



Working for the best possible National Park

PO Box 3473
Brighton
BN1 7FZ

Tel: 01273 563358

Fax: 01273 553044

Email: southdowns@zoom.co.uk

Website: www.southdownscampaign.org.uk

Department for Environment, Food and Rural Affairs
Sponsorship, Landscape & Recreation Branch (National Parks)
Zone 1/03 Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6EB

24 September, 2007

Dear Madam / Sir,

Proposed South Downs National Park

The South Downs Campaign (SDC), a growing network of over 110 local, regional and national organisations, welcomes the opportunity to respond to the further public consultation on the South Downs National Park (Designation) Order 2002 (as varied by the South Downs National Park Designation (Variation) Order 2004). This submission should be read in conjunction with the attached copy of the SDC's letter to the Secretary of State.

Overall, the SDC warmly welcomes the recommendation that the South Downs National Park should be confirmed. However, the SDC is deeply opposed to the Inspector's recommendation to exclude the western Weald and objects also to some of his other recommended deletions. In these instances the SDC strongly supports the Designation Order boundary instead.

While the SDC sets out below comments on each of the four areas on which Defra has invited comments, the SDC is seriously concerned about the narrow scope of this consultation. Furthermore, the SDC is perturbed that a number of the Inspector's recommendations in relation to boundary issues are:

- based on evidence which was not presented to the inquiry and has not, therefore been subject to rigorous public examination;
- based on a misapplication of the statutory designation criteria;
- based on a misapplication of the boundary setting criteria;
- in some other way flawed fundamentally, for example, some deletions are recommended without any reasons or justification having been given by the Inspector.

The South Downs Campaign is a network of over 110 organisations including: **National** - Council for National Parks, Campaign to Protect Rural England (CPRE), Friends of the Earth (FOE), John Muir Trust, Open Spaces Society, Ramblers' Association, Royal Society for the Protection of Birds (RSPB), The Wildlife Trusts, WWF-UK, Youth Hostels Association (YHA); **Regional/County** – Butterfly Conservation - Sussex Branch, Council for British Archaeology - South East, CPRE Hampshire, CPRE Surrey, CPRE Sussex, CTC South East, FOE Hampshire & Isle of Wight Network, FOE South East, Hampshire & Isle of Wight Wildlife Trust, Hampshire Conservation Volunteers, LDWA Wessex, Ramblers' Association Hampshire, Ramblers' Association Sussex, South Downs Society, Sussex Amphibian & Reptile Society, Sussex Archaeological Society, Sussex Wildlife Trust, Sustrans South East, YHA South Region, plus over 80 local organisations including a number of Parish & Town Councils.

The SDC therefore wishes to register its gravest concern and to request that no final decision should be taken on the national park boundary without rigorous examination in public of the relevant issues which have been raised by the Inspector's report and, in particular, of the possible alternative boundary between Petersfield and Pulborough.

The SDC also wishes to register its grave disquiet that the Inspector recommends that, should his recommendations on the western Weald not be accepted, he wishes to see the A3 corridor excluded nonetheless. No eastern boundary for this 'corridor' has been provided for public consultation. In the event that Ministers should be minded to accept this supplementary recommendation of the Inspector, the SDC expects that a further consultation will take place on such a boundary since the Inspector's indicative line is unsound.

Finally, the SDC would like to register its concern about the Inspector's presentation of the 'In Principle' support for the national park in his report. A significant number of individuals and organisations who supported the concept of a national park, both in their representations and at the inquiry, appear to be missing from the list. Not least, the South Downs Campaign and many of its supporting organisations are not listed which is surprising given their acknowledgement elsewhere in the Inspector's report. The SDC also notes that Brighton & Hove City Council, which has strongly supported the concept of a national park since its inception, is also omitted. While the number of supporters for a national park does not form part of the statutory criteria, public support and opposition was used in part by the Inspector to add weight to his case for a 'chalk only' national park.

New evidence

The SDC believes that significant new evidence, which either supersedes the evidence on which the Inspector based his recommendations, or expands on that available to him, has come to light since the close of the public inquiry. This is relevant to the line of the final boundary and should be considered before any decision on the boundary is taken.

