

CABINET

21 May 2009

IMPLICATIONS OF THE SOUTH DOWNS NATIONAL PARK'S CONFIRMATION

REPORT OF CORPORATE DIRECTOR (POLICY)

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RECENT REFERENCES:

CAB1498 - The Proposed South Downs National Park: The Inquiry Inspector's Report, 17 July 2007.

EXECUTIVE SUMMARY:

This report relates to the recently announced decision by the Secretary of State, to confirm the designation of a new South Downs National Park. The Park covers significant parts of eastern Hampshire, West Sussex and East Sussex and stretches from Winchester, to the west, as far as Eastbourne; a distance in excess of 110 kilometres. Within the Winchester District, the Park will effectively take the place of the present Area of Outstanding Natural Beauty and, in covering an area larger than the AONB, will cover approximately 40% of the total area of the District.

It is the Government's intention that 'shadow' arrangements for a National Park Authority should be in place by April 2010 and that a full Authority, together with its staff, should be operational by April 2011. If this timetable is adhered to, the current South Downs Joint Committee (SDJC) which manages the East Hampshire and Sussex Downs AONBs will cease to operate at the end of March 2011.

Following the Ministerial decision there will now be a period of heightened activity, to prepare for and put in place procedures and protocols for the administration, day-to-day management and funding of the new Park. The Department for Environment, Farming and Rural Affairs (DEFRA) will lead this process and will shortly instigate a key phase of consultation and negotiation with the fifteen local authorities directly affected, together with other principal stakeholders and consultees.

From a Winchester perspective, it is the key recommendation of this report that the City Council should fully engage with this programme, to ensure proper participation in all relevant aspects of the process of establishing the new National Park.

**RECOMMENDATION:**

That Cabinet notes the recent decision by the Secretary of State, confirming the designation of a South Downs National Park and seeks a place on the Steering Group about to be formed and to participate in all relevant discussions and negotiations regarding arrangements for membership of the National Park Authority, the delegation of elements of development control to the local authorities and future policy planning within the National Park area.

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#### DETAIL:

##### 1.0 Introduction and Background

- 1.1 The Countryside Agency started the designation process for a South Downs National Park (SDNP) in April 2000. Statutory consultation with all affected local authorities was followed by public consultation on both the proposed Park boundary and the administrative arrangements for a National Park Authority. In November 2002, the Countryside Agency agreed to make a Designation Order and this was signed by the Secretary of State in December 2002. From its inception the Park was proposed to run from the edge of Winchester, across to Eastbourne in East Sussex.
- 1.2 A Public Inquiry into objections started in November 2003 and finished in February 2005. The Inspector's Report of the Inquiry was sent to the Secretary of State at the Department of Environment, Food and Rural Affairs (DEFRA). That report was intended to be used as the basis for the Government's decision to accept, refuse or modify the designation of a South Downs National Park .
- 1.3 However, in February 2006, the Department informed all those involved in the Public Inquiry that it had halted the designation process, due to the implications arising from a High Court Judgement issued in November 2005. That judgement concerned the earlier designation of the New Forest National Park.
- 1.4 The High Court found that both the Countryside Agency and the Inspector who conducted the New Forest Public Inquiry had mistakenly interpreted the two key criteria of "natural beauty" and "opportunities for open-air recreation", used in creating national parks, when they included the Meyrick Estate - a listed building and its surrounding parkland within the designated New Forest National Park. An important issue, in this particular case, is that there is no public access to the Estate nor is there any apparent prospect of that situation changing in the future.
- 1.5 Since then, DEFRA has inserted two sections into the Natural Environment and Rural Communities (NERC) Act 2006 to clarify these two key criteria in the legislation. The Department was also granted leave to appeal to the Court of Appeal. That case was heard in November 2006.
- 1.6 The outcome of the Appeal was made known in February 2007. The Appeal was dismissed and, after due consideration, the Minister decided not to pursue it further. As a result, a small area of land was taken out of the New Forest National Park. The

judgement also changed the basis on which the natural beauty and recreational criteria for designating a National Park are to be judged in future. In effect, more emphasis is to be put on the 'potential' for opportunities for recreation and, in primary designation terms, the previously held concept of the need for an intrinsic sense of remoteness and/or wildness becomes less important.

