

South Downs National Park Public Inquiry
(Re-opened)

Addition 16 Roedean School and Foreshore

(Section L, Map 8)

Written Rebuttal

by

Brighton Urban Wildlife Group



SOUTH DOWNS CAMPAIGN

Working for the best possible National Park

May 2008

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1 Introduction

- 1.1 The South Downs Campaign (SDC) submits this written representation in support of the Inspector's recommendation that additional area 16, Roedean School and Foreshore, should be included in the proposed South Downs National Park. This area is within Section P, Map 8 of the proposed South Downs National Park recommended boundary modifications – June 2007 maps.
- 1.2 This is a rebuttal of the objections made by Roedean School¹.
- 1.3 The SDC is a network of organisations working for the best possible South Downs National Park, representing over 150 national, regional and local groups and organisations². This particular representation has been written with the help of Brighton Urban Wildlife Group who helped the SDC produce its original proof of evidence on 'The Cliffs – Brighton to Newhaven' which remains relevant today³.

¹ Letter from school bursar, Charles King, February 2008: Inquiry Document No. #2024/1/1

² SDC Revised Updated Biography – Inquiry Document No: #1147/0/8

³ Inquiry Document No. 3275/10/1

2 Addition 16, Roedean School and Foreshore

2.1 Brief Description of the Area and its Boundary

2.1.1 Addition 16 completes the sweeping and extensive tract of downland, running south between East Brighton and Rottingdean right down to the sea. It includes Roedean School along with the chalk cliffs and foreshore, leaving an open boundary to the sea.

2.2 Inspector's Justification for Inclusion

2.2.1 Roedean School is covered under a number of sub-sections of the Inquiry Report, in particular: the Brighton to Peacehaven – Foreshore and Cliffs⁴; and, Roedean School⁵ specifically. The comments on land between Whitehawk and Woodingdean⁶ and Beacon Hill / St Dunstons⁷ are also relevant.

2.2.2 The Inspector states that the cliffs and foreshore in this area “*satisfy the natural beauty criterion*”⁸. He goes on to say when discussing the Brighton to Newhaven Cliffs that:

“Given that the cliffs and foreshore are readily accessible and offer visitors a wide range of educational and open air recreational pursuits, I am also in no doubt that this coastline satisfies the recreational opportunities criterion” (paragraph 7.532).

2.2.3 Later on when outlining his conclusions for the area west of Rottingdean he states:

“...there is no doubt that this stretch of coastline offers a markedly superior recreational experience...” (paragraph 7.585).

2.2.4 As well as the cliffs and foreshore to the immediate south, the Inspector considers that the area to the east of Roedean School also clearly satisfies the National Park criteria. He draws attention to the fact that:

“...the [Countryside] Agency concluded that much of Beacon Hill satisfies the statutory criteria...” (paragraph 7.582).

2.2.5 Most significantly, the Inspector notes the continuous tract of land that links up with the open coast west of Rottingdean (in contrast to the areas where the coast is separated from the wider Downs by development or lesser quality land). Although accepting that “*...the natural coastline has been altered by sea defence works and other infrastructure...*”⁹ he concludes that: “*...In my opinion this stretch of cliffs and foreshore enhances the PSDNP and merits inclusion...*”¹⁰. He then states:

⁴ Paragraphs 7.523 – 7.535, Part II, CD #3

⁵ Paragraphs 7.602 – 7.605, Part II, CD #3

⁶ Paragraphs 7.566 – 7.572, Part II, CD #3

⁷ Paragraphs 7.573 – 7.587, Part II, CD #3

⁸ Paragraph 7.531, Part II, CD #3

⁹ Paragraph 7.585, Part II, CD #3

¹⁰ Paragraph 7.585, Part II, CD #3

“...to ensure a clear and recognisable boundary I recommend that the coastline as far as Rottingdean Harbour and as far west as Brighton Marina be included in the PSDNP...” (paragraph 7.586).

- 2.2.6 On Roedean School itself, the Inspector states that including the school conforms to the Agency approach towards educational establishments:

“...where buildings are of special architectural merit and have attractive grounds that contribute to the quality of the surrounding landscape, it may be appropriate to include them...” (paragraph 7.604).

