



Appeal Decision

Hearing held on 4 and 5 April 2005

**By Stuart Hall BA(Hons) DipTP FRTPI
MIHT**

an Inspector appointed by the Secretary of State for
Environment, Food and Rural Affairs

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Appeal Ref: CROW/8/M/04/3447 (Appeal A)

Site address: Land at former pit, east of Thixendale Road, Fridaythorpe, Driffield, East Yorkshire

Appeal Ref: CROW/8/M/04/3449 (Appeal B)

Site address: Land at Brubber Dale, north west of Fridaythorpe, Driffield, East Yorkshire

Appeal Ref: CROW/8/M/04/3439 (Appeal C)

Site address: Land at Middledale, west of Fridaythorpe, Driffield, East Yorkshire

Appeal Ref: CROW/8/M/04/3448 (Appeal D)

Site address: Land at West Dale, west of Fridaythorpe, Driffield, East Yorkshire

- These appeals are made under section 6(1) of the Countryside and Rights of Way Act 2000 (the 2000 Act) against the above land having been shown on a provisional map as open country.
- The appeals are made by Henry and David Watson, and are dated 9 September 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the 2000 Act, and relates to the East of England (Region 8).
- The ground of appeal in each case is that the land does not consist wholly or predominantly of mountain, moor, heath or down, and to the extent that the Agency have exercised their discretion under section 4(5)(b) of the 2000 Act to treat land which is not open country as forming part of an area of such country, they should not have done so.

Summary of Decisions: Appeals A, C and D are dismissed. Appeal B is allowed in part, and the provisional map is modified accordingly.

Preliminary Matters

The Agency's mapping methodology

1. The appellants contend that the Agency's published Mapping Methodology for England (the Methodology) is flawed and has been wrongly applied to all the appeal sites. They challenge the Methodology on four broad grounds, which I address below in turn in the following context. Published Defra Guidance advises, at DG3.12, that the Agency have gone to considerable efforts to discharge properly their duty to map open country, including consulting widely on the proposed Methodology. The Guidance confirms, at DG3.13, that it is appropriate to use the Methodology as the starting point in all mapping appeals, but also that it is open to appellants to challenge it.
2. Firstly, the appellants submit that the 2000 Act is not intended to open up land such as the appeal parcels for public access. I find no evidence to support that submission. Rather, that Act requires the Agency to map as open country all land which appears to them to consist wholly or predominantly of mountain, moor, heath or down. I am satisfied, without prejudice to my decisions on the appeals, that through their use of the Methodology the Agency demonstrate how they come to conclude that the subject land so qualifies.

3. Secondly, the appellants argue that the Methodology should include reference to improvement by managed grazing, and the subsequent application of organic fertiliser, in the definitions of semi-improved and improved grassland. In fact, the relevance of natural fertilisation is not ruled out. Annex 5.4 3 of the Access Inspectors' Handbook (the Handbook) acknowledges that fertiliser or farmyard manure, together with herbicides and intensive stocking densities, can lead to semi-improvement through a loss of species diversity.
4. However, the Handbook also makes clear that information on past improvement measures does not constitute evidence as to whether land does or does not qualify as open country. Defra Guidance, at DG5.9, endorses the Methodology statement that the key consideration is the composition of the grassland rather than the extent of improvement in the past.
5. Thirdly, it is alleged that survey records made as part of the Methodology lack specific detail as to vegetation and the means by which the surveyor made a judgement regarding the predominance of qualifying land cover. That may be so, but the records each contain clear opinion as to whether land qualifies as mountain, moor, heath or down, a broad indication of the observed proportions of qualifying land cover, and a signed declaration by a trained surveyor that the findings reflect best professional judgement. The credibility of that judgement would be weakened if those findings were not endorsed by the Agency's representative at an appeal site inspection. However, that does not apply here, and of itself does not discredit the process as a whole.
6. Finally, the appellants assert that to be adequate the Methodology must properly distinguish between the three critical grassland types in two key ways, namely: by evaluating the key plant species; and by mapping and quantifying the percentage cover of grassland types where two or more types are present. With regard to this, the Handbook states at Annex 5.4 3 that botanical composition will usually be the overriding criterion.
7. In my view, it does not follow from this Handbook statement that the degree of precision and detail implied by this challenge is normally appropriate. The Agency point out that they and not, for example, English Nature, have been charged with the 2000 Act mapping duties. Defra Guidance DG5.16 says that what is obvious to an Inspector, following visual inspection and in the light of evidence produced, will normally decide the issue on appeal. I consider these to be good indicators of the level of precision and detail required for the purposes of the 2000 Act.
8. For the above reasons, I conclude that the appellants have not demonstrated that the Methodology is flawed as they allege, or that there are cogent reasons why it should not be applied to these appeals.

