

## A Briefing Note from the Blackdown Hills Parish Network

### Housing in the Blackdown Hills

The law about housing development in Protected Landscapes is changing. This note explains how and what a Parish Council can do about it.

'Protected landscapes' is the generic term for National Parks and National Landscapes. 'National Landscapes' is the new term for AONB's. The UK has 61 Protected landscapes which cover 28% of land area in England, Wales and Scotland, and the Blackdown Hills is one of them.

### **The Law**

To understand this we have to go back to the start.

In 1937-1939 a series of reports and studies started to investigate how the UK might have 'national parks'. The architect who started the whole process had travelled to and was impressed by American National Parks, some of which had been established in the 1870's. Nothing happened while the nation was at war but afterwards politicians felt uncomfortable about the destroyed nature of many UK towns, whereas the countryside had been comparatively unscathed. They wanted to open it up for recreation and 'escape'.

The result was the 1949 National Parks and Access to the Countryside Act. In setting up 'protected landscapes' it defined their purpose as; 'to preserve and enhance natural beauty'. There are other purposes too but a principle known as the Sandford Principle ascribes precedence to natural beauty.

Later the 1968 Countryside Act changed the purpose from 'preserve and enhance...' to 'conserve and enhance....' The difference was more than just semantic.

In 2000 the Countryside and Rights of Way Act ( CROW) said that ' all relevant Authorities should have regard to the purposes of a Protected Landscapes when exercising any function'

More recently the Levelling up and Regeneration Act ( LURA Dec'23) has redefined the provisions in the 2000 Act and says that relevant authorities have a duty 'to seek to further the purposes of a protected landscape...'

***Clearly 'seeking to further' a statutory purpose is very different from 'having regard to' it. This is going to be a critical distinction.***

The relevant government department ( Defra) has only just produced guidance on what this means. It says this is an active not a passive duty. That it applies to all functions of a 'relevant authority'. That 'relevant authorities' are all local authorities, government agencies, plc's ( such as water companies etc). It includes Parish Councils who therefore

have a legal duty to conserve and enhance natural beauty in all their functions. The duty applies to activities outside the boundary of a Protected Landscape too if the function will affect it.

### **Planning decisions and the Protected Landscape**

In Planning law there is a hierarchy of obligations. In other words provisions of more important legislation 'trump' lower policies and plans. It works like this. Primary legislation (eg: the LURA) is top of the list. Next is National Planning Policies, then Local Plans then Neighbourhood plans. All decisions with tangible outcomes should be 'in accord' with the hierarchal provisions in these documents. One reason why it takes Local Planning Authorities ( like EDDC) so long to compile a Local Plan is because the law is so complex, the decisions effect everyone and require consultation and the document covers much more than just housing.

One piece of the jigsaw ( the second in hierarchal order) is comprised of National Planning Policies, and the Framework (NPPF) is constantly updated as legislation changes. The framework also addresses how the UK's international treaty obligations to alleviate climate change should be implemented and a lot of these international obligations depend on Protected Landscapes doing something.

The most recent version ( NPPF Dec 2023) says: ' great weight should be given to conserving and enhancing natural beauty in...National Landscapes' (para 189 ). It also says: 'when considering applications for development within National Landscapes permission should be refused for major development....'. Elsewhere it says: '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 significant adverse impact on the purposes for which the area has been designated...' (para 190 )

### **Conserving and enhancing natural beauty**

All of this comes down to one question. What is 'natural beauty' and how are the purposes of a National Landscape defined?

The overriding purposes is to 'conserve and enhance natural beauty'. If your duty as a Parish Council is to 'further' this aim then how do you do it?

The Defra guidance says that it all depends on the reasons the National Landscape was listed in the first place because these define the specific 'natural beauty' of the area in question. Throughout the UK protected landscapes are 'listed' for different reason. The Lake District is very different from the Norfolk Broads for example.

The Blackdown Hills National landscape was listed in 1991 and the formal process set out the reasons. These reasons are detailed in the Management Plan which is the legal document setting out how the protected landscape will discharge its purposes. It is this

document which a Local Planning Authority should consult to see how to further the enhancement of natural beauty in any Planning approval.

The elements of natural beauty in the Blackdown Hills are too detailed to list here but they include landscape and scenic quality, tranquillity, dark skies, cultural heritage, long views and more. Individually and in combination these are the special qualities which must be conserved and enhanced by law. The Blackdown Hills National Landscape Management Plan is currently being rewritten and will be published in 2025 but the extant version has the details too. Since all this emanates from the 1991 process its unlikely to change with the latest version of the plan.

But how can housing development 'enhance' natural beauty? If 'enhance' means 'to improve the quality or value of something' then it's hard to see how the legal duty to improve natural beauty can be discharged by building housing. This is an unresolved conundrum which will need to be tested in law.

### **The challenge**

A lot of this is new and Local Authorities haven't yet worked out how to comply with the law. There have been no test cases. In addition all Local Authorities are distracted by the threat of reorganisation, the pressure to meet government housing targets and the massive workload of preparing a Local Plan. They also have funding pressures.

A National Landscape itself cannot realistically legally challenge either the provisions in a draft Local Plan or an individual Planning decision with the Planning Inspectorate. Judicial review of a legal technicality is also highly unlikely. Legally NL's are an entity of a Local Authority. The staff are employed by the Local Authority and funding comes from the LA's in whose area the NL is located. This is simply a statement of the legal relationship between a NL and its sponsoring Local Authority. It is not intended as a comment on NL Officers. However it does illustrate the conflicts in which they are placed by organisational responsibility. Unlike National Parks, a National Landscape is not a Local Planning Authority. In fact, bizarrely there is no legal obligation for a LPA to advise a NL of a Planning Application within a NL or on its boundary.

So its down to a Parish Council! Because this process is technically complex and expensive there would need to be some prospect of success and that can only be assessed with professional help. It's a process which is probably beyond the expertise of an individual householder too. However if in the course of the 'case' you can prove that the LPA has acted unreasonably, then you can recover costs.

Additionally LPA's will probably push the boundaries to test the provisions in the Act. They have little choice because if they fail to meet government targets then a solution will be imposed on them. In the case of East Devon some 75% of available land is Protected Landscape so their options are limited.

There is one big danger in all of this. To meet their housing targets LPA's will be tempted to agree development which is marginal and extract an off-set mitigating payment so that natural beauty can be improved somewhere else. This Faustian pact is uncomfortable and should be resisted. We do not think its clever to destroy natural beauty in one part of the National Landscape whilst seeking to enhance it in a different place. However the financial pressure on Local Authorities and National Landscapes will make it attractive to some.

### **Parish Councils**

This is a tough requirement on Parish Councils. For example simply 'supporting' a Planning Application which could contravene legislation is itself failing to discharge the legal duty of a 'relevant Authority'.

Our best advice is to object to the application if you believe it will have an impact on natural beauty. Set out clearly what the objections are using this note as guidance. Use the Blackdown Hills Management Plan as a guide. Try to be specific about the features of natural beauty which will not be conserved or enhanced by the proposed action. Publicise your response so there is no question of your position. Try to get it reviewed before sending by someone with experience in Planning policy or law. Send your objections to the National Landscape Planning Officer too and let the Parish Network know. We might be able to help.

Obviously people need housing and there should be sufficient housing in the Blackdown Hills to house people associated with the Hills. But that doesn't mean that natural beauty can be destroyed by unscrupulous or insensitive development. Unfortunately its down to Parish Councils to act as the check and balance on the process. There is no easy solution but the law is about as clear as it will ever be. It now all depends on precedent and case law.

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