21 LANDSCAPE MANAGEMENT

OVERVIEW

This chapter looks at the legal protection and management of various features of the UK countryside—that is, its landscape, trees, forests, and hedgerows. (We do not consider the specific protections of human artefacts, such as archaeological sites. And though focused on the 'countryside' many controls apply equally in urban settings.) This involves applying some controls at which you have already looked: in particular, town and country planning law. Sometimes, this gives added levels of protection, but many of the activities that shape the countryside are not covered by planning law. Nature conservation designations are also important in this area, because what humans see as landscape features may also be the habitat of protected species of plants and animals. But effective landscape management relies heavily on using economic instruments, especially grants and subsidies to landowners.

For all of these reasons, you will get most from this chapter if you have already looked at Chapters 7, 12, and 19, and if you bear in mind that this topic demands that you think about the full scope of the regulatory toolbox.

At the end of this chapter, you should be able to:

- appreciate the particular legal challenges in managing natural landscapes;
- understand the main landscape designations and how they work in practice;
- understand the main ways in which positive assistance is given to promote landscape management;
- appreciate how traditional legal approaches are used to protect forests, trees, and hedgerows in the UK.

Introduction

Effective landscape management involves a number of different things. In relation to landscape, there is the restriction of urban expansion and urban development in the countryside, the preservation of the particular rural character of an area, and the protection of distinctive landscapes or landscape types. With trees, forests, and hedgerows, the focus is generally on smaller, sometimes individual, environmental features, the key problem for the law being in grappling with two familiar and related difficulties—controlling destructive, rather than constructive, acts and establishing adequate control over natural things. In both cases, however, protection and management pose some difficult problems. The two main reasons are that, first, the shape of most of what is to be protected is the result of hundreds of years of human intervention. Secondly, landscape management is inherently subjective, which makes it difficult to decide exactly what to preserve and why (see Box 21.1).

Some of the difficulties in this respect can be seen in the statement of the (then) Countryside Commission that future generations must be passed a national inheritance '*with all its richness intact*'.[1] However obscure this objective, it must surely be preferable to the view, expressed by 90 per cent of respondents to a survey in 2003 by the Countryside Agency, that it is important '*to keep the English countryside the way it is now*', which fails to recognize the changing nature and perception of the countryside, and changing priorities. Landscape plays a role in constructing cultural identity and this is a key motivation behind the Council of Europe European Landscape Convention. This might form one part of a more 'bioregional' approach to decision making, in which nature conservation would also play an important part. As discussed briefly in Chapter 19, nature conservation and landscape issues are increasingly being integrated, following many decades of relative isolation.

BOX 21.1 Landscape, values, and communities—the case of wind farms

Wind farms are an increasingly common feature of the countryside. They are often located in exposed areas of high landscape value. This has led to conflict between those who stress the contribution of wind energy in reducing greenhouse emissions and those who place greater weight on the importance of not 'spoiling' the landscape. But this clash of opinion is complicated by various factors. Wind farms are a further change to land continuously altered by humans over the centuries and it is a subjective judgement to say that a wind turbine is less appropriate in a national park, or less beautiful than, for example, a poorly insulated 'chocolate box' cottage. Also, those who object to wind turbines may do so on grounds that are unrelated to landscape—for example, that energy efficiency or reduced demand for electricity would be preferable, or even that the need to address climate change is so acute that only more drastic steps such as a revival of nuclear energy will be effective.

We saw in Chapter 3 the role that values play in this kind of decision making, and, in particular, how possible clashes between individual and collective perspectives ('not in my back yard', or 'NIMBY'-ism) may colour attitudes to polluting or obtrusive development. There is survey evidence, however, indicating that local residents view wind farms in a relatively positive light. In a 2003 poll of residents near to the larger wind farms in Scotland,[2] 20 per cent of respondents said that their local wind farm had a broadly positive impact on the area, compared with 7 per cent who said it had a negative impact, while most respondents said that the impact was neutral. Those living closest to the wind farms were even more positive about their impact. And while 27 per cent thought that there *would* be landscape problems, only 12 per cent said that the landscape had *actually* been spoiled. A majority of respondents (54 per cent) and an even higher percentage of those living closest supported significant expansion of the wind farm. This is a good illustration of the extent to which environmental values are not static, but

[1] Countryside Commission (1998) *Protecting Our Finest Countryside: Advice to Government*.
[2] MORI Scotland (2003) *Public Attitude to Windfarms*, Scottish Executive Social Research.

change, not only as a result of debate, but also through experience. Note that, partly for planning reasons, most wind energy development is likely to take place offshore.

Consider this

Think about another landscape issue (what about (rurally) solar farms, or urban skyscrapers). What values and interests might be engaged? Who benefits and who might lose out? Do you think that different values and interests are engaged as between rural and urban settings?

Regulatory mechanisms

Three main methods of control are used:

- relying on the town and country planning legislation to control developments in the countryside in the same way that they are controlled in towns;
- imposing special protections in designated areas, or in relation to designated features such as hedgerows (in practice, these added protections often tend to stem from the town and country planning system as well, although there are some that do not);
- utilizing grants and other incentives to ensure the proper care of the countryside or natural features, again with special schemes available in selected areas. Economic tools are widely used in the promotion of desirable objectives, such as tree planting and hedge laying.

A particular feature of the third mechanism is the reliance on voluntary controls, rather than on compulsion. Because most countryside land is privately owned, it is perhaps inevitable that positive action, as much as restrictive controls, will be used.

The international and EU dimensions

Compared with most other topics covered in this book, international and EU law has had relatively little direct impact on national law and policy relating to landscape management. This is undoubtedly because of the often local and subjective nature of this topic, although some conventions have, in recent years, included landscape features within a general definition of 'the environment' (as is the case with the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context and the 1992 Transboundary Watercourses Convention). Attempts to conclude a global convention on forests have so far been unsuccessful and only a Non-binding Statement of Forest Principles was agreed at the Earth Summit in 1992. Although there have been signs that a global treaty may now be more acceptable, in 2007 the parties to the UN Forum on Forests, established in 2000, agreed a Non-Legally Binding Instrument on All Types of Forests. Nevertheless, this probably reflects something of an evolving international consensus in response to the challenge of sustainable forest management and tackling

forest loss and degradation. Certain actions have also been taken under the auspices of the Biodiversity Convention.

The 1972 World Heritage Convention, however, is a notable example of an attempt to use international law to protect national features of global significance. As well as cultural treasures, the treaty aims to protect natural heritage of 'outstanding universal value' for aesthetic or scientific reasons. The treaty is unusual, because states are obliged not only to protect sites that are eventually accepted onto a 'World Heritage List', but are also under general obligations to protect any areas worthy of inclusion on such a list. States must keep under review heritage covered by the treaty and protect it even if it is not accepted on to the list, although it is unlikely that any decision about an area forming part of the world heritage would be reviewable by the courts (for an Australian example, see *Queensland v. Commonwealth* (1989) 167 CLR 232). The added protection of being listed is that sites are eligible for assistance from the World Heritage Fund, run by the United Nations Educational, Scientific and Cultural Organization (UNESCO). However, funding is only given to sites in developing countries. The list is currently biased in favour of cultural heritage and the 30 sites for which the UK is responsible are also mostly built heritage—for example, Canterbury Cathedral.

CASE 21.1 *Coal Contractors v. Secretary of State for the Environment* [1995] JPL 421

Planning permission was applied for for an open cast coalmine very near to Hadrian's Wall, a world heritage site (WHS). Although there was no planning policy on WHSs, there was a Ministerial statement to the effect that inappropriate development should be avoided at such sites. Applying his own policy, the Minister decided that to grant planning permission would adversely affect the wider setting of the WHS, even though the effect on the landscape was—for topographical reasons—not adverse. Permission was therefore refused. WHS designation can therefore provide extended landscape protection in and around such sites, but, notably, WHS designation added an extra dimension to the decision beyond only the landscape impact of the development.

Note also that the Secretary of State found that there '*was no complete embargo on any particular form of development within a WHS*'. Ultimately, it was a matter of political judgement and discretion whether the development was approved, and, had the decision been to grant planning permission, this decision, while it might have been politically (and even diplomatically) unpopular, would almost certainly have been unchallengeable. In 2009, a planning circular was issued strengthening the level of protection from development and that significant development-affected WHSs would be subject to call-in by the Minister under the Town and Country Planning (Consultation) (England) Direction 2009 (on call-in powers—see Ch. 12).[3]

[3] *Communities and Local Government Circular 07/2009,* Circular on the Protection of World Heritage Sites.

At the European level, there is no EU legislation with a specific and primary objective of conserving landscape. The Environmental Impact Assessment Directive (2011/92/EU) does require information about the effects of projects on landscape and cultural heritage to be assessed, but the impact of the EU is most closely felt through the Common Agricultural Policy (CAP)[4] and from EU regulations aimed at integrating agricultural and environmental objectives (see below). Under the Habitats Directive (92/43/EEC), member States must encourage in their land-use planning and development policies the conservation of linear landscape features, such as hedgerows, which play an important part in biodiversity conservation. This obligation marks an important break from a pure protected areas approach to conservation (on which, see generally Chapter 19), and emphasizes the links between nature conservation and landscape management that are increasingly being made.

