

CABINET

17 July 2007

THE PROPOSED SOUTH DOWNS NATIONAL PARK; THE INQUIRY INSPECTOR'S
REPORT

REPORT OF THE HEAD OF STRATEGIC PLANNING

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RECENT REFERENCES:

CAB1325 – The South Downs Management Plan – Consultation Draft – 11 October 2006
CAB1355 - The South Downs Management Plan - Consultation Draft (Updated Report) – 15
November 2006

EXECUTIVE SUMMARY:

Following a Public Inquiry into the proposed designation of a South Downs National Park, which lasted for some fifteen months, the Inquiry Inspector's report and recommendations to the Secretary of State have now been made public. With regard to limited aspects of the report, as well as related legislative and judicial events which have occurred in tandem with the National Park's designation process there is, currently, a six-week public consultation period in progress. This is intended to give an opportunity for local authorities and all other interested parties to make further representations on certain matters which have arisen since the Inquiry closed.

This report focuses on the main conclusions of the Inspector's report and those boundary-setting aspects which have a direct effect on the District. The report goes on to recommend that, in regard to one particular boundary change which has been endorsed by the Inspector, the City Council has not previously had any opportunity to argue against this particular alteration. It is, consequently, recommended that the Council should make use of the current consultation phase to press for an adequate opportunity to demonstrate its opposition.

RECOMMENDATIONS:

- 1 That Cabinet thanks the Department for Environment, Food and Rural Affairs (DEFRA) for the opportunity to comment on certain aspects of the South Downs National Park Inquiry Inspector's report together with other, directly related, judicial and legislative matters.
- 2 That Cabinet notifies DEFRA of the City Council's concern at the recommended Park boundary alteration at Pondside Lane, Bishops Waltham, in regard to which the Council has been given no previous opportunity to submit an objection.
- 3 That Cabinet requests, therefore, that DEFRA should take any necessary steps to provide the Council with an equitable and appropriate opportunity to present its case, in opposition to this proposed deletion.

CABINET17 July 2007THE PROPOSED SOUTH DOWNS NATIONAL PARK: THE INQUIRY INSPECTOR'S REPORTREPORT OF THE HEAD OF STRATEGIC PLANNINGDETAIL:

- 1.0 Introduction and background to the Inspector's report
- 1.1 In April 2000, the Countryside Agency began the process of designating a South Downs National Park (SDNP). Statutory consultation with all of the affected local authorities (fifteen, in total, including Winchester) was followed by extensive public consultation.
- 1.2 Primarily, consultation focused on the proposed administrative arrangements under a new National Park Authority and on the proposed boundary for the National Park. As proposed, the Park would extend from Winchester, to the west, as far as Eastbourne in East Sussex. One of the main aims of designation is to bring together, under one administrative and managerial body, this very large tract of chalk downland and associated landscape stretching across eastern Hampshire, West Sussex and East Sussex. The area proposed would be contained within a boundary of over 500 kilometres in length and would extend to cover some 60,000 hectares.
- 1.3 The size, diversity and complex characteristics of this area, compared to most existing National Parks, tend to highlight the many significant differences. Partly for this reason, concerns were raised at that time regarding the comparative benefits of changing the current designation of land in the South Downs chalk landscape that is, for the most part subject to 'Area of Outstanding Natural Beauty' status, to a National Park administered by a single authority guided, to an extent, by different land use and spatial objectives.
- 1.4 However, following the consultation process, during which a good deal of support for a National Park had also been expressed by both individuals and organisations, the Countryside Agency, in November 2002, resolved to make a Designation Order. The Order was formalised in December of that year.
- 1.5 Resulting from the Designation Order's publication, a number of formal objections were made, including those of the City Council and certain other local authorities affected by the proposal. As a result, the Secretary of State determined that a Public Inquiry should be held in order to examine, before an Inspector, evidence both for and against these objections.
- 1.6 The Public Inquiry into objections opened in November 2003 and was later closed in February 2005. The Inspector's Report of the Inquiry proceedings, together with his

recommendations, was subsequently sent to the Secretary of State of the Department of Environment, Food and Rural Affairs (DEFRA). This report, which has only now been made public, will be a key element in the decision by Government whether to confirm, reject or modify the designation of a South Downs National Park.