## 2.0 Restarting the Designation Process

2.1 In March 2007, DEFRA announced that work on resolving the matter of the South Downs National Park designation would resume. Further public representations were invited, during a consultation period from July to September 2007.

2.2 Comments were invited in regard to four principal issues:

- Any implications of the 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, resulting from the challenge by Meyrick Estate Management Ltd in relation to the New Forest National Park
- A possible alternative boundary line from Petersfield to Pulborough, produced by Natural England at DEFRA's request and based on a recommendation in the Inspector's Inquiry Report which would have had the effect of significantly reducing the size of the Park.
- Additional areas of land recommended by the Inspector for inclusion in the National Park - these totalled 25 sq miles and included land in Arun, Adur, Brighton & Hove, Chichester, Eastbourne, East Hants, Horsham, Lewes, Mid Sussex, Wealden, Winchester and Worthing.

2.3 Individually, these additional areas were relatively small in size although, spread across the three counties, the total is significant. Within the Winchester District, the main addition was the inclusion of the spring-fed area known as The Moors, on the south-eastern edge of Bishops Waltham (Appendix 2, illustrates). The addition of this particular area was not challenged at the resumed Inquiry and has subsequently been confirmed by the Secretary of State.

2.4 In late 2007, in the light of the comments and representations received, the Minister decided to reopen the South Downs public inquiry. The reconvened Inquiry then sat for a further period, from February to May 2008.

## 3.0 The Inspector's Second Report and the Secretary of State's Decision Report

3.1 Following the close of the Inquiry, the Inspector submitted his second report to the Secretary of State. The report contained the following key recommendations:

- In principle, the SDNP should be created
- The new South Downs National Park should broadly encompass the land originally included in the 2002 Designation Order, subject to certain detailed changes in boundary alignment
- The two Orders to revoke the East Hampshire and Sussex Downs Areas of Outstanding Natural Beauty should be confirmed
- The SDNP should be managed by a National Park Authority comprising thirty members, to reflect the size and complexity of the national park area
- Contrary to the view expressed by the Inspector in his first Report, the area commonly known as the Western Weald should be included in either an AONB or National Park. In addition, the A3 corridor should remain a protected landscape, either as part of a residual AONB or a National Park.

### Decision

- 3.2 In response to the Inspector's second report and recommendations, the Secretary of State has now concluded that:
- A South Downs National Park should be created
  - Subject to a small number of changes, the boundary for the SDNP should be as recommended by the Inspector
  - The Western Weald and the A3 corridor should both be included within the National Park
  - The two AONB Revocation Orders should be confirmed
  - The SDNP should be managed by a National Park Authority with a membership in the overall size range of 29-37. The final size to be determined following further consultation with the local authorities.
  - Details of four further 'new additions' to the Park area should be put on public deposit for a 12-week period. If objections are received, an inquiry or hearing will be called and the report of that will inform the Minister's decision as to whether or not to include these additional areas within the National Park. Three of these are situated in Sussex the fourth, Alice Holt Forest, is within East Hampshire District, abutting the Surrey border.

### 4.0 The Next Steps

- 4.1 Although provision has been made for any possibility of a legal challenge to the Minister's decision it is, nevertheless, intended that enabling legislation

will be laid before Parliament in the autumn of this year. If that stage is successfully passed, the National Park Authority could then be established and members appointed to it, from April 2010.