In 2004, a Council of Europe European Landscape Convention entered into force. This has more general application than the World Heritage Convention, going beyond protecting the 'jewels in the crown', but, depending on one's perspective, either puts rather too general, or too wide-ranging, obligations on the parties. The UK, which took a lead in negotiating the Convention, signed and ratified in 2006, and it became binding on the UK in March 2007. The Government view is that the Convention does not require any specific legal changes but certain implementation issues need to be addressed, such as strengthening landscape considerations in policy making.[5]

Town and country planning

The starting point for protecting the countryside has always been the development control system. But it has never proved particularly successful because, despite its name, it has always had an urban bias. There have been very few adaptations of the basic structure to cope with countryside matters. Indeed, it is commonly referred to as the 'town planning' system, the countryside aspect being forgotten.

There are several reasons for this. A major one is the history of the system, which had a consequent effect on the nature of the legal mechanisms that were adopted. The town and country planning system developed in 1947 was specifically designed to meet predominantly urban problems, such as community layout and design, industrial location, post-war reconstruction, public health and overcrowding, and transportation changes. As far as the rural environment was concerned, the main policy was the protection of the countryside against urban creep and expansion. The legal mechanisms that were adopted were thus mainly negative, such as the need for planning permission, and did not reflect the need for positive management in the countryside.

[4] Note that forestry is not included in this.
[5] See: https://www.gov.uk/government/publications/european-landscape-convention-guidelines-for-managing-landscapes#framework

In addition, in 1947, there was perceived to be little need to control developments in the countryside, because it was generally considered that landowners and farmers had done a good job in shaping the landscape, and, in any case, agriculture itself required protection after the rural depression of the 1930s and the Atlantic Blockade of the Second World War. Agriculture and forestry—the two main activities likely to have an impact on the landscape—were granted generous exemptions in the legislation that, despite some minor changes, remains today.

As a result, there are distinct limitations on the use of development control in the countryside, and its most important role is in controlling new buildings and structures.

- Many rural activities that have a significant impact on the landscape do not constitute development. For example, afforestation or deforestation, the removal of hedgerows or stone walls, ploughing, and the cultivation of new crops (such as oilseed rape) are all entirely excluded from the development control system.
- The Town and Country Planning Act 1990, s. 55(2)(e), provides that a change of use to agriculture or forestry is not development. While it is obvious that this covers a change from an urban to a rural use, in landscape terms, it is more significant that this paragraph excludes from development control a change from unused land (often of high nature conservation or landscape value) to agriculture or forestry, or from agriculture to forestry, or from forestry to agriculture, or from one type of agriculture or forestry to another. 'Agriculture' is defined very widely in the Town and Country Planning Act 1990, s. 336, to include such diverse things as intensive livestock production, fish farming, horticulture, and extensive grazing.
- Further exemptions are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), Sch. 2, under which blanket automatic planning permissions (permitted development rights) are granted. For example, the GPDO exempts the construction of fences and walls up to 2 metres in height, and some temporary uses up to 28 days per year.
- The GPDO, Sch. 2, Part 6 , provides permitted development rights for a wide range of agricultural and forestry operations, such as new roads, buildings, drainage works, and excavations, subject to some generous limitations on size and height (for example, each building may be up to 465 square metres in area and 12 metres in height). There are other, more technical limitations, such as that the erection or alteration of structures for the accommodation of livestock, or for storing slurry or sewage sludge, within 400 metres of non-agricultural dwellings or other buildings is not permitted under the GPDO.
- A final limitation on the usefulness of the development control system in the countryside is that this is a political system. Decisions are made by local planning authorities, and are likely to reflect the economic needs and policy preferences of local residents, although reference must always be made to the National Planning Policy Framework which sets out general government

planning policies towards the countryside. Local authorities may also underestimate the importance of a local area in national terms.[6]

BOX 21.2 Polytunnels and the new agriculture

A very visible change in agricultural practice over the last few years is the rise, quite literally, of the polytunnel. In previous times glasshouses were used to bring forward growing seasons and protect from pests. Today, it is the more versatile, more easily constructed and more easily dismantled polytunnel that has taken over, on some units covering many tens of hectares and causing a fair degree of opposition on landscape grounds. Is the putting up of a polytunnel 'development' for the purposes of the 1990 Act? The issue was considered in *R (Hall Hunter Partnership) v. Secretary of State* [2006] EWHC 3482 (Admin). A farmer had constructed very sizeable polytunnels on around 40 hectares of land but had not sought planning permission. Was this a 'building operation' requiring permission? Although the polytunnels were moved around the farm every few months, this required considerable time and effort. The Court of Appeal asked whether the polytunnels were of a sufficient size, were sufficiently physically attached to the land, and were there for a sufficient length of time, to amount to a 'building' (an approach followed in later cases). The Court thought that in this case it did. Clearly, however, none of the main limbs of the test – size, physical permanence and permanence in time – is one where there are any hard and fast standards and planning decision-makers will have a fair degree of discretion to decide whether in fact any particular construction meets both test. It is worth noting that this is a High Court decision – these are not normally binding but in the absence of any other judgments in practice it becomes so. As a 'building', it may be that planning permission is automatically granted by the GPDO (see above), though it is likely that for larger arrays of tunnels the size restrictions will prevent planning permission being automatically given.

Extra protections under planning law

In some circumstances, there are extra protections provided by the town and country planning system in the countryside.

- The extent of development permitted under the GPDO is limited in national parks, the Norfolk and Suffolk Broads, areas of outstanding natural beauty (AONBs), conservation areas, World Heritage Sites and any area specified by the Department for Environment, Food and Rural Affairs (DEFRA) under the Wildlife and Countryside Act (WCA) 1981, s. 41(3). (Collectively these

[6] These same limitations explain why the network of SSSIs is not protected properly by controls dependent on the town and country planning system—see Ch. 19.

areas are known as 'Art. 2(3) land'.) While the limitations are not great, this does mean that stricter controls apply to such things as extensions to houses and other buildings.

- A system of prior notification applies to farm or forestry developments otherwise permitted by the GPDO, Sch. 2, Part 6. This means that 28 days' prior notification of the proposed development must be submitted to the local planning authority, which may then impose conditions relating to the siting, design, and external appearance of the development in the light of the likely effects on the surroundings.
- As a matter of policy, the local planning authority may impose restrictive conditions on activities requiring permission. For example, specific design criteria are commonly imposed where there is a local style. It may also make non-statutory designations of such things as sites of high landscape value in its development plan.
- An Art. 4 direction may be imposed under the GPDO, requiring planning permission to be sought for something that would otherwise be granted automatic permission (see Ch. 12). Because Art. 4 directions entail the payment of compensation by the local planning authority if planning permission is then refused, their use is rare (even though the cost is sometimes grant-aided by central government agencies).

It is important to note that green belts—creatures of planning policy, but never planning law—are primarily intended to act as a brake on suburban growth. There is a policy presumption against major development in green belts, unless 'very special circumstances' dictate otherwise,[7] which, around many urban areas, entrenches the divide between urban and rural. While green belts are not designated on nature conservation or landscape grounds, they undoubtedly contribute indirectly to these objectives. There is currently a debate as to whether 'belts' of land around towns and cities should be superseded by other approaches to green infrastructure. Development tends to leapfrog over the greenbelt and can end up being sited in more vulnerable parts of the natural environment. There is a case that things such as green wedges, corridors, etc., might have greater ecological value, although the shift of approach is seen by some as motivated primarily to opening the green belt up to accommodate house-building. At the time of writing, Government has restated its commitment to protecting the Green Belt, but is proposing various tests that would apply when encroachment is planned, and is also suggesting that any loss of green belt land is offset not by identifying additional land as green belt but by improving the quality of and access to existing green belt..[8]

[7] National Planning Policy Framework (2012), para. 87.

[8] DCLG, Fixing Our Broken Housing Market (the 'Housing White Paper') (2017)

Natural England

Since 2007, Natural England, established under the Natural Environment and Rural Communities Act (NERC) 2006, has had functions combining nature conservation and landscape conservation (as well as certain functions inherited from the Rural Development Service). Similarly integrated institutions with equivalent responsibilities to those of Natural England are Scottish Natural Heritage and (more integrated still) Natural Resources Wales.

We comment on the constitution and general powers of Natural England in Ch. 4, but it is worth noting again that its general purpose is '*to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*', and that this purpose includes conserving and enhancing the landscape (NERC 2006, s. 2). In addition, all the landscape agencies, and all Ministers, government departments, and public bodies, must have regard to the desirability of conserving the 'natural beauty and amenity'[9] of the countryside (Countryside Act 1968, s. 11). These are broad-ranging duties, applying to the functions of these bodies under any enactment, but their usefulness is limited by the weakness of their formulation.

Landscape designations

Apart from the limited protection accorded to landscapes by planning law, there are a number of designations of land that may be made. Ultimately, however, these depend either on the town planning system or on voluntary powers. There are few, if any, compulsory powers to support landscape protection.

In line with this voluntary philosophy, there is a power for any local planning authority to enter into a management agreement with any owner of land for conserving or enhancing its natural beauty or amenity, or for promoting its enjoyment by the public (WCA 1981, s. 39). Since the Countryside and Rights of Way Act (CROWA) 2000, a wider range of bodies also have powers under this section to enter into management agreements, including a conservation board for an AONB in its area (WCA 1981, s. 39(5), as amended). Natural England also has general powers to enter into management agreements (NERC 2006, s. 7).

BOX 21.3 Countryside designations—benefit or burden?

A feature of key landscape designations is that they may actually *increase* pressure on the land designated. Particularly with national parks, it is at least debatable whether the designation increases some of the adverse effects associated with high tourist demand or simply reflects already existing demands, but what is clear is that many visitors are drawn to areas, at least in part, *because* of their

[9] In Scotland, the 'natural heritage'—see Countryside (Scotland) Act 1967, s. 66.

designation. There is a clear contrast here with nature conservation designations, which generally do not have this potentially damaging 'honey pot' effect.

