

(2) Conservation Areas and Listed Buildings

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The presumption in favour of sustainable development also requires to be considered in the context of conservation areas, where there is an over-riding statutory requirement under [s.72 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. Similar provisions with respect to listed buildings are to be found in [s.66 of that Act](#). The effect of these provisions is discussed in the commentary to them in Volume 1 of the Encyclopedia.

Current government policy concerning conservation areas is now to be found in Chapter 12 of the NPPF: "Conserving and enhancing the historic environment".

(3) Areas of Outstanding Natural Beauty

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Areas of outstanding natural beauty are dealt with in [Pt IV of the Countryside and Rights of Way Act 2000](#). Provision for the designation of an area as an area of outstanding natural beauty is contained in [s.82 of that Act](#), and the procedure for designating an area is set out in [s.83](#). [Section 84\(4\) of the 2000 Act](#) provides inter alia that a local planning authority whose area consists of or includes the whole or part of an area of outstanding natural beauty has power to take all such action as appears to them expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty or so much of it as is included in their area. [Section 85\(1\)](#) provides that 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 (as defined in [s.85\(2\)](#)) shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Areas of outstanding natural beauty are included within the definition of "sensitive area" contained in [reg.2\(1\) of the Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011](#) and are subject to the provisions thereof.

Areas of outstanding natural beauty are also dealt with in paras.115–116 of the NPPF. Paragraph 115 provides:

"Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads, and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads."

Paragraph 116 then continues:

"Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Consideration of such applications should include an assessment of:

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or

meeting the need for it in some other way; and

- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

Thus, in [R. \(Megavissy Parish Council\) v Cornwall Council \[2013\] EWHC 3684 \(Admin\)](#), Hickinbottom J., applying these principles, observed (at para.52):

"Even if there were an exceptional need for affordable housing in an area, that would not necessary amount to exceptional circumstances for a particular development, because there may be alternatives sites that are more suitable because development there would result in less harm to the AONB landscape."

In [R. \(Cherkley Campaign Limited\) v Mole Valley District Council \[2014\] EWCA Civ 567](#) the Court of Appeal emphasised that para.116 of the NPPF was concerned with developments physically within an area of outstanding natural beauty. According to Richards L.J. (para.44 of the Judgment) (with whom Underhill and Floyd L.JJ. agreed):

"... I see no good reason for departing from the language of paragraph 116 itself. The paragraph provides that permission should be refused for major developments 'in' an AONB or other designated area except where the stated conditions are met: the specific concern of the paragraph is with major developments in a designated area, not with developments outside a designated area, however proximate to the designated area they may be."

In that case the only part of the development in question, namely a golf course, that was in the area of outstanding natural beauty was one fairway and one tee. In the Judge's view, the creation of one fairway and one tee of a golf course could not reasonably be regarded as major development "in" the area in question, even when account was taken of the fact that they formed part of a larger golf course development which was immediately adjacent to the AONB.

As regards the meaning of "major development", the Court in [Aston v Secretary of State for Communities and Local Government \[2013\] EWHC 1936 \(Admin\)](#) (Wyn Williams J., at paras.90–94) rejected an argument to the effect that that phrase should be given the same meaning wherever it appeared in regulations or planning policy documents, and, specifically, that it should be interpreted in accordance with the definition of "major development" set out in [art.2 of the Town and Country Planning \(Development Management Procedure\) Order 2010](#). Rather, in the view of the court, the phrase should be construed in the context of the document in which it appeared. The context of paras.115 and 116 of the NPPF militated against the precise definition of "major development" contained in the [2010 Order](#). The word "major" has a natural meaning in the English language, albeit not one that is precise, and the phrase "major development" as it occurs in the latter paragraphs should be interpreted in light of that natural meaning.

(4) National Parks

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These areas are subject to special control administered by National Park authorities: see further the commentary to [s.4A](#).

(5) Sites of Special Scientific Interest