

970/1/2

Ref. No: 970

**SOUTH DOWNS NATIONAL PARK
(DESIGNATION) ORDER 2002
RE-OPENED INQUIRY**

PLANNING EVIDENCE

for TOADS HOLE VALLEY

by Martin Carpenter BA (Hons) MRTPI

**On behalf of the joint owners of Toads Hole Valley:
JW Cook Estates Ltd and Pecla Investments**

February 2008

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CONTENTS	Page
1.0 Qualifications and Experience	3
2.0 Introduction	4
3.0 Review of the Evidence Submitted to the First Inquiry by Objectors to The Exclusion of Toads Hole Valley to PSDNP	7
4.0 The Inquiry Inspector's Conclusions in Respect of Toads Hole Valley	13
5.0 The Relevant Changes to the Legislation	15
6.0 Open-Air Recreational Opportunities and Accessibility Criterion	18
7.0 Natural Beauty Criterion	21
8.0 Summary and Conclusions	23

Appendices (common to Mr Russell-Vick & Mr Carpenter)

Appendix 1	Countryside Agency's Position Paper 1 (CD/069) (extract only)
Appendix 2	Landscape Character Assessment Guidance for England and Scotland (CD/057): CAX 84 (extract only)
Appendix 3	Objection Evidence of Mr MGI Ray
Appendix 4	Objection Evidence of Society of Sussex Downsmen
Appendix 5	Objection Evidence of Mr D Bangs (Friends of Whitehawk Hill)
Appendix 6	Countryside Agency's Response to Objection Evidence of Mr Bangs
Appendix 7	Inspector's Report (extract only)
Appendix 8	Enplan's Representations September 2007
Appendix 9	SDNP Public Consultation: Enplan's Landscape Report February 2002
Appendix 10	Landscape Evidence to Brighton & Hove Local Plan Public Inquiry November 2002 (extract only)
Appendix 11	PRV Viewpoint Assessment Photographs 2008
Appendix 12	Report on Cultural Heritage Issues by Place Archaeological Consultants 2008
Appendix 13	Report on Botanical Issues by EPR 2008
Appendix 14	Proposed National Park Boundary Designation Order 2002
Appendix 15	Proposed National Park recommended boundary modifications June 2007
Appendix 16	Representations by Lawrence Graham August 2007
Appendix 17	Site plan with SNCI and CROW boundaries

- Appendix 18 Noise Survey by Acoustic Associates 2008
- Appendix 19 Pedestrian and Horse Rider Survey by Steer Davies Gleave 2008
- Appendix 20 Plan of Enplan's proposed PSDNP boundary
- Appendix 21 Proof of Evidence of Nigel Green (MRTPI) for Brighton & Hove City Council concerning the Re-opened Brighton & Hove Albion Football Stadium Inquiry 2005 (extracts only)
- Appendix 22 OS Plan 1938

1.0 QUALIFICATIONS & EXPERIENCE

- 1.1 I am Martin Alan Carpenter, a Partner of Enplan, Planning, Landscape and Environmental Consultants, which was established in 2000. I have been a member of the Royal Town Planning Institute since 1985. I was formerly Director of Planning at DMH, a regional law firm with offices in Brighton, Crawley and London. I have over twenty three years' experience having worked with a number of local planning authorities at the start of my career and, for the last twenty years, in the private sector.

- 1.2 I have acted on behalf of JW Cook Estates Limited and Pecla Investments, the owners of Toads Hole Valley, since 2003. Prior to setting up Enplan with Philip Russell-Vick I worked in Brighton between 1995 and 1999. I am familiar with the appeal site and the wider area having visited them on numerous occasions for the purpose of preparing this evidence.