Nature conservation designations, meanwhile, tend to depress the value of land, whereas land values inside national parks tend to be higher than those immediately outside the park. One historical consequence of the depressed land value of nature conservation sites was, paradoxically, to expose them to particular development pressures. A designation, such as a site of special scientific interest (SSSI), could prevent planning permission being granted to the landowner for a profitable development, but this would not prevent permission being granted by local or central government for public developments such as infrastructure projects. In these cases, the public interest would weigh more heavily and designated land would have the advantage that the cost of compensating affected landowners was relatively low (because landowners would only receive compensation for the value of their land in its undeveloped state).

Consider this

The Lake District is currently a National Park. It is presently under consideration to be included as a World Heritage Site with a decision expected in July 2017. Would this be a positive development? Or would it entrench patterns of land management which, for some, are ecologically harmful (what George Monbiot describes as 'sheepwrecking'). Interrogate both sides of the debate, and follow up on developments.

National parks

National parks in the UK do not equate to the concept of a 'national park' used in most other countries. Instead of being wilderness areas with few, if any, inhabitants, they contain land on which large numbers of people live. They are effectively working environments. The aim of national park designation is to plan and manage the area so as to create a balance between recreation, amenity, wildlife, and economic development. Land ownership is unaffected by designation, although various public bodies are given powers to purchase land and, in practice, much of some parks is in the ownership of a public body, or of the National Trust.

General objectives and duties

National parks were first provided for in the National Parks and Access to the Countryside Act 1949. This Act still provides the basic structure of the legislation on national parks, although it has been much amended, especially by the Countryside Act 1968, the Environment Act 1995, Pt III, and Pt V of NERC 2006. The purposes of national parks were originally stated in the Hobhouse Report,[10] and set out in the

[10] National Parks Committee (1947) *National Parks in England and Wales*.

National Parks and Access to the Countryside Act 1949, s. 5, in terms of two general objectives: the preservation and enhancement of the natural beauty of the areas, and the promotion of their enjoyment by the public. In recognition of the way that attitudes towards the national parks have changed since 1949, the Environment Act 1995, s. 61 substituted a new s. 5, which set out somewhat wider purposes:

(a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas . . . , and

(b) . . . promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

NERC 2006 did not change these basic purposes, but it did expand the interpretation given to some of these terms (see Case 21.2 below).

BOX 21.4 The separation (and integration?) of landscape

The historian T. C. Smout[11] has written that:

Every age constructs nature in a different way. In the seventeenth century, use and delight were very difficult to separate. By the end of the eighteenth, they occupied different spheres in the mind. By the twentieth, they were in frequent conflict.

This nicely captures the way in which, historically, landscape (and nature conservation) emerged as discrete concerns. This came from a separation in how the countryside was seen from, initially, a place within which work and leisure were inextricably bound together, to a position in which the aesthetic and leisure interests of one section of society often clashed with the economic interests of other groups. In thinking about the objectives of national parks (and also areas of outstanding natural beauty—AONBs—see below) and how these are prioritized, it is worth reflecting on this historical development.

Since the 1995 Act, s. 11A(2) of the 1949 Act also gives statutory effect to the so-called 'Sandford principle', which is that, in cases in which there is a conflict between purposes (a) and (b), then greater weight should be attached to purpose (a). The balance between environmental, amenity, and economic factors is also made explicit in s. 11A(1), which requires national park authorities to seek to foster the economic and social well-being of local communities within the national park, albeit in the context of pursuing the purposes set out in s. 5. NERC 2006 removed the restriction that prevented significant money from being spent in pursuing this.

[11] T. C. Smout (2000) *Nature Contested*, Edinburgh: Edinburgh University Press, p. 18.

The impact of the changed purposes was reinforced by s. 11A(2), which also requires all public bodies and statutory undertakers to have regard to the new purposes when exercising or performing any functions affecting land in a national park. A review in 2002 by DEFRA of national park authorities, however, suggested that these provisions were not adequately applied in practice, because of a lack of awareness, understanding, and compliance, both on the ground and at departmental level.[12]

The criteria for designation mirror the twin statutory objectives (but see Box 20.4). Responsibility for proposing and designating a national park originally lay with the National Parks Commission, which designated the first ten parks in the 1950s. This responsibility has now devolved to Natural England and Natural Resources Wales.

Currently, there are 12 fairly sizeable national parks in England and Wales. The parks are the Peak District, the Lake District, the Yorkshire Dales, the North York Moors, Northumberland, Snowdonia, the Brecon Beacons, the Pembrokeshire Coast, Exmoor, Dartmoor, the New Forest and the South Downs. In addition, the Broads Authority was established by the Norfolk and Suffolk Broads Act 1988. This has a similar constitution and powers to the national parks, with the inclusion of powers over navigation and water space. For the purposes of most legal protections, it is treated as a national park, although it is notable that the Sandford principle does not apply.[13]

In the case of the two most recently designated parks – the New Forest and the South Downs – an interesting feature is that, despite responsibility for proposing and designating parks resting with (now) Natural England, central government (the confirmation and funding of which is needed) was able to initiate the designation process by political direction. The rationale for these new parks appears to be slightly different from that of the existing parks. For example, there was already a New Forest heritage area in which, as a matter of government policy, the same planning principles that govern development in national parks were applied.

CASE 20.2 National parks, natural beauty, and the NERC Act 2006—*Meyrick Estate Management Ltd v. Secretary of State for the Environment, Food and Rural Affairs* [2007] Env LR 26

[12] DEFRA (2002) *Review of English National Park Authorities*, para. 18; see [2002] JPL 1334. To address this, guidance was published: see DEFRA (2005) *Duties on Relevant Authorities to Have Regard to the Purposes of National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Norfolk and Suffolk Broads: Guidance Note*. This still applies. Defra published two guidance documents to support the implementation of the new 'Biodiversity Duty' under s. 40 NERC Act 2006, one for local authorities and one for public authorities as a whole. These can be found respectively at:
www.defra.gov.uk/environment/biodiversity/documents/la-guid-english.pdf and
www.defra.gov.uk/environment/biodiversity/documents/pa-guid-english.pdf

[13] Some of the practical consequences of this—in particular, the tensions between biodiversity conservation and navigation on the Broads—are discussed in L. Ledoux, S. Crooks, A. Jordan, and K. Turner (2003) *Implementing EU Biodiversity Policy: A UK Case Study*, CSERGE Working Paper, GEC 2000–03.

A landowner challenged the inclusion of its estate (which included a Grade 1 listed building) in the proposed New Forest national park. Following a public inquiry, the Inspector concluded that the estate should be included because of its natural beauty and the opportunities it afforded for open-air recreation (the statutory tests in s. 5(2), National Parks and Access to the Countryside Act 1949). Both of these grounds were successfully challenged in the High Court.[14] The Secretary of State appealed, but, before the appeal hearing, the Natural Environment and Rural Communities (NERC) Act 2006 (which DEFRA promoted) amended the 1949 Act in various ways. First, a new s. 5(2A) was introduced that

i) included cultural heritage in the matters capable of being taken into account in determinng 'natural beauty';
ii) allowed the extent to which it was possible to promote opportunities for the understanding and enjoyment of the area's special qualities by the public to be taken into account.

Secondly, s. 99 of the 2006 Act provided that, if an area consisted of, or included, land, the flora, fauna, or physiological features of which were partly the product of human intervention in the landscape, this did not prevent it from being treated as an area of natural beauty. This provision was intended to make clear that agricultural land could be deemed to be 'natural'—large agricultural estates such as Chatsworth in the Peak District have always been included in national parks.

It is worth reading the debates, in both Houses of Parliament, on these amendments because they reveal quite sharp differences between the government and the opposition on the value of parks.[15]

The Court of Appeal held that, because the estate was not, in fact, open to public access, the test used by the Inspector—that is, of *potential* opportunities for open-air recreation—was the wrong one and dismissed the appeal without considering the issue of 'natural beauty'. On this, it is worth noting that the High Court had distinguished between the criteria for designation (in s. 5(2) of NPACA 1949) and those relating to the statutory purposes behind parks (in s. 5(1)). The difference is interesting because the designation criteria were—until NERC 2006 anyway—narrower than the general purpose and management provisions. Usually, in nature conservation law, it is the other way around, so that sites are designated using strict criteria, but can then be interefered with to take economic and social criteria into account. Meyrick's case was decided under the old law and, although an order varying the faulty designation order could have been applied for—which would have been subject to the new NERC Act rules and probably would have succeeded—this was not done, so Meyrick's land remains outside the national park.

Until relatively recently, there were no national parks in Scotland, although there were designations with a roughly similar impact. This changed with the National Parks (Scotland) Act 2000, which enables

[14] [2006] Env LR D6.
[15] See, e.g., House of Commons debates, 29 March 2006, and House of Lords Debates, 20 March 2006.

the Scottish Parliament to propose and designate national parks.[16] The procedure for designation is somewhat different. In addition to being satisfied about the outstanding national importance of the area's natural heritage, or natural and cultural heritage combined, Ministers must be satisfied that the area has a distinctive character and coherent identity, and that designation would meet the special needs of the area and would be the best means of ensuring that the aims of the national park are achieved in a coordinated way. (Proposing a national park is a power, not a duty.)