- 4.2 After a further year of preparatory work, it is envisaged that the Park Authority could become operational; taking lead responsibility for delivering the statutory 'National Park purposes', with effect from 1 April 2011.
- 4.3 In the decision letter on behalf of the Secretary of State, it is made clear that:

"The South Downs National Park Authority should delegate its development control work so far as possible to its constituent local authorities. He recognises that this is a decision for the National Park Authority but will base his own decisions (for example on membership or funding) on the presumption that delegation will, so far as possible, occur until such time as the National Park Authority may decide differently".
- 4.4 A considerable amount of investigation and exploratory work has already taken place with regard to putting in place efficient and cost-effective development control procedures and protocols, in the event of the National Park being confirmed. This has involved discussions and the exchange of information between the constituent authorities, DEFRA, the South Downs Joint Committee (SDJC) and the Government Office for the South East (GOSE).
- 4.5 As stated above, approximately 40% of the District will be incorporated in the National Park. However, given the rural character of this area, the number of applications determined by the Council would not fall by the same proportion. It is envisaged that application numbers would reduce by roughly 18%. Similarly, the planning fee income could also decrease depending upon the financial arrangements put in place for development control.
- 4.6 It is the case that the biggest developments, which generate the highest fees, tend to fall within the District's larger settlements, such as Winchester, Bishops Waltham, New Alresford and Whiteley. As these places lie outside the Park's boundaries the reduction in fee income should be much less than 40%. Nevertheless, considerably more preparatory work will need to be carried out, in the light of the recent confirmation decision and in advance of the Park Authority taking responsibility as the sole local planning authority for the area of the new National Park.
- 4.7 Similarly, there will need to be a far closer and more detailed engagement with DEFRA and the Government Office, in regard to the full range of planning policy issues. In particular, this will have to address the challenge of arranging the transition to a new Local Development Framework (or Frameworks) for such an extensive, complicated and diverse area.
- 4.8 Although the 'second' Inspector's report and its endorsement by the Secretary of State does not result in further boundary changes which materially affect the Winchester District, there is one exception to this which should be noted. After further careful consideration the Inspector concluded that, in regard to the detailed definition of the Park boundary at Pondsider Lane, Bishops Waltham his original conclusion, reached at

the time of the initial Public Inquiry, was correct. Consequently, the Inspector confirmed that the triangular field abutting the Lane on its western side should not be included within the National Park (Appendix 2, illustrates). The Secretary of State confirmed this view.

- 4.9 With regard to the revocation of the existing East Hampshire and Sussex Downs AONBs and certain 'residual' issues arising, these matters will have implications for other authorities which will need to be resolved. However, for the Winchester District, its part of the East Hampshire AONB will be subsumed within the greater area of the new National Park. The only exception to this is a small area of anomalous roadside land at Bar End, Winchester which, since the construction of the M3 Twyford Down cutting and its side roads, has been effectively cut off from the rest of the AONB and would similarly be separated from the Park (Appendix 3, illustrates).
- 4.10 At a very recent meeting between the Chief Executives of the affected local authorities and representatives of DEFRA and the SDJC, the following points were discussed with a view to clarifying, amongst other things, the likely sequence of events over the coming months :
- The Government intends to publish an SDNP Confirmation Order by the end of August 2009, subject to there being no further objections over boundaries. DEFRA will then undertake the necessary transition arrangements, including the appointment of a shadow authority with effect from April 2010.
  - The full National Park Authority will then come into operation on 1 April 2011. This interval should provide sufficient time to overcome any technical and/or legal issues in making the transition from the two AONBs to a single Park Authority. The South Downs Joint Committee will remain in being until March 2011.
  - DEFRA will shortly be forming a Steering Group, in order to advise on policy and management issues in relation to this transition. The Local Authorities will have places on this Group, although precisely how many and in what distribution has yet to be decided. However, it is already known that overall membership of the Steering Group will include representatives from DEFRA, Natural England, GOSE and the SDJC, together with an officer from another Park Authority.
  - There will be consultation shortly on the size and make-up of the Park Authority itself. Among the options to be proposed will be one which suggests at least one seat for every authority included within the boundary, together with a number of Parish seats.
  - Ministers have already indicated that "it makes sense for the Park to delegate development control work to the local authorities". However, this will be a matter for the Park Authority in due course. Current policy envisages recommendations coming from the local authority, but with decisions being made by the Park Authority. There was some discussion at the meeting as to whether local authorities could legally take any planning decision for the Park Authority, with the result that DEFRA has undertaken to issue a paper on this subject, by the end of

May. Powers delegated to the local authorities would most likely be achieved by a series of service level agreements.