2.0 INTRODUCTION

- 2.1 My evidence concerns land at Toads Hole Valley (THV) which is located at the northern edge of the built up area of Hove. It is a triangular site with established residential development along its south-western and south-eastern boundaries. The A27 on an embankment, runs along the length of the northern boundary of the site.
- 2.2 The site was excluded from the Proposed National Park Boundary by the Countryside Agency (CA) in the Designation Order 2002. The CA and their landscape advisors considered that the site did not meet the natural beauty or recreational criteria as required under the 1949 Act. The relevant section of the Designation Boundary is at **Appendix 14**.
- 2.3 Representations were submitted to the Designation Order in respect of, inter alia, the THV site. At the subsequent Public Inquiry evidence was presented to the Inspector objecting to the exclusion of the site from the Proposed National Park. It is noted that those parties supporting the Designation Order were not afforded the opportunity to present evidence, either orally or in writing, to the Inquiry. It is significant in my view that no professional landscape evidence was presented to the inquiry on behalf of the landowners. The Countryside Agency did provide evidence in relation to THV at the Inquiry and in response to the objectors which is set out at **Appendix 6**. The CA's assessment of the natural beauty criterion is contained in para's 4.10 - 4.15 of the evidence and their assessment of the opportunities for open-air recreation is set out at para's 4.25 - 4.29. In my view the CA's response was not comprehensive and did require detailed knowledge of factual issues which they were not able to provide. I say this in the light of the evidence of the objectors which contained erroneous and misleading information concerning for example access to the land. I also say this in the light of the Landscape Report dated February 2002 which was prepared by Mr Russell-Vick of Enplan on behalf of the landowners and which was submitted as part of the consultation process to the draft Designation Order which included THV in the PSDNP.

- 2.4 Having considered the evidence presented to the Inquiry by the objectors and the CA, the Inspector recommended that THV should be included in the PSDNP and the revised relevant section of the boundary is at **Appendix 15**. The Inspector's assessment and conclusions are set out at para's 7.694 - 7.699 of Volume 1 of his report dated 31st March 2006 (at **Appendix 7**).
- 2.5 Following the Inspector's Report, the South Downs National Park process was deferred to await the outcome of the '*Meyrick*' judgements (in relation to the proposed New Forest National Park). By the time the judgements had been made in February 2007 changes to the Natural Environment and Rural Communities (NERC) Act 2006 were in place. In June 2007 DEFRA wrote to interested parties inviting representations in respect of the following matters:-
- (i) the relevance and implications of the '*Meyrick*' case;
 - (ii) the relevance of any new provisions contained in the NERC Act 2006;
 - (iii) the alternative boundary line produced by Natural England concerning the area between Petersfield and Pulborough;
 - (iv) the Inquiry Inspector's Report Volumes 1-3 dated 31st March 2006; and
 - (v) the schedule of additional areas (with supporting maps) recommended for inclusion in the Proposed South Downs National Park (PSDNP).
- 2.6 Initial representations were submitted on behalf of the owners of THV by Lawrence Graham Solicitors on 13th August 2007. A copy of these representations are at **Appendix 16**.
- 2.7 Further representations were submitted to DEFRA on 24th September 2007 and a copy of these are at **Appendix 8**. The representations provided a brief commentary on items (i), (ii), (iv) and (v) of DEFRA's letter and set out a summary of the background to the 2002 Designation Order for the THV site. The above mentioned Landscape Report of February 2002 was appended to these representations.

Scope of Evidence

- 2.8 My evidence will expand upon the representations submitted in August and September 2007 and will focus on the following issues:
- (i) review of the evidence submitted to the first Inquiry by objectors to the exclusion of THV in the PSDNP.
 - (ii) the Inquiry Inspector's considerations in respect of THV;
 - (iii) implications of the '*Meyrick*' judgements and implications of the legislative changes to the NERC 2006 Act;
 - (iv) assessment of the recreational and accessibility opportunities for THV; and
 - (v) the natural beauty criterion.
- 2.9 My evidence will refer, as appropriate, to the evidence prepared by Philip Russell-Vick, MLI who considers the natural beauty criterion under the NERC 2006 Act. Appendices common to both my evidence and that of Mr Russell-Vick have been prepared and are referred to.

3.0 THE REVIEW OF THE EVIDENCE SUBMITTED TO THE FIRST INQUIRY BY OBJECTORS TO THE EXCLUSION OF THV TO PSDNP

3.1 THV was considered at the Inquiry on the 14th January 2004. From the Inquiry documents list the following prepared evidence in relation to THV, objecting to its exclusion from the PSDNP:

- (i) Mr D. Bangs (Secretary, Friends of Whitehawk Hill), for the Friends of Toads Hole, & Brighton and Hove Community Wildlife Groups Forum – November 2003.
- (ii) Society of Sussex Downsmen on behalf of South Downs Campaign (SDC) – November 2003, and
- (iii) Mr M. Ray – November 2003.