The statutory objectives of Scottish national parks are similar to those of parks in England and Wales in that they include conservation of the natural and cultural heritage, and the promotion of public understanding, enjoyment, and recreation. But they also include the promotion of the sustainable use of the natural resources of the area, and the promotion of sustainable social and economic development of the communities of the area. As with the 1949 Act, there is a version of the 'Sandford principle' in that, in cases in which there is a conflict of aims, it is the conservation aim that must be given greater weight. So far, Loch Lomond and the Trossachs, and the Cairngorms, have been designated, following advice from Scottish Natural Heritage.

Administrative responsibilities

The national parks are the only areas in which a new institutional structure has been created in an attempt to protect the countryside, but control remains essentially local, because Natural England and Natural Resources Wales have no executive functions. Under s. 63 of the Environment Act 1995, the Secretary of State has power to establish by order a national park authority in the form set out in Sch. 7. This has altered the previous arrangements whereby each national park was administered by an authority run by a committee of the relevant county council or a separate, autonomous board. This has had the effect of creating autonomous local authorities for national parks, with primary responsibility for planning functions.

The national park authorities were formally established on 1 April 1997. Schedule 7 provides that a national park authority is subject to most legislative provisions affecting local authorities, including those on access to meetings and the jurisdiction of the Commissioner for Local Administration (the ombudsman). For national parks in England, a majority of members are to come from a combination of those appointed by district, county, or unitary authorities in the area, and from those appointed by the Secretary of State, but appointed to represent parish councils. The remaining minority ('national members') are appointed by the Secretary of State. (In Wales, the Welsh Government appoints half of the members, after consultation with Natural Resources Wales, and half are appointed by the constituent local authorities.) The authority then elects its own chair and deputy chair.

[16] Notably, DEFRA (2002) contains many proposals that would adapt policy and governance in line with the approach taken in Scotland.

The position in Scotland is slightly different: there is an equal division between appointees nominated by the Scottish Parliament and the relevant local authorities, but only after at least 20 per cent of each governing board has been directly elected at local level.

In England and Wales, under s. 66 of the Environment Act 1995, national park authorities must prepare a national park management plan, although they may adopt existing management plans (made under the Local Government Act 1972). There are provisions for regular review. The management plan performs a different strategic function from the purely planning-based development plan, covering wider management policy issues.

In Scotland, there is a similar duty on national park authorities to produce plans that, following consultation, are approved by Ministers (National Parks (Scotland) Act 2000, s. 12). Unlike in England and Wales, a more explicitly integrative approach is taken, and a plan must set out and coordinate '*the functions of other public bodies and office-holders so far as affecting the National Park*' (s. 11), and all public bodies must have regard to these plans in exercising their functions as these affect national parks (s. 14). This puts on public bodies a more specific obligation than the general duty on public bodies in s. 11A(2) of the 1949 Act.

There are powers to provide funding for the national park authorities. Under the Environment Act 1995, s. 72, the relevant Secretary of State has a wide discretion to make grants to a national park authority, while s. 71 empowers the authorities to issue levies to the constituent local authorities. Seventy-five per cent of funding comes from central government. Grants from Natural England and Natural Resources Wales for works and schemes are normally payable at a higher rate in a national park than they are outside.

Controls on development

Protection of the parks has always been strongly tied to the town and country planning system. The national park authority is designated the sole local planning authority for its area. One exception concerns tree preservation orders (TPOs), in relation to which the district council retains concurrent jurisdiction with the national park authority. Strategic planning in national parks centres around the national park development plan that was first required by the Planning and Compensation Act 1991. (As with all plan making in national parks, this requires consultation with Natural England or Natural Resources Wales.)

In Scotland, planning functions are not automatically transferred to national park authorities and decisions are taken on a park-by-park basis. In Loch Lomond and the Trossachs, all development planning and development control functions (and TPO functions) have been transferred to the national park authority, with the exception of structure plan functions. For these functions, responsibility continues to be exercised by local authorities, in consultation with the national park authority. In the Cairngorms, however, the major difference is that development control functions have not been transferred, although the national park authority has the power to call in, for its own determination, planning applications that raise a planning issue of general significance to the national park aims. In both parks,

however, where responsibilities have been transferred to a national park authority, these are exercised by a committee, which must have a majority of members who are either directly elected or who are members of a local authority. These provisions are aimed at addressing concerns—voiced in England and Wales—that planning functions in national parks lack a sufficient local democratic mandate, and a consequential tension between local authorities and national park authorities.

As far as the substantive detail of planning law is concerned, apart from the limited restrictions referred to above, the main protection lies in the formulation and application of sensitive policies for the protection of the park through the planning process. These are now contained in the National Planning Policy Framework. Policy has long stated that major development should not take place in the National Parks unless in exceptional circumstances and where this is in the public interest, though there have been subtle shifts in how things like the public interest are defined and whether this requires need on a national scale to be demonstrated. National parks, then, are certainly not inviolable, as the siting of Fylingdales' early warning station, Milford Haven's oil terminal, and numerous quarries in the Peak District illustrate.

Areas of outstanding natural beauty (AONBs)

AONBs, first provided for under the 1949 Act, are now designated, under CROWA 2000, s. 82, solely for their natural beauty, with the objective of conserving and enhancing these features. Even though, in landscape terms, they are meant to be the equivalent of national parks, by comparison with the parks, they are little known and understood. Unlike national parks, there is no duty to consider their designation and many of the powers available within them are optional for the local planning authority. Indeed, writing in 1980, Marion Shoard described them as the '*Cinderellas of the landscape designation system*'.[17]

AONBs have a number of similarities with national parks and, since the changes made under CROWA 2000, the similarities in regulatory approach are even stronger. For example, there are now general duties on all public bodies as there are with national parks (s. 85). AONBs tend to be extensive areas: 46 have been designated across the UK, with with around 18 per cent of England and Wales covered. (The designation does not extend to Scotland, where there are instead 'national scenic areas'.) They are designated in the same way as national parks—that is, Natural England/Natural Resources Wales makes a proposal for designation, which requires confirmation by the Secretary of State, normally after extensive consultation (in only one case has there also been a public inquiry). They rely on town planning procedures for their legal protection and the town planning powers are essentially the same as in national parks, including the duty to consult with Natural England/Natural Resources Wales over the making of development plans. Since CROWA 2000, there are also duties to prepare management plans for all AONBs and to keep these under review (s. 89), and relevant authorities—that is, public bodies—

[17] M. Shoard (1980) *The Theft of the Countryside*, London: Temple Smith, p. 144.

must have regard to the statutory purposes of AONBs (s. 85). This duty to prepare management plans falls either on local authorities in the area or, if one has been established by the Secretary of State (under s. 86 and Sch. 13), a conservation board. Conservation boards build on non-statutory partnerships between local authorities and other key actors in AONBs, which were encouraged in the 1990s and proved to be generally successful. In practice, conservation boards are likely to be established only for larger AONBs.

But there are significant differences too: AONBs do not have a statutory role as far as recreation is concerned (although, under s. 87(1), conservation boards (only) must have regard to protecting beauty *and* its enjoyment); nor is extra finance specifically provided for AONBs, although the establishment of the Countryside Agency brought with it some increased funding (and power to make grants to conservation boards—s. 91). But perhaps the major difference from national parks is that the local planning authority generally remains unchanged. This is the case even if a conservation board has been established. Although certain planning functions may be transferred to conservation boards, this does not extend to functions relating to development planning, development control, or planning enforcement.

Agriculture, landscape, and environmental impact assessment

Projects for the use of uncultivated land or semi-natural areas[18] for intensive agricultural purposes have always been listed in Annex II of the EU Environmental Impact Assessment (EIA) Directive (2011/92/EU). But their inclusion in Sch. 2 to the general implementing regulations covering town and country planning was always meaningless, because these activities fall outside the town and country planning system. This gap was (very belatedly) plugged by the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001. Uniquely these provide for criminal liability if uncultivated land is brought into more intensive production without EIA. The Regulations came under challenge in the *Alford* case (Case 21.3).

CASE 21.3 *DEFRA v. Alford* [2005] EWHC 808[19]

A farmer was convicted of spreading modest amounts of manure and seaweed on her land. This improved the grassland, but adversely affected various acid-loving flora. The High Court overturned the original conviction, on the ground that this had not been done for an intensive agricultural purpose. In particular, the Court found that bringing land back to a normal level of agricultural productivity (albeit after many years) could not amount to an 'intensive' agricultural purpose. The Court favoured the

[18] On the meaning of semi-natural areas see *R (Wye Valley Action Association Ltd)* v *Herefordshire District Council* [2011] EWCA Civ 20, and comment by C. Rodgers at (2011) Env L Rev 85.
[19] For more detailed analysis, see D. McGillivray (2005) 17 JEL 395.

definition of 'intensive' as meaning the use of 'artificial' aids to increasing productivity over a definition of 'intensive' as meaning any practice that aimed at increasing productivity for a given area of land—that is, as being the opposite of 'extensive', under which, for example, yields are increased by extending the acreage under the plough. This may be a correct reading of the dictionary meaning of 'intensive' in this context, but it does beg the question whether it makes sense for the law to intervene because of *how* environmental harm is caused rather than *whether* it is caused. Perhaps the real root of the problem is that the concept of intensiveness is one that might ordinarily be thought of as admitting of degrees, whereas the difficulty here is that 'intensive' is being used in an absolute way (an agricultural purpose being either intensive or not). It is notable that the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 cover projects to increase the agricultural productivity of uncultivated land even in cases in which this is 'below the norm'—a change justified on the grounds that the *Alford* decision '*did not enable the UK to meet the aims of the EIA Directive*'.

