

# ENVIRONMENT CABINET MEMBER MEETING

## Agenda Item 21

Brighton & Hove City Council

**Subject:** South Downs National Park – Land at Green Ridge  
**Date of Meeting:** 30 July 2009  
**Report of:** Director of Environment  
**Contact Officer:** Name: Rob Fraser Tel: 29-2380  
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**Key Decision:** No  
**Wards Affected:** Patcham

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report considers the decision of the Secretary of State under the National Parks and Access to the Countryside Act regarding the boundaries of the intended South Downs National Park, the omission of Green Ridge and the recommended response.

#### 2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Environment:
- (a) Welcomes the Government's recent decision that there should be a South Downs National Park.
  - (b) Supports the addition of land at Roedean Crescent and Patcham Recreation ground.
  - (c) Formally objects on behalf of the council to the Addition 6 embankments on the basis that land at Green Ridge and the adjacent Mill Road/A27 embankments should all be included in addition 6 if discussions with DEFRA fail to result in acceptance of the inclusion of Green Ridge within the National Park Designation.

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The decision to create the South Downs National Park (SDNP) was taken by the Secretary of State for the Environment on 31<sup>st</sup> March 2009. Consultation on the intended South Downs National Park is restricted to commenting on the proposed additions which include the land to the rear of Roedean Crescent and Patcham Recreation Ground.
- 3.2 Whilst the omission of Toads' Hole Valley is regretted, it is also noted that no objection may be raised to this because although the Council had successfully proposed its inclusion at the first SDNP Inquiry, the owners subsequently argued against its inclusion at the reopened Inquiry and their case was accepted by the Inspector and this has been endorsed by the Secretary of State.

3.3 It is recommended that the Council supports the proposed additions which it recommended for Patcham recreation Ground and land to the rear of Roedean Crescent.

3.4 The major outstanding issue remains the omission of Green Ridge

### **Green Ridge**

3.5 Green Ridge, was excluded from the proposed South Downs National Park despite the fact that it forms part of a continuous stretch of land that extends north east to Coney Hill which is included in the SDNP.

3.6 In his decision letter of 31 March the Secretary of State stated that Green Ridge was "*included as part of addition 23*" (paragraph 71). However this was incorrect because it was only the embankments alongside Mill Road and the A27 bypass, north of the land at Green Ridge that were included as part of addition 23, (which also included Toads' Hole Valley on the other side of Dyke Road).

3.7 When the proposed Designation Order boundary was published in 2003, all of the land from Green Ridge to Coney Hill was included within the SDNP but for some reason, the south western part of the A27 and Mill Road embankments from the Dyke Road junction to the windmill were excluded.

3.8 This left what the Inspector referred to in his first report as '*an awkward and convoluted boundary*' (paragraph 7.683, of the Inspector's First Report of the SDNP Inquiry) which sandwiched the land at Green Ridge between the built up area and the excluded south western half of the embankments between the Dyke Road junction and the A23/A27 junction to the east.

3.9 The Council argued successfully for the inclusion of Toads' Hole Valley at the initial SDNP Inquiry and when the Inspector's First Report was published, Toads' Hole Valley was identified as a proposed 'addition 23' together with the previously excluded embankments on the east side of Dyke Road in what appeared to be a cartographic or administrative convenience since the two areas are separated from each other by the Dyke Road intersection. Subsequently at the re opened Inquiry, the owners of Toads' Hole Valley persuaded the Inspector to reverse his earlier decision and exclude Toads' Hole Valley.

3.10 However because Toads' Hole Valley had been artificially grouped with the embankments on the other side of the Dyke Road intersection, these were specifically excluded by the Planning Inspector in Volume 2 of his report. However the Secretary of State has excluded them although there had been no objections to their inclusion. This again, resulted in a boundary that was '*awkward and convoluted*'. The Secretary of State therefore asked the Inspector to clarify the boundary at this point. In his first report, the Inspector had considered different options for the boundary:

*1 including all of the land north of Green Ridge in the pSDNP.*

*2 exclude the narrow strip of land north of Green Ridge as well as the adjoining A27 and its embankments.*