3.2 In addition, the following letters of objection were referred to at the THV session:

- (i) Mr D. Newland, 93 Clark Avenue, Hove dated 28/02/02.
- (ii) Colin & Dinah Child, 18 Houndean Rise, Lewes dated 20/11/03.
- (iii) Letter from the CPRE Sussex (undated).

3.3 I am advised that the proceedings were conducted by way of an informal hearing with no cross-examination of evidence.

3.4 SDC stated at para 2.2.4 of their evidence under the heading '*Justification Against Criteria – Natural Beauty and Landscape Quality*':

"Land use of the larger north eastern segment is in a state of transition. Recently taken out of use as agricultural land it is now subject to unauthorised motorcycle use. However, the SDC considers the area has considerable potential, if properly managed and restored as Downland and a public open space."

3.5 Agricultural use of THV ceased soon after the bypass was constructed in the late 1980s. Agricultural evidence was presented to the Brighton and Hove Local Plan Inquiry in November 2002 which confirmed that future agricultural use of the site would not be viable. The Local Plan Inspector considered this evidence and concluded that future agricultural use of THV would be '*inconceivable*'.

3.6 The unauthorised motorcycle use has occurred for a number of years and the landowners have erected bunds and created trenches along the site boundaries to

seek to prevent the motorcycle use. In addition, signage has been erected confirming that the land is private and that motorcycle use is prohibited. More recently the landowners have erected further fencing and re-dug the trenches at the suggestion of Sussex Police and the City Council to seek to prevent access.

3.7 It is important to appreciate that THV has been in the private ownership of the same family since 1937 and they have no intention of selling the site now or in the future. There is no public access to the majority of the site. The CROW land comprises 18% and non-public access is 82%. Accordingly, SDC's comment that the site has considerable potential as Downland and a public open space is incorrect. The landowners will not permit THV to become public open space. There is absolutely no prospect, therefore, of there being any opportunities for public access or recreational use for the majority of the site.

3.8 The SDC commented at para 2.3.1 of their evidence under the heading '*Justification Against Criteria – Opportunities for Open-Air Recreation*' that:

"The SDC considers that the Countryside Agency is therefore incorrect in stating that the area is not open to the public."

3.9 The CROW land is the only area of THV that is publicly accessible and as mentioned above the majority of the site is private and not open for public use.

3.10 SDC refer at para 2.3.3 to

"The north-west tongue of the area provides a vital link to the greater Downland. It is contiguous with the south-west segment and is traversed by a bridleway which is visually well insulated from the bypass to the north and the built up area to the south. This bridleway leads directly to a bridge over the bypass, one of the most important recreational gateways to the Downlands to the north, continuing along the track bed of the old Devil's Dyke railway."

3.11 The pedestrian bridge over the A27 referred to by SDC is some 500m from the north-western edge of THV. The bridleway/footpath between THV and the bridge abuts the urban form and has a distinctly urban feel to it. Views of the Downs to the north of the A27 are entirely screened from this bridleway/footpath and the 'gateway' to the

Downs, as described by SDC, is the crossing over the A27. The crossing follows the alignment of the old Devil's Dyke railway and a public footpath runs to the south of the bridge to a public car park within the Hangleton estate and which provides signage and details of the history of this link to the Downs. I attach at **Appendix 22** a 1938 OS extract which shows the alignment of the old railway and some of the early development of the Hangleton estate. For ease of reference, THV, the current A27 and the above mentioned car park are marked on this plan.

- 3.12 SDC and Mr Ray refer to the 1994 Local Plan Inspector's Report to the Hove Borough Local Plan Second Review. There was no independent landscape evidence presented to Local Plan Inquiry on behalf of the landowners and the Inspector noted that the majority of the site was in agricultural use. The Inspector also stated at para 4.25 that:

"The Valley includes some of the best and most versatile land which, in accordance with Policy S12 (d) of the Structure Plan, should be protected from development."

- 3.13 I have already referred to the agricultural evidence presented to the 2003 Brighton and Hove Local Plan Inquiry, and the Inspector's conclusions concerning the future agricultural use of the site.