The 2006 Regulations mean that certain agricultural projects must be screened by Natural England for the significance of their environmental impact and, if they are likely to give rise to significant environmental effects, then an environmental statement must be submitted to Natural England. EIA is not linked to any consent procedure (as it usually is in other areas). Because there is no consent procedure, there is no real monitoring and, while there have been successful prosecutions,[20] these have tended to follow tip-offs from the public. It is notable that while a quantitative threshold (2 hectares) is used in England, no such threshold applies in Wales.[21]

Trees, woodland, and hedgerows

The rest of this chapter looks at the protection afforded to trees, woodlands, and hedgerows. What we see is a development from early, mainly negative, controls, such as the use of tree preservation orders (TPOs), which have existed in town and country planning law since 1932, towards a more varied approach, encompassing the use of economic instruments and consumer information. We also see a slight shift in emphasis from pure amenity considerations (which have always been prevalent with TPOs) towards wider environmental considerations. A good example of these are the limited environmental duties to which the Forestry Commission is subject when granting felling licences, although the primary focus of forestry legislation with trees as commercial items means that this general area is covered only briefly. The conservation of some trees can, of course, be safeguarded through protective designations or agreements of the kind discussed in Chapter 19.

[20] See (2004) ENDS Report 353, 162.

[21] See C Goldthorpe (2016) 28 ELM 218

In theory, the use of negative restrictions is particularly unsuitable for the proper management of natural resources, such as trees, that require positive management. Although some lessons have been learnt, the Hedgerows Regulations 1997 are arguably a throwback to 'command and control' measures, a central weakness of which is the inability to address mismanagement or neglect, now the major threat to hedgerow conservation. But there are also environmental consequences from tree or hedge *planting*.[22] For larger projects, this is dealt with through environmental impact assessment.[23]

Tree planting on a smaller scale is unlikely to be legally regulated, falling outside the town and country planning system, and being unlikely to give rise to any private law remedy, because there is neither a general right to a view (*Hunter v. Canary Wharf* [1997] 2 WLR 684, and see Ch. 11), nor to light (other than light to buildings). Under Pt VIII of the Anti-Social Behaviour Act 2003, local authorities in England and Wales have obligations to deal with complaints about high evergreen hedges and powers to reduce such hedges to a reasonable height. These provisions, however, are best seen as a measure to tackle neighbour disputes; they apply when the reasonable enjoyment of a neighbour's property is affected and are not a landscape conservation provision in any wider sense. They are considered in more detail in Chapter 22 (on the Online Resource Centre; for Scotland see High Hedges (Scotland) Act 2013)).

Trees and planning permission

Ordinary town planning rules have a limited impact on tree protection. Planning permission is not required for the planting or cutting down of trees or woodland, because trees, being natural, are not structures or buildings for the purposes of the development control system. Section 55(2)(e) also excludes from the definition of 'development' any change of use of land to forestry or woodland. But specific protective measures are found in ss 197–214 of the Town and Country Planning Act 1990, which deal with TPOs. All references to section numbers in relation to TPOs refer to this Act.

Section 197 imposes a general duty on local planning authorities to make adequate provision for trees when planning permission is granted. This may involve attaching conditions relating to trees to the permission—for example, that certain trees should be retained or replaced by others, or that new trees should be planted as part of the landscaping of the site. It also involves considering whether to impose a TPO on any existing trees. A further possibility is to refuse permission on the grounds that existing trees or woodland should be retained.

Tree preservation orders (TPOs)

A TPO is a means by which individual trees, groups of trees, or woodlands may be protected against damage. A woodland TPO is arguably the most restrictive, because it includes trees that take root after the order is made. A TPO may be imposed on specified trees '*if it appears to a local planning authority*

[22] See, e.g., the concerns raised in *Kincardine and Deeside District Council v. Forestry Commissioners* [1993] Env LR 151.
[23] See the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999.

that it is expedient in the interests of amenity' (s. 198). Because the section refers explicitly to amenity, it does not seem that a tree could be protected for nature conservation purposes.

Most TPOs are made in urban areas, although rural woodland may also be protected. Government Guidance, now repealed, suggested that TPOs would not normally be made on trees under good arboricultural or silvicultural management. This is an entirely proper interpretation of the basic rule and appears to remain the general practice.

TPO offences

Any person who, in contravention of a TPO

(a) cuts down, uproots or wilfully destroys a tree, or
(b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it

commits an offence, unless consent has been obtained from the local planning authority (s. 210(1)). Fines are unlimited. In determining the amount of any fine, the court must have regard to the financial benefit accruing, or likely to accrue, to the convicted person in consequence of the offence. This is a significant provision, because many offences against TPOs are committed by developers who stand to make a substantial gain on the development value of their land (see, for example, the £50,000 fine imposed on a property company for deliberately felling 25 trees after designation, reported at [1991] JPL 101). There is a further offence of contravening the provisions of a TPO (s. 210(4)), for which the maximum fine is £2,500. This will cover such things as ignoring conditions imposed on works permitted by a TPO. If no other enforcement action works, an injunction to stop contravention of a TPO is available (s. 214A), although courts will be reluctant to exercise their discretion to issue an injunction except in clear cases. One notorious persistent offender (a Kent farmer) was, however, imprisoned for failing to comply with the terms of an injunction.

These offences may be committed by any person, not only the owner or occupier of the property. They are offences of strict liability (see Ch. 8) and thus, in *Maidstone Borough Council v. Mortimer* [1980] 3 All ER 552, a contractor was guilty of an offence even though the owner of the site had assured him that consent for the works had been given. (It seems that the owner would also commit an offence in such a situation, because the contractor is acting as an agent.) This strict position is justified by the fact that a TPO is a public document (it is a local land charge), so anyone can check the position before carrying out works.[24]

Part of the offence requires that it be committed 'wilfully'. This has been interpreted to mean that it is the act of damaging or destroying the tree that must be wilful—that is, deliberate—not the contravention of the TPO. *Barnet London Borough Council v. Eastern Electricity Board* [1973] 1 WLR 430

[24] Compare the justifications for the strictness of felling licences (see Case 21.7).

illustrates that this may include a negligent act. In that case, contractors negligently damaged the roots of six trees subject to a TPO, shortening their life expectancy. The Divisional Court held that this amounted to a wilful destruction. The case also illustrates that the concept of destruction includes something less than immediate death to the tree, for example, ring barking.

Making a TPO

The local planning authority has responsibility for making TPOs. This normally means the district planning authority, or the national park authority in a national park.[25] The authority that imposes the TPO is then the relevant local authority for all procedures for consent and for enforcement purposes. The Secretary of State has a reserve power to make a TPO under s, 202, although this is unlikely to be used much.

In England, the procedures for making a TPO are set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 . The local planning authority makes a TPO, which is placed on public deposit, and all owners, occupiers, and those with felling rights are notified. At least 28 days are then allowed for objections, which must be considered before the local planning authority itself confirms the TPO. There is no appeal against the making of a TPO, although there is a right to challenge its validity in the High Court under s. 284. In practice, arguments about the desirability of protecting the tree are considered at the stage of seeking consent to fell. TPOs have immediate effect once they are made (Reg. 4(2)). But they will lapse if not confirmed within six months. This change is obviously useful and mirrors other areas of the law where protective designations apply immediately, subject to later scrutiny and possible challenge (such as SSSIs – see Ch. 19).

Each TPO is separately drafted and accompanied by a map. This position allows for flexibility—for example, conditions specific to that TPO may be attached, or permitted woodland management operations may be established for a coppiced woodland—but it does make the making of a TPO quite a cumbersome process, certainly more cumbersome than those protective designations for which all that is required is that standard rules or restrictions apply to the designated land. But there is a standard form, which is set out in the Schedule to the 2012 Regulations, and most TPOs will be substantially in the form set out in the Schedule. The normal position is therefore that TPOs include a list of permitted operations and of prohibited operations, some of which are especially tailored for that site.

CASE 21.4 What is a tree? *Kent County Council v. Batchelor* (1976) 33 P & CR 185 and *Bullock v. Secretary of State for the Environment* (1980) 40 P & CR 246

In the first of these two cases, Lord Denning MR somewhat arbitrarily suggested that a diameter of 7–8 inches at least was needed before something could be said to be a tree. This was expressly not accepted

[25] A county planning authority has jurisdiction over its own land and where it grants planning permission (e.g. on waste disposal or minerals applications).

by Phillips J in the second of the two cases, who thought that anything ordinarily called a 'tree' could be covered by a tree preservation order (TPO). He accepted expressly that a coppiced woodland could be covered—a position that seems sensible, because, from an ecological point of view, a coppice is effectively a single entity and not a collection of unconnected trees.

Phillips J's view is to be preferred and is supported by s. 206(4) Town and Country Planning Act 1990. This states that a TPO will attach to any tree planted as a replacement for one subject to a TPO. Such a replacement will often be a sapling or smaller tree. Although the dividing line is imprecise, some things cannot, however, be the subject of a TPO—for example, hedges, bushes, and shrubs. It appears to be accepted that a stump of a tree is capable of remaining a tree if it is still alive. So a TPO can continue to apply to felled trees, but not uprooted trees.

A further issue relates to whether local authorities have the resources to make TPOs. It appears that many local authorities have adopted a policy of not making any further TPOs because of the time and expense involved. The legality of such a policy must be questioned, because it appears to amount to an effective fettering of discretion.

