

**NATIONAL PARK AND ACCESS
TO THE COUNTRYSIDE ACT 1949**

**SOUTH DOWNS NATIONAL PARK
(DESIGNATION) ORDER
OBJECTION N° SDNP 2697**

**PROOF OF EVIDENCE TO THE RE-OPENED INQUIRY
DAVID JARVIS PPLI ON BEHALF
OF TARMAC LIMITED
(RELATING TO SECTION D, KINGSLEY)**

DECEMBER 2007

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1. INTRODUCTION

- 1.1 My name is David Jarvis. I am a Director of David Jarvis Associates Limited.
- 1.2 My practice was appointed in May 2003 by Tarmac Southern Limited to examine, inter alia, the impact of the Proposed South Downs National Park (PSDNP) on its interests near Lode Farm, Kingsley (Section D of the proposed boundary).
- 1.3 I presented my main Proof of Evidence to the South Downs National Park Inquiry on Wednesday 31st March 2004.
- 1.4 I submitted a Supplementary Proof of Evidence (dated July 2004) to the Inquiry in the light of the decision concerning the establishment of the New Forest National Park (28th June 2004).
- 1.5 In the light of the Meyrick judgement, the Inspector's recommendation that "Non-Chalk" landscapes be excluded and Natural England's (NE) revised proposed boundary to the PSDNP, I submitted Additional Evidence in support of the case that the land near Lode Farm, Kingsley should be excluded from any National Park designation.
- 1.6 This Proof of Evidence builds on my previous Proofs and Evidence. Drawings DJA29-DJA45 in this Proof supercede those in the Additional Evidence.

2. THE MEYRICK JUDGEMENT

- 2.1 The Meyrick judgement was delivered on 3rd November 2005. It changed the way in which the National Park designation criteria have generally been understood since the first Parks were designated in the 1950's. As a result Defra took two actions to counter the Judgement:
 - a) clarifying the National Park legislation through the Natural Environment and Rural Communities Act 2006 which came into effect in May;
 - b) appealing against the Judgement. The Court of Appeal dismissed Defra's appeal on 1st February 2007.
- 2.2 NE in its "Statement of Impacts of the Meyrick case and the relevant provisions contained in NERC 2006 on the South Downs National Park designation process" has the following at paragraph 12:
 12. *The amendments have the following effect.*
 - a) *When considering natural beauty, Natural England may:*
 - *take into account an area's wildlife and cultural heritage (Section 5 (2A) (a); and*
 - *treat as being an area of natural beauty an area which consists of or includes land used for agriculture or woodlands, or used as a park, or an area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape (Section 99).*
 - b) *When considering opportunities afforded for open-air recreation, Natural England may take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of an area's special qualities by the public (Section 5 (2A) (b)).*

- 2.3 In my Proof of Evidence to the original Inquiry at paragraph 6.9 I stated that "I cannot see any justification for including the half dozen fields north of Rookery Farm and south of the B3004. They are ordinary and offer no public access (and definitely no markedly superior recreation experience)."
- 2.4 The Inspector at paragraph 7.95 in his report agreed with my view and stated that, *"Looked at on their individual merits, I accept, firstly, that these fields are not of especial scenic attraction and, secondly, that they do not offer any degree of public access."*
- 2.5 Similarly, the Assessor agreed with my view and found that the Mixed Farmland and Woodland Landscape Character Area (in which the land at Lode Farm falls) fails the natural beauty criterion (his para 3.31 of Annex B).
- 2.6 The Meyrick Judgement does not detract from the arguments put forward at the Inquiry regarding land near Lode Farm, Kingsley. The land fails the 'natural beauty' criteria and so, therefore, fails the recreation criteria also. If anything, it now fails the tests more clearly.