- 3.14 The objectors were collectively concerned about the future use of the site if it were to be excluded from the PSDNP. In my view this is not relevant to the principal criteria of the designation of the national park. Notwithstanding this, I would refer to the planning evidence presented by the City Council in support of a 'community stadium' on land at Falmer within the Area of Outstanding Natural Beauty. That evidence considered a number of alternative sites for the community stadium including THV. One of the City Council's objections to locating the stadium at THV was that its potential for development for employment purposes would be lost which the Council considered would not be in the long term interests of the city. I attach relevant extracts of this evidence at **Appendix 21**.

- 3.15 Mr Bangs stated at page 11 of his evidence under the heading '*Opportunities for open-air recreation*' that:

“The Valley has been the playground of the people of the Hangleton estate and the Goldstone Valley since those areas were built, over 50 years ago... The Valley provides pleasure and delight to children & young people, & to adults, for dog walking, children’s games, blackberrying & collecting. In the woods & scrub thickets are kids’ dens & slides, & informal paths wind about the valleysides... .Subsequent actions by the owners, including the total banning of the public & Council from the site, the entrenchment of the boundary of the site and the erection of aggressive ‘Keep Out’ noticeboards have done little to diminish public usage of the site. On any summer evening or weekend around the year, children, women walking their dogs and casual strollers are to be seen enjoying this hillside, &, at weekends, too, the trail bike riders enjoy a freedom they are hard put to find elsewhere on local Downland.”

3.16 In my view this is not a fair description of the uses on the site which have consisted of largely motorcycling, fly-tipping and dog walking.

3.17 I have stated earlier, the objectors are wrong to say that the site has or is in public use. Any public uses of the site, including the uses alleged by Mr. Bangs, are unlawful. They constitute a trespass and the efforts to prohibit such uses are entirely lawful. Indeed, the authorities have recently encouraged the landowners to erect appropriate fencing to help prohibit the unauthorised motorcycle use. These actions have followed a number of years of complaints from local residents about the noise generated by the motorcycle users who come from beyond the urban area of Brighton and Hove to use the site. It appears that Mr Bangs wishes to encourage all types of unauthorised uses on the site irrespective of their desirability with the local community or their compatibility. Mr Bangs also fails to appreciate that the site is privately owned however, he refers to “*management of the Valleyside*” at para 2 of page 11 of his evidence which he states was ‘*first mooted around 1992*’. Again it is important to clarify that the landowners have no intention to enter into a management agreement of THV and will retain it as privately owned land. It is incorrect for the objectors to suggest that public access or any public management of THV is in any way possible.

CA’s response to the objectors of THV’s exclusion of the PSDNP

3.18 The CA prepared responses to the objections to the exclusion of THV from the PSDNP and these are at **Appendix 6**. With regard to natural beauty, the CA confirmed at para 4.10 of their response to Mr. Ray and Mr. Bangs that the site had been considered in

line with the CA's approach (CD69 – pages 26-28) and that their landscape consultants had concluded that it did not meet the natural beauty criterion. The CA reiterates at para 4.12 that:-

“The scenic quality and sense of place have been eroded by the A27; which impacts on the perception of the site. This is evident in views from both within THV and from the National Park to the north. Topography means the land at THV is orientated towards the urban edge. Views out of the site are severed by the embankment of the A27 and the traffic is seen breaking the skyline while views south from the National Park towards THV are elevated and look across the A27. Clearly in both views the A27 visually and physically severs THV from the Downland.”

- 3.19 The CA considered that the severance of the land from the wider AONB and the A27 resulted in the land being ‘*associated with the urban context and not the wider landscape to the north*’.
- 3.20 The CA noted the lack of management of the site and the damage to it from trespass which had eroded its qualities such that it did ‘*not demonstrate the characteristic qualities of the open Downland in this part of the National Park*’.
- 3.21 The CA referred to the nature conservation interests on the south-western embankment and that their approach to defining the boundary recognised that such features situated at the margins of a National Park should be included where practicable. The CA continued that this approach would be appropriate if the natural beauty and recreational issues were finely balanced but the CA concluded at para 4.14 that:

“However, in the case of THV the considerations against the area meeting the natural beauty criteria are so strong that any ecological designation would not, on balance, sway the decision making process.”

I agree with the CA's assessment of the natural beauty criterion.

