

Appendix 1 for Submission

1007/1/2

SOUTH DOWNS NATIONAL PARK INQUIRY 2007

TOPIC 1: NERC ACT

TOPIC 2: MEYRICK JUDGEMENTS

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On behalf of

West Sussex County Council

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1 INTRODUCTION

1.1 Qualifications, experience and scope of evidence

1.1.1 Moira Hankinson gave evidence for West Sussex County Council and Chichester District Council at the previous sessions of the South Downs National Park (“SDNP”) Inquiry. My qualifications and experience are set out in that evidence (*1881/2698/1/1; Section 1.1*).

1.1.2 I also gave evidence at the New Forest National Park Inquiry, on behalf of Southern Water and the Quarry Products Association (*ref: 1881/2698/1/10; para 1.1.2*).

1.1.3 At both Inquiries, my evidence was based on the statutory criteria for the designation of National Parks, precedents in the application of the criteria, and published guidance on landscape assessment. In short, I argued that when the criteria were applied together, National Park status should be conferred on extensive tracts which had a characteristic natural beauty and which possessed the qualities of openness, remoteness and a sense of wildness, where the public could literally “get away from it all.” This approach to designation allows a meaningful distinction to be drawn between National Parks and Areas of Outstanding Natural Beauty.

1.1.4 In the case of the proposed SDNP, I did not consider that it met these tests in principle, but as a fall-back position contended that if a SDNP were to be designated, it should be focussed on the chalk downlands.

1.1.5 This evidence addresses the implications of the Meyrick judgments and the changes to the National Parks legislation arising from the Natural Environment and Rural Communities Act 2006. I consider whether these matters affect the evidence that I gave at the last sessions of the Inquiry. The County Council will refer to this evidence when making its written representations on Topics 1 and 2.

2 THE NERC AMENDMENTS: NATURAL BEAUTY

2.1 Introduction

2.1.1 The Court of Appeal summarised the effect of the NERC amendments (*CoA, Feb 2007, para 27*) as follows:

- The National Park ‘natural beauty’ designation criterion takes into account the wildlife and cultural heritage of the land;
- Land is not prevented from being of natural beauty if in agriculture, woodland, parkland or because its physiographic features result from human intervention;
- Opportunities afforded for open-air recreation should take into account the extent to which it is possible to promote understanding and enjoyment of the designated area.

2.2 Consideration of wildlife and cultural heritage

2.2.1 In my 'in-principle' evidence I referred to the Countryside Agency's criteria for assessing natural beauty, in their Landscape Character Assessment Guidance (*CD 57, paras 7.22, 7.27*). These include:

- **'conservation interests:** the presence of features of particular **wildlife**, earth sciences or **archaeological, historical and cultural** interest ...' (*1881/2698/1/1 para 7.3.13*).

2.2.2 I also reviewed the CA criteria for drawing the proposed South Downs National Park boundary. Criterion (j) referred to **'features of scientific, historic or architectural value'** (*CD 31, p 35, Table 1; at 1881/2698/1/1, para 8.6.11*). I argued that:

- **'Statutory natural beauty does include the first two elements; it does not include cultural heritage, which is a purpose, once the National Park has been designated'** (*1881/2698/1/1 para 8.10.3*);
- **'Natural beauty...includes the 'natural' elements of the landscape, but not its cultural heritage. Cultural heritage is a separate purpose, following designation'** (*1881/2698/1/1 para. 7.3.3*)

2.2.3 This argument was repeated in other parts of my evidence (*see my evidence on the objection relating to the Arundel area: paras 4.3.16-18 1881/1/8*).

2.2.4 The NERC amendment has overtaken that aspect of my evidence: an assessment of statutory natural beauty now does require that cultural heritage be taken into account.

2.2.5 However I note that, in any event, I considered whether designation of the proposed SDNP was justified on the basis of the CA's own criteria, which include 'archaeological, historical and cultural interest' (*para 2.2.1 above*).

