

Dear Secretary of State

**TR010062: A66 Northern Trans-Pennine Project
Registration identification number - 20031841**

The Levelling Up and Regeneration Act 2023 (LURA) 26th October 2023 has amended the legislation on the duty of public bodies with respect to nationally designated landscapes. As the decision on this scheme is delayed until 7th March 2024, the Secretary of State (SoS) as decision maker will be required to demonstrate that they have fulfilled the duty placed on them to **further** the purposes of designated landscapes. I urge the SoS to provide evidence that their decision would meet the amended duty or reject the DCO.

The Legislation

The nationally important designations of National Parks and Areas of Outstanding Natural Beauty confer the highest status of protection for landscape and scenic beauty¹. The statutory purposes of National Parks² are:

- (i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks; and
- (ii) to promote opportunities for the understanding and enjoyment of the special qualities [of the Parks] by the public.

An Area of Outstanding Natural Beauty (AONB) has a primary single statutory purpose to conserve and enhance natural beauty.

With respect to the National Park designation, Section 62 of the Environment Act 1995 places a general duty on statutory undertakers, such as the Secretary of State as decision maker for the scheme and National Highways as the scheme promoter, to have regard to its purposes when coming to decisions or carrying out their activities relating to or affecting land within the Parks. The LURA, Part 12, 245 (3) (b) (1A) 245 which comes into force on 26th December 2023 amends that duty to: *'In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park'*.

With respect to the AONB designation, the Countryside and Rights of Way Act 2000 section 85 places a general duty on statutory undertakers to have regard to its purpose when coming to decisions or carrying out their activities relating to or affecting land within the AONB. The LURA, Part 12, 245 (6) (a) (A1) amends this to: *'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'*.

¹ National Parks and Access to the Countryside Act 1949 Part 1 (1) (a)

² National Parks and Access to the Countryside Act 1949 as amended by Environment Act 1995, Section 62

Under section 104(3) of the Planning Act 2008, the application for the DCO must be determined in accordance with the relevant NPS, except where the SoS is satisfied that one or more of sections 104 (4-8) apply. LURA now brings into effect Section 104 (6) '*deciding the application in accordance with the relevant NPS would be unlawful by virtue of any enactment*'. The LURA enactment overrules NNNPS paras 5.150 and 5.154 which refer to the duty to 'have regard to' the statutory purposes of designated landscapes.

Furthering the purposes of designated landscapes

According to Natural England's advice, the duty to 'have regard to' requires consideration of potential impacts on AONB/National Park purposes – with the expectation that adverse impacts will be avoided or mitigated where possible ('England's Statutory Landscapes: a practical guide to your duty of regard', 2010). Provided this is done, the duty has been met, irrespective of whether or not the decision ultimately taken conflicts with AONB/National Park purposes. By contrast if you further something, as in the LURA amendment, you help it to progress, to be successful, or to be achieved.

The duty to 'further' the statutory purposes of designated landscapes reinforces the relevant NNNPS requirements:

- NNNPS, 4.26, requires the assessment of alternatives.
- NNNPS, 5.150, '*Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions*'.
- NNNPS, 5.151, '*The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest.*'
- NNNPS, 5.152, '*There is a strong presumption against any significant road widening ...in... Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.*'

However, although the above policies impose a rigorous assessment for a development that impacts on nationally designated landscapes, they do not **further** their purposes or refer to enhancement, as the legislation does.

The A66 would not further AONB/National Park statutory purposes

In APP-008 the applicant attempted to address these policy requirements through the test of major development in a nationally designated landscape (NPPF 177), in this case the North Pennines AONB. The applicant claims that the development is needed to reduce congestion, unreliable journey times and road crash figures. It would improve the local road network and connectivity for local people and provide facilities for walkers and cyclists; journey times on the A66 and connectivity between key employment areas across the north; and access to key tourist destinations. If the A66 is not improved it would constrain national and regional connectivity and threaten the transformative Northern Powerhouse initiative and the Government's levelling up agenda. The applicant then claims exceptional circumstances to

permit the detrimental effect of 'minor encroachment into the AONB' which has been moderated by mitigation.