*3 The Designation Order boundary*

- 3.11 He considered that either of the first two options was preferable to the Designation Order boundary. On balance, he preferred including all the land north of Green Ridge. However he added that if Toads' Hole Valley were to be excluded then, *'the boundary should run along the northern edge of the A27 and thus exclude all of the land north of Green Ridge'*. It is unclear from this whether he meant north of Green Ridge, the road or north of the land at Green Ridge.
- 3.12 The Secretary of State selected a hybrid boundary that was none of these options that excluded the publicly accessible land at Green Ridge that had always been within the Designation Order boundary together with part of the south western sequence of embankments along Mill Road and the A27. At the same time the eastern sequence of embankments alongside Mill Road and the A27 between the Dyke Road intersection and the A23/27 junction have been included in the SDNP.
- 3.13 There would be no difficulty in re-including these embankments and land at Green Ridge because the land at Green Ridge did not form part of the disputed 'addition 23' (comprising Toads' Hole Valley and the embankments) and no representations were made to exclude the embankments.
- 3.14 The Inspector has not set out any sound reasoning to justify the exclusion of the land at Green Ridge and severing it from the continuous area of land at Coney Hill.
- 3.15 Land at Green Ridge meets the designation criteria because it meets the tests for natural beauty because:
- (a) it is in the AONB;
  - (b) it forms part of a larger designated Site of Nature Conservation Interest (SNCI) together with other land north of Windmill Drive and part of Coney Hill
  - (c) it contains an ancient Saxon hedge boundary line,
- 3.16 It meets the tests for recreation because it is:
- (a) public open space, owned and maintained by a public body – the City Council
  - (b) it is linked to the SDNP land north of the A27 by a footbridge and the path to the footbridge runs through this excluded parcel of land.
- 3.17 The Council has two main options regarding Green Ridge:
1. to formally object to the Addition 6 embankments on the basis that land at Green Ridge and the south eastern part of the Mill Road/A27 embankments should be included in Addition 6.
  2. to seek to mount a legal challenge to the exclusion land at Green Ridge because of the failure of the Inspector to 'clearly explain' the reasoning behind his decision to exclude the land; and to sever an SNCI, contrary to his recommendations elsewhere along the boundary and thus fail to provide the Secretary of State with a sound and equal basis on which to inform his decision making. However as this is a costly option a legal challenge

should only be pursued as a last resort and considered only in the event that formal objections or discussions with DEFRA are not successful.

- 3.18 Officers are seeking an urgent meeting with DEFRA to attempt to resolve the matter before the deadline for objections which is 13<sup>th</sup> July 2009.

#### **4. CONSULTATION**

- 4.1 Currently consulting with colleagues in the Countryside team, Legal and financial sections.
- 4.2 Groups campaigning in support of the South Downs are of the opinion that further delays to the designation of the National park should be avoided if at all possible but are in principle concerned that Green Ridge be included.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications

- 5.1 There are no direct financial implications arising from the recommendations contained within the report. The raising of an objection to the Addition 6 embankments would be covered within existing resources. There would be costs involved in mounting a legal challenge, which are difficult to quantify at this stage.

*Finance Officer Consulted: Patrick Rice*

*Date: 18/06/09*

##### Legal Implications:

- 5.2 "The South Downs National Park will ultimately be designated and confirmed as such under the provisions of the National Parks and Access to the Countryside Act 1949 as amended by the Natural Environment and Rural Communities Act 2006. The 1949 Act provides that should any person wish to challenge the validity of the designation order this must be done within 6 weeks of publication of notice of confirmation of that order. A legal challenge can be directed at the reasoning in the Inspector's Report. As stated in this Report to Cabinet, it is the opinion of your officers that the exclusion of Green Ridge may have been unintentional and unwitting and that the reasons for the exclusion have not been made out.
- 5.3 Insofar as a designation order for the South Downs National Park has not yet been made or confirmed any challenge through the Courts would be premature. However, it is incumbent on the Secretary of State to set out clearly his reasons for coming to his decisions and hence it is appropriate at this stage to make the representations and requests as recommended in this Report.
- 5.4 It is not considered that any adverse human rights implications arise from this Report

*Lawyer Consulted:*

*Hilary Woodward*

*Date: 19/06/09*

Equalities Implications:

- 5.5 It is considered that there will not be any significant impact on any of the equality strands.

Sustainability Implications:

- 5.6 None identified

Crime & Disorder Implications:

- 5.7 None identified

Risk and Opportunity Management Implications:

- 5.8 Court costs.

Corporate / Citywide Implications:

- 5.9 None identified

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 Seeking a resolution that does not involve a legal challenge or accepting the Secretary of State's proposed boundary would be less costly and could increase the chances of an earlier designation of the National park Boundary.
- 6.2 Mounting a legal challenge is a costly option which should be pursued only as a last resort and considered after formal designation of the boundary should formal objections or discussions with DEFRA not be successful.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 The need to agree to submit a formal objection to the exclusion of land at Green Ridge before the deadline of 13 July 2009, if that is the wish of the Council

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Map showing the areas around Green ridge described in the report (to be added)

**Documents In Members' Rooms**

None

**Background Documents**

None