2.2.6 Thus, I described the landscapes of south-east England, under the headings of: the structure of south-east England, the South Downs, the Weald, the Coastal Lowlands and the Sussex Downs and East Hampshire AONBs (*1881/2698/1/1, Chapters 2 to 6*), by reference to physical elements such as geology, topography and vegetation along with **cultural features**, including land uses and settlement pattern.

2.2.7 Later in my 'in-principle' evidence, I assessed the **'conservation interests'** of the South Downs (*1881/2698/1/1 para. 9.2.4*), the Weald (*para. 9.3.4*) the Coastal Lowlands (*para. 9.4.3*), without prejudice to the views I expressed about the relevance of cultural heritage in the designation process. That assessment, based on the CA/SNH Guidance criteria, took into account wildlife and cultural interests.

- 2.2.8 Elsewhere, my 'in principle' evidence mapped the important **wildlife** elements of each of those areas – the ecological designations, Environmentally Sensitive Areas, and Natural Areas (1881/2698/1/3, *Appendix M, Plan HDA5*).
- 2.2.9 My 'Downs-area' evidence also referred to the CA/SNH Guidance criteria for assessing natural beauty (1881/2698/1/6 *para 4.2.1*). Again, notwithstanding my view on the relevance of cultural heritage in an assessment of natural beauty, I set out the published character assessments, which included **cultural elements** such as land use, former hill forts, lanes and villages (1881/2698/1/6 *section 4.3*).
- 2.2.10 In identifying an Area of Search, I collated information on physical features, landscape character and designation history. Physical features included the **ecology** of the Downs and the **scale and density of settlement** (1881/2698/1/6, *section 5.2*).
- 2.2.11 I carried out landscape character assessments based on the CA description of landscape character as '**Particular combinations of geology, landform, soils, vegetation, land use, field patterns and human settlement**' (CD 56, p 9, *para 2.5; at my section 5.3 in 1881/2698/1/6*). The Downs character, as described by the CA, includes characteristic land uses, settlement pattern, building materials and historic features. The main distinctive cultural feature now is the relative lack of settlement in the Downs – their remoteness and 'getting away from it all' character (CD 56, p 125 and 1881/2698/1/6, *section 5.3*). This contrasts markedly with the well-settled landscapes of the Weald and Coastal Plain, with their towns, villages and relatively dense pattern of roads.
- 2.2.12 I identified three 'Area of Search' zones for the whole PSDNP area – 'Include', 'Scrutinize' and 'Exclude'. These included cultural elements, most notably land use, such as extent of rural settlement (the converse of remoteness), and occurrence of towns such as Lewes, Petersfield and Arundel (1881/2698/1/6, *Chapter 6 and Plans HDA20A to D*).
- 2.2.13 In my evidence on the boundary objections relating to the Arundel area, I assessed the evidence of conservation features in that area and acknowledged the cultural value of the Arundel, its castle and grounds (1881/1/8 *para. 4.3.16-8 and 4.4.7-8*).
- 2.3 Consideration of agriculture, woodland, parkland, human intervention**
- 2.3.1 Similarly, when my 'in principle' evidence described the landscapes of south-east England (1881/2698/1/1, *Chapters 2 to 6*), purely physical elements, such as geology and topography were described, along with the effects of **human intervention** on physiographic features – the land uses and settlement pattern of the area, and vegetation. Vegetation included the occurrence of **woodlands**. Land uses, including **agriculture**, were described and scheduled (1881/2698/1/1/3, *Appendix O; HDA Chart I*

and HDA Table 1). Where **parklands** are particularly characteristic, these were referred to (as at 1881/2698/1/1, para 3.6.3, last bullet). In reviewing the history of designation, my evidence addressed land use changes, such as the ploughing-up of the downland (e.g. 1881.2698/1/1, 6.2.8).