3. THE EXCLUSION OF "NON-CHALK" LANDSCAPES

- 3.1 The Assessor (summarised in paragraph 2.59 of the Inspector's Report Part 2) found that there was a need to focus on landscapes that have the characteristic natural beauty of the core landscape - in this instance the characteristic natural beauty of the core chalk downland.
- 3.2 The Assessor doubts whether Wealden or coastal lowland landscapes generally satisfy either the statutory natural beauty or recreation opportunities criteria.
- 3.3 At paragraph 2.61 of his report, the Inspector states that, *"My conclusions in respect of the non-chalk landscapes in the PSDNP generally accord with those of the Assessor."*
- 3.4 I agree wholeheartedly with both the Inspector and the Assessor.
- 3.5 We saw at 2.4 above that the land at Lode Farm had failed both the "Natural Beauty" and the "Markedly Superior Recreation" tests. In addition, it is not on the Chalk nor, even, intervisible with it.
- 3.6 The Agency (NE) has placed weight on the concept of "borrowed character" from the core downland.
- 3.7 The land at Lode Farm borrows no character from the distant chalk. I accept that some of the Hanger landscape on Greensand does have borrowed characteristics and that some of this landscape passes the "natural beauty" and "recreational" tests. The land at Lode Farm is not only distant from the core Chalk, it is distant from and not contiguous with the Greensand. Some of the land at Lode Farm is not even intervisible with the Greensand. The photograph from Viewpoint 2 on DJA 41 illustrates the very limited intervisibility with the distant hangers.
- 3.8 The Assessor at paragraph 6.149 in the Annex 1 states, *"In terms of visual links, I consider that land should be included within the Park for visual reasons where it is of high quality, **contiguous** with the chalk downland, and where visual links to the downland form a **dominant** characteristic of the land. In my opinion, the boundary should be drawn close to the escarpment to ensure that this is the case."* (his emphasis).
- 3.9 The land at Lode Farm fails both these tests.

- 3.10 At paragraph 2.53 of his Report, the Inspector states, *"It will be evident from the preceding paragraphs that, like the Landscape Assessor, I harbour serious reservations regarding the inclusion of extensive non-chalk landscapes in the PSDNP on the strength of unifying links to the core Chalk Hills. Even if I had concluded that the unifying links were individually or cumulatively sufficiently strong to effectively link these tracts to the core area, **the land in question would still need to satisfy the statutory criteria.**"* (My emphasis)
- 3.11 We have already seen in para 2.4 that the land at Lode Farm has failed the statutory criteria.
- 3.12 The "unifying factors" which the Agency (NE) cites include not only visual but also historical, geological, cultural and ecological factors (Inspector's Report Part 2 page 14).
- 3.13 There are no historical or cultural linkages between the core Chalk Downland and the land at Lode Farm; none has been suggested.
- 3.14 There is no ecological linkage between the core Chalk Downland and these "ordinary" fields. There are SSSIs at Binswood and Shortheath Common but these are on Gault Mudstone and Folkestone Sandstone respectively.
- 3.15 Geologically there is no close linkage. The land at Lode Farm is on Folkestone Sandstone which is separated from the Upper Greensand by the Gault Mudstone. The first Marly Chalk begins beyond this as is shown on DJA 31.
- 3.16 The Inspector in his report at paragraph 2.46 states, *"The Agency identifies a number of matters that are said to link the non-chalk character areas of the chalk downs. Firstly it is said that the chalk outcrop is inextricably linked to the clays and Greensand formations to the north. The geological relationship of the chalk to the clays and Greensand laid down in the Cretaceous period is not in dispute. That said, this sequential relationship is not unique or even unusual; it extends well beyond the PSDNP and can be observed throughout the south-east of England. In these circumstances I find it difficult to accept that geology represents a compelling link between the non-chalk character areas and the chalk outcrop."*
- 3.17 The Assessor at paragraph 6.151 concludes that, *"I agree that the Weald is an outstanding landscape in its own right. But from the evidence submitted and my own visits to the area, I find that the geological, historical, ecological and visual links are not sufficiently strong from the majority of the Weald and 'Coastal Lowlands' to be considered part of the extensive tract of land that can qualify as the proposed National Park."*
- 3.18 He goes further in his paragraph 3.49 of the Annex 2, *"I therefore recommend that, to the north of Petersfield, the eastern boundary of the proposed National Park boundary should follow easily recognisable features along the eastern limit of the 'Hangers on Greensand' landscape type, described in CD183."*
- 3.19 In summary, the land at Lode Farm:
- fails the "natural beauty" test;
 - fails the "markedly superior recreation experience" test;
 - fails the core Chalk Downland test;
 - is not intervisible with Chalk Downland;
 - has no cultural linkage of consequence;

- has no historical linkage of consequence;
- has no ecological linkage of consequence;
- has no relevant geological linkage as it is on sandstone, well removed from the Chalk;
- fails all the above tests either pre- or post- the Meyrick Judgement.