For example, the consultants employed by Natural England to devise the possible alternative boundary between Petersfield and Pulborough have considered documents such as the South Downs Integrated Character Assessment (2005) and CPRE's tranquillity maps of 2006. The SDC believes that these are both material to the application of the designation criteria and would wish to draw on them in its evidence to an examination in public.

A further example is the publication since the end of the inquiry of English Heritage Historic Character Assessments for certain settlements in Sussex. Together with the implications of the NERC Act this warrants further consideration with regard to the proposed decision to exclude settlements such as Lewes and Ditchling.

Further research and analysis of the strength of public support for the South Downs National Park and for its Designation Order boundary has also been carried out since the close of the inquiry and is a pertinent consideration given the Inspector's comments on this. The SDC would like the opportunity to submit this to any examination in public.

The SDC's replies to the four questions posed by Defra

i) any implications for the Designation Order (as varied by the Variation Order) arising directly as a result of revised National Parks legislation – amendments to the National Parks and Access to the Countryside Act 1949 made by the Natural Environment and Rural Communities (NERC) Act 2006, sections 59 and 99

The SDC notes the statement from Natural England regarding the impacts of the Meyrick case and the relevant provisions contained in the Natural Environment and Rural Communities (NERC) Act 2006 on the South Downs National Park designation process. The SDC generally supports this statement and notes in particular its conclusions that the effect of the developments in the law is neutral on the case for designating the South Downs National Park and the South Downs National Park Designation Order, and that Natural England's prior decisions on the boundary are consistent with the legal framework as now understood. This is particularly pertinent for the Inspector's recommendation to exclude the western Weald and the larger settlements.

The SDC notes that during the passage of the NERC Bill through Parliament MPs and Peers had every opportunity to restrict the designation of national parks to a landscape of a particular character but they did not choose to do so. Therefore the reliance by the Inspector and his Landscape Assessor on a test of 'characteristic natural beauty' to constrain the South Downs National Park to the chalk downland is clearly wrong in law.

The SDC believes that the Inspector and the Landscape Assessor have wrongly interpreted 'relative wildness' in relation to the western Weald. Their arguments are broadly similar to the arguments on 'relative naturalness' used by Judge Sullivan in his Meyrick judgment. However, since the enactment of the NERC Act 2006 and its clarification of the qualities of 'natural beauty' it is clear that the recommendation to exclude the western Weald needs now to be reviewed and re-examined.

During debates on the NERC Bill the Minister (Lord Bach) made it clear that an AONB and a national park are judged under the same rules for natural beauty, which further undermines the interpretation of 'relative wildness' as used by the Inspector and Landscape Assessor.

One of the main issues that the NERC Act 2006 addressed is the scope of 'natural beauty'. The Act clearly gives Natural England the power to include factors such as 'wildlife' and 'cultural heritage' in its assessment of natural beauty, something that was ruled wrong in law by the Meyrick judgement. The SDC is concerned that this clarification of the legislation and understanding of the scope of 'natural beauty' has not been incorporated into the Inspector's reasoning or his conclusions. This is particularly pertinent to the exclusion of the settlements, especially Ditchling and Lewes, and also the western Weald.

As the inquiry pre-dates the clarification which the NERC Act now provides, and the Inspector's report was submitted only two days after the NERC Act passed its final reading in the House of Commons, it is essential that the Inspector's conclusions be examined in public in respect of landscape character, the natural beauty of the western Weald and the exclusion of the larger settlements.

(ii) any implications for the Designation Order (as varied by the Variation Order) arising directly as a result of the High Court and Court Of Appeal Judgments on the challenge by *Meyrick Estate Management Ltd* relating to the New Forest National Park

The SDC's response on (ii) is largely the same as for (i) above.

However, the Meyrick Court of Appeal Judgment has implications for the Inspector's report and for any subsequent Ministerial decision in that an assertion in the New Forest Inspector's report, with little or no evidence to substantiate it, formed part of the reasons for the original High Court Judgment being upheld. This has implications for the western Weald but also for a number of smaller deletions in other areas where the Inspector has given few or no reasons or justification for his recommendations. These areas must be re-examined in public before any decision is taken on them. Further, more detailed, comments on some of the Inspector's recommended deletions can be found in Annex A.