2.3.2 Again, my 'Downs-area' evidence included landscape character assessments based on the CA description of landscape character as '**Particular combinations of geology, landform, soils, vegetation, land use, field patterns and human settlement**' (CD 56, p 9, para 2.5; at my section 5.3 in 1881/2698/1/6).

2.3.3 This approach was followed because in England, which has been inhabited for millennia, the natural landscape has been almost universally changed by human intervention, from the natural forest cover, to a landscape of farmland, managed woods, infrastructure, towns and villages. Land uses, and the way in which they relate to geology, soils, landform and natural vegetation of an area, together create the landscape. All landscape assessments take into account such human uses of the land. My evidence therefore described the land uses and man-made elements of all the PSDNP area, and took the effect of those uses into account when assessing natural beauty.

2.3.4 In my evidence on the boundary objections relating to the Arundel area, I again described the area by reference to physical elements, along with land use and vegetation including woodlands and farmland (1881/1/8 section 2).

2.4 **Effect of NERC changes**

2.4.1 It follows from the above that with the exception of cultural heritage, all of the factors referred to in NERC in relation to natural beauty were already regarded as relevant in the assessment contained in my evidence. The Assessor and the Inspector therefore had structured information in which the cultural and wildlife elements of each landscape throughout the PSDNP were described and assessed, along with elements including agriculture, woodland, parkland and other flora, fauna and physiographical features which had been influenced by human intervention. The NERC changes, including the requirement to take into account cultural heritage, would not have altered my conclusions, for the following reasons.

2.4.2 First, as I commented in my evidence (1881/2698/1/1 para. 8.6.11), the occurrence of features of scientific, historical or architectural value (including features of wildlife or cultural heritage interest) would not, on their own, mean that land met the statutory criteria.

- 2.4.3 An SSSI or ancient monument has national protection for its ecological or historic value, not related to natural beauty or recreational opportunities. If an element of cultural heritage forms an integral part of the beautiful landscape, then it can contribute to natural beauty. If the element of cultural heritage is, for example, a town, then however attractive its core, its historic or cultural interest cannot of itself mean that it meets the natural beauty criterion.
- 2.4.4 The same applies to land which is used for agriculture, woodland, parkland or has otherwise been influenced by human intervention. As NERC confirms, these features do not make the land naturally beautiful. The new wording is in the negative – uses such as agriculture and land affected by humans '**does not prevent**' such land being of natural beauty. Nor, of course, does it give all such land natural beauty – otherwise most if not all of England would qualify.
- 2.4.3 Second, these features are therefore only to be taken into account as part of a wider assessment of natural beauty, which inevitably recognises that the English landscape (including land in existing National Parks) has been influenced by human activity.
- 2.4.4 Third, I carried out this wider assessment of natural beauty and, with the exception of cultural heritage, I explicitly took account of these features. I give examples above of how the landscape features referred to in NERC, including the use of land for agriculture, were acknowledged in my assessment of natural beauty. Although, in principle, I identified that 'cultural heritage' was not part of the then natural beauty criterion; in fact, I did consider cultural interests and elements, including land use, because these are within the CA guidance criteria.
- 2.4.5 Fourth, even when cultural heritage is more formally taken into account, there is no reason to alter my conclusions. In those conclusions I emphasised how there has always been a distinction drawn between National Parks and AONBS, which in the former case is achieved by identifying the elements of an extensive tract which exhibits a characteristic natural beauty and sense of openness, remoteness and wildness (a sense of "getting away from it all") from which recreational opportunities emerge. The need to define a coherent identity for that extensive tract and for it to exhibit these features (or to include a more diluted sense of "relative wildness") were fundamental reasons for either not designating a National Park at all or (as I acknowledge the Inspector recommended) for excluding the non-chalk landscapes from any SDNP.
- 2.4.6 Nor is there anything in NERC which impacts upon this approach. In my evidence, I did not dispute that the area covered by much of the proposed SDNP is naturally beautiful, in particular due to its AONB status. Neither explicitly taking account of wildlife and cultural

heritage, nor acknowledging that land in agriculture, woodland, parkland or influenced by human activity could be naturally beautiful would have altered that position.