Other matters

9. With regard to appeal A, the appellants maintain that the mapped north eastern boundary of the site is inadequate, and that the site forms part of a larger parcel in which arable land is predominant. A preliminary issue, therefore, is whether the mapped boundary of this site is appropriate. From my inspection, I note that the disputed boundary is marked intermittently by remnants of a hedge. I consider that these are inadequate indicators. However, it also follows the top of a steeply incised and mainly grass covered valley slope. As such, it coincides with an abrupt and clearly defined break of slope, beyond which the arable land undulates gently.

10. As the appellants contend, break of slope and vegetation features are not listed in the Methodology as strong physical features, with which mapped parcel boundaries will normally coincide. However, the Methodology indicates that they will be used in some circumstances. The key consideration is that boundaries should be readily identifiable on the ground. From my observations, I consider that in this case the combination of pronounced break of slope and change in vegetation makes it obvious where the boundary is. Therefore, I conclude that it is not appropriate to regard this appeal site as forming part of a larger land parcel, and I approach the appeal accordingly.
11. At appeal site B, the appellants point out that a small, fenced area of recently planted trees lies within it. They maintain, without prejudice to their case that the whole of the site is not open country, that this area should have been excluded from the mapped parcel. The Agency concede this point, and I find no cause to disagree. The area is excluded from the revised parcel boundary on Plan A submitted by the appellants, and is shown cross-hatched black on the plan attached to this decision.
12. In the hearing it became clear that some evidence could be most effectively considered on the appeal sites. At an appropriate point I adjourned the hearing and resumed it, firstly at appeal site A and again on the following day at appeal sites B, C and D.

The Appeal Sites

13. Appeal site A comprises part of the south west facing side of a steeply incised minor valley entering Brubberdale from the south east. Appeals B, C and D relate to three adjacent parcels on the floor and the broadly west facing side of the Brubberdale dry valley, running successively from north to south. It is not in dispute that the appeal sites lie in an area of chalk geology.

The Main Issue

14. The main issue is the extent to which the appeal sites qualify as mountain, moor, heath or down, in these cases down, as a result of their vegetation and general character, including openness. There is no evidence that the Agency have exercised their discretion under s4(5)(b) of the 2000 Act, so this aspect need not be considered.

Reasons

Appeal A

15. The Agency accept the appellants' submission that the old quarry face occupying part of this site, and the small, partially fenced area of conifer trees in the southern corner, do not meet the Methodology's criteria for down. They also concede that there are signs of semi improvement in the grass around the banks and base of the quarry. From my inspection, I find no cause to disagree with these views. The remainder of the site, comprising the substantial majority of it, is dominated by coarse grassland with scattered scrub and trees, the latter being more numerous at its northern end.

16. There is no evidence that works of agricultural improvement have been directly applied to this site. Rather, it is argued by the appellants that artificial inputs will have been made indirectly from the adjoining arable land above, and that the land has been managed by grazing over many years. They also point to the lack of diversity in the grassland, and the absence of broad leaved calcareous indicators, in support of their contention that it is semi improved in terms of the Methodology.
17. The Agency concede that in most places the grassland is not species rich, but that is not conclusive evidence of improvement in itself. Apart from a few small patches of nettles near the top of the site there is very little evidence of improvement across the large majority of the site. I note that by far the greater part of it is dominated by tor grass which, though it can be found in semi-improved grassland, is a species associated with semi-natural calcareous grassland. Accordingly, my observations lead me to favour the Agency's view, supported by the Ramblers' Association, that such grassland and scattered scrub predominate on this site. Paragraph 68 of the Methodology states that semi-natural grassland in areas of chalk or limestone geology is one of the primary vegetation types characteristic of down. Therefore, I conclude that the site comprises predominantly qualifying vegetation.
18. With regard to the site's general character, the appellants contend that it is not part of an open landscape as envisaged by the Methodology, due to its presence within a steep sided narrow valley, and the consequent restriction on views out of it. However, footnote 10 to paragraph 68 of the Methodology explains that down will sometimes comprise steep sided dry valleys with limited views. I consider that those circumstances apply to this site.
19. I have had regard to the appellants' point that the site's character is that of an agricultural grazing enclosure, with field boundaries and arable land adjoining, and so it is not part of a typical chalk landscape. However, as the Agency point out, arable land and woodland do occur in a modern chalk landscape. Moreover, the appellants acknowledge that the site has been neglected recently, and I find no evidence of recent grazing. Although the site is small, the boundary features are not visually dominant, and do not detract materially from the sense of openness that the site possesses. Therefore, I consider that the site's character fits the description of down set out in the Methodology.
20. I note the appellants' submission that by virtue of its small size this site serves no useful purpose, and so should not be shown as open country. However, this does not relate to the statutory grounds of appeal, and I have no power of discretion to exclude the land for that reason. Having reached the view that the site qualifies as down in terms of the main issue, I make my decision accordingly.

