

South Downs National Park Public Inquiry
(Re-opened)

The Demise of the Concept of 'Characteristic Natural Beauty'

Supplementary Proof of Evidence

by



March 2008

Contents

Topic	Page
1 Introduction	3
2 The Historical Policy Context to Dartmoor	4
2.1 Setting the Scene	4
2.2 The Sandford Review	4
2.3 The Government's Response to the Sandford Review	4
2.4 The Countryside Commission's Advice on National Park Boundary Reviews..	5
2.5 The Dartmoor Inspector's Report (1993).....	5
3 The New Forest	6
4 The South Downs	7
5 Whose Role is it to Determine National Park Policy?.....	7
6 Conclusion.....	8
Annex 1: The South Downs Landscape Assessor	9

1 Introduction

- 1.1 The South Downs Campaign (SDC), a network of over 140 national, regional and local groups and organisations¹ working for the best possible South Downs National Park, submits the following proof of evidence on 'characteristic natural beauty'. This paper provides an accurate and comprehensive account of the derivation of the so-called 'Dartmoor test' and its apparent requirement for 'characteristic natural beauty' and its implications for the South Downs National Park.
- 1.2 The SDC's evidence on Topics 1 and 2 was that the Dartmoor and New Forest 'precedents' (that had been used in part to justify a proposed South Downs National Park (PSDNP) largely confined to the chalk) can as a matter of law have no materiality to the designation of the South Downs National Park since the enactment of the NERC Act². So, the Inspector would be wrong in law to take into account either the Dartmoor or New Forest Inquiries in reaching a conclusion on 'characteristic natural beauty' for the PDSNP, and any decision on that basis would be legally challengeable. That legal evidence is not reversed here.
- 1.3 The SDC's evidence in Topics 1 and 2 also outlines why the boundary setting approach in the Dartmoor Inquiry was, in any case, misapplied as a matter of fact in the New Forest National Park Inquiry and how this error was repeated by the South Downs Landscape Assessor³.
- 1.4 However, the SDC notes that both David Jarvis for Tarmac and WSCC persist in misapplying these 'precedents' in their proofs⁴. The SDC therefore provides the additional factual evidence set out in this proof of evidence. This, reaches the same conclusion as the legal evidence (that these 'precedents' have no materiality to the designation of the South Downs National Park).
- 1.5 The additional factual evidence demonstrates that:
- The Inspector at the Dartmoor Inquiry did not apply his own test but adopted without change or comment the policy of the Countryside Commission, the then designating authority for National Parks in England, in reviewing the boundary of the Dartmoor National Park
 - The Dartmoor 'test' was only intended to apply to that one variation order
 - The Dartmoor 'test' was misapplied by the Landscape Assessor in her report for the New Forest National Park Inquiry
- 1.6 It should be noted that the SDC stands firmly by its position that the application of the designation criteria in the New Forest National Park decision now has no materiality, given the changes to the legislation that have occurred since that decision was made. This paper is produced without prejudice to that position.

¹ SDC Updated Biography – Inquiry Document No: #1147/0/1

² Paragraph 3.2.9, #1147/1/1 and SDC oral submissions

³ Paragraph 3.2.4, #1147/1/1

⁴ See paragraph 2.6, #762/1/2 and paragraph 63, #1007/1/1 respectively

2 The Historical Policy Context to Dartmoor

2.1 Setting the Scene

2.1.1 In order to understand what happened in the Dartmoor National Park Variation Order Inquiry in the 1990s, hereafter known as the Dartmoor Inquiry, it is essential to look at the context in which that boundary review took place. To do this it is necessary to consider the policy context at the time which had been set by the Sandford Review in the 1970s. Although the Edwards Report was published in 1991 before the Dartmoor Inquiry had sat, it had not been published when the original boundary work took place and at the time the Variation Order was drawn up.

