



**Kent Downs**  
National  
Landscape

**Interested party Ref no: 20035310**

**KENT DOWNS NATIONAL LANDSCAPE TEAM**  
**RESPONSE TO**  
**CONSULTATION SEEKING COMMENTS FROM THE APPLICANT,**  
**NATURAL ENGLAND AND OTHER INTERESTED PARTIES**

**Amendment of section 85 of the Countryside and Rights of Way**  
**(CRoW) Act 2000**

1. The Kent Downs National Landscape concurs with the Applicant that both National Highways and the Secretary of State are *relevant authorities* and that the new duty is engaged in relation to the determination of the application.
2. The applicant's conclusion is '*that the Secretary of State can be satisfied that the amended duty is complied with having regard to the meaning of the duty*'. At A2.1.10, the Applicant advises that the Secretary of State '*will need to consider whether there is anything further that reasonably could be done to avoid or mitigate any harm identified. If there is not, then he will have fulfilled his duty to seek to further those purposes*'. As submitted to the Examination, the Kent Downs National Landscape Team considers that there are opportunities to both avoid and mitigate the impact of the scheme, and that if these are rejected, there has been wholly insufficient compensation given to the measured economic cost of the harm to the landscape. Furthermore, this statement from the Applicant refers only to avoiding and mitigating harm; it is our view that these are only the first steps required to comply with the new duty which goes beyond such requirements and necessitates further action that should explore what is possible in addition to avoiding and mitigating the effects of the development.

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3. It is the view of the Team that the harm to the Kent Downs National Landscape arising from the Project could be wholly avoided by choosing one of the alternative locations/alternative ways of meeting the need (such as technological methods of managing traffic flows) for a new Crossing and that these alternatives were discounted too readily by the Applicant, with insufficient weight assigned to the harm arising to the Kent Downs landscape. This was in part as a result of the proposed works to the A2 not being assessed at the time the decision to progress the current proposal was taken. Both the conservation and enhancement of the natural beauty of a nationally and internationally important landscape (IUCN Cat V) and national transport infrastructure are important for the public good, they should be weighed equally.
4. As set out in previous submissions and explored at the Examination, it is our position that additional measures could be undertaken to help mitigate harm, such as the provision of an additional green bridge across the A2 at Park Pale and the enhanced design of the proposed green bridges across the A2 that would meet established best practice standards (as promoted by the National Landscape Team, Gravesham Borough Council and Natural England).
5. At 2.1.11 it is advised that *'The interpretation set out above is consistent with the submissions made by the Applicant on the same issue during the determination of the A66 Northern Trans-Pennine DCO. It is noted that the Secretary of State recognised the force of those submissions in his decision letter<sup>1</sup> on that scheme (paragraph 311)'*. In respect of that decision, it should also be noted however that the Secretary of State considered *'that the requirements of the statutory duty have been satisfied in the context of this decision on the interpretation of the duty as advanced by CNP in any event'* (paragraph 311, my emphasis).
6. In the context of the TransPennine decision, as set out at para 308 of the decision letter, it was the Secretary of State's conclusion that alternatives *'are either not viable or would have greater impacts on the environment and surrounding National Landscape'* and at paragraph 309 *'Whilst the Scheme will result in some harms (as identified above) the Secretary of State is satisfied that on the specific facts relating to this Scheme and in the absence of viable or less harmful alternatives (as considered above), all necessary steps have been taken to further the relevant purposes and to comply with the statutory duty in this particular case'*. As submitted in paragraph 3 above, the same is not true with the Lower Thames Crossing, where alternatives that would not impact on the Kent Downs National Landscape are available. Furthermore, it is our understanding that the TransPennine scheme would not result in the same degree of harm to Protected Landscapes, as reflected in the acceptance of the preferred route by both Natural England and the North Pennines AONB Partnership, as set out in paragraphs 4.9.9 and 4.9.10 of the Report of Examination<sup>2</sup>.
7. At A2.1.11, the Applicant asserts that the new Duty reflects the requirements of the 2014 NPSNN, paragraphs 5.150 to 5.153. However, it is our view that the new duty

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<sup>1</sup> [TR010062-002476-Secretary of State for Transport Decision Letter .pdf \(planninginspectorate.gov.uk\)](#)

<sup>2</sup> [A66 Northern Trans-Pennine Project Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport](#)

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goes beyond the requirements set out in the NPSNN, which only requires the SoS to have regard to the purposes of the AONB. It places a higher level of obligation on the SoS to ensure that all possible measures to conserve and enhance the natural beauty of the AONB have been taken and beyond the current requirement set out here which is for consideration of *'the detrimental impact on the environment and the landscape, and the extent to which that could be moderated'*. Furthermore, the new duty to 'seek to further' goes beyond the current requirement to include measures to enhance other aspects of the environment 'where possible', which are unspecified in quantity and may not amount to a furthering of the conservation and enhancement of the AONB. "Where possible" is a qualified requirement; the requirement in the new duty is unqualified. Also of note is that the new NPSNN 2024 requires the Secretary of State to be satisfied that the new duty is complied with.

8. It is stated at A.2.19 (b) that the *'Applicant has included in the Project design a raft of measures which has the effect of mitigating the impacts on the AONB (National Landscape), as well as providing enhancements – these include woodland planting on a landscape scale, a number of green bridges and the enhancement of walking, cycling and horse riding networks in the AONB (National Landscape)'*. However, it remains our view that only very limited mitigation of impacts is achieved, as is borne out in the predicted residual significant adverse effects of the scheme on the Kent Downs National Landscape as concluded in the Environment Statement. We consider that the Applicant overstates the extent of mitigation for the landscape harm to the Kent Downs, given that the majority of proposed woodland planting is located outside of the Kent Downs National Landscape boundary, and is mostly proposed to provide ecological compensation, such as for Ancient Woodland loss and Nitrogen Deposition compensation, rather than to provide mitigation for the landscape harm to the AONB. In addition, we remain concerned that some of the proposed landscape scale planting (such as that at Park Pale) is an inappropriate intervention in the landscape, and as such does not further the AONB purposes.
9. It is submitted by the Applicant at A2.19c, that a fund of £4.24million has been agreed with the Kent Downs to enable further compensatory enhancement elsewhere across the protected landscape. However, as set out in our final position statement [\[link\]](#), the compensatory amount falls well short of the monetary valuation of the impact of the Project on the landscape that has been undertaken, based on DfTs Value for Money Supplementary Guidance on Landscape<sup>3</sup> and set out in Submission Doc 7.7 Combined Modelling and Appraisal Report, Appendix D Economic Appraisal Report: Economic Appraisal Package [\[APP-526\]](#). As the compensatory amount does not reflect the calculated harm, we consider the Applicant has failed in their public duties to seek to achieve the best public outcome from the Project and meet the requirement to seek to further the purpose of the AONB.
10. Taking the above into account, we therefore strongly disagree with the final conclusion set out by the Applicant at A.2.20 that there is an *'absence of less harmful alternatives'* which is not substantiated, and as set out above, nor do we concur with the Applicant's

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<sup>3</sup> Department for Transport Value for Money Supplementary Guidance on Landscape Moving Britain Ahead, 2021 <https://assets.publishing.service.gov.uk/media/6103d905e90e0703aee75920/value-for-money-supplementary-guidance-on-landscape.pdf>

position that that *'all necessary steps have been taken to seek to further the relevant purposes of the AONB (National Landscape) and to comply with the amended statutory duty'*.



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01 May 2024

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