Opportunities for open-air recreation

- 3.22 The CA confirmed that there is no public access to the site and noted the evidence of trespass including access by motorised vehicles. The CA also noted the A27 had created a physical barrier to access to the wider Downland and that there were no crossings or tunnels associated with the site. The CA considered that the A27 resulted in the severance of recreational opportunities associated with THV.
- 3.23 The CA referred to traffic movements and its impact on the perceived tranquillity of THV. Tranquillity was noted as an aspect of recreational experience that would mark it out as being markedly superior from general recreational activities associated with the urban edge. The CA concluded with regard to the recreational experience that THV was not directly related to the wider Downland but as an 'open area, edge of settlement resource' and that therefore 'such an experience is not considered to be markedly superior'.

4.0 THE INQUIRY INSPECTOR'S CONCLUSIONS IN RESPECT OF THV

4.1 The Inspector's conclusions and recommendations in respect of THV are set out at para's 7.694–7.699 of his Report and which are attached at **Appendix 7**. The Inspector commented on the natural beauty and open-air recreational opportunities criteria of the 1949 Act.

4.2 With regard to the natural beauty criterion the Inspector made the following comments:-

- (i) the site has suffered from superficial damage from trespass and unauthorised motorcycle use;
- (ii) the site is no longer farmed and has an unkempt appearance;
- (iii) the intrinsic quality of the land has deteriorated;
- (iv) all parties at the Inquiry agreed that the A27 physically severed THV from the landscapes to the north of the A27;
- (v) this severance inevitably raises doubts as to THV's suitability for inclusion in the PSDNP; and
- (vi) there is clear visual connectivity between THV and the wider Downs.

4.3 With regard to open-air recreational opportunities the Inspector stated that:-

- (vii) the land is the subject of a high degree of 'de facto' access;
- (viii) the site is reasonably described by objectors as one of the gateways into the South Downs; and
- (ix) the public can enjoy views of and across the land from every side.

In the context of the '*Meyrick*' judgement and whether a site is visible from viewpoints outside of it, (as referred to in (ix) above), this is deemed to be not relevant.

4.4 In addition, the Inspector made the following comments in relation to the A27:-

- (x) the A27 along the length of the site's northern boundary is not a conspicuous feature; and

- (xi) passing traffic along the A27 is a relatively minor landscape detractor within a large-scale and expansive landscape.
- 4.5 With regard to ecology the Inspector commented that the steep sloping west bank of the site had ecological value by virtue of its allocation as a Site of Nature Conservation Importance (SNCI). For clarification the SNCI closely follows the boundary of the CROW land which allows public access to the public on this part of the site. The SNCI and the CROW boundaries are shown on the plan at **Appendix 17**. It is noteworthy that some of the CROW land particularly the northern part close to the A27 is not readily accessible as it is so steep sided.
- 4.6 In reading his recommendations to include THV in the PSDNP the Inspector concluded that:
- “On balance I consider that the natural beauty criterion is satisfied and that the recreational opportunities criterion is satisfied”.*
- 4.7 I will comment on the natural beauty criteria in Section 7 of my proof and with reference to the evidence prepared by Mr Russell-Vick. With regard to the impact of the A27 upon the site I do not agree with the Inspector’s view that it is not a conspicuous feature. I believe it is both visually and aurally highly noticeable and this is emphasised by it being on an embankment along the full length of the site’s northern boundary. There is a constant and relentless passage of heavy traffic along this stretch of the A27 both during normal working hours and also during night time hours. The presence of lighting along part of the carriageway abutting the site is another prominent feature in this landscape. Furthermore, the vehicles themselves and their lights during the hours of darkness add to the prominence of the road and the urban experience that this creates.
- 4.8 The Inspector’s comments on the recreational opportunities may have been influenced by the representations of third party objectors and the evidence they presented to the first Inquiry. In my view the Inspector’s conclusions are incorrect in respect of the public accessibility of the site and therefore its actual recreational value. Furthermore, I do not agree with the assessment that THV is one of the gateways into the South Downs and . I will expand upon these views in later sections of my proof.

5.0 THE RELEVANT CHANGES TO THE LEGISLATION

Legislative Changes Concerning Designation

- 5.1 Prior to the changes, National Parks were designated pursuant to s.5(2) of the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), as:

“those extensive tracts of country in England as to which it appears to the Agency that by reason of

(a) their natural beauty and

(b) the opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population,

it is especially desirable that the necessary measures be taken...”

- 5.2 The new subsection of the NERC 2006 Act is as follows:-

“5(2A) Natural England may-

(a) when applying subsection 2(a) in relation to an area, take into account its wildlife and cultural heritage.

