

**SOUTH DOWNS NATIONAL PARK BOUNDARY**

**WESTERN WEALD**

**ADVICE**

1. Hampshire County Council (“HCC”) and others are seeking to persuade the Landscape Assessor (“LA”) and the Inspector that their conclusions on the exclusion of the Wealden landscape north of the chalks downs (“the Weald”) including the A3 corridor (“the Corridor”) from the proposed National Park (“NP”) are wrong both on the facts and in law. I do not address the merits of designation of this area. I have however been asked to advise Phillips (Build) Ltd (who have an interest in land in the Corridor and in the Weald which was previously included within the Boundary and under the Inspector’s and LA’s approach would be excluded) as to whether the approach of the LA and the Inspector is compliant with the statutory scheme especially in the light of the representations being made by HCC.
2. I do not in this Advice seek to analyse each paragraph or section of the Report in detail. Everyone interested in this issue will be well aware of the key themes of the Inspector’s Report and of the LA and their logic in reaching the conclusions they did. Rather, having carefully read all the documents and the objections to the Reports, I set out some general observations which I consider would be the likely conclusion of a Court were it to consider the legality of the approach of the LA/Inspector.

**General Approach**

3. I have come to the clear conclusion that the approach of the Inspector and the LA is lawful and that the “in principle” criticisms of it are (when properly

analysed) no more than an objection to the merits (and not the legality) of the conclusions reached.

4. It seems to me that if one reads the reports of the LA and the Inspector as setting out general principles of law (“characteristic beauty” and “remoteness/wildness”) which are then strictly applied to the facts of the case, HCC may have identified a legal flaw because it is plain that those matters are not legal thresholds which land has to pass before it can be included in the NP.
5. However, I cannot read the reports in that way, and I do not think the reports can be fairly read as setting high legal tests which have to be passed. Rather it seems to me that the LA in particular is identifying the sort of features which it is appropriate to take into account in deciding whether the legal tests are passed and which make it appropriate to designate as a NP rather than e.g. an AONB. I can find no misdirection in law. All I can find in the reports is the LA and the Inspector seeking to find ways to apply the statutory criteria on the facts of the case.
6. It is hardly surprising that, in applying the statutory criteria, they find it necessary to look at broad themes/factors including factors such as remoteness/ characteristic natural beauty to aid their decision making. That allows them to create a logically defensible boundary of an area which plainly meets the statutory criteria and which justifies NP designation.
7. The LA and the Inspector are plainly well aware of the very special role NPs have in the UK. It seems to me that the very broad approach to designation advocated by HCC is contrary to that very special role and to the purposes of NP legislation. The result of HCC’s approach could be that where a particular NP was being designated, all land contiguous with the proposed boundary of the NP and having natural beauty and opportunities for recreation would be included in the National Park even if that area (looked at separately from the

NP) would not warrant designation. It seems to me that that is entirely the wrong way round. I think the LA adopts the correct approach by saying e.g. “only the chalk downland areas have the distinctive and characteristic natural beauty appropriate for the proposed [SDNP]”. I read this as saying one looks first at what one is designating – here one is designating a “South Downs” national park. Logically that includes the South Downs and ancillary landscape areas. To require other areas to be linked in some way to the characteristics of the South Downs is in my view simply commonsense.

8. It is not at all clear to me why if HCC’s was the correct approach large additional parts of south East Sussex and Kent should not be included within the NP. There are a profusion of AONBs and areas of great landscape and recreational value right across this area but there is (correctly in my view) no suggestion that they should be included in the NP.
9. I therefore think that the approach of the Inspector and the LA is justified in law.
10. I further think that attempts to show it is flawed by reference to detailed legal submissions misses the point. This is an exercise of determining an appropriate boundary for a NP. The legislation cannot be and is not intended to be a mechanistic straitjacket for decision makers in that context. The big question is how broad should a “South Downs” national park be? It deciding that question matters such as links to the South Downs and extent to which the recreational experience will be special by reasons of remoteness are plainly relevant.

### **The A3 Corridor**

11. I consider the position in respect of the A3 Corridor to be even stronger. The name is a little misleading. It is not just the A3 which the LA and the

Inspector thought compromised this tranche - it was a combination of that road with the main railway line and the urban and suburban development and the level of activity surrounding it, that made the A3 fail the tests for inclusion in the NP.

12. Of course, the mere existence of a town is not necessarily inconsistent with NP status – although the general approach has been to try to avoid inclusion of large areas like Petersfield for obvious reasons. Here the combination of the town, the urbanisation of the corridor and the A3 itself are factors which I consider the Inspector and the LA not only could but had to, consider in combination. Once that starting point is accepted the logic for the LA and Inspector's conclusions are clear and clearly lawful.
  
13. I should further add that historically the AONB boundaries were determined by administrative boundaries and were set for administrative convenience. I can find no indication that they were set by reference to any assessment of a coherent character. I also note that the AONBs were designated prior to the A3 being built in its current form. I further note that despite AONB designation there has been very significant development in the area. All those are factors which make simple reliance on historic AONB boundaries flawed in principle in determining either the boundary of the NP or the future boundaries of the AONB.

David Forsdick  
Landmark Chambers  
24<sup>th</sup> April 2008