2000, for that part of the High Weald Area of Outstanding Natural Beauty that falls within the Borough.
2. That the High Weald Joint Advisory Committee (JAC) be informed that the Borough Council confirms that it wishes the JAC to publish and submit the Plan to the Secretary of State on the Council's behalf.

**Explain how this report relates to the Corporate Priorities in the Five Year Plan:**

Our Borough

- To support a prosperous borough
- To support a well borough

Providing Value

- To ensure effective partnership working

**Timetable**

<b>Meeting</b>	<b>Date</b>
Management Board	19 December 2018
Discussion with Portfolio Holder and Planning Policy Working Group	22 January 2019
Planning and Transportation Cabinet Advisory Board	11 February 2019
Cabinet	7 March 2019

# High Weald Area of Outstanding Natural Beauty (AONB) Management Plan 2019-2024

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The High Weald Area of Outstanding Natural Beauty (AONB) Management Plan was adopted by the Council in January 2004. In line with Countryside and Rights of Way Act 2000 the plan is reviewed every 5 years with the current Plan expiring in 2019. This latest review was undertaken by the High Weald Joint Advisory Committee (JAC) in 2017/18 to replace the current plan in 2019 and is now presented to the Council for adoption.
  - 1.2 The purpose of this report is to present the plan to members for adoption to ensure compliance with the Countryside and Rights of Way Act.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The High Weald was designated as an Area of Outstanding Natural Beauty in 1983 and spreads across 11 District and 4 County authorities. These authorities are brought together under the High Weald Joint Advisory Committee to provide for a coordinated approach to High Weald AONB issues across the designated area.
- 2.2 Around 70% of the Borough is designated as part of the High Weald Area of Outstanding Natural Beauty. The high scenic quality of the landscape brings many benefits to the Borough which is well known as an attractive place to live but the designation also carries with it certain statutory duties aimed at preserving and enhancing the *Natural Beauty* of the Area.
- 2.3 Section 89 of the Countryside and Rights of Way Act 2000 specifically requires the production of a Management Plan and responsibility for the production of this was delegated by the constituent authorities to the High Weald JAC under a Memorandum of Agreement. The High Weald Area of Outstanding Natural Beauty Management Plan was produced by the JAC and adopted by the Council in January 2004. In line with Countryside and Rights of Way Act 2000 the plan has been reviewed every 5 years.
- 2.4 Attached is the pre publication review 2019 to 2024 which is the third review of the 2004 plan. The document has been subject to public consultation and the necessary assessments and was reviewed by officers and members of the 15 constituent authorities. The document was approved by the High Weald AONB Joint Advisory Committee on the 28 November 2018 to be recommended to the constituent authorities for formal adoption by March 2019.
- 2.5 Officers and the Member representative to the JAC, Cllr Julia Soyke, recommend that Tunbridge Wells Borough Council continue its support for the Management Plan and the JAC to ensure the continued protection of the High Weald AONB and the Council's compliance with its statutory duty.

- 2.6 This review was very much about updating and refining the plan rather than a major revision or change and provides an opportunity to reflect current circumstances and revise indicators and targets.
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### **3. AVAILABLE OPTIONS**

- 3.1 Do nothing – The Council would not adopt the revised AONB Management Plan and might be considered in breach of its statutory duty.
- 3.2 Adopt the AONB Management plan as recommended.
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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 It is necessary to comply with our statutory duties in relation to the High Weald AONB to have an up to date Management Plan formally adopted by the Council. Approving the adoption of this revised plan will ensure that the valued high quality environment of the High Weald is conserved and enhanced for current and future residents of the Borough.
- 4.2 The Management Plan can, when adopted, be used to inform policies and actions of the Council and help to insure that it is meeting the statutory duty and adopted policy to conserve and enhance the AONB. The Management Plan and supporting guidance can also continue to be used to inform strategic and development control planning decisions.
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### **5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 5.1 The revision has been subject to public consultation and was available on the High Weald Unit website. The revised plan has been subject to a Strategic Environmental Assessment and Appropriate Assessment to conform to environmental legislation and government guidance and is supported by a Condition Report and Monitoring Report. A link to a draft was circulated to Members and planning officers electronically and comments received have been taken into account with the revised wording.
- 5.2 The process of public consultation and environmental assessment and ultimately adoption by the Local Authority enable the document to be given significant weight in planning considerations.
- 5.3 The work of the AONB Unit and the review of the AONB Management Plan are overseen by Members and officer representatives from each authority, which for this Borough are Cllr Julia Soyke and David Scully. There has been wider consultation with planning policy officers and development management officers during the drafting of the document.
- 5.4 The recommendations in this report come from the review which included consultation with key stakeholders.