2.2 The Sandford Review

2.2.1 The Sandford Review is important as it sets the context for the Dartmoor Inquiry. In paragraph 2.13 the Sandford Report (CD 86) outlines what National Parks are:

“What distinguishes the present national parks and the other areas which the Dower and Hobhouse Reports identified as potential parks is that:

a) they contain in close proximity an aggregation of landscapes of high scenic quality; ...” [SDC’s emphasis]

2.2.2 The Oxford English dictionary definition of the noun ‘aggregate’, of which aggregation is a derivative, is: *“a whole formed by combining several (often disparate) elements.”* [SDC’s emphasis]. This lends support to the view that restricting a National Park to a single, ‘characteristic natural beauty’ was never the intention of the legislators and policy makers. This sets the context for Committee’s comments on existing National Park boundaries, where in paragraph 22.2⁵ it is stated:

“So far as the existing national parks are concerned, public opinion and that of the park authorities does not favour radical alterations; we see no reason to disagree...”

2.2.3 This shows that while there was no appetite for radically altering the size of existing National Parks, the Sandford Committee was acknowledging that National Parks are not confined to a single characteristic landscape.

2.3 The Government’s Response to the Sandford Review

2.3.1 The Government’s response to the Sandford Review was published in 1976, in the form of Circular 4/76 (CD #22). Of particular note is the statement in paragraph 13 under the heading ‘boundaries’ which states: *“The Secretaries of State agree with the Committee in not favouring radical alterations to national park boundaries (22.2).”* This paragraph from Circular 4/76 is also quoted in Annex B of CD 79 (see below).

⁵ Paragraph 22.2, page 107 – CD 86

2.4 The Countryside Commission's Advice on National Park Boundary Reviews

2.4.1 In 1982, the Countryside Commission agreed advice to National Park Authorities on reviews of National Park boundaries (CD 79). The document takes note of the recommendations of the Sandford Review and the endorsement by Government in Circular 4/76, and while not ruling out any boundary review options, it does tend not to favour radical change (paragraph 18, CD 79).

2.4.2 Most relevant to the Dartmoor Inquiry though is the statement in paragraph 5 which says: "*...It is stressed that the discussion here does not deal with or affect the way in which proposals for new national parks might be considered by the Commission.*"

2.4.3 Therefore, the Commission could not have been clearer in stating that the National Park boundary review process was not relevant to the designation of new National Parks.

2.5 The Dartmoor Inspector's Report (1993)

2.5.1 At the beginning of his Report (paragraphs 2.1 – 2.27, CD 68), the Dartmoor Inspector outlined the national policy background and the Countryside Commission's approach to the variation of national park boundaries.

2.5.2 Within this section, the Sandford Review along with the Government's response in Circular 4/76, which agreed that radical boundary reviews were not favoured, were mentioned several times⁶. However, in paragraph 2.24 the Inspector reports further (in stating the Commission's case) that:

"in accordance with the advice contained in Circular 4/76, major extensions into different landscape types had not been considered..."

2.5.3 It is clear from this statement that different landscape types could have been included, were it not for this specific government policy, guided by Sandford, on boundary variation in existing national parks. Therefore, this highlights that having a single characteristic landscape type was not a requirement for National Parks, either existing or new.

2.5.4 The Dartmoor Inspector also refers to the Countryside Commission's 1983 guidance note which set out advice on National Park boundary reviews and which was drawn up from the Countryside Commission's Board Paper (82/40 – CD 79)⁷. As discussed above (in paragraph 2.4.2) this Board Paper stressed that the boundary review advice was not relevant to the designation of new National Parks.

2.5.5 Despite significant mention of the policy background to the Dartmoor Variation Order in the Dartmoor Inspector's Report, it is only part of paragraph 2.22 which is quoted by most people when claiming that Dartmoor sets a precedent for the designation of a new National Park. Sometimes it has been incorrectly quoted as representing the Dartmoor Inspector's opinion. The paragraph in question reads (in full) as follows:

⁶ Paragraphs 2.7 and 2.14, Dartmoor Inquiry Report (1993) – CD 68

⁷ Paragraph 2.13, Dartmoor Inquiry Report (1993) – CD 68

“More recently the Countryside Commission had prepared a detailed character assessment to provide a clear definition of Dartmoor character and landscape quality (Core Doc. 18). The following eight landscape sub-divisions had been recognised: Inner High Moor, Moor Fringe, Eastern Upland, Dartmoor Borders, Upland Rivers, Broad Valley, Dartmoor Woodland, and Towns and Settlements. The assessment demonstrated that all the sub-divisions had Dartmoor character and that, together, they made up an extensive area which comprised the Park. The critical test for boundary making in this case was whether the landscape was both of Dartmoor character and national quality.”