- 1.7 However, in February 2006, DEFRA advised all those who had been involved in the South Downs Public Inquiry that it would halt the designation process, due to the legal implications arising from a High Court judgement in November 2005, which had resulted from a challenge to the designation of the New Forest National Park.
- 1.8 The High Court found that both the Countryside Agency and the Inspector who conducted the New Forest Public Inquiry had incorrectly interpreted the two key criteria of "natural beauty" and "opportunities for open-air recreation", used in creating all national parks, when they included the Meyrick Estate - a listed building and its surrounding parkland - within the New Forest National Park.
- 1.9 Since the time of that judgement, the Department has introduced two new parts to the Natural Environment and Rural Communities (NERC) Act 2006, in order to clarify future interpretation of these two key criteria in the legislation. Quite separately from this corrective action, the Department was granted leave to appeal to the Court of Appeal in respect of the earlier High Court Judgement. The case was heard in November 2006.
- 1.10 The outcome of the appeal was made known on 1 February 2007. The appeal was dismissed and, after due consideration, the Minister decided not to contest the matter further. Consequently, in order to comply with the previous High Court decision, a small area of land centred on the Meyrick estate was taken out of the New Forest National Park. Perhaps more significantly, however, the judgement also changed the interpretive basis on which the natural beauty and recreational criteria for designating a National Park are to be judged in the future.

2 The resumption of the designation process

- 2.1 On March 16th 2007 the Department for Environment, Food and Rural Affairs announced that work on resolving the matter of the South Downs National Park designation would resume. To assist with progress on this, the Department has now invited further public representations, in response to the publication of the Inspector's report, during a six-week consultation period beginning on July 2nd 2007 and concluding on August 13th.
- 2.2 Copies of the consultation documents and the Inspector's Inquiry Report can be seen on the DEFRA website (www.defra.gov.uk) and at the City Offices, Colebrook Street, Winchester.
- 2.3 There are four main issues which can be commented on:-
 - Any implications of those amendments to the National Parks legislation in the National Parks and Access to the Countryside Act 1949, made by the Natural Environment and Rural Communities (NERC) Act 2006

- Any implications of the High Court and Court of Appeal judgements arising from the challenge by Meyrick Estate Management Ltd in relation to the New Forest National Park
 - A possible alternative Park boundary, for the section between Petersfield and Pulborough, which has been produced by Natural England, at DEFRA's request and is based on a specific recommendation in the Inquiry Inspector's Report
 - Those additional areas of land recommended by the Inspector for inclusion in the National Park. These areas total some 25 sq miles and include land within the authority areas of Arun, Adur, Brighton & Hove, Chichester, Eastbourne, East Hampshire, Horsham, Lewes, Mid Sussex, Wealden, Winchester and Worthing.
- 2.4 In the light of comments and representations received, it will then be for the Minister to decide whether or not to reopen the South Downs public inquiry, in late 2007 at the very earliest. In view of these uncertainties it is not possible to provide a projected date for the creation of a South Downs National Park, or for the establishment of a National Park Authority (NPA). However, if a Ministerial decision to confirm the Park's designation was taken without significant further delay, the most optimistic estimate for the inauguration of a Park Authority would be April 2010.
- 2.5 The four principal issues identified in paragraph 2.3 arise directly, or indirectly, from the Inspector's report and are intended to: define the extent to which further representations can be made; avoid entirely new issues being raised at this stage and; prevent objectors from attempting to revisit arguments previously aired at length at the Inquiry.
- 3 The Inspector's Report Part 1: Issues of Principle and Governance
- 3.1 The Public Inquiry was essentially divided into two distinct phases. In the first part, the Inspector heard a great deal of oral evidence which elaborated on written representations previously submitted on matters 'of principle'. Much of this evidence was submitted by those local authorities, including Winchester, who questioned the overriding need for a National Park designation for the South Downs.
- 3.2 In addition the authorities, together with certain individuals and other representative bodies, argued against what they saw as the practical disadvantages of designation in terms of organisation, financing and democratic representation (not least in regard to planning policy making and development control) when compared to then existing arrangements under the supervision of the East Hampshire AONB Joint Advisory Committee and the Sussex Downs Conservation Board.
- 3.3 The Inspector was, without doubt, presented with a great deal of evidence both for and against the principle of designation and the associated question of the administrative arrangements under a projected Park Authority. Not surprisingly, the Countryside Agency presented a vigorous defence of its application of the statutory National Park 'designation criteria' and, in more general terms, its entire approach towards elevating the status of the South Downs by this means.
- 3.4 Nevertheless, the Inspector's findings on each of these issues can now be viewed by all concerned and can be seen to be forthright and unambiguous. As part of his overall conclusion, the Inspector states that: "I consider that if the statutory criteria