2.4.7 The important point, which NERC does not change, is that for the proper distinction between National Parks and AONBs to remain, National Park land must still exhibit characteristic natural beauty with a sense of relative wildness and the features I have identified, even on the understanding that all British landscapes have been influenced to a degree by humans.

2.4.8 This approach to natural beauty is inextricably linked with the recreational experience necessary to distinguish National Parks from AONBs. It is the particular natural beauty of National Parks – distinctive, strongly characteristic, extensive, relatively wild and remote – which provides the nature of the experience in recreational terms. And as can be seen further below, there is nothing in the NERC amendments which alter that approach to the recreational criterion either.

2.4.9 Further, my conclusions on the detailed boundary in the Arundel area remain unaffected. As I have stated, my evidence considered the extent of wildlife interest and acknowledged the influence of human activity, including agriculture and parkland, on the landscape. Without prejudice to my other evidence to the inquiry, my conclusions sought the inclusion of the high quality, distinctive landscapes of the South Downs, including Arundel Castle and its grounds, given their situation on a distinctive chalk bluff and surrounded by downland trees (*paras 4.3.20, 4.4.8, 5.4.14 and 6.5.1*). I argued for the exclusion of Arundel town and the rest of the land south of the A27, on the grounds that the town's cultural heritage could not on its own make the town naturally beautiful given its predominantly built form (*paras 5.4.12-19*); and that the coastal plain landscapes largely lacked the downland character and high quality of the upper valley (*para. 5.4.7*); None of these views on the application of the natural beauty criterion to this area is altered by NERC.

3 THE NERC AMENDMENTS: RECREATION

3.1 Introduction

3.1.1 The Court of Appeal summarised the effect of the NERC amendments on the National Park recreation criterion as follows:

'... when considering whether designation is desirable by reason of the opportunities afforded for open-air recreation, Natural England is required to take into account the extent to which it is 'possible to promote' opportunities for the understanding and enjoyment by the public of the special qualities of the tract of land proposed for designation' (CoA, *Meyrick*, para 27).

3.1.2 That is, potential should be taken into account when assessing land against the open air recreation criterion.

3.2 My evidence

3.2.1 My evidence described the existing recreational resource of each part of the PSDNP, including open access land, footpaths and bridleways, other facilities and 'wildness and remote feel' (1881/2698/1/1; Sections 3.8, 4.8, 5.7); and my assessment of the PSDNP against the statutory criteria took into account only existing recreation (1881/2698/1/1, paras 9.2.6, 9.3.5, 9.4.4; see too my evidence on the Arundel area 1881/1/8 para.s 6.2.3-6).

3.2.2 However, I disputed the use by the CA of recreational potential. I considered that an area had to meet the statutory criteria at the time of designation (1881/2698/1/1, paras 8.6.4; 8.12.1).

3.3 Effect of NERC

3.3.1 NERC supercedes that aspect of my evidence by allowing potential to be taken into account. However I do not consider that this change alters the fundamentals of my conclusions on the recreation criterion. My assessment was based largely on the need to find character that affords opportunities for open air recreation – i.e. openness, remoteness, relative wildness or, in other words the ability to “get away from it all” – and in my view there is no further “potential” recreational experience that would change my assessment on whether or where that character can be found.

3.3.2 Thus in my 'Downs-area' (non-Weald) evidence, I assessed each of the three main character areas, The Downs, Weald and Coastal Lowland, against the statutory criteria. In addressing open air recreation, I particularly took into account the relative wildness and remoteness of each area. I found none of the PSDNP area to have the degree of wildness and remoteness typical of other English National Parks: **'it is the particular natural beauty of National Parks – distinctive, strongly characteristic, extensive, relatively wild and remote – that provide the nature of the experience in recreational terms'** (1881/2698/1/6, paras 2.6.1, 2.6.2).