(b) when applying subsection 2(b) in relation to that area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public”.

- 5.3 Section 99 of the 2006 Act also provides that land used for agriculture or woodlands, as a park or 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 as an area of natural beauty.

- 5.4 Therefore, the effects of NERC on the designation of National Parks were summarised by the Court of Appeal in *Meyrick* as follows. First, when considering whether it is especially desirable to designate a tract of land by reason of its ‘natural beauty’, account must be taken of its wildlife and cultural heritage (s.59(1) of NERC, inserting a new s.5(2A) (a) into the 1949 Act). Land is not prevented from being of natural beauty by the fact that it is used for agriculture or woodlands, or as a park, or that its

physiological features are partly the product of human intervention in the landscape (s.99 of NERC).

- 5.5 Secondly, when considering whether designation is especially desirable by reason of the opportunities afforded for open-air recreation, it is necessary to take into account the extent to which '*it is possible to promote*' opportunities for the understanding and enjoyment of its special qualities by the public (s.59(1) of NERC, inserting a new s.5(2A)(b) into the 1949 Act).
- 5.6 In the *Meyrick* decision, the Court of Appeal considered whether the land in that case would meet the recreational criterion following NERC.
- 5.7 It is suggested that '*vague aspirations*' for public access, which it had not regarded as '*opportunities*' for open air recreation under s.5(2)(b). I have doubts as to whether '*vague aspirations*' are consistent with '*possibilities to promote opportunities*' under the new s.5(2A)(b) - the latter seems to set a higher requirement than vague aspirations. In any event there are no possibilities to promote such opportunities given that THV is private land and no such opportunities will be entertained by the landowners.
- 5.8 This indicates that when applying the new legislation:
- (i) vague or unrealistic aspirations should not be sufficient to create '*opportunities*' for open-air recreation under s.5(2) or '*possibilities to promote opportunities*' for the understanding and enjoyment of an area of purposes of 2.5(2A)(b); and
 - (ii) in the absence of public access to the land it is unlikely that the recreational criterion can be achieved.
- 5.9 For clarification, the court did not seek to interpret the new provisions relating to natural beauty.

Open-Air Recreation

- 5.10 The legislative change which requires consideration of the extent to which ‘it is possible to promote’ opportunities for the understanding and enjoyment of its special qualities by the public ought to have no effect on the Inspector’s conclusions.
- 5.11 By definition, the term opportunities infers that one can look to the future in assessing the ability to promote such recreational opportunities. To assess the opportunities for a markedly superior recreational experience it is reasonable to include the ‘*current use of an area and future recreational capacity*’ and the ‘*potential for improving recreational provision with possible changing land uses*’. As I shall amplify later THV is private land apart from the steep west bank which has CROW rights and is a designated SNCI. The vast majority of THV is therefore not publicly accessible and as set out in Section 5 of my proof the fencing and signage has been erected with the support and encouragement of the City Council and Sussex Police consequent upon pressure from local residents to stop the trespass on the land.

Urban Fringe Sites

- 5.12 It is recognised and understood that significant parts of the PSDNP are not reasonably accessible with public footpaths. However, para 24 of the Court of Appeal judgement stated that:

“In practice there may well be more scope for excluding certain areas which do not meet the criteria in subsection 5 (2)(b) when defining an outer boundary of a National Park.”

- 5.13 This judgement confirmed that it was reasonable to consider public access in respect of areas on the urban fringe on their individual merits and that the lack of access could indeed hinder the ability of the site to promote a markedly improved open-air recreational experience as required by the Act.

6.0 OPEN-AIR RECREATIONAL OPPORTUNITIES AND ACCESSIBILITY CRITERION

- 6.1 As I have re-iterated in my proof, the site is privately owned with only access to the public on the CROW land which is the western steep bank of the site. The majority of the site is not publicly accessible and therefore open-air recreation opportunities are not available now or in the future. The landowners have erected fences and reinstated trenches to prevent unauthorised uses of the site. Such works have been encouraged by the police and Brighton and Hove City Council.
- 6.2 Notwithstanding the majority of the site's lack of accessibility, I have considered the open-air recreational experience afforded within it. In undertaking this assessment Enplan has commissioned a Noise Report of the site.
- 6.3 Acoustic Associates has undertaken a Noise Report of the site in February 2008 which is attached at **Appendix 18**. I would refer to the noise map in the report which shows the noise contour levels across the site. The major noise sources at THV are from the A27 and King George VI Avenue which abut two sides of the triangular site. The whole of the site is exposed to noise levels of in excess of 55dB(a) which the World Health Organisation (WHO) advises is at a level sufficient to create '*serious annoyance*'. I would refer to para 5.5 of the report which stated that, in view of the existing noise levels:

"I would expect walkers to take the opportunity to utilise the footpaths into the open downland to the north where the walking/recreation experience would be considerably more pleasant".