4. THE PROPOSED REVISED BOUNDARY TO EXCLUDE 'NON-CHALK' LANDSCAPES

- 4.1 The Inspector asked the Assessor to examine two large areas of 'non-Chalk' landscape and to propose a boundary. One of these areas is called "Petersfield, Liss and the A3 Corridor".
- 4.2 Without repeating all of the Assessor's analysis, he finds at paragraph 3.49 that the boundary of the PSDNP should follow, ". . . . *easily recognisable features along the eastern limit of the "Hangers on Greensand" landscape type, described in CD183.*"
- 4.3 I agree with him. This is easily applied on the ground as Alison Farmer for NE has demonstrated in the western section of E.
- 4.4 While it does not affect my arguments in any relevant way, care must be taken over which of the various definitions of the greensand terrace with hangers is to be used. DJA 39 shows the latest definition of the "Greensand Terrace" which comes from the East Hampshire Landscape Character Assessment - Final Report July 2006. This is to all intent and purpose the same as the South Downs Integrated Landscape Character Assessment prepared for the South Downs Joint Committee in December 2005. DJA 38, for comparison, shows the "Hangers and related areas" Landscape Character Area from the East Hampshire District Local Plan.
- 4.5 Whichever of the definitions is used (including others referred to by the Assessor), the land at Lode Farm lies to the east¹, on different geology and in a different Landscape Character Area.
- 4.6 In my Proof of Evidence to the original Inquiry at paragraph 3.7 I suggested that the northern boundary to the PSDNP should be the E-W road which runs through Hartley Wood. Apart from the arguments relating to "natural beauty" and "markedly superior recreational experience", I chose this boundary because it is defensible on the ground, coincides with the northern boundary of the AONB and because the proposed Binstead peninsula would be only 1.6kms wide at this point.
- 4.7 Taking the Assessor's suggested eastern boundary northwards (i.e. following the eastern boundary of the Greensand Terrace) it crosses this Hartley Wood road at a point where the PSDNP would now only be circa 800 metres wide. This reinforces my argument that the Hartley Wood road should be the northern boundary of the PSDNP at this point.
- 4.8 Defra asked Natural England (NE) to re-visit the PSDNP boundary in the light of the Inspector's report. DJA 36 shows the NE proposed revised boundary in red.
- 4.9 While NE followed broadly the eastern boundary of the various Greensand with Hangers (Greensand Terrace) Landscape Character Areas (which broadly coincides with the AONB) up to a point east of Selborne, NE then diverges from these two boundaries (LCA and

¹ Incorrectly written as west in my Additional Evidence.

AONB) to include the area left white on DJA 36.

4.10 NE only reconsider the boundary from E-H as suggested by the Inspector; they begin the revised boundary from Blackmoor. If the Inspector had suggested D-H, then there would be, in my opinion, greater scope to apply the "Chalk Only" objectives and select a defensible boundary which does not include land which fails the two main tests.

4.11 In this divergence from the two boundaries (a consequence of limiting themselves to E-H) NE has failed to exclude 'non-chalk' landscapes (and, more importantly, included land which the Inspector (see paragraph 2.4 above) and the Assessor (see paragraph 2.4 above) have found to fail the 'natural beauty' test and, therefore, by definition the 'markedly superior recreational experience test').

4.12 NE were given a clear brief to,

"exclude lower quality landscape and to exclude land which is of non-chalk character other than where there is a strong visual link or other association with the core chalk downs" (Alison Farmer, paragraph 1.3.3).

Logically this should apply to Section D.

4.13 Immediately to the South of Section D (from Blackmoor), NE could apply this brief and avoid the Mixed Farmland and Woodland. I quote from Alison Farmer at paragraph 3.2.3.

"Here the recommended revised boundary is pulled back to the west of the A3 to exclude lower lying land that forms part of the Mixed Farmland and Woodland landscape type. This takes on board comments by the Assessor in relation to landscape tranquility and quality issues and recommendations for the revised boundary line."

This approach should logically be applied to Section D where the Mixed Farmland and Woodland should be excluded.

4.14 I disagree with the Inspector in paragraph 7.95 of his Report where he says that, *"decisions regarding the appropriate boundary cannot be made on a field by field basis."*

4.15 Common sense suggests that a group of visually unattractive fields **surrounded by** land which passes all the tests for designation as National Park should be included. To exclude such fields in these circumstances would result in an ungainly "pepper-pot" effect.

4.16 The position of visually unattractive fields which lie **at the edge of** land which passes all the tests for inclusion as a National Park cannot be the same. If it was, the entire proposed National Park might as well be broadened and lengthened by the width of several fields.

4.17 If a single field which borders land passing all the tests, itself fails the tests at a proposed National Park boundary, it must be excluded. If it is not excluded, how can the next field (or the next fields ad infinitum) which also fails the test, be excluded? The answer is that they cannot be excluded. The coherence and the quality of the concept of a National Park are undermined as a result of their inclusion.