Exceptions to TPO offences

There are a number of exceptions to these offences which are now grouped together in Reg. 14. These include, amongst other exceptions:

- works needed to implement a planning permission (though in relation to development permitted under the GPDO this is only exempted if carried out by a statutory undertaker or body such as the Environment Agency).
- cutting down, uprooting, topping, or lopping trees that are dead. An exception in respect of 'dying' trees was removed by the 2012 Regulations, due to its uncertainty, though dead branches may be removed from a living tree.
- to give effect to an Act of Parliament or '*so far as may be necessary for the prevention or abatement of a nuisance*' (). The nuisance exception relates to the position in which a tree is a civil nuisance. It is potentially a very wide exception, because it may be a civil nuisance for a tree to affect a neighbour's foundations or access,[26] but if measures to the tree short of cutting down or uprooting it could abate the nuisance, then the exception will not apply to more drastic action—that is, any measure must be proportional (and it is also worth mentioning here that *removing* trees can cause problems to neighbouring land, through land 'heave').

[26] On which, see the important decision in *Delaware Mansions v. Westminster City Council* [2001] UKHL 55.

This was one part of the decision in *Perrin v. Northamptonshire Borough Council* [2007] Env LR 12. The judge also held that, for the purposes of s. 198(6), 'nuisance' should be construed narrowly as covering only actual damage caused (or which is imminent), and not simply a mere encroachment. This was because the exception goes beyond what the common law of nuisance allows, which, in relation to encroachments, is only to remove the things that have encroached, but it also makes sense in prioritizing the public amenity importance over the mere invasion of a legal right without harm. It was also held that whether action is 'necessary' cannot be determined according to factors such as whether damage could be prevented in some other way—for example, by underpinning the neighbouring property—because these could always be done, chopping down the tree could never be 'necessary'.

Some interesting issues arise from this case. It suggests that TPOs should not shift the burden of addressing the nuisance from the tree owner to the person affected, especially if the remedial action that the person affected could undertake would cost much more than it would to remove the tree. But because the person affected can, to protect damage to their property, cut down the tree without consulting the local authority, nothing might be done to see whether a reasonable solution could be found that preserves the tree and prevents harm. In other words, as *Perrin* indicates, s. 198(6) does not take into account how valuable the tree is in amenity terms. It is, however, not a nuisance to deprive a neighbour of the right to a view or the right to light to his land, so this section would not justify interference with protected trees on these grounds (although the 'high hedges' provisions of the Anti-Social Behaviour Act 2003 might be used—see Chapter 22 on the Online Resource Centre).

There are further exceptions in cases in which the Forestry Commission is already effectively controlling forestry activities on the land through a forestry dedication covenant, or a grant or loan made under the Forestry Acts (s. 200).

CASE 21.5 *Elliott v. Islington London Borough Council* [1991] 1 EGLR 167

This case illustrates the potential for conflict between public and private rights when dealing with private nuisance. Mr Elliott obtained a mandatory injunction against Islington London Borough Council requiring that a horse chestnut tree, which was in an adjoining park and was damaging his garden wall, be removed. (The tree was not actually subject to a tree preservation order, because it was the council's practice not to designate trees on its own land, but this does not affect the point being made.) It is believed that the injunction was, in fact, never enforced following a later compromise agreed between the parties, but, in the Court of Appeal, Lord Donaldson MR showed the primacy accorded to private rights over the public interest when he stated:

It is not generally appropriate to refuse to enforce specific private rights on the basis that that would cause hardship to the public: the court would be legislating to deprive people of their rights.

Consent

It is possible to apply to the local planning authority for consent to carry out any works that are prohibited by a TPO. Any consent that is granted may be subject to conditions, such as the planting of replacement trees. There are no publicity requirements for an application for consent. There is an appeal to the Secretary of State[27] against a refusal of consent, and the procedures and powers on an appeal are similar to those for an appeal against refusal of planning permission (see Part 5 of the 2012 Regulations). There are now powers to vary or revoke a TPO (Regs. 10 and 11), which could fulfil the same purpose.

CASE 21.6 *Robinson v. East Riding of Yorkshire Council* [2003] JPL 894

Robinson wanted to use some of his extensive grounds for touring caravans, which would involve felling a number of trees. As a matter of urgency and following a brief inspection, the council made a tree preservation order covering all of the grounds (including areas without trees). The court observed that, depending on the circumstances, protecting landowners' rights might mean that more specific orders rather than one 'blanket' TPO may be needed, at least in the long run. But the law relating to TPOs was inevitably anticipatory in character and there are safeguards to protect landowners' interests. Although a TPO cannot be appealed, the same result is achieved by seeking consent from the local authority to carry out works on a tree and an appeal to the Secretary of State thereafter (see above). Hence: '*The making of a tree preservation order is . . . the beginning of the road and not the end of it.*' The appeal was dismissed.

Replacement trees

The replacement of trees covered by a TPO may be required by the terms of the TPO itself (for example, in return for permitted works), by a condition attached to a planning permission, by the terms of a consent, or by s. 206. Section 206 provides that, if a tree is removed, uprooted or destroyed in contravention of a TPO, or if trees are removed at a 'prescribed time' (which means if they are removed etc because they are dead or dangerous, see Reg. 25), a replacement tree of appropriate size and species must be planted at the same place as soon as reasonably possible. The owner may ask the local planning authority for this requirement to be lifted. The TPO attaches to the replacement tree. Similar provisions apply to trees in conservation areas (s. 213)

Special provisions apply to woodlands. There is no need to replace a dead, dying, or dangerous tree, and the obligation is to replace the same number of trees on or near those removed, or as agreed by the

[27] Inevitably, inspectors who will visit the site will hear appeals. The scope for the Secretary of State, on the basis of papers and photographs only, to reach a different decision to the inspector will be limited: see *Richmond upon Thames London Borough Council v. Secretary of State for the Environment, Transport and the Regions (Tree Preservation Order)* [2002] JPL 33.

local planning authority. Flexibility has been provided in such a case, because it will often be impossible to determine exactly how many trees were removed and from where.

Enforcement notices

Because contravening a TPO is itself a criminal offence, there is less need for an enforcement notice requirement than for ordinary breaches of development control. But there is a power for the local planning authority to serve an enforcement notice if a replanting obligation is not complied with. Such a notice must be served within four years of the failure and may require such replanting as is specified by the authority (s. 207). There is a right of appeal against an enforcement notice to the Secretary of State, who may uphold, modify, or quash it (s. 208).

Failure to comply with an enforcement notice is not a criminal offence, but the local planning authority may enter the relevant land, carry out the replanting as required, and recover the cost from the owner (s. 209).

Trees and conservation areas

All trees in a designated conservation area are subject to a statutory restriction (effectively, a statutory TPO), which prohibits the cutting down, lopping, topping, uprooting, wilful damage, or wilful destruction of the tree (s. 211). This is more limited than most individual TPOs. In addition, regulations may be made by the Secretary of State that exempt specified works (s. 212).

There is one crucial difference between these statutory TPOs and ordinary ones: prohibited acts may go ahead six weeks after notification of an intention to do them has been given to the local planning authority. The purpose of this section is to enable the local planning authority to have prior notification of potentially damaging works to trees in conservation areas.[28] The local authority then has six weeks in which to decide whether to impose a TPO: if it does not, the works may go ahead. It is an offence to do any of the prohibited acts without notifying the local planning authority and waiting six weeks, unless consent is given earlier. The penalties for this offence, and the replanting and enforcement provisions, are the same as for ordinary TPOs.

Compensation for a TPO

No compensation is payable for the imposition of a TPO, but it is payable in cases in which loss or damage is caused by a refusal of consent (including revocation or modification) or by a conditional consent (Reg. 24).

Originally, it was thought that this compensation was payable to compensate for the value of cut timber forgone, but this assumption was shown to be unwarranted by *Bell v. Canterbury City Council*

[28] A similar form of control is applied for the protection of SSSIs—see Ch. 19.

[1989] 1 JEL 90. In this case, the Court of Appeal confirmed that the level of compensation payable was for the loss in value of the land. Accordingly, it awarded compensation at £1,000 per acre to a farmer who was prevented from converting a coppiced woodland to beef or sheep farming. Such large amounts of compensation would obviously limit the use of TPOs by local authorities, especially on woodlands that may have potential for agricultural or urban development.

An immediate response was to alter the existing Regulations—namely, the TPO Regulations 1969. It had always been possible for the local planning authority to certify that refusal was in the interests of good forestry or that the trees were of outstanding or special amenity value; in such a case, no compensation would be payable. This certificate was originally available for individual trees, but the 1969 Regulations were amended (by SI 1988/963) to apply the procedure to woodlands.

A more significant response, however, was to alter the practice of the Forestry Commission in relation to woodland TPOs. In woodland, the volume of timber being cut will normally require a felling licence from the Forestry Commission (see below). Normally, the Commission would refer any application relating to trees subject to a TPO to the local planning authority, but a change of practice consequent to *Bell v. Canterbury City Council* was that the Commission agreed to refuse a felling licence if TPO consent would be refused. The effect is that the Commission pays compensation, but at the level set out in the Forestry Act 1967, which relates to the value of the timber. The 2012 Regulations give statutory effect to this position by limiting compensation to loss in value of the timber and then applying this valuation method to trees covered by felling licences. Losses under £500 cannot be recovered.

Ancient woodlands and veteran trees

There is now quite stringent policy guidance concerning 'ancient woodland'. Although local planning authorities are not expressly instructed in the National Planning Policy Framework to identify any areas of ancient woodland in their areas that do not have statutory protection (e.g. as an SSSI) , they are nevertheless instructed (para. 118) not to grant planning permission for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss. 'Ancient woodland' is defined, but aged and veteran trees are not.