Indeed, those parts of the site along the A27 and King George VI Avenue experience levels in excess of 65dB(a). Clearly these noise levels have a significantly detrimental impact upon any recreational experience of the site. This is an important and legitimate consideration when assessing urban fringe sites and whether 'markedly superior open-air recreational opportunities' exist or can be created. In my view such opportunities do not exist nor can they be created.

- 6.4 I have also considered the pedestrian flows between the crossing over the A27 (500m to the west of the site) and the public footpaths/bridleways to the south of the A27 and including the CROW land. Enplan commissioned Steer Davies Gleave (Transport Consultants) to undertake a Pedestrian and Horse Rider Survey and which was carried out on the 16th and 17th February (Saturday and Sunday) between the hours of 07:00 to 19:00. A copy of the survey results is at **Appendix 19**.
- 6.5 Three survey locations were selected and these are shown on the aerial photograph:
- (i) Immediately to the south of the crossing over the A27.
 - (ii) At the north-western corner of the school playing field.
 - (iii) At the edge of the north-western edge of the CROW land.
- 6.6 The vast majority of pedestrians were recorded between Hangleton Way and the bridge over the A27. The survey location (i) illustrates this with pedestrian numbers of between 107 – 144 over the two 12 hour periods using this route which is part of the old Devils Dyke Railway which includes a public car park and signage adjacent to Hangleton Way. I have referred to this earlier in section 3.11 of my proof.
- 6.7 The next most used pedestrian route in survey location (i) is eastwards towards the rear of the school and towards survey location (ii). 28 pedestrians used this route (p1.1 on the 17th February).
- 6.8 The results at survey location (ii) showed relatively few pedestrians. It is noted that at route p2.2, 22 and 32 pedestrians walked from the bridge along the western edge of the school playing fields towards Hangleton Way. Only a handful of pedestrians walked between survey point (ii) and the CROW land at survey point (iii). Even fewer pedestrians walked between survey point (iii) and the CROW land with figures ranging between 0 and 7 pedestrians over the two 12 hour periods.
- 6.9 The survey demonstrates that the principal route for pedestrians within the Hangleton area of Brighton and Hove is 500m to the west of THV along the line of the old railway and which crosses the A27 due north of the public car park. This crossing is the 'gateway' to the Downs in this part of the urban area which the survey shows is well

used by the local community. The survey also demonstrates that there are relatively few pedestrian movements between the CROW land and this crossing.

- 6.10 The survey establishes that THV is not used as a gateway to the Downs. The gateway is clearly the line of the old railway and in any event it is difficult to describe THV in such terms as it is not open to public access apart from the CROW land.

7.0 NATURAL BEAUTY CRITERION

- 7.1 The evidence of Mr Russell-Vick updates the written statement he prepared on behalf of the landowners in relation to the 2002 Consultation Draft Designation Order of the PSDNP. He has considered both the 'naturalness' and 'beauty' of the site and because he feels that both elements of the criteria should be met in accordance with the CA's own Landscape Character Assessment Guidance which is relied upon by Natural England's landscape consultants in relation to their evidence in respect of the western Weald area.
- 7.2 Mr Russell-Vick particularly highlights the test of 'beauty' and considers it a demanding one of high landscape quality of national importance. Having reviewed his 2002 assessment and undertaken a new assessment for the purposes of writing his evidence, he concludes that the site '*falls markedly short*' of the beauty test. He also considers, correctly in my view, that the assessment should apply to the landscape in its current state and not at a future point in time. This is important in respect of THV in the light of the evidence I have provided which confirms that there is no prospect of the majority of the site being lawfully accessible to the public nor a management plan to secure improvements to the site. The landscape quality of THV will remain low and it is noted that the recent archaeological and ecological assessments have confirmed that the site has no value in respect of these matters. Again, these are important considerations in the context of the legislative amendments concerning land of ecological and archaeological value.
- 7.3 Mr Russell-Vick has reviewed other sites between the Brighton and Hove urban area and the A27 and draws a number of distinctions between THV and the other sites which are included in the PSDNP. An important distinction is that all of the other sites have high landscape qualities and are either actively managed and/or farmed or partly farmed. It is noteworthy that most of these sites are in public ownership or is accessible from adjoining farmland.
- 7.4 Mr Russell-Vick concludes that THV has poor landscape and scenic quality whose condition is damaged. The proximity of major highways (the A27 and King George VI Avenue) has a significantly harmful impact on the level of tranquillity. All of these