4.18 Whether a single field (on the boundary) is part of a wider tract that includes fields which do pass the tests is irrelevant. Providing there are clearly identifiable boundaries on the ground, the National Park boundary must, by definition, include the high quality land and exclude that which fails the tests.

4.19 The fields at Lode Farm, Kingsley fail the tests. They are on the proposed boundary of the

National Park. As can be seen on DJA 36, they form currently the north east corner of the proposed National Park providing two boundaries.

4.20 For the reasons given above, these fields must be excluded from any National Park.

5. CONCLUSIONS

5.1 The Meyrick Judgement and the NERC Act (2006) do not, in my opinion, significantly affect my or the Inspector's findings on the land at Lode Farm, Kingsley. The land fails the 'natural beauty' criteria and so, therefore, fails the recreation criteria also. If anything, it now fails the test more clearly - that is all.

5.2 The Inspector accepted my (and others) argument, in part, that the so-called Binstead peninsula should not be included in a PSDNP. He placed his proposed boundary along the B3004 and not along my recommendation which was the AONB boundary near Hartley Wood.

5.3 The Inspector (agreeing with the Assessor) has recommended that 'non Chalk' landscapes be removed from any PSDNP. The Assessor believes in 6.149 of his Annex 1 that "*land should be included within the Park for visual reasons where it is of high quality, **contiguous** with the chalk downland, and where visual links to the downland form a **dominant** characteristic of the land.*" (his emphasis).

The land at Lode Farm Kingsley is not high quality, contiguous with the chalk or visually linked to it.

5.4 At paragraph 6.94, the Assessor lists his key characteristics of the "South Downs" chalk downland as,

- *strong relative relief and a deceptive sense of great height;*
- *distinctive smooth, rolling, topography with a complex arrangement of dry valleys;*
- *dramatic, steep, winding scarp slopes with hanger woodlands;*
- *exhilarating, panoramic views and a sense of exposure;*
- *numerous river valleys cutting through the chalk ridge;*
- *relatively few signs of settlement;*
- *the obvious presence of archaeological remains in the open landscape, ancient trackways; and*
- *spring-line settlements at the base of the scarp slopes, with a conspicuous use of flint in vernacular buildings and walls.*

None of these characteristics apply to the land at Lode Farm, Kingsley.

5.5 The Assessor recommends in Annex 2 at 3.49 that the eastern limit of the "Hangers on Greensand" landscape character type should provide the eastern boundary of the PSDNP.

5.6 NE was asked by Defra to examine the Inspector's 'non-chalk' alternative and devise a boundary. While NE followed the Assessor's recommendation (and the AONB) for some of its length, it diverged east of Selborne to include a large area which is not core Chalk or greensand; NE was only asked to re-examine Sections E-H.

5.7 A boundary which followed the Assessor's recommendation (and the AONB) would create a "pinch point" near Hartley Wood only circa 800 metres wide.

5.8 I argued in my Proof of Evidence to the original Inquiry and in this Proof that the road at Hartley Wood represents an easily identified and logical northern boundary to the PSDNP excluding as it does land of differing geology (Mudstone, Sandstone, Head), differing LCAs

(Mixed Farmland and Woodland and, in some assessments, Heath) and differing quality (fields the Inspector finds to fail the natural beauty criterion).

5.9 I have argued in this Proof that the land at Lode Farm, Kingsley:

- fails the “natural beauty” test;
- fails the “markedly superior recreation experience” test;
- fails the core Chalk Downland test;
- is not intervisible with Chalk Downland;
- has no cultural linkage of consequence;
- has no historical linkage of consequence;
- has no ecological linkage of consequence;
- is on sandstone, well removed from the Chalk;
- fails all of the above tests either pre- or post- the Meyrick Judgement.

It must, I suggest, therefore be excluded from the PSDNP.

5.10 Finally, the Inspector considers that decisions regarding the appropriate boundary cannot be made on a field by field basis.

5.11 I have demonstrated that this approach is flawed and that, irrespective of whether fields which fail the tests are part of a wider tract which may or may not pass the test, they must be excluded if they occur at the boundary (as is the case here). Land which fails either the ‘natural beauty’ or ‘recreation’ tests and occurs on the potential boundary must be excluded if there is a readily discernible boundary on the ground. Not to exclude such land is to risk undermining the clear and definitive two criteria or tests laid down in the 1949 and 2006 Acts regarding National Park designation.

5.12 I, therefore, respectfully ask that the land at Lode Farm, Kingsley be excluded from any PSDNP and that the most defensible boundary line for the PSDNP runs east west along the road near Hartley Wood as shown on DJA 45.