- 2.5.6 Therefore the approach that the Countryside Commission took at the time was to restrict boundary changes in Dartmoor to areas of 'Dartmoor character' to accord with Government guidance not to alter the area of the National Park radically. As shown by paragraph 5 of CD 79 this approach was not to apply to new National Park designations. Equally, the Commission clearly state, as reported by the Dartmoor Inspector in paragraph 2.22 (CD 68) that the test being applied was only applicable to Dartmoor⁸.
- 2.5.7 Once examined, it is clear that Dartmoor has been taken out of context. The fact that it has been somehow turned into a test for new National Parks by the New Forest Landscape Assessor is a cause for serious concern and is based on a fundamental misunderstanding of the context in which the Dartmoor boundary review took place.

3 The New Forest

- 3.1 Dartmoor is the building block upon which the New Forest National Park boundary approach was justified by the New Forest Landscape Assessor. Yet the New Forest Landscape Assessor's Report (Appendix 1, CD 204), which contains a review of National Park Policy since 1949, does not mention the Sandford Review or Circular 4/76 in relation to setting the context for the Dartmoor Inquiry. Indeed these are not listed as core documents, although reference might have been made to them in other documents. Neither is there any reference to the Countryside Commission's advice on reviewing National Park boundaries (CD 79).
- 3.2 Consequently, the Landscape Assessor's report contains no discussion of the context of the Dartmoor Inquiry. Other than some general comments on natural beauty, the New Forest Landscape Assessor merely quotes from paragraph 2.22 of the Dartmoor Inquiry Report (CD 68)⁹. Later on in her report she expands on this slightly to say¹⁰:

“Whatever the diversity and quality of landscape character, two elements must be met for NFNP status. In connection with this I agree with the views of the inspector for the Dartmoor National Park Designation (Variation) Order Inquiry 1990 as in para 2.22 of the Inspector's report: “the critical test for boundary

⁸ See paragraph 28 Val Kirby proof for Natural England – Inquiry Document No: #1330/0/1. See also paragraph 51, Natural England Position Paper 5 – CD #1

⁹ Paragraph 1.19, Appendix 1, New Forest Inspector's Report – CD 204

¹⁰ Paragraphs 2.45 and 2.46, Appendix 1, New Forest Inspector's Report – CD 204

*making in this case was whether the landscape was of Dartmoor character **and** (my bold) national quality”.*

*“Translated to the NHNP case, this would mean that the critical test for boundary making is the presence of New Forest character **and** outstanding natural beauty of national or international importance.” [her emphasis].*

- 3.3 However, as the SDC has shown already, to ‘translate’ the so called ‘Dartmoor test’ to the New Forest was fundamentally wrong. The Countryside Commission could not have been more explicit at the time in saying that this approach only applied to boundary reviews and not to new designations (paragraph 5, CD 79), a fact which, critically, was overlooked by the New Forest Landscape Assessor.

4 The South Downs

- 4.1 To some extent it is understandable that the South Downs Landscape Assessor took the line he did, with the New Forest Inquiry Inspector having followed the advice of his Landscape Assessor and the New Forest Inspector’s Report having been accepted by the Secretary of State. It is regrettable that the Countryside Agency did not challenge the New Forest decision at the time, nor did it explain adequately the background to the Dartmoor boundary review in the first part of this inquiry.

- 4.2 However, it is worth noting that for whatever reason, the SDNP Landscape Assessor failed to review the policy context to the Dartmoor Inquiry before concluding that the ‘Dartmoor test’ applied to the South Downs, despite the evidence being before him (see Annex 1, attached). This was an unfortunate oversight and led him to advise the Inspector wrongly, in his summary conclusions¹¹ that:

“The findings of the Dartmoor and New Forest Inquiries confirm the need for National Parks to have an individual, distinctive and coherent identity. Only those areas that have typical chalk downland landscape characteristics can be said to possess distinctive ‘South Downs’ character. Land should be excluded if it does not share the characteristics of the core of the proposed National Park, even if it is of outstanding quality. The chalk downland alone meets the requirement for characteristic natural beauty.”