- At the meeting officials confirmed that the Park Authority will also have planning enforcement, tree preservation order, traffic regulation order and similar powers.
- The Park Authority will be a strategic planning authority and need to produce an LDF. Options for this include preparing its own Park-wide LDF, preparing joint LDFs for relevant areas with the Districts and Unitary authorities concerned and, possibly, working through a Joint Committee. It was noted that there would be many transitional issues, with LDFs across the area currently in various stages of development, but DEFRA confirmed that they would not expect the National Park to seek radical changes where AONB status was already reflected in policies.
- In addition to the Steering Group referred to above, DEFRA propose to appoint an Interim Chief Executive shortly, in effect to speak for the Authority pending its formal establishment. The Department will also put in place a 'consultative network' of wider 'stakeholders' - business, communities etc.
- Funding for the National Park will be from DEFRA Grant, although it will be for the Department for Communities and Local Government (DCLG) to decide, in the light of functional responsibilities and delegations, whether Rate Support Grant should be adjusted. Although no commitments were made at the meeting, it was noted that, in practice, no Grant had been withdrawn from New Forest District Council when the New Forest National Park was created.

## 5. Conclusions and Recommendation

- 5.1 Following the Secretary of State's decision there will now follow a period of intense activity to put in place the various arrangements, procedures and protocols referred to in the main part of this report. This provides a vital opportunity for the Council to engage with the different aspects of this process and to ensure proper involvement and, where necessary, direct participation. Of key importance will be the issue of NPA membership and it is, therefore, recommended that early contact should be established with DEFRA, in order to secure a place on the Steering Group which will shortly be set up to debate this and all other key issues.

## OTHER CONSIDERATIONS:

### 6. SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

This report is of relevance to the Strategy's Aim of maintaining a high quality of rural and village life, by supporting the rural economy and conserving the rural landscape, together with the Strategy's objective of sustaining and improving the natural environment.



## 7. RESOURCE IMPLICATIONS:

Until now the City Council has, together with Hampshire County Council and East Hampshire District Council, contributed directly towards the costs of managing the East Hampshire AONB and, in particular, the costs associated with employing the AONB Project Officer (£11,085 in 2008/09).

In resource terms, a primary consequence of the move to National Park status is that, with effect from the date of its establishment, statutory responsibility for funding the operation and management of the new National Park will pass to central Government and be administered by DEFRA. The transfer of financial responsibility will produce some benefit for local authorities within the SDNP, although this may be subject to clarification/confirmation of any implications for the Rate Support Grant.

However, with regard to the arrangements for development control and policy planning within the Park there are inevitable uncertainties at the present time. Negotiations between DEFRA, the SDJC, GOSE and the local authorities will intensify over the coming weeks and months.

Nevertheless, the new National Park Authority will have the final say with regard to the degree of delegation of development control powers back to individual local authorities. The financial terms, on which any resultant protocols and implementation procedures are concluded, will need to be subject to further clarification and negotiation.

Similarly, the Park Authority's stance with regard to future plan-making and the transition from separate Local Development Frameworks laid down by each individual planning authority will be influential, if not definitive. Whilst it is not yet possible to identify such changes with any certainty or to quantify their cost implications, there will undoubtedly be significant implications for this and other authorities subject to the new National Park regime.

## BACKGROUND DOCUMENTS:

Files and correspondence held in the Strategic Planning Department of the Policy Group .

## APPENDICES:

Appendix 1: The South Downs National Park, confirmed by the Secretary of State.

Appendix 2: The confirmed Park boundary at Bishops Waltham.

Appendix 3: The confirmed Park boundary at the western edge (Bar End, Winchester).

(A Copy of the Secretary of State's formal Decision Letter, confirming the Designation of a South Downs National Park, together with a copy of the Inspector's Report which forms the basis for this decision, have been made available for inspection through Customer Services and are also available to view and download at the DEFRA website:

<http://www.defra.gov.uk/wildlife-countryside/protected-areas/national-parks/south-downs/index.htm>