



# Appeal Decision

Site visit made on 21 April 2005

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

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

the Planning Inspectorate  
09 Kite Wing  
Temple Quay House  
The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
✉ mail: [enquiries@planninginspectorate.gsi.gov.uk](mailto:enquiries@planninginspectorate.gsi.gov.uk)

date  
04 May 2005

**Appeal Ref: CROW/8/M/04/3456**

**Site Address: Land at Brubberdale, north west of Fridaythorpe, Drifffield, East Yorkshire**

- This appeal is 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 appeal is made by T W Duggleby, and is dated 2 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 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 Decision: The appeal is dismissed**

### **Preliminary Matters**

1. Initially, the appellant asked for the appeal to be considered at a hearing. Following consultation with the appellant and the Agency, the Secretary of State decided to change the procedure to that of written representations.
2. The appellant challenges the Agency's published Mapping Methodology for England (the Methodology), on which basis the Agency have shown the site on the provisional map. It is alleged that the Methodology is flawed in three respects, namely: the 2000 Act was never intended to apply to sites such as the appeal site; definitions of semi-improved and improved grassland should take managed grazing and natural fertilisation into account; and the Methodology is not sufficiently robust adequately to distinguish three grassland types in a measurable form.
3. I address these three strands below, in the following context. Published Defra Guidance advises, at DG3.12, that the Agency have gone to considerable efforts to discharge properly the 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.
4. Firstly, no evidence is submitted to substantiate the suggestion that the 2000 Act should not apply to the appeal site. 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 decision on the appeal, that through their use of the Methodology the Agency demonstrate how they came to conclude that the subject land so qualifies.

5. Secondly, the relevance of managed grazing and natural fertilisation is not ruled out. Annexe 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. 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.
6. Thirdly, with regard to quantifying key plant species, the Handbook does state at Annexe 5.4 3 that botanical composition will usually be the overriding criterion. Even so, in my view it does not follow from this statement that the degree of precision and detail implied by the appellant's 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.
7. 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 this appeal. I approach the appeal on this basis.

### **The Appeal Site**

8. The appeal site occupies almost 10 hectares of for the most part steep valley side extending for approximately 1000 metres from south to north east. It is fenced, with a mature hedge and occasional trees on much of its lower boundaries. It is not disputed that the site lies on chalk geology.

### **The Main Issue**

9. The main issue is the extent to which the appeal site qualifies as mountain, moor, heath or down, in this case down, as a result of its 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 of the statutory ground of appeal need not be considered.

### **Reasons**

10. The appellant states that the appeal site has long been part of a cultivated field system, that it has been cultivated and improved over many years, and that it has been fertilised where possible. Be that as it may, my inspection of the site does not bear out his conclusion that in consequence of those actions it is predominantly semi-improved grassland. There is an area of semi-improved grassland where the site extends onto the valley floor towards its southern end, but on the remaining steeply sloping land there is very little evidence of any works of improvement. Here, the sward is dominated by unimproved calcareous grass, containing many anthills, within which scattered scrub and occasional regenerating trees are widespread. Only at the top of the valley side, where it abuts ploughed land, are improved grass species evident.

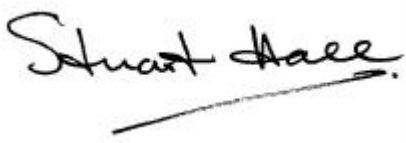
11. My observations are consistent with the Agency's submission, based on a recent site survey, that the areas of calcareous grassland and scattered trees and scrub occupy between 50% and 75% of the site. The Methodology explains that unimproved grassland, often with scattered scrub, is typical down vegetation. Accordingly, I conclude that the appeal site passes the vegetation test for down set out in the main issue.
12. Turning to the site's character, the appellant supports his contention that the site is not part of a downland landscape by suggesting that the dale sides and valleys of the Yorkshire Wolds do not constitute such a landscape. However, the Handbook, at Annexe 5.4.7, mentions the Yorkshire Wolds in its description of down as open country. Footnote 10 to paragraph 68 of the Methodology explains that in areas of down a generally open landscape may include steep sided scarp slopes and dry valleys.
13. On the appeal site, there are open views across and along the dale, and from its higher parts there are extensive vistas across undulating countryside. Much of this is cultivated, but that is now a common feature within areas of chalk geology. Having regard to its scale and topography, the boundary features do not have a material impact on the sense of openness experienced on most parts of the site. There are areas where the scrub is becoming dense, and where views are consequently more limited, but these are not sufficient in extent to determine the site's overall character.
14. From these observations I find no reason to disagree with the Agency's submission that the appeal site's general character is consistent with the description of down given in the Methodology. Therefore, I conclude that the site also qualifies as down in terms of this aspect of the main issue.

### **Conclusions**

15. I have had regard to all other matters raised, including the appellant's observations on the assessment methods used by the Ramblers' Association. None of these override the main issue, on which I conclude that the appeal site qualifies as down. I further conclude, therefore, that the site has been correctly shown as open country on the provisional map. It follows that the appeal must fail.

### **Formal Decision**

16. For the above reasons I dismiss the appeal and, in so far as it relates to the appeal site, approve the provisional map without modification. The appeal site is as indicated on the map accompanying the appeal form.

A handwritten signature in black ink, reading "Stuart Hale", with a horizontal line drawn underneath it. The signature is written on a white background.

INSPECTOR