5 Whose Role is it to Determine National Park Policy?

- 5.1 It is also worth reiterating that the Dartmoor Inspector did not create the so-called ‘Dartmoor test’ himself. While it is sometimes quoted as being his conclusion (for example by the New Forest Landscape Assessor), he was in fact merely summarising the Countryside Commission’s approach. This is critical in three respects:

1. The Dartmoor Inspector did not create a precedent or new policy based on his own deliberations;

¹¹ Paragraph 7.4, page 101, Annex A, CD #3

2. He implemented the Countryside Commission's policy approach, correctly and seemingly without question;
 3. That Inspector having accepted the Commission's policy approach, it must surely be right that the limitations on that approach should be applied correctly to subsequent decisions
- 5.2 Today, it is Natural England which is given the power to formulate policy to designate National Parks, not others¹². Similarly it was the Countryside Commission who formulated the boundary review criteria and stated that it should not apply to new National Park designations. Consequently, it cannot have been correct for the New Forest National Park Inspector to accept the Landscape Assessor's re-interpretation of the Commission's boundary review process and effectively turn it into a policy that it was never intended to be.

6 Conclusion

- 6.1 It is unfortunate that the misinterpretation of the Dartmoor boundary review 'precedent' has been allowed to continue for so long, when it clearly has been taken out of context and misapplied to new National Parks. While too late for the designation of the New Forest National Park, it is now very clear that these 'precedents' have no materiality to the designation of the South Downs National Park, either as a matter of law or fact. Therefore they should be abandoned forthwith.

¹² Paragraph 52, Natural England: Position Paper 5 – CD #1

Annex 1

The South Downs Landscape Assessor

- 1.1 The Landscape Assessor's Report on the application of the statutory criteria in the designation of the South Downs National Park (paragraphs 1.16 and 1.17, Annex A, CD #3) does little more than paraphrase what was written by the New Forest Landscape Assessor. He also quotes paragraph 2.22 from the Dartmoor Inspector's Report (CD68) as support for his belief in the importance of 'characteristic natural beauty' (paragraph 1.18, Annex A, CD #3).
- 1.2 Unfortunately, the Landscape Assessor provides no evidence to support his conclusion about the relevance of the Dartmoor Inspector's Report to the particular circumstances of South Downs National Park designation. As with the New Forest, any mention of the context in which the Dartmoor boundary review took place is noticeable by its absence¹³.
- 1.3 The Landscape Assessor does devote a section later to 'characteristic natural beauty' (paragraphs 6.17 – 6.32, Annex A) but this does little more than repeat the West Sussex County Council and Chichester District Council line that Dartmoor and the New Forest decisions set a precedent for the South Downs. It is interesting to note that it contains no mention of the characteristics of existing national parks. This seems rather odd if precedents are being examined and an interpretation is being made as to what was intended by the original policy formulators and legislators.
- 1.4 Indeed the characteristics of existing national parks are not actually discussed until much later in the Assessor's report under the heading 'variety' (paragraphs 6.103 – 6.119, Annex A). Even then, the Welsh National Parks are not examined despite having been established under the same legislation and at the same time as the original English National Parks.
- 1.5 In his summary conclusions, the Landscape Assessor states in paragraph 7.4 (page 101, Annex A) that:

“The findings of the Dartmoor and New Forest Inquiries confirm the need for National Parks to have an individual, distinctive and coherent identity. Only those areas that have typical chalk downland landscape characteristics can be said to possess distinctive ‘South Downs’ character. Land should be excluded if it does not share the characteristics of the core of the proposed National Park, even if it is of outstanding quality. The chalk downland alone meets the requirement for characteristic natural beauty.”

¹³ The Sandford Review (CD 86), Circular 4/76 (Annex B, CD 79), and the Countryside Commission advice on National Park boundary reviews (CD 79), are not in the list of documents used by the Landscape Assessor to determine the framework within which the statutory criteria have been interpreted over time - See paragraph 1.1 of the Landscape Assessor's Report (Annex A, CD #3).