Appeals B, C and D

21. The vegetation and character of these three linked sites are broadly similar. Based on a recent field survey, and with reference to the Methodology, the Agency say that each contains between 50% and 75% qualifying vegetation comprising mainly calcareous grassland. They say that the dale floor, which extends through the three sites, is covered in semi-improved grassland. This assessment is supported by the Ramblers' Association, though their evidence prior to the hearing is based largely on a Phase 1 Habitat Survey made in the early 1980s.

22. In sharp contrast, the appellants' view, based on a recent ecological survey, is that the dale floor contains improved grassland, and that this and semi-improved grassland account respectively for 95%, 97% and 94% of the sites' cover. In support, they state that the whole of each site was regularly fertilised up to 1992, since when the dale floor has been similarly treated and the dale sides have been hand sprayed for nettles and docks. In addition, at sites B and C the dale floor was ploughed in 1972 and then cropped for two years.
23. From my inspection of the sites I note that, save for a small part of site C, the dale floor contains a predominance of rye grass, other nutrient-demanding grasses and clover, providing clear evidence of the continuous improvement works to which the appellants refer. On the northern part of site B, on the lower slopes of the dale side these species fade out gradually. Elsewhere on this site, and on sites C and D, the change in vegetation composition is more abrupt and closer to the dale floor.
24. The steep, generally west facing dale side occupies the great majority of each site. Here, I note that there are indicators of past improvement, such as the scattered presence of rye grass and clover, and occasional patches of nettles. Anthills are widely distributed on each site. Tor grass is prevalent within the sward. Areas of diverse species are not extensive or abundant, but are more evident where tor grass is patchy, rather than dominant.
25. This pattern reflects the improvements carried out up to 1992, but also indicates that since then substantial reversion has occurred. There are marginal variations in the degree of reversion found on each site, and there is a small area of evident semi-improvement on the top of the slope on site D. However, I consider that on each site the current species composition on the dale side is more akin to unimproved than to improved grassland.
26. This leads me to favour the Agency's assessment that unimproved calcareous grassland is predominant on each site. The Methodology states that the typical vegetation type on down is unimproved grassland. Therefore, with the exception of that part of site B to which I refer in paragraph 11, I conclude that each site qualifies as down in terms of its vegetation.
27. Turning to the sites' general character, I accept the appellants' contentions that they are surrounded by fencing, extensive views from them are only available from their upper parts, and much of the visible land in the vicinity is intensively farmed. Even so, taking into account the extent and topography of each site the fencing is visually insignificant and does not contribute materially to any sense of enclosure. That topography is consistent, in my opinion, with the Methodology's description of down, to which I refer in paragraph 18. Intensive farming is often part of a modern chalk landscape, and is typical in the Yorkshire Wolds. I conclude, therefore, again with the exception of part of site B, that each site qualifies as down in terms of its general character, including openness.

Conclusions

28. I have had regard to all other matters raised. These include comments made on the draft map, and other appeal decisions to which I have been referred by the appellants. None of these matters detracts from my conclusions on the main issue for each of the appeal sites. My overall conclusions are that appeal sites A, C and D qualify as down, and have been correctly mapped as open country; and that appeal site B so qualifies, and has been correctly mapped, save for that fenced part of the site containing recently planted trees. It follows that appeals A, C and D fail, and that appeal B succeeds to that limited extent.