(iii) the possible alternative boundary from north of Petersfield running east across to Pulborough

The SDC objects strongly to the possible alternative boundary and considers that it is unsound. The following represents some of the SDC's reasons:

- a) The possible alternative boundary is based on the Landscape Assessor's report which, in the SDC's view, is: inconsistent with the Inspector's reasoning in relation to the chalk landscapes; inconsistent with other evidence; factually incorrect in relation to matters which are highly significant to its conclusions; speculative, and partial in relation to the statutory criteria and other matters;
- b) It places undue emphasis on the Inspector's and Landscape Assessor's interpretation of the boundary considerations rather than on the Countryside Agency's Approach to Defining National Park Boundaries;
- c) It takes account of transient or seasonal influences on the landscape;
- d) It is inconsistent with the approach to boundary setting that was adopted by the Countryside Agency when drawing up the Designation Order; for example, in a significant number of places the alternative boundary is difficult, if not impossible, to follow on the ground and it also splits settlements;
- e) It seems to have been drawn up as a result of greater weight having been placed on the Landscape Assessor's report than on the Inspector's findings, even when these are in clear conflict.

The SDC is also concerned at some of the reasoning which the Inspector and the Landscape Assessor have relied upon to justify the exclusion of the western Weald. Its concerns on this matter are included in this submission; there is a legitimate expectation that there will be an opportunity for these to be examined rigorously in public.

The SDC's main concerns are as follows

- ***Unfounded reliance on a characteristic landscape type***

When debating the NERC Bill and national park designation criteria, Parliament did not limit national park designation to landscapes of a single character type. The

emphasis on the need for a characteristic landscape type also ignores the actual landscape make up of a significant number of the national parks in England and Wales, which contain landscapes of different character. It also appears to be based on a misunderstanding of historical precedence. Character in itself is not a defining feature of whether or not an area of land is of sufficient natural beauty to merit designation. The SDC believes the Inspector's report to be fundamentally flawed on this point. There is need for further examination of this point and, if necessary, it merits intervention by the Secretary of State so that the composition of the existing national parks is not threatened and so that current and future boundary reviews are not hamstrung by the Inspector's flawed arguments;

- ***Instances where it is claimed that a deterioration in landscape quality means the area does not meet the first designation criterion.***

For example, no supporting evidence is provided in respect of the statement in the Landscape Assessor's report that it is likely that the landscape quality of the 'Sandy Arable Farmland' character type has deteriorated significantly in the 38 years (at the time of the inquiry) since confirmation of the Sussex Downs AONB.

- ***Instances where it is claimed that the area does not deliver a markedly superior recreational experience and does not meet the second designation criterion.***

For example, the statement in the Landscape Assessor's report that north of Petersfield most of the crossings of the A3 are not well integrated with the footpath network when evidence demonstrates that in fact there has been no practical change to the footpath network as a result of the construction of the A3;

- ***Instances where the statutory criteria have been inconsistently applied.***

For example, the approach on the impact of trunk roads when they are on Chalk landscapes as opposed to Wealden landscapes;

- ***Instances where high quality landscapes have been excluded because they are alleged to be separated from the recommended boundary by land of lower quality***

For example, the River Rother and its environs.

In conclusion, both the reasoning and the evidence behind the need for the possible alternative boundary and the logic of the alternative boundary itself are fundamentally flawed. The SDC would urge the Secretary of State to reject them out of hand and to confirm the Designation Order boundary in the western Weald area.

(iv) possible additional areas recommended for inclusion within the proposed South Downs National Park

The SDC strongly supports the Inspector's recommended additions and urges the Ministers to include them all within the South Downs National Park. The SDC believes that all of these recommended areas meet the statutory criteria and therefore should be included. The SDC offers only one clarification to its support and that is with regard to Tide Mills, where the Inspector has inadvertently included land that is allocated for development on the western side of this area. This is contrary to the criteria laid out by Natural England for boundary setting. The SDC in this instance would support a slightly redrawn boundary on this western fringe.

At this stage the SDC does not wish to make further representations on every single area that the Inspector has recommended for inclusion as it has already commented in some detail on many of these areas during the public inquiry. In the first instance, if further information is required, the SDC would direct Ministers to the proofs of evidence and written representations that were submitted by the SDC during the inquiry. However, the SDC would also reserve the right to submit further evidence for any, or all, of these areas at any future hearings or examination in public, particularly in light of any representations that might be made by other interested parties.