- 2.2.7 The Inspector acknowledges that the school was ‘listed’ and the land is an:

“...important component of the attractive sweep of landscape that separates Brighton from its neighbours to the east...” (paragraph 7.604).

- 2.2.8 He then concludes that the inclusion of the school and its grounds is “*finely balanced*” but on balance gives:

“...more weight to the fact that the school is part of a wider sweep of land that satisfies the designation criteria than... ..to the more localised concerns identified by the Agency...” (paragraph 7.604).

- 2.2.9 It is clear that the Inspector believes that landscape within which Roedean School sits is:

“...essentially an extensive tract of high quality chalk downland. It is one of the few tracts of downland that sweeps down to the sea...” (paragraph 7.570).

- 2.2.10 He goes on to say that:

“...the limited number of locations where the sweep of downland meets the coast are all places of especial importance...” (paragraph 7.570).

2.3 Support for Inspector’s Recommendation

- 2.3.1 The SDC has estimated that 136 respondents to the public consultation, in the summer 2007, supported the inclusion of addition 16 in the South Downs National Park.

2.4 Summary of Objector’s Reasons for Exclusion

- 2.4.1 The Bursar, on behalf of Roedean School, objects to the inclusion of the school in the proposed National Park for two reasons. First, that the school does not meet the statutory criteria. Second, that being included in the National Park will adversely affect future building development.

2.5 Detail of Roedean School's Objection

- 2.5.1 The main argument over the criteria concerns the fact that the school is private and therefore there are no opportunities for open-air recreation. The Bursar quotes the Meyrick case and cites the *"lack of opportunities for open air recreation"* given by the judge for excluding Hinton Park from the New Forest National Park and upheld by the Court of Appeal. He states this is similar to the situation at Roedean¹¹ and that the Inspector *"has not taken appropriate account of the absence of opportunities for open air recreation"*¹².
- 2.5.2 He also says that there is *"very limited public access"* because of the need for security as it is a girls' boarding school with there being no access land or rights of way across the site¹³.
- 2.5.3 Following Meyrick, the Bursar considers that the Inspector *"has misapplied the 'natural beauty' criterion"*¹⁴ which he believes the school and its grounds does not meet and that it is not in the Sussex Downs Area of Outstanding Natural Beauty (AONB)¹⁵. He expands on this when saying:

"Roedean School and its estate is a private area of managed land, largely sports pitches and facilities and mowed lawns and institutional buildings which comprise a completely different heavily managed landscape to the farmed and natural downland beyond the school boundaries to the north and east. We consider that it cannot be described as an extensive tract of natural beauty." (paragraph 13)

- 2.5.4 In paragraph 15 of his rebuttal he also cites some of the judge's comments from the Meyrick case on the essential attributes of national parks, which primarily related to natural beauty and states that the *"school does not meet these requirements."*

3 Rebuttal of Objector's Reasons for Exclusion

3.1 Rebuttal of Objector's Reasons for Exclusion – Natural Beauty

- 3.1.1 The Bursar has relied upon the school's managed appearance and 'institutional buildings' as the main thrust as to why the school does not meet the natural beauty criterion (see paragraph 2.5.3 above). Yet it is interesting that in his objection, the Bursar fails to mention the relevance of Section 99 of the NERC Act 2006, which states:

"The fact that an area in England or Wales consists of or includes-

(a) land used for agriculture or woodlands,

(b) land used as a park, or

¹¹ Paragraph 9, #2024/1/1

¹² Paragraph 12, #2024/1/1

¹³ Paragraph 17, #2024/1/1

¹⁴ Paragraph 12, #2024/1/1

¹⁵ Paragraph 5, #2024/1/1

(c) any other area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape,

does not prevent it from being treated, for the purposes of any enactment (whenever passed), as being an area of natural beauty (or of outstanding natural beauty)."

