

South Downs National Park Public Inquiry

Part 2: Boundaries

Response to the Countryside Agency's Rebuttal of the SDC's Marine Proofs of Evidence

(Section O, Maps 27 & 28)

Proof of Evidence

by



July 2004

1 Introduction

- 1.1 The South Downs Campaign (SDC) submits the following response to the Countryside Agency's rebuttal of the SDC's original proofs of evidence on the marine area¹ (Section O, Maps 27 & 28 of the Countryside Agency designated boundary maps). This response should be read in conjunction with these original proofs.

2 Countryside Agency's Rebuttal: Inquiry Reference No.: 5770/1/1/3275

- 2.1 The Countryside Agency agrees that the marine area proposed for inclusion by the SDC is of ecological and geological importance, is accessible, offers a range of recreational activities and that there is the potential to improve the resource. The Countryside Agency has refused to include two stretches of foreshore at Seaford and Eastbourne.
- 2.2 As regards the legal possibility of including marine areas within the South Downs National Park, the Countryside Agency seeks to refute that possibility using three main arguments. Firstly, according to the advice received from Ian McCollough, section 5(2) of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") does not allow it. Secondly, there is no precedent in the other National Parks for doing so. Thirdly, planning powers and byelaws could not be made in respect of those areas.

3 SDC's Response to the Countryside Agency's Rebuttal

- 3.1 To the extent that the Countryside Agency consider the foreshore at Seaford and Eastbourne to be within the SDC's proposed boundary, the Countryside Agency has misunderstood the SDC's proposed boundaries at Eastbourne and Seaford. The SDC's proposed boundary at Seaford and Eastbourne begins at the mean low water mark and extends out to sea and therefore does not include the foreshore. Consequently there appears to be no dispute between the Countryside Agency and the SDC regarding the exclusion of the foreshore at Eastbourne and Seaford.

3.2 Marine areas

- 3.2.1 As regards the first argument raised by the Countryside Agency, namely that section 5(2) of the 1949 Act does not allow for marine area, that fails to deny that section 101(2) of the 1949 Act extends the geographical areas available for designation as a National Park from "extensive tracts of country in England" to "any Crown land" which fulfills the purposive criteria of section 5(2) of the 1949 Act. The effect of section 101 is explained more fully in the SDC's Proof of Evidence 3272/34/3.
- 3.2.2 As regards the second argument put forward by the Countryside Agency, namely that there is no precedent of a National Park including areas of sea beyond the MLWM, that is incorrect. An area of sea between the mainland and the Kokoarrah rocks is

¹ SDC Qualities of the Marine Area – Inquiry Document No: 3275/34/1
SDC The Seven Sisters Voluntary Marine Conservation Area – an archaeological perspective – Inquiry Document No: 3275/34/2
SDC Legal Foundation for Marine Area Designation – Inquiry Document No: 3275/34/3

included in the Lake District National Park, as the Countryside Agency has recognized at para 4.24 of its rebuttal. Neither is it clear for what reason, if any, marine areas have not been included in other National Parks. It may be that marine areas were not included because they did not seem “especially desirable” for reason of their natural beauty and/or opportunities for recreation at the time rather than because as marine areas it was considered that they did not come within the geographical application of the 1949 Act. In any case, the question whether or not marine areas “have” been included before in a National park is not strictly relevant to whether marine areas “can” be included in a National Park.

3.2.3 The Countryside Agency are also wrong to argue that there are no planning powers beyond the MLWM in a National Park and that byelaws cannot be made in respect of marine areas. In this regard the Countryside Agency's rebuttal states “*Furthermore, even if it were accepted that there is provision in the 1949 Act to include marine areas within a National Park designation, this would not mean that a NPA [National Park authority] would have any planning powers over the marine area within its boundary. Land use planning powers can only extend to the MLWM. Similarly, there is no legal provision for a NPA to establish bye-laws beyond the MLWM, even if the designated boundaries include a marine area.*”

3.2.3.1 *Planning capabilities of a National Park Authority*

3.2.3.1.1 Section 4A(2) (National Parks) of the 1990 Act states “...*the National Park authority for the Park shall be the sole planning authority for **the area of the Park**...*” and as such may exercise all functions conferred by or under the planning Act (emphasis added).

3.2.3.1.2 As discussed fully in the SDC's Proof of Evidence 3272/34/3, the area of a National Park may include marine areas.

3.2.3.1.3 The planning powers of the National Park authority extend to Crown land that is in the area of the National Park. Paragraph 19(2A) (The Crown) of Schedule 1 (Local Planning Authorities: Distribution of Functions) of the Town and Country Planning Act 1990 states “[a]s respects the area of any National Park for which a National Park authority is the local planning authority those functions shall be exercised by that authority.” Moreover the new section 292A of the 1990 Act, as inserted by the Planning and Compulsory Purchase Act 2004, will have the effect that section 4A(2) applies to marine areas owned by the Crown.

3.2.3.1.4 The Crown Estate Commissioners may enter into agreements with the National Park authority regarding the use of the area of the National Park. Section 101(3) of the 1949 Act states “Where a National Park includes any Crown land, the appropriate authority and the local planning authority in whose area the land is situated may enter into an agreement for securing that, so far as any interest held by or on behalf of the Crown is concerned and so far as may be provided by the agreement, the land will be managed in a manner consistent with the accomplishment of either or both of the purposes specified in subsection (1) of section five of this Act”.

3.2.3.1.5 Therefore once a marine area is designated as part of the “area of the Park” the respective National Park authority will exercise sole planning authority over the area of the National Park including any marine area. Moreover the National Park authority may enter into an agreement with the Crown Estate Commissioners to use the marine area for National Park purposes.

3.2.3.2 *Byelaws*

3.2.3.2.1 Section 90(1) of the 1949 Act states “[a] local planning authority may... as respects land or a waterway to which the public are given access by an agreement or order, or in consequence of acquisition, under Part V of this Act...make byelaws for [specified reasons]”. Given that National Park authorities are, as of 1 April 1997, the sole planning authorities for National Parks, section 90(1) of the 1949 Act must refer to ability of the respective National Park authority to make byelaws.

3.2.3.2.2 It is a requirement for byelaws to be made that access agreements or orders or an acquisition under Part V of the 1949 Act exists in respect of the relevant land or waterway.

- a. An access agreement regarding Crown land in a National Park does not require an extra consent under section 101 of the 1949 Act. However section 297(1) of the 1990 Act requires any agreement made between the Crown and the National Park authority to be in conformity with the development plan.
- b. An access order regarding Crown land in a National Park does require consent of the appropriate authority under section 101(6)(a) of the 1949 Act.
- c. For the powers of acquisition under Part V to be exercised, the consent of the appropriate authority is needed under section 101(6)(b) of the 1949 Act.

3.2.3.2.3 Section 101(8) of the 1949 Act states “Byelaws made under this Act shall apply to Crown land if the appropriate authority consents to their application thereto”.

3.2.3.2.4 In summary, therefore, with the consent of the Crown Estate Commissioners, byelaws can be made in respect of marine areas in a National Park.