Comments on specific areas:

Addition 11 – Wilmington Green

The SDC supports the inspector's recommendation that this area be included as it clearly meets the natural beauty criterion, being of similar quality to land already inside the national park. With two footpaths crossing this additional area, plus a quiet lane and a road used as a public path on its western boundary, there are plenty of opportunities for quiet, informal recreation. When this is combined with the natural beauty of the area, and the strong sense of place provided by views of the iconic Long Man of Wilmington, it is clear that this area meets the second criterion and provides a markedly superior recreational experience.

Consequently, the SDC disagrees strongly with the claims of East Sussex County Council and other local authorities that this area does not meet the designation criteria. The County Council's and other local authorities' objections seem to be based on non-statutory grounds.

Omitting this area would also split the settlement of Wilmington which would be against Natural England's boundary setting criteria.

Deleted areas

A number of the areas proposed for deletion should be re-considered by the Inspector in light of new evidence and the legal context introduced by the NERC Act 2006, particularly with reference to the fact that 'wildlife' and 'cultural heritage' are components of 'natural beauty'. Some of the SDC's constituent members will be bringing forward evidence on some of these deleted areas but in particular the SDC would highlight Lewes, Ditchling and the land to the north of the B3004 in East Hampshire as being most in need of urgent review.

The SDC is far from convinced that none of the settlements and their surrounding areas, which are recommended for deletion, fulfilled the designation criteria. Despite the Inspector's acknowledgement that the size of a settlement was not the determining factor as to whether it should be included or excluded¹ it is none the less significant that he has removed all the larger settlements and thus, in his view, reduced the planning load on a national park authority. The latter point is not a material consideration since it does not form part of the statutory criteria for designation yet, despite this, it appears to have influenced the Inspector's conclusions.

More detailed comments on specific deletions are contained in Annex A.

¹ Paragraphs 3.2 & 3.4, Pages 39 & 40, Inspector's Report Volume 1 (Part II Report: Boundary Report)

Please contact me should you require clarification of any of the above or any further information. The SDC looks forward to the opportunity to expand on the above points through the presentation of evidence at an examination in public.

Yours sincerely

Robin Crane
Chairman

Enclosed: SDC letter to the Rt Hon Hilary Benn MP, Secretary of State for Environment, Food and Rural Affairs, dated 24 September, 2007

Annex A

Comments on Specific Deletions

Land north of the B3004 (Selborne Outlier), to Bentley Station (Hants) (Deletion 1)

It would appear that one of the main reasons that the inspector used for the deletion of this area was its remoteness from the core South Downs, though it represents the continuation and completion of the chain of Hampshire Hangers. The SDC questions the Inspector's reasoning and also has new evidence that is pertinent to the designation criteria.

Since the public inquiry finished, the South Downs Integrated Landscape Character Assessment was published in 2006. This documents the designated area north of the B3004 as containing five Sites of Special Scientific Interest (SSSIs) and no fewer than thirty three Sites of Importance for Nature Conservation (SINCs). It also documents hamlets and isolated farmsteads of medieval origin in the area including the presence of a Roman settlement. This is potentially new evidence not previously considered.

Land at Coldwaltham (Deletion 4)

This deletion should be considered in conjunction with the western Weald to which it is strongly related. The SDC is not convinced of the case for the deletion of this area; if the western Weald is retained within the South Downs National Park it would make sense to include this area as well.

Windmill Hill (Smaller part of Deletion 5 – separate to main deletion)

It is not clear why Windmill Hill and land to the north-east, which lies within the Designation Order boundary to the east and north-east of Upper Beeding, has been deleted as part of Deletion 5. The area is almost entirely within the Sussex Downs AONB, unlike the main block of Deletion 5, and it is not insignificant in its size covering an area approximately some 0.5 square kilometres. No reasons for excluding this land have been -provided by the Inspector.

The SDC would urge Ministers to retain this separate portion of Deletion 5 in the South Downs National Park, even if he is minded to agree with the Inspector to remove Steyning and land north of the A283.