are applied in the light of the Agency's new policy [for assessing opportunities for open-air recreation which can offer a 'markedly superior experience'], the designation of the extensive tract of core chalk downland that extends for over 100 kilometres from Eastbourne to Winchester as a National Park is warranted....In my view there are no overriding in-principle objections to the designation of a new National Park in this part of the country".

- 3.5 The Inspector goes on to give detailed attention to the consequential issues of governance, funding and planning. His first response is to those representations made by Winchester and others calling on the Agency at the first consultation stage and later repeated at the Inquiry, to recognise the potential advantages of continuing with an AONB regime and AONB mechanisms, but under the control of an enhanced statutory conservation board.
- 3.6 The Inspector (who applauded the excellent work carried out by the East Hampshire JAC and the Sussex Downs Conservation Board) nevertheless, concludes "I consider that the conservation and enhancement of the chalk downland and the provision of opportunities for their enjoyment by the public would benefit, if this nationally important landscape was managed by a National Park Authority rather than some other form of management. An NPA could provide integrated planning and management arrangements with additional status, focus and expertise".
- 3.7 Turning to those concerns and doubts expressed with regard to National Park funding, the Inspector states the view that:"I can well understand the concern that [in the absence of any detailed information on likely future funding arrangements] those promoting the designation of a new National Park are inviting a leap into the unknown....In practice I see no easy solution to this dilemma, given the uncertainties over the structure and role of any incoming NPA. In advance of decisions regarding these and other key matters it is simply not possible to know what the funding levels will be. What is apparent, however, is that if the designation order is confirmed it is essential that secure and adequate funding follows, otherwise the entire designation process will be rightly condemned as an expensive and damaging exercise".
- 3.8 With specific regard to planning issues, the Inspector draws several conclusions. "Unlike conservation boards, statutory or otherwise, National Park Authorities have a full range of planning powers. This arrangement was recently reviewed by the Government's National Park Policy Review. The Review concluded, in effect, that a National Park Authority's responsibility for both the preparation of development plans and their implementation via the development control process supported National Park purposes. So far as the chalk downland is concerned, I see no reason to disagree. Indeed, I consider that it represents a major reason why it could be especially desirable to designate the chalk landscapes as a National Park. Having responsibility for forward planning across this nationally important landscape, a task currently shared by no less than fifteen local authorities, together with a unified system for the control of development (whatever its precise details) are means by which a Park Authority could help secure National Park purposes and therefore provide 'added value'".
- 3.9 Regarding the specific issue of development control and the burden which this could impose on a National Park Authority attempting to deal with 4,000+ planning applications, annually, the Inspector finds that: "Without question this would pose a formidable task and I do not doubt that it could easily divert attention and resources from land management and other key issues. I do not find it surprising, therefore, that the Agency itself favours the delegation of at least some of the development

control work to the existing local authorities. The way this might work and other concerns regarding possible changes to the existing planning arrangements are examined in more detail, in the Governance annex of the Part 2 report”.

- 3.10 That annex, which sets out the Inspector’s formal recommendations to the Secretary of State on the different aspects of Park ‘governance’, including National Park Authority membership, is attached to this report as Appendix A.