- 3.1.2 Part (c) is the most applicable here as it allows for any areas of a more managed appearance potentially to be treated as having natural beauty, i.e. the school and its grounds should not automatically be considered not to have natural beauty as the Bursar is implying.
- 3.1.3 This is a fundamental flaw in his argument on natural beauty and his failure to address this point highlights this. This is reinforced by his reliance on the Meyrick Judgment's comments on natural beauty which have been superseded by the NERC Act 2006 amendments.
- 3.1.4 In response to the Bursar's rather negative use of the term 'institutional buildings' to describe the school site, it is clear that the Inspector takes a rather different view considering the school of "*special architectural merit*" and it being an important part of this attractive sweep of landscape¹⁶. Although some of the more modern additions, it could be argued, have not respected the architectural and landscape position of the school, these are relatively few and are dwarfed by the impressive 500 foot frontage of its listed Flemish-style main building and the greater downland landscape.
- 3.1.5 The Inspector also specifically addressed the inclusion of educational establishments "*of special architectural merit ... that contribute to the quality of the surrounding landscape*"¹⁷. He also applied this approach to St Dunstons which is in a similar situation but not an educational establishment. This point was not addressed by the Bursar, highlighting another weakness in his objection on natural beauty.
- 3.1.6 The Bursar presumes that "*the site is excluded from the Sussex Downs Area of Outstanding Natural Beauty*"¹⁸ because it is a private estate of heavily managed appearance and 'institutional buildings', but provides no evidence to back up this claim. However, neither is the surrounding 'natural downland' in the AONB either, the reasons for this probably lost in history. However, it is worth noting that the former Brighton Borough Council did pick up the anomaly and incorporated this area (between Brighton and Woodingdean / Rottingdean) into its Local Plan and polices, designating it as an "Area of Important Landscape and Environmental Value"¹⁹. This landscape designation included Roedean School, indicating that the school was valued in its landscape setting. It is worth noting too that the Council wished to see the area incorporated into the AONB²⁰:

"...The Council is concerned however that the AONB does not cover all areas of exceptional landscape value within the Borough. For example, the coastal area

¹⁶ Paragraph 7.604, Part II, CD #3

¹⁷ Paragraph 7.604, Part II, CD #3

¹⁸ Paragraph 14, #2024/1/1

¹⁹ CD 99 (Brighton Borough Local Plan Towards 2000 - Proposals Map)

²⁰ Paragraph 3.58, CD100 (Brighton Borough Local Plan Towards 2000)

of downland countryside at Ovingdean Valley and Roedean Bottom should be afforded similar protection to other areas of exceptional landscape value which are included in the AONB. Consequently it is the Council's intention to protect such areas through designating them as Areas of Important Landscape and Environmental Value (AILEV)... ..Brighton Council would nonetheless welcome a boundary review which re-assessed those areas of exceptional landscape value within the Borough that are currently not designated within the AONB."

3.1.7 All this would tend to suggest that this area, including Roedean School, lies within an extensive tract of downland, which is of great natural beauty.

3.2 Rebuttal of Objector's Reasons for Exclusion – Recreational Opportunity

3.2.1 The Bursar's main argument against Roedean School's inclusion in the PSDNP is his claim that it fails the recreational criterion and relies on the Meyrick Judgment to back up his claim. Yet there are a number of flaws in this approach.

3.2.2 Firstly, there are many parts of the South Downs and existing National Parks that are private and have limited or no public access and many of these lie on the boundary (this latter point is addressed later on in section 4). The fact that Roedean is a girls' boarding school is irrelevant to National Park criteria. The Bursar has only commented on the actual school itself, not the context of the surrounding downland, which has very good public access on three sides and close by to the school. Security issues in relation to public access are covered in other legislation, such as the Countryside and Rights of Way Act 2000; it is not a consideration in determining whether a site should be in or out of a National Park.

3.2.3 Secondly, the Bursar relies on the Meyrick Judgment on Hinton Park to substantiate his claim and tries to draw a parallel between the two cases²¹. However, the two areas are fundamentally different.

3.2.4 Hinton Park is some 800 acres in size²² and part of a much larger estate on the edge of the New Forest National Park. However, in contrast, Roedean School is only around 20 hectares²³ or 50 acres. This is one sixteenth the size of Hinton Park and therefore on a completely different order of magnitude.

3.2.5 Also, the Inspector from the New Forest National Park Inquiry accepted that²⁴:

"...the landscape of Hinton Park is not often visible from surrounding countryside due to the extensive layout of woods beyond the central parkland area and the mosaic of smaller woodland within..."