## RECOMMENDATION FROM PLANNING POLICY WORKING GROUP

- 5.5 The Planning Policy Working Group was consulted on this decision on 22 January 2019 and supported the recommendations.

## RECOMMENDATION FROM CABINET ADVISORY BOARD

- 5.6 The Planning and Transportation Cabinet Advisory Board was consulted on this decision on 12 February 2019 and agreed the following:

That the recommendations set out in the report be supported.

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## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The High Weald Joint Advisory Committee will be informed that the Borough Council confirms that it wishes the JAC to publish and submit the Management Plan to the Secretary of State on the Council's behalf.
- 6.2 The successful adoption or otherwise of the revised AONB Management Plan will at first be communicated through the JAC to participating authorities and then through the High Weald AONB website and publications as well as the various communications of the participating authorities.

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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Legal</b> including Human Rights Act	<p>The production of a Management Plan for the area designated as Area of Outstanding Natural Beauty that falls within the Borough is a statutory requirement of the section 89 of the Countryside and Rights of way Act 2000. Adoption of this Management Plan would fulfil that duty.</p> <p>There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.</p>	Jo Smith Planning Lawyer 13.12.2018
<b>Finance</b> and other resources	The production of the MP is included in the existing budget for Planning Services	Jane Fineman, Head of Finance & Procurement 01.02.2018
<b>Staffing establishment</b>	No implications identified	David Scully Landscape &

		Biodiversity Officer 13.12.2018
<b>Risk management</b>	No implications	David Scully Landscape & Biodiversity Officer 13.12.2018
<b>Data Protection</b>	No implications	David Scully Landscape & Biodiversity Officer 13.12.2018
<b>Environment and sustainability</b>	<p>The management plan contributes to the Council's obligations under:  <u>Section 40, National Environment and Rural Communities Act 2006</u>:  "40(1) Every public authority must, in exercising its functions have regard so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity."</p> <p>And:  <u>Section 85, Countryside and Rights of Way Act 2000</u>  "85(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."</p>	David Scully Landscape & Biodiversity Officer 13.12.2018
<b>Community safety</b>	No implications	David Scully Landscape & Biodiversity Officer 13.12.2018
<b>Health and Safety</b>	No implications	David Scully Landscape & Biodiversity Officer 13.12.2018
<b>Health and wellbeing</b>	No implications	David Scully Landscape & Biodiversity Officer 13.12.2018

<p><b>Equalities</b></p>	<p>Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.</p> <p>With regards to advancing equality of opportunity, the Management Plan includes an objective to develop and manage access to maximise opportunities for everyone to enjoy, appreciate and understand the character of the AONB while conserving its natural beauty. This includes an action to encourage engagement of people from all backgrounds and address inequalities of access particularly for people from different ethnic groups, low income households, children and young people and people with disabilities.</p>	<p>Sarah Lavallie Corporate Governance Officer 16.01.2018</p>
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## 8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: High Weald AONB Management Plan 2019-2024
- Appendix B: Letter to Chief Executive from the JAC dated 10 December 2018

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## 9. BACKGROUND PAPERS

- High Weald AONB Management Plan review consultation web page and supporting documents <http://www.highweald.org/high-weald-aonb-management-plan/management-plan-review.html>