

**Case Name:** *Campaign for the Protection Of Rural England, Kent Branch, R (On the Application Of) v Secretary Of State For Housing Communities And Local Government* [2025] EWHC 1781 (Admin) (20 June 2025)

**Full case:** [Click here](#)

### **Commentary:**

This was an application under section 288 of the Town and Country Planning Act 1990 challenging the validity of a planning permission for the construction of 165 new dwellings and associated works on land adjacent to Turnden, Hartley Road, Cranbrook, Kent ("**the Site**").

This case was heard by Mr Justice Mould in parallel with the *Wadhurst* case, which was summarised in last week's Town Library update, and considered the interpretation of the same duty under section 85(A1) of the Countryside and Rights of Way Act 2000 ("**the 2000 Act**") as amended by section 245 of the Levelling-up and Regeneration Act 2023.

The duty applies to relevant authorities in England and, in performing a function in relation to and so as to affect land in an Area of Outstanding Natural Beauty ("**AONB**") in England, the Secretary of State was a "relevant authority" to which this duty applies. The duty now requires relevant authorities to "*seek to further*" the purpose of conserving and enhancing the natural beauty of the relevant AONB, whereas previously it only required relevant authorities to "*have regard to*" the purpose".

The court held that section 85(A1) of the 2000 Act does not rule out the grant of planning permission for development in an AONB simply by virtue of the fact that the development would give rise to some, albeit limited, unavoidable harm to the natural landscape. The Secretary of State's decision to grant planning permission for the proposed development was a proper performance of that duty; and she gave proper and adequate reasons to explain why that was so. For these reasons, both grounds failed and the claim was dismissed.

### **Facts**

The Site is situated within the High Weald AONB, a protected landscape originally designated under the National Parks and Access to the Countryside Act 1949.

The planning application was called-in by the Secretary of State and, following an inquiry, the inspector completed his report recommending the grant of planning permission subject to conditions. The Secretary of State issued his first determination of the planning application in April 2023 but that determination was quashed in October 2023. The Secretary of State made a fresh determination of the planning application and

decided to grant the planning permission on 22 November 2024. That decision was the subject of this challenge.

In her decision letter, the Secretary of State concluded that the proposed development would result in harm to the landscape and scenic beauty of the AONB. Nevertheless, the Secretary of State indicated that, in making her determination and granting planning permission, she had performed her section 85(A1) duty and sought to further the purpose of conserving and enhancing the natural beauty of the AONB.

The claimant contended that, in granting permission for development of land in the AONB which will neither conserve nor enhance the natural landscape, but rather result in harm to the landscape and scenic beauty of the AONB, the Secretary of State had failed to perform the duty under section 85(A1).

## Grounds

The claimant advanced two grounds of challenge:

- Ground 1: On a proper construction of the duty now enacted under section 85(A1) of the 2000 Act, the only lawful decision open to the Secretary of State, in determining the planning application, was to refuse planning permission. To grant planning permission for development that will harm the natural beauty of the landscape is not capable in law of discharging the duty to seek to further the purpose of conserving and enhancing the natural beauty of the AONB.
- Ground 2: Alternatively, even if the grant of planning permission for such a development was, in principle, capable of being a lawful performance of the duty under section 85(A1) of the 2000 Act, the Secretary of State nevertheless failed to give proper, adequate and intelligible reasons for concluding that she had complied with that duty.

## Judgment

Mr Justice Mould reiterated the approach set out in his judgment in the recent *New Forest* case, which recognised that:

- The amended duty to “*further*” a stated purpose requires more than merely weighing the effect of the proposed development in the overall balance.
- In order to discharge the strengthened duty, the relevant authority must determine whether the proposed development is consistent with the promotion of the purpose of conserving and enhancing the natural beauty of the AONB.

- If the relevant authority determines that the proposed development is in conflict with the purpose or would undermine the fulfilment of the purpose, they must consider whether the grant of planning permission would be in accordance with their duty to seek to further that purpose.
- The duty is expressed in qualified terms and it is not necessary to fulfil the purpose of conserving and enhancing the natural beauty of the AONB. Nevertheless, in any case in which the relevant authority determines that a planning application proposes development which is in conflict with the purpose or would undermine the fulfilment of the purpose, the authority ought both to consider whether and to explain why they have decided that planning permission may justifiably be granted. These are matters of judgement.
- The decision maker is ultimately responsible for judging whether the planning application before them for decision proposes development which interferes with the fulfilment of the purpose; and if it does, whether and if so why the grant of planning permission is justified.
- The relevant authority may need to consider whether and if so, how the proposed development may be mitigated in order to address the identified conflict with the statutory purpose. They may need to consider whether any compensatory measures (secured via planning conditions or obligations) are available to offset the identified conflict.

This approach is reflected in the guidance issued by Defra in December 2024 and is consistent with the policy currently stated in paragraphs 187(a), 189 and 190 of the NPPF in relation to development management decision-taking in AONBs. In the context of policy, it is appropriate that matters should be expressed in terms of weight; since the section 85(A1) duty does not and is not intended to displace the established evaluative character of the determination of planning applications, which arises from the long-established principles that govern such decisions.

The court held that section 85(A1) of the 2000 Act does not rule out the grant of planning permission for development in an AONB simply by virtue of the fact that the development would give rise to some, albeit limited, unavoidable harm to the natural landscape. The Secretary of State's decision to grant planning permission for the proposed development was a proper performance of that duty; and she gave proper and adequate reasons to explain why that was so. For these reasons, both grounds failed and the claim was dismissed.

*Case summary prepared by Nikita Sellers*