factors in his view substantially outweigh the elements of landscape character that the site exhibits. I agree with his conclusion that THV does not meet the beauty criterion test.

8.0 SUMMARY AND CONCLUSIONS

- 8.1 For THV to be included in the PSDNP it must meet the natural beauty test and also must be capable of providing open-air recreational opportunities which can secure a markedly superior recreational experience. From the evidence provided by Mr Russell-Vick and me, we have shown that THV meets none of these tests.
- 8.2 Apart from the SNCI land on the steep western bank the site is generally devoid of any ecological or archaeological value. The recent reports from EPR and Place Associates confirm this.
- 8.3 The position of the CA in respect of THV at the first Inquiry was clear. The CA strongly supported the Designation Order that THV should be excluded from the PSDNP on the grounds that the above criterion were not met. Their evidence in response to objectors is summarised earlier in my evidence and I would take this opportunity of re-iterating their conclusions in respect of excluding THV. They stated that *'in the case of THV the considerations against the area meeting the natural beauty criteria are **so strong...**'*
- 8.4 With regard to the objectors, some of the evidence particularly in respect of accessibility of the site was misleading and incorrect. The fact that the landowners were not able to prepare evidence (or even a written statement) or attend the Inquiry meant that incorrect evidence could not be rebutted. I accept however that the CA did attend and did respond to the objectors at the Inquiry but that the detailed knowledge as matters such as access and trespass were not available to them and therefore the Inspector. An example of this is the consideration of whether THV is a 'gateway' to the Downs. The pedestrian/horse rider survey has shown that pedestrian links between the site and the Downs are poorly used and that the principal route is, not surprisingly, the historic former Devil's Dyke railway footpath which the Council promote with signage and a public car park. The survey demonstrates the significant numbers that use this route. The pedestrian link between THV and the Downs is relatively tortuous and involves a pedestrian/bridleway route within a distinctly urban and noisy area for approximately 500m which is the distance between THV and the crossing over the A27. This factor as well as the physical barrier that the A27 represents confirms that

THV is not in any way a 'gateway' to the Downs. On the contrary, the links to the Downs are severed by the A27.

- 8.5 With regard to the recreational experience of THV, the majority of the site is not publicly accessible and therefore there is no recreational experience. Notwithstanding this, the Noise Report shows that noise levels across the whole site are above 55dB(a) and above 65dB(a) within a significant proportion. The proximity of the A27 and King George VI Avenue has a major impact on the site and at these levels the recreational experience is harmfully affected. I would refer to the WHO's consideration that such noise levels across the whole site would create '*serious annoyance*' and would also refer to the conclusions of the report where it states at para 5.5:

"I would expect walkers to take the opportunity to utilise the footpaths into the open downland to the north where the walking/recreation experience would be considerably more pleasant".

As the site is on the fringe of the urban area and the PSDNP, this factor is important in line with para 24 of the Court of Appeal judgement.

- 8.6 With regard to the reference to '*vague aspirations*' for public access, I would reiterate that the ability to promote recreational opportunities on the site does not and will not exist at THV. It is privately owned land and the landowners have no intention of this situation altering now or in the future. The site does not meet the two tests of natural beauty and open-air recreation and it is not therefore '*especially desirable*' for the land to be designated as part of the National Park.
- 8.7 In conclusion therefore, the changes in legislation have set out a number of tests and assessments for land to be included within a National Park. All of these tests must be met and in my view THV does not meet these and therefore it is considered that the site should not be part of the PSDNP and that the boundary should be amended as per the plan at **Appendix 20** as described by Mr Russell-Vick.