Formal Decisions Appeals A, C and D

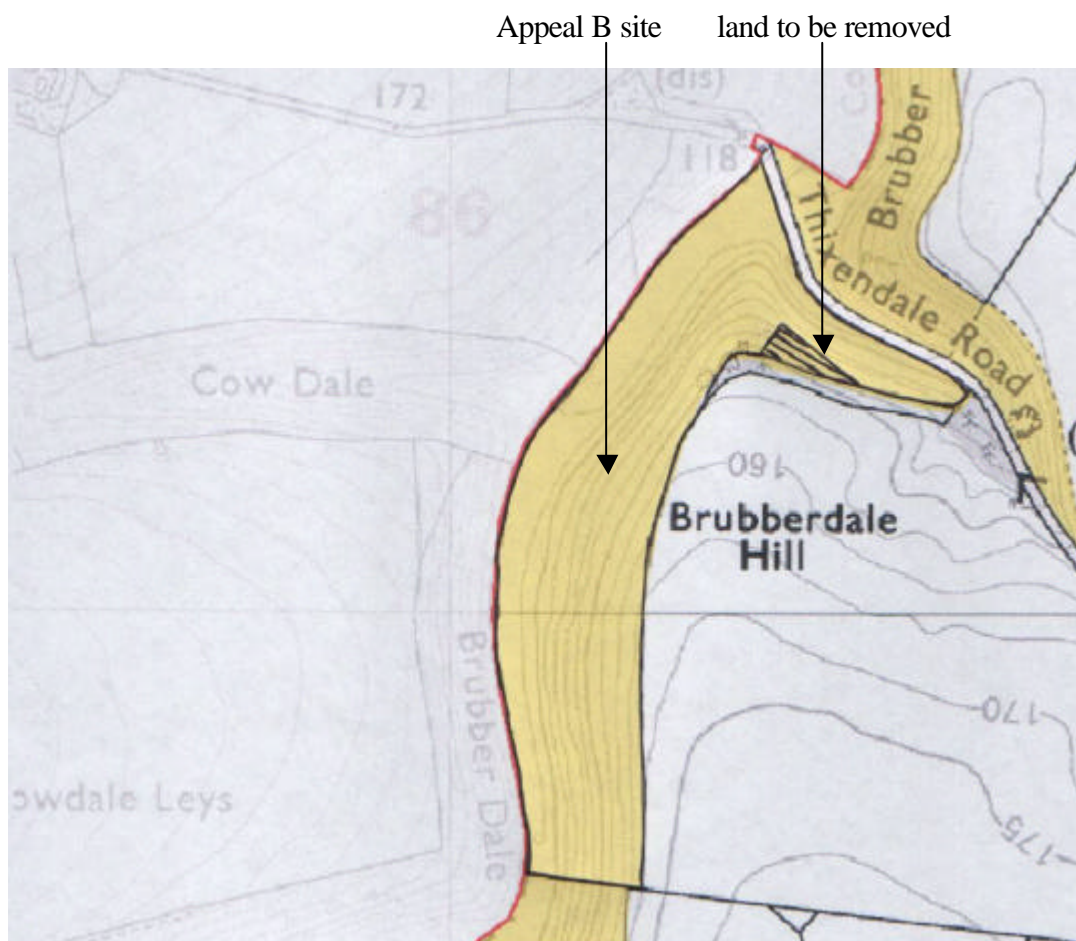
29. For the above reasons I dismiss appeals A, C and D and, in so far as it relates to those appeal sites, approve the provisional map without modification. The appeal sites are as indicated on the maps accompanying the appeal forms.

Formal Decision Appeal B

30. For the above reasons I allow appeal B in part and, in so far as it relates to the appeal site, approve the provisional map subject to the removal from it of the area shown cross hatched black on the attached plan. The appeal site is as indicated on the map accompanying the appeal form.

Stuart Hare

INSPECTOR



APPEARANCES

FOR THE APPELLANT:

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FOR THE COUNTRYSIDE AGENCY:

Mr A Best	The Countryside Agency, Bristol
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INTERESTED PERSONS

Mr M Biggs	The Ramblers' Association, 7 Caedmon Close, York YO31 1HS
Dr T K Halstead	The Ramblers' Association, 1 Derwent Drive, Wheldrake, York YO 19 6AL
Mrs S Donaghy	The Ramblers' Association, The Bungalow, Back Lane, Osgodby, Selby, North Yorkshire YO8 5HS

DOCUMENTS

Document 1	List of persons present at the hearing
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PLANS

Plan A	Revised appeal B parcel boundary, submitted by the appellants
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PHOTOGRAPHS

Photo 1	Aerial photograph of Brubberdale, submitted by the Ramblers' Association
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