Consider this

What should we do when ancient woodlands and development collide? Is it enough to avoid harm? If harm is sanctioned, could this be 'offset' in some way? In this context think about not just the legal definition of 'ancient woodland' but also how government and others measure loss. For a discussion see Forestry in England (Defra Committee Report, 2017).

Forests

There are legal controls on afforestation and deforestation, involving economic incentives and other voluntary schemes, licensing powers, and the utilization of private property rights.

BOX 21.6 Forests—lessons from history, satellites, and trade

The word 'forest' has legal origins, originally being used to mark out land for deer—and not necessarily for trees—and delineating land in relation to which specific forest law and forest courts operated. The legal forest was nearly always much wider than the physical forest, to cover deer when they strayed beyond the trees. This, as Oliver Rackham notes,[29] led scholars to make the double error of assuming that land described as forest represented physical forest and that all of these areas were wooded: '*Hence the pseudo-historical belief that medieval England was very wooded.*'

Today, there are twice as many trees as there were a century ago—probably more than at any time since the Middle Ages—a resurgence that is almost entirely due to planting. Much of this planting, however—which, until recently, tended to be monocultures of fast-growing spruce—has been considered unfavourable, both in landscape and nature conservation terms. And notably, despite this increase, the UK is one of the world's largest importers of wood products, importing around 85 per cent of its timber needs.

Afforestation

Outside of any requirement for EIA, the main tool used to regulate afforestation is incentive payments.

There are currently three schemes used:

- The Countryside Stewardship Scheme (CSS) under which landowners, including farm owners and woodland owners, receive funding for certain environment activities including woodland creation and management. (Discussed in outline in Ch 19)
- The Woodland Creation Planning Grant (WCPG) which contributes to costs of UK Forestry Standard (UKFS) compliant woodland creation plan for large commercial forests (>30 hectares)

[29] O. Rackham (1996) *Trees and Woodlands in the British Landscape*, Abingdon: Routledge, p. 166.

- The Woodland Carbon Fund which is available for multi-purpose woodlands over 30ha

The second and third of these are fairly new schemes, which in part replace previous schemes, and show the different emphases within the sector: on the one hand, commercial forestry, and on the other supporting afforestation so as to promote wider ecosystem service benefits such as carbon management and flood prevention.

Felling licences

By contrast with the minimal legal controls over afforestation, under s. 9(2) of the Forestry Act 1967, a felling licence is required from the Forestry Commission for the felling of trees over 8 cm in diameter (15 cm in coppices), measured 1.3m from the ground, unless in a garden, etc., or part of a hedge. It is an offence to fell without a licence, which again may be committed by anyone (see *Forestry Commission v. Frost* (1989) 154 JP 14). Fines either of up to £2,500 or twice the value of the trees when they were felled can be imposed. In practice, the development value of the land without the trees may far exceed this, so the real protection lies in the power to impose a restocking notice (which can be imposed even if there is not a criminal prosecution), and the obligation to maintain replacement trees for up to 10 years, being used (Forestry Act 1967, s17A-C, added by s. 1 Forestry Act 1986).[30] That the sanctions are so low (compare unlimited fines for unlawful cutting down under TPO legislation) and non-custodial does, however, have a bearing on whether criminal liability can be imposed without *mens rea*—that is, whether the Act gives rise to strict liability criminal offences (see Case 21.7).

CASE 21.7 *R (Grundy & Co. Excavations Ltd) v. Halton Division Magistrates Court* [2003] EWHC Admin 272

How do the courts view tree-felling offences? In this case, the claimants had felled 86 trees without a licence, but they had done so in agreement with the landowner. Clearly, the landowner was guilty of an offence, but were the contractors?

This is obviously an important practical issue, because landowners will rarely undertake large-scale felling personally. The answer turned on whether the offence was one of strict liability or whether mens rea (criminal intent) was needed. With environmental crimes like water pollution offences, we have seen that the courts have dispensed with the need for mens rea because the regulatory system would

[30] The civil sanctions regime does not currently extend to forestry.

otherwise be unworkable, although the price of doing so has sometimes been to label such crimes as quasi-criminal and not 'true' crimes (see Ch. 8). The Court of Appeal consequently thought that the offence of unlicensed tree felling was:

plainly on the 'quasi-criminal' and not the 'truly criminal' side of the line. . . . The offence involves only a monetary penalty and carries no real social disgrace or infamy and no moral stigma or obloquy. It is a classic regulatory offence designed not . . . to protect segments of the public such as employees, common consumers and motorists, but to protect the nation's trees . . . comparatively little weight should be attached to the presumption that mens rea is required before a person can be held guilty of a criminal offence and that the presumption is displaced here because it was clearly or by necessary implication the intention of the statute. The statute is concerned with an issue of public concern, namely the preservation of the country's natural heritage and, to my mind the creation of strict liability is likely to promote these objects.

Felling controls are based on commercial factors, rather than on amenity factors. But the Forestry Commission is under a duty to endeavour to achieve a balance between the management of forests, and the conservation of landscape and nature (Forestry Act 1967, s. 1(3A), inserted by the Wildlife and Countryside (Amendment) Act 1985, s. 4). A felling licence is not required for fruit trees, trees in gardens, orchards, churchyards, or public open space, topping or lopping of trees, operations under a forestry dedication scheme, thinning trees less than 10cm in diameter, or harvesting less than 5 cubic metres of timber per quarter. Nor is a licence required if felling is immediately required for development authorized under the town and country planning system, or if the felling is necessary for preventing danger or preventing or abating a nuisance. The onus is on the defendant to prove that he or she can rely on one of these exceptions. Because, for example, the defendant is best placed to say what the diameter of a tree was and the licensing system would otherwise be unworkable, this onus is not incompatible with human rights law (see *Grundy*, Case 20.7).

To avoid duplication of effort, if a felling licence is required and there is a TPO in force, the following procedure applies. The application goes to the Forestry Commission, which has three choices:

- it may refer the matter to the local planning authority, in which case, the TPO legislation applies;
- it may refuse the licence, in which case it will pay compensation under the Forestry Act 1967;
- it may grant a licence.

A felling licence is the equivalent of a TPO consent, but, before the Commission grants a licence, it must consult with the local planning authority. If the authority objects to a proposed grant of a licence, the matter is referred to the Secretary of State for decision. If a licence is granted, there is an obligation, as noted above, to restock the land, unless the Commission waives it.

Consultation on felling and afforestation

There are no formal requirements for the Forestry Commission (or, in the case of the Farm Woodland Premium Scheme, DEFRA) to consult on applications for felling licences or grant applications. It is, however, Forestry Commission policy to consult local authorities, and bodies such as Natural England, about grant applications and all applications for new planting are placed on a public register. In both cases, there is an appeal—ultimately, to the Minister.

Community forests and the National Forest

There is a 'Community Forests' programme run as a joint venture between Natural England and the Forestry Commission, together with local authorities. The aim is to promote the creation, regeneration, and multipurpose use of well-wooded landscapes around major towns and cities. Community forests are non-statutory designations, and their establishment is facilitated in part through planning policy guidance under which development plans should play a facilitative role and provide that any development proposals within them respect the woodland setting. Their establishment therefore relies heavily on the exercise of private rights by the Forestry Commission.

Consumer information and certification schemes

One consequence to emerge from the Forest Principles and from Agenda 21, both agreed at the 1992 Rio Earth Summit (see Ch. 3), was the emergence of forest management certification and eco-labelling as a preferred policy approach both of producers and of wider civil society (such as environmental NGOs). At national level, we have the UK Woodland Assurance Scheme,[31] which aims to assure purchasers of wood products in the scheme that the timber has come from sustainably managed sources. The voluntary scheme is notable for being a partnership between the public and private sectors, and environmental organizations, and operates through a combination of auditing of producers by a certification body and subsequent use of an eco-label, though notably UKWAS is not a product certification per se. There are linkages with Forest Stewardship Council certification, see www.ukwas.org.uk.

Hedgerows

There was an enormous loss of hedgerows between 1945 and 1990, mainly as a result of agricultural intensification. Hedges have never had the same protection as trees, however, because the definition of a 'tree' means that the TPO legislation does not apply to hedges (although it is capable of applying to trees in hedgerows). Numerous promises were made in relation to hedgerow protection until, finally, the Environment Act 1995, s. 97, made provision for the protection of special categories of hedgerows (but

[31] And now also the Forest Stewardship Council (FSC) UK Standard.

only in England and Wales). Under this section, the Secretary of State has the power to make regulations prohibiting the removal, damage, or destruction of 'important hedgerows'. The Hedgerows Regulations 1997 generally apply to a wide class of hedgerows (in particular, to hedgerows that are 20 metres or more long, or which meet another hedgerow at each end and which, in each case, are on, or adjacent to, land used for certain specified purposes). Domestic hedgerows are excluded.

The protection is basic, to say the least. An owner (or, in certain cases, a relevant utility operator) must notify the local planning authority before removing any hedgerow, or stretch of hedgerow. The local planning authority has 42 days in which to serve a retention notice, failing which, consent is deemed to have been given. Consent can only be refused if the hedgerow is important. The 'unimportant' hedgerows can be removed after that period. To qualify as an important hedgerow, the hedge must be not less than 30 years old and must comply with certain detailed criteria laid down within the Regulations, relating to such matters as the number and type of species contained in the hedgerow. Thus, the range of hedgerows that can actually be protected is relatively narrow.