3.2.6 This point was picked up during the two legal challenges. In fact it was this point combined with the lack of public access to the land itself which led to the land being

²¹ Paragraphs 9 & 17, #2024/1/1

²² Paragraph 8, CD #20 (Meyrick Court of Appeal Judgment)

²³ This was calculated using the area measuring tool on the Magic Map website:

www.magic.gov.uk/website/magic/

²⁴ Paragraph 4.166, CD 204 (New Forest National Park Inspector's Report)

removed from the New Forest National Park on the grounds that the Inspector had failed to explain²⁵:

“...why he took the view that the opportunities for open air recreation, in relation to Hinton Park, went beyond “vague or unrealistic aspirations”...”

- 3.2.7 However, once again, the situation at Roedean School is completely different. It is overlooked and highly visible in the landscape, not hidden away and difficult to see as is Hinton Park in the New Forest.
- 3.2.8 Therefore on both size and visibility, it is wrong to try and compare the circumstances of Roedean School with those of Hinton Park. The fact that this small establishment itself does not have public access is immaterial and the Inspector was quite correct to focus on its setting in a wider sweep of high quality downland (see section 2.2 above). Roedean School is a small private site, in the middle of open, highly accessible coast and countryside, with much high quality public access.

4 Implications of NERC Act 2006 and Meyrick Judgments

- 4.1 The main aspects of the implications of the NERC Act 2006 and Meyrick Judgments have been largely covered in the rebuttal in section 3 above. However, one aspect not covered, which is relevant to this case should there be any doubt about the area satisfying the criteria, is the issue of ‘washing over’.
- 4.2 This is an issue that has been raised a number of times by Natural England during the course of the inquiry. The following is an extract from its statement of impact of the Meyrick Judgment on the South Downs National Park designation process²⁶:

“...Mr Justice Sullivan confirmed that a designation could ‘wash over’ a tract of land even though not every part of the tract meets the designation criteria (paragraph 83). Whilst, in principle, the 1949 Act does not warrant a distinction being drawn between land in the main body of a National Park and land on its boundary, in practice there is more scope for excluding land which does not meet the designation criteria when it is at the boundary (paragraph 84). It is a matter of judgement on the ground whether this should apply in any particular case.”

- 4.3 The Bursar in his submission has focussed on the words in CD #2, that *“in practice there is more scope for excluding land which does not meet the designation criteria when it is at the boundary”*. This may be true, although it is interesting to note that Judge Sullivan was not quite so definitive as Natural England has been here, and used the words *“there may well be more scope...”* [SDC’s emphasis]²⁷ rather than there ‘is’.

²⁵ Paragraph 57, CD #20 (Meyrick Court of Appeal Judgment)

²⁶ Paragraph 7, CD #2

²⁷ Paragraph 84, CD #9 (Meyrick Judgment – High Court)

- 4.4 In any event, the SDC does not believe that it should apply here, given the small area involved and the fact that the extensive tract in which Roedean School sits clearly meets both the National Park criteria.
- 4.5 The issue not picked up by the Bursar but accepted by the Meyrick Judgment and by Natural England as outlined in paragraph 4.2 above is that the designation can ‘wash over’ a tract of land. This is clearly a case where this might apply given the Inspector’s ‘finely balanced’ decision²⁸.

5 Additional Considerations

- 5.1 This rebuttal focuses on the two legal criteria for determining whether land should be included in a National Park. However, the Roedean School objection letter objects that “*inclusion will materially impair the School’s ability to upgrade its buildings and estate*”²⁹. While this might be a legitimate concern, it is of no relevance to the designation of the area within the South Downs National Park and should be ignored.

6 Conclusion

- 6.1 Overall, Roedean School has not produced any substantive evidence that the area does not meet the statutory criteria. It has failed to show why the removal of Hinton Park from the New Forest National Park is relevant to Roedean, given the very different circumstances on the ground between the two situations and neither has it properly addressed the school’s wider relationship with the tract of downland within which it sits. Therefore the SDC can see no sound reasons as to why Addition 16 (Roedean School and Foreshore) should not be included in the proposed South Downs National Park.

7 Recommendation

- 7.1 The SDC considers that a substantive and compelling case for excluding this area has not been made by the objector and requests that the Inspector confirms his recommendation to the Secretary of State that the South Downs National Park Designation Order boundary be amended to include Addition 16.

²⁸ Paragraph 7.604, Part II, CD #3

²⁹ Paragraph 1, #2024/1/1