3.3.3 However, I found that the Downs are relatively lightly settled and that **'their dramatic topography, large scale and exhilarating panoramas provide an experience that ... is relatively more wild and more remote than the coastal or Wealden landscapes'** (1881/2698/1/6, para 4.4.2 – 4.4.4).

3.3.5 My assessment identified zones of the PSDNP that should be 'included', 'scrutinised', or 'excluded', should there be a National Park. The areas for 'inclusion' would be those that are (inter alia) **'lightly settled ... correlated with the relative sense of wildness and remoteness that ... is most likely to lead to a markedly superior recreational**

experience' (1881/2698/1/6, para 5.5.4-1). My assessment concluded that these were the Downs areas. Areas to be scrutinised were **'relatively less wild'**; and my assessment identified the footslopes and margins below the Downs as being in this category (*op cit*, 5.5.4-2). Areas to be excluded were those that did not have the character to afford opportunities for recreation superior to that of normal countryside or AONBs (*op cit*, 5.5.4-3).

3.3.6 None of these considerations would be affected by the NERC changes to the recreation criterion and my evidence generally on the approach to that criterion remains.

3.3.7 The same conclusion applies to my evidence on the Arundel area. I argued that land outwith the AONB boundary should be excluded on recreational grounds because the A27 formed a significant barrier, introducing visual and aural disturbance, reducing access and degrading the landscape (1881/1/8, para. 5.4.7). I found that the extent of recreational experience was inadequate, both physically and in terms of the intangible elements of characteristic natural beauty with a sense of openness, wildness and remoteness (*paras* 6.2.3-6). Again, NERC provides no reason for me to change these views.

4 MEYRICK

4.1 Introduction

4.1.1 The NERC amendments have, for the SDNP and future NP designations, largely superceded the issues raised in the first Meyrick judgement. However the Court of Appeal reached the following conclusions which are relevant to an application of the recreation criterion, following NERC:

- When taking into account the extent to which it is 'possible to promote' opportunities, **'vague or unrealistic aspirations'** as to the likelihood of achieving those opportunities do not meet the recreational criterion (*CoA, paras* 22, 37, 40, 44, 49, 55);
- The failure on the recreation criterion was sufficient to justify quashing the decision (i.e. it was not possible to argue that meeting the natural beauty criterion was sufficient: all areas of a proposed National Park should comply with both statutory criteria) (*CoA, para* 58).

4.1.2 It also appears that the conclusion of Sullivan J in the first judgment, to the effect that a designation could 'wash' over a large tract even if there were no public access to a part of it, remains (*High Court, para* 83).

4.2 The effect of Meyrick

4.2.1 Meyrick would not have changed the substance of my evidence. I based my recreational assessment largely on the occurrence of landscapes of 'National Park' quality and

characteristics – open, remote, wild, with a sense of ‘getting away from it all’. In principle, I considered that none of the PSDNP met the recreational criterion, because of absence of those types of landscape. However, I considered (as did the Inspector) that if anywhere did have those qualities, it was the Downs. As I have mentioned, none of this would change as a result of considering ‘possible potential,’ and this would apply equally when the criterion is applied by reference to a test which precluded consideration of ‘vague aspirations’.

4.2.2 Further, the Councils' evidence consistently assessed all area of the PSDNP against both criteria. I specifically criticised the CA's criterion that seemed to allow for inclusion where both criteria were not met (*1881/2698/1/1, Section 8.8*). That evidence was therefore consistent with Meyrick and would not alter.

4.2.3 Finally, even if it were right that it is not necessary for there to be rights of access over every part of the proposed National Park, my evidence on the lack of meaningful access and the general lack of a recreational experience of National Park quality remains. Nor does this change my evidence on the significant differences in the recreational experience emerging from the inherent differences in the character of the Downs as compared with the Weald or Coastal Plain.

5 CONCLUSIONS

5.1 For the reasons set out above, the main conclusions of my evidence from the last Inquiry sessions stand unaltered.