The accompanying guidance emphasizes cooperation with farmers rather than confrontation, thus continuing the tradition of voluntariness found in other areas pre-CROWA 2000. In cases in which an offence is committed, however, fines can be imposed on defaulters (as with TPOs, the courts are directed to take account of any financial benefit accruing from the removal) and the courts can also order replanting.

CASE 21.8 *Conwy County Borough Council v. Lloyd* [2003] Env LR 264

A landowner served a removal notice on the local authority, but, before the 42-day period expired, he removed the whole hedgerow. He was prosecuted, but successfully argued that what he had done was permitted under the Regulations as being for the 'proper management of the hedgerow' (reg. 6(1)(j)), because it was claimed the hedge was at risk of collapse and dangerous to livestock and machinery. On appeal, the local authority argued that proper management could not mean the removal of the whole hedgerow, particularly a hedgerow of some 100 metres' length. But the Court held that the '*very structure of the Regulations themselves . . . contemplate the possibility of removal without notice*'. Whether removal constituted 'proper management' was a question of fact.

While this approach may be correct in law, the danger is that unscrupulous landowners may be encouraged to remove a hedgerow—on 'proper management' grounds—in order to make it harder for the local authority to determine whether the hedge was important. The position is not helped by the absence of any requirement to replant hedges that have been removed for management reasons (a requirement that would seem to be justified in cases such as this, in which it is the *condition* of the hedge that was the alleged problem).

The Hedgerow Regulations have been criticized for placing too much emphasis on the need for objectively verifiable indicators of importance and thus restricting their ambit to a small category of

hedges (around 20 per cent) of historic importance. For Holder,[32] this is a consequence of seeing the importance of hedgerows as '*little more than the sum of their parts*', rather than trying to give weight to matters of cultural and local importance. This is also evidenced in the absence of public consultation built into the Regulations. A government review of the Hedgerow Regulations in 1998 placed priority on consistency and commercial certainty, over giving greater powers to local authorities to determine locally important factors. Nowadays, neglect is as much a threat to hedgerows as uprooting—this is not covered in the Regulations, but is addressed through agri-environmental payments. Other legislation will affect things like the timing of when work on a hedge can be done, for example so as not to disturb bird nesting sites (see Wildlife and Countryside Act 1981, Part 1, discussed in Ch 19).

In the absence of control under the Regulations, other legal remedies may be possible. These include individual enforcement of the provisions of enclosure Acts, such as in *Seymour v. Flamborough Parish Council*, The Times, 3 January 1997, in which Cracknell J ordered the council to preserve what was an '*undistinguished, badly maintained, straggly and unkempt*' hawthorn hedge, because it was still bound by the Flamborough Enclosure Act 1765, which required the parish council to maintain the hedge forever. This case nicely illustrates that, even in an era of modern public regulation, the environmental Lawyer may find winning arguments in unusual places.

CHAPTER SUMMARY

1 Landscape management ranges from the protection of wide areas of land for their scenic value, down to much smaller objects such as trees and hedgerows.

2 The challenge for the law is that this often involves controlling destructive, rather than constructive, acts and establishing adequate control over natural things. What is a valued landscape, tree, etc. is a subjective judgement.

3 Protecting the most prized areas for their landscape value involves land designations, but, on designated land, the controls applied involve either slightly stronger planning laws than would normally apply or the use of positive assistance.

4 Prized landscapes do not have the same kind or degree of legal protection that important habitats enjoy. They remain working environments, rather than wildlife havens, and are not immune from development. Whether planning permission is granted often depends on how quite unspecific planning policy guidance is interpreted by decision-makers.

5 Increasingly, as noted in Chapter 19, nature conservation and landscape management goals are pursued together—for example, through management planning or financial incentives, but also institutionally. Economic rather than traditionally legal tools are generally preferred.

6 Local authorities can require tree planting when planning permission is granted, but otherwise town and country planning law does not generally cover tree planting and felling.

[32] [1999] MLR 100.

7 The main exception to this is when a local planning authority makes a tree preservation order (TPO). These can protect from destruction anything from an individual tree to an area of woodland, and require replacement trees to be planted.
8 Commercial afforestation is generally steered by the use of grants, which now encourage the planting of native trees, and with much greater emphasis on landscape and conservation.
9 Commercial tree felling must be done under licence.
10 Local authorities can conserve important hedgerows by serving retention notices, but this power is quite limited in scope.

QUESTIONS

1 Sam and Tina flee the rat race and buy a small farm in a national park. They aim to farm the land as an experiment in sustainable agriculture. This will involve reroofing their house with photovoltaic cells and setting up a mini 'Eden Project' in a natural dip in the land. To help them to pay the bills, they intend to allow paying visitors into the 'glasshouses' (which are in fact made of plastic). Some local residents are concerned about the impact of the project, including the loss of a stand of trees and a section of hedgerow if the development goes ahead. Advise the local authority.
2 Refer back to Chapter 19. How do the legal controls on landscape differ from those that are used to conserve nature? Think about the following.
    i) Any different policy issues
    ii) The legal force of their respective objectives
    iii) The tools used to achieve these objectives

    Does the level of protection for landscape and landscape features seem adequate?
3 The author (and president of the Campaign to Protect Rural England) Bill Bryson has asked (slightly rhetorically), '*Why you don't make the whole of England a National Park?*' How would you answer this question?
4 Look at R (Dillner) v Sheffield City Council [2016] EWHC 945 (Admin), a challenge by local residents to a policy of cutting roadside trees. Do you agree that the case was 'unarguable'? And that the duties under the Highway Act 1980 required the work to be undertaken and trumped other arguments? Given the scale of tree cutting, do you think this should have been classified as deforestation, for example for the purposes of the EIA Regulations? Would a case like this be considered differently if the trees were themselves said to have 'rights'?

FURTHER READING

Greater detail than we can provide here can be found in B. Jones, J. Palmer, and A. Sydenham (2004) *Countryside Law*, 4th edn, Crayford: Shaw and Sons, J. Rowan-Robinson and D. McKenzie Skene (eds) (2000) *Countryside Law in Scotland*, Edinburgh: T and T Clark, though both are now somewhat out of

date. In relation to the latter sections of this chapter a very up to date and comprehensive work is C. Mynors (2011) *The Law of Trees, Forests and Hedgerows*, 2nd ed., London: Sweet and Maxwell. To bring this up to the 2012 TPO Regulations, supplement this with Department of Communities and Local Government (2012) *Protected trees: A Guide to Tree Preservation Procedures, at* https://www.gov.uk/government/publications/tree-preservation-procedures-guidance.
Many books on planning law include a brief chapter on tree preservation. A useful 2017 Parliamentary report into the current state of forestry in England is at https://www.publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/619/61902.htm

C. Willmore, 'What's in a name? The role of "national park" designation' [2002] JPL 1325 looks at whether national parks really live up to expectations about their level of protection, while F. Cheever, 'British national parks for North Americans' (2007) 26 Stan Envtl LJ 247 asks what the USA (where national parks have wilderness connotations) can learn from the UK experience. J. Holder, 'Law and landscape: the legal construction and protection of hedgerows' [1999] MLR 100 considers the Hedgerows Regulations 1997 against a backdrop of reflections on legal constructions of landscape. C. Rodgers, 'Environmental impact assessment: mapping the interface between agriculture, development and the natural environment?' (2011) Env L Rev 85 considers not just EIA but also the *Hall Hunter* polytunnel case.On policy questions, M. Shoard (1980) *The Theft of the Countryside*, London: Temple Smith, puts the case for extending planning controls to agriculture and forestry, while G. Harvey (1997) *The Killing of the Countryside*, London: Jonathan Cape, focuses on the negative effects of the Common Agricultural Policy (CAP). A more optimistic version of conservation (and landscape amenity) in the wider countryside is B. Green (1996) *Countryside Conservation*, London: E. and F. N. Spon, which examines the range of policy options in this area—in particular, whether to make agriculture generally less extensive, or to allow further intensification on the best farmland, and use the remaining land primarily for its amenity and conservation value.

Beyond the legal literature, we must mention some outstanding works that give a rounded appreciation of nature and landscape, especially Oliver Rackham's superlative works (2000) *The History of the Countryside*, London: Orion, and (1996) *Trees and Woodlands in the British Landscape*, Abingdon: Routledge, and K. Thomas (1984) *Man and the Natural World*, London: Penguin. More recently, the role that values and perceptions play in our understanding of the countryside, and the conflicts that arise, has been the subject of two outstanding and engaging works: T. Smout (2000) *Nature Contested*, Edinburgh: Edinburgh University Press, and P. Macnaghten and J. Urry (1998) *Contested Natures*, London: Sage.

WEB LINKS

An excellent general starting point for web research is **www.naturenet.net**, which has comprehensive links to numerous official (and unofficial) sites, as well as brief information about countryside law. In terms of official policy and information, the main starting points are the national countryside agencies—

Natural England (**www.naturalengland.org.uk**), Natural Resources Wales (**www.naturalresourceswales.gov.uk**), and Scottish Natural Heritage (**www.snh.org.uk**)—and central government: **www.defra.gov.uk**; **www.scotland.gov.uk**; **www.wales.gov.uk.** The websites of the national agencies usually contain reports to government on the state of the countryside. The Association of National Parks at **www.nationalparks.gov.uk** and the National Association of Areas of Outstanding Natural Beauty (AONBs) at **www.aonb.org.uk** provide helpful information about these areas. For forestry issues, start with the Forestry Commission at **www.forestry.gov.uk**