4 The Inspector’s Report Part 2: The Boundary

- 4.1 In this, the second part of his report, the Inspector comes to further conclusions regarding the great weight of evidence submitted to the Inquiry on more detailed aspects of the Park proposals. In particular, his consideration focuses on each of the numerous changes to the Countryside Agency’s preferred Park boundary, which had been advocated by objectors.
- 4.2 The Inspector’s careful examination of the evidence presented at the Inquiry (where he was assisted by a Landscape Assessor), together with the large number of accompanied and unaccompanied site visits he made throughout the area of the proposed Park, appear to have confirmed and consolidated his view, initially expressed at the ‘in-principle’ stage of the Inquiry, that ‘an especially desirable’ South Downs National Park should be confined to the core chalk downland areas.
- 4.3 By the same token, the Inspector has now concluded that such a Park should not extend to include those Wealden areas and other ‘associated’ landscapes which had formed part of the Countryside Agency’s original proposals.
- 4.4 These conclusions have led the Inspector to make a formal recommendation to Government that the National Park should not significantly extend beyond the natural limit of the chalk downland. To reflect this view, the Inspector has further recommended that a major portion of the proposed northern Park boundary, between Petersfield and Pulborough, should be reassessed and re-drawn, in order to delete those additional Greensand and other Wealden areas originally included in the Designation Order. This particular recommendation represents one of the four topic areas, referred to in paragraph 2.3 of this report, where further comments and representations are now being invited by DEFRA..

5. Local Boundary changes affecting the Winchester District

- 5.1 The City Council made several representations to the second phase of the Inquiry, regarding detailed aspects of the proposed boundary, where this passes through both the northern and southern parts of the District. The Inspector’s subsequent conclusions on these submissions are contained in Part 2 of his report and the relevant extracts from this have been attached to this report, as Appendix B.
- 5.2 Although one or two of the Inspector’s conclusions are disappointing, a considerable success has been achieved in regard to the area of The Moors at Bishops Waltham. Here, the Inspector has been persuaded by submissions from the City Council and the Bishops Waltham Society that this well-used area should be included within the Park, on grounds of both landscape merit and public recreational benefit.
- 5.3 In other instances, most notably at several points around the urban periphery of Winchester, Bishops Waltham and Swanmore, the Inspector was requested to support adjustments to the Countryside Agency’s chosen boundary line, in order to

bring this forward to be contiguous with the settlement 'policy boundary' which has already been defined for planning and development control purposes.

- 5.4 As drawn, the proposed boundary line leaves certain minor areas of land outside the policy boundary and yet not included within the Park area. It was argued by Council officers that this could make these specific areas, beyond the defined built-up area, more vulnerable to future development pressure. However the Inspector, who acknowledged the validity of the Council's argument from a planning point of view, nevertheless concluded that he is required to follow and apply the statutory designation criteria and that in these particular instances, considerations of landscape quality and natural beauty should take precedence.
- 5.5 One further area, at Pondside Lane, Bishops Waltham has, however, produced a conclusion by the Inspector which is particularly disappointing. For more than fifteen years, this land has been designated in the local plan as recreational land, and this status was confirmed by the Local Plan Inspector who held a public inquiry before the adoption of the current Winchester District Local Plan Review. In order to achieve the objective of such designation, (i.e. the permanent provision of recreation facilities on the site) negotiations were held with the landowner with a view to the Parish Council acquiring the land by agreement. Following the failure to agree terms with the landowner, a compulsory purchase order (CPO) was made at the request of the Parish Council, which was subsequently confirmed with modifications. The effect of the modifications was to authorise the compulsory acquisition of only the southern part of this land, although the whole of the designated land had been included in the original Order. The test applied by the Secretary of State when deciding whether to confirm a CPO is based on considering whether there is a compelling case in the public interest for the compulsory acquisition to take place, rather than a test based on whether the planning designation is or is not appropriate. In this case, he concluded that a compelling case had been made for the compulsory acquisition of part, but not all, of the land. However, this does not mean that the designation of the whole of the land in the Local Plan as recreation land is wrong, or that development on the remainder of the land should now be permitted.
- 5.6 Initially, the whole of the designated land was included in the National Park. However, a change instigated by the Countryside Agency, in the period following the publication of the Park's designation Order, resulted in this triangular area of land being taken out of the proposed area of the Park. The Inspector's conclusion appears to endorse this particular deletion.
- 5.7 Due to the timing of this boundary alteration the City Council was not given an opportunity to argue against this change at the Inquiry. It is considered important, therefore, to maximise the opportunity now provided (referred to under paragraph 2.3, above) to restate the Council's concern over this apparently pre-emptive boundary change and to press DEFRA for a re-opened Inquiry, which could then provide the forum for Winchester to present its case for a return to the original boundary and the reinstatement of this parcel of land.