In REP1-033 Natural England also addressed these policies, stating that it *'would normally push for the highest level of sensitivity to be applied to all land within an AONB given its nationally designated status and its statutory purpose to conserve and enhance the area's natural beauty. The 'enhance' part of that purpose means that existing development which reduces the quality the landscape should not contribute to an assessment and subsequent justification for further development which would further close down opportunities to apply enhancement measures to bring the area into closer alignment with the wider AONB...'*. However, due to the established presence of the A66, and that the scheme is about changes to that existing road rather than a completely new scheme, Natural England accepted a 'high' rather than 'very high' sensitivity rating (despite the alteration works involved being significant). This acceptance was based on an expectation that the design and screening mitigation in relation to the AONB and its statutory purpose would be effective as possible and not be compromised by a 'high' rather than a 'very high' sensitivity rating.

The Northern Pennines AONB partnership started from a similar premise: *'The A66 Northern Trans-Pennine Project having an impact on the designated landscape of the NP AONB is inevitable'* (REP8-019 the Statement of Common Ground between National Highways and the North Pennines AONB Partnership).

The approach of all these public bodies does not further the purpose of the AONB but is to its detriment as it neither conserves nor enhances its natural beauty. Instead those involved have accepted the degradation caused by the existing A66 and its further degradation from new infrastructure and increased traffic. The Examining Authority (ExA), although not subject to the duty, would also have been working within its effects.

There is no doubt that long term damage to the North Pennines AONB would occur from both infrastructure and increased traffic flows of up to 30% when the extended A66 becomes operational. The damage would include direct negative impacts to its tranquillity, to its landscapes and its setting and to its habitats and wildlife. None of these impacts can be adequately mitigated and would result in permanent damage to the AONB. The acceptance of this is clear in Natural England's submissions and in REP8-019. Furthering the purpose of the AONB would be achieved by alternative measures that avoid road building and reduce traffic, as was implied by the North Pennines AONB Partnership: *'It will therefore be necessary for the developer to evidence the compelling reasons for the enhanced capacity against alternative measures, such as improved safety of junctions, reducing speed limits etc. We expect the developer to have fully explored and scoped out those alternative measures that would be less damaging, before pressing ahead with dualling – it should not be a fait accompli'* (REP8-019). Despite this strong statement these measures were dismissed at an early stage and do not appear to have been developed or costed as a least intrusive option for comparison with route options.

With respect to the Lake District National Park traffic increases on the A66 west of Penrith would harm its tranquillity and landscapes, which are already negatively impacted by the existing road and its traffic. One of the goals of the A66 North Pennines upgrade is to increase traffic from visitors to either or both designated landscapes (APP-244 Table 1). This is in direct contravention to the LDNPA's policy goals for visitors to arrive by sustainable

modes. All of these issues could be addressed by using the alternative measures described above.

The scheme's carbon emissions also have to be taken into account as the special qualities of both designated landscapes are vulnerable to the impact of climate change. The A66 scheme would create additional carbon emissions of over 500,000 tonnes of CO₂ from construction, and between 35,000 to 40,000 additional tonnes of CO₂ annually from 2029 to 2037, critical years for the 5th and 6th carbon budgets. If the temperature rise predicted for the end of this century is realised our protected landscapes will be recognisable only to geologists. Everything will be affected: their natural world of wildlife, trees, water and soils; their historic and cultural heritage; and their economy, especially its mainstay of farming and tourism. The reasons for their designation would be negated. Increasing carbon emissions not only threatens the UK meeting its carbon budgets and the 2050 net zero target, but also threatens National Park/AONB purposes.

Conclusion

The Examination documents supply no evidence that the duty incumbent on the SoS to further National Park/AONB purposes would be met. The applicant developed the scheme and Natural England commented on it in the context of the duty on them as public bodies to 'have regard to' National Park/AONB purposes. The ExA's recommendations would have been made within that context. The SoS cannot therefore rely on the ExA's recommendations or assessments made by other public bodies in order to show that the amended duty to further the purposes of both designations has been met. A fresh assessment would be required to show if, where and how the proposed DCO would further those purposes. This requires personal attention from the SoS as decision maker.

In addition, where a nationally designated landscape is at stake, the LURA amendment effects the planning balance required by the Planning Act 2008. It is not enough to balance all the negative impacts against purported benefits. Enhancement of both designations must be demonstrated absolutely, unequivocally and separately to the balancing act if their purposes are to be furthered.

Finally, with respect to the **North Pennines Special Area of Conservation** I wish to support TAN's submission that there is an exceptional and significant gap in the information before the Secretary of State under Regulation 64(4A) HR 2007, and that the Secretary of State should urgently seek the opinion and carry out the statutory consultations required in order to reach a conclusion on IROPI. The SoS should suspend consideration of the application until the information has been provided and consulted on in accordance with Regulation 20(3) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Anne Robinson