Ditchling (Deletion 7)

The SDC objects to the deletion of Ditchling and its surrounding landscape which it feels meets the designation criteria. Indeed the Inspector states that he is "*in no doubt that it warrants inclusion in the PSDNP so long as the land to the north of it satisfies the designation criteria*"². However, the Inspector's rationale for the removal of Ditchling is not consistent with the approach taken elsewhere on the boundary, nor in other national parks where settlements of a similar, or even larger, size than Ditchling have been included within the boundary of the park. While the Inspector is correct to state that settlements are only

² Paragraph 7.318, Page 138, Inspector's Report Volume 1 (Part II Report: Boundary Report)

included if they sit within a tract of landscape that satisfies the designation criteria, a settlement can sit within a tract close to or at the edge of that tract.

In his justification for excluding Ditchling, the Inspector has focussed on the land to the north of Ditchling being of lower quality. That may be true in places, although the SDC is not convinced that this means that it doesn't meet the designation criteria. However, the Inspector makes no mention of the land to the west of Ditchling, particularly around Lodge Hill, which the SDC believes clearly meets the natural beauty criteria and forms part of the sweep of high quality landscape that includes Ditchling. This is an area that the SDC believes warrants inclusion in the South Downs National Park, even if Ditchling is eventually ruled out. However, no reason was been given by the Inspector for its recommended deletion.

The SDC believes that this is an instance where the clarification of the legislation in the NERC Act in relation to cultural heritage, along with the provision of new evidence for the area, the inconsistent approach to the inclusion of other villages close to the boundary and the failure to justify the exclusion of Lodge Hill and the land to the west of Ditchling, are pertinent reasons to re-examine this recommended deletion at an examination in public.

Lewes (Deletion 9)

The SDC objects to the exclusion of Lewes which is enclosed within an extensive tract of countryside which meets the statutory designation criteria. The SDC believes that there are strong grounds for re-examining the deletion of Lewes and land to the north in the Ouse Valley on the following grounds:

- The clarification of the scope of natural beauty in the NERC Act 2006 to allow the consideration of wildlife and cultural heritage;
- New evidence on the cultural importance and qualities of Lewes;
- The Inspector's recommended boundary contravenes Natural England's boundary setting criteria by splitting settlements and by excluding features of national importance close to the boundary;
- The Inspector appears to have been unduly influenced by non-statutory issues such as planning which do not form part of the designation criteria.

The SDC is concerned that the Inspector has underestimated the natural beauty of the Ouse valley, which is very close to the Chalk Hills and borrows heavily from that landscape. The Inspector's boundary also excludes the chalk outlier at Hamsey Church and Offham Marshes which are designated a Site of Special Scientific Interest (SSSI). There are also a number of important cultural features within and around the valley. The SDC would like the opportunity to present new evidence on all of these points.

In seeking to delete Lewes, the Inspector has overlooked the boundary setting criteria of not splitting settlements by recommending that half of the settlement of Offham should be deleted. The hamlet lies wholly within the AONB and it has not significantly changed in the past 40 years. The current AONB boundary follows the railway line at this point and the SDC believes that even if the Ministers ultimately decide to exclude Lewes they should review the Inspector's recommended boundary which splits the settlement of Offham and excludes a number of other nationally important features close by.

Land at Chyngton Way (Deletion 10)

The SDC is unconvinced by the Inspector's reasoning for deleting this piece of land, which he mistakenly describes as 'an area of transition'. This was a definition specific to certain areas around the boundary but not to this one. The SDC believes that the Designation Order boundary should stand here.

Land to the rear of Bishopstone Drive / Falmer Avenue, Saltdean (Deletion 13)

The SDC supports Brighton & Hove City Council in its objection to the deletion of this piece of land. There appear to be no reasons given by the Inspector as to why this land should be deleted.

Arundel (Deletion 17)

The SDC believes that the Inspector has incorrectly applied the designation criteria here and split the settlement of Arundel. The proposed boundary includes the Arundel Castle Estate, but excludes Arundel Cathedral which is only 20 metres away from that Estates' boundary and is on the same chalk escarpment, as is the majority of the township in that area. The SDC firmly believes that Arundel should be included in the national park and that the NERC Act provisions in relation to cultural heritage are pertinent to the case.