6. Conclusions and Recommendations

- 6.1 In terms of the four topic areas referred to in paragraph 2.3 of this report, there are issues arising from the recent Appeal and High Court judgements and the related legislative change which are likely to continue to reverberate both nationally and regionally. Furthermore, such 'clarifying' changes are likely to have a direct bearing on any future designation proceedings in regard to National Parks.

- 6.2 However, with regard to the designation of the South Downs National Park, certain aspects of the now clarified legislative framework have been anticipated by the Inspector's report and although other interested parties may well seek to make objections to this during the current consultation period, it does not seem necessary or particularly constructive at this fairly advanced stage, for this authority to make its own representations on these particular issues. It should also be borne in mind that the Inquiry has already spent a matter of months examining every aspect of designation and the application of the statutory criteria.
- 6.3 Similarly, the fundamental conclusion by the Inspector that the designated area of the Park should be drawn back to omit what are clearly *not* chalk downland areas, is likely to trigger objections from interested parties within West Sussex and the easternmost parts of Hampshire. Furthermore, although not directly included in the list of issues on which further comments may now be made, the Inspector's allied conclusion that certain larger and more urbanised settlements such as Petersfield town, should also be taken out of the proposed Park, is likely to result in other attempts to have new representations heard.
- 6.4 Any such objections, combined with a natural desire by the Countryside Agency (now part of Natural England) to defend its original stance on boundary issues, could well form the basis for a reconvened Inquiry. However, the reconfiguration of part of the northern Park boundary and the recommended deletion of certain larger settlements do not have any particular bearing on the Winchester District and it is not, therefore, a recommendation of this report that any first time representations should be made on these issues. Similarly, it is not recommended that representations should be made in regard to possible additions to the Park area. With the exception of The Moors, at Bishops Waltham, such additions all fall occur beyond the District boundary.
- 6.5 In summary it is the case that, with some caveats, the Inspector has come down firmly in favour of a South Downs National Park. Whatever the short-term outcome of the current consultation process, his report is likely to be a most influential factor, if not *the* most influential factor, in terms of ministerial decision making. As made clear in this report, the reservations expressed by the City Council from the earliest consultation stages, followed by the formal objections lodged with the Inquiry, have all been thoroughly aired and have received due consideration by the Inspector.
- 6.6 With regard to Winchester's boundary concerns these have also received a fair hearing and the Inspector's conclusions have, in some instances, served to reflect the relatively narrow remit of the designation process, rather than any weakness in the Council's case. The only exception to this is the proposed boundary change at Pondside Lane. Here, it is recommended that the City Council should seek to fully use the scope of the present consultation to press DEFRA to provide the City Council with the opportunity to address this recommended deletion for the first time and present its reasoned objections to such a change.

OTHER CONSIDERATIONS:

7. CORPORATE STRATEGY (RELEVANCE TO):

- 7.1 The Inquiry Inspector's findings and recommendations regarding the proposed designation of South Downs National Park are relevant to all of the following corporate objectives: economic prosperity; high quality environments; safe and strong communities and; an efficient and effective Council.

8. RESOURCE IMPLICATIONS:

- 8.1 In the event of the designation of a South Downs National Park being confirmed, at some point, there would be significant resource implications for the District, particularly in terms of planning policy making and development control. However, no final decision is expected imminently and, in any event, it is not yet possible to give a quantified estimate as to any particular implications.

9. BACKGROUND DOCUMENTS:

- 9.1 Copies of the Inquiry Inspector's report and associated documents are currently held on deposit at the Customer Services Centre of the City Council, City Offices, Colebrook Street, Winchester.

10. APPENDICES:

Appendix A - Annex C to the Inquiry Inspector's report, relating to his consideration of 'Governance' issues.

Appendix B - Extracts from Part 2 of the Inquiry Inspector's report, relating to boundary issues within the Winchester District.