



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

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date
04 May 2005

Appeal Ref: CROW/8/M/04/3493

Site Address: Land south 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 Express and Star Group Pension Scheme, and is dated 3 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. The appellants requested an accompanied site visit, but were not present or represented at the appointed time. I made an unaccompanied inspection of the site, having first obtained their agents' agreement by telephone.

The Appeal Site

2. The appeal site comprises the floor and the broadly west facing side of a dry valley, with the head of that valley at its southern end.

The Main Issue

3. 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

4. The appellants maintain that some two thirds of the appeal site has been improved by fertiliser and re-seeding, and so it does not qualify as down. In support of that assertion, they submit details of an agronomist's survey, which records that perennial rye grass and white clover predominate across the top half (possibly two thirds) of the site. I note that the survey report also acknowledges that the grassland on the site is generally of poor nutritional quality, as indicated by widespread tor grass with dispersed blackthorn trees, which the agronomist describes as being indicative of a down land site.

5. From my inspection of the site I note that the valley floor and the rounded top of the valley side is dominated by improved or semi-improved grassland containing nettles, docks and thistles. However, on the steep valley side this non qualifying vegetation quickly gives way to unimproved calcareous grassland, within which there are extensive areas of scattered scrub and regenerating trees. There is no evidence of re-seeding or chemical fertilisation within this calcareous grassland. Broadly consistent with the Agency's survey evidence, I estimate that this area occupies substantially more than half of the total appeal site.
6. The Agency's published Mapping Methodology for England (the Methodology) explains that unimproved grassland, often with scattered scrub, is typical of down vegetation. Accordingly, I favour the Agency's assessment, supported by the Ramblers' Association, that the appeal site meets the vegetation criteria set out in the main issue. In addition, my observations of the site and the landscape in which it is set give me no cause to disagree with the Agency's view, which is not contested by the appellants, that the site's open character is consistent with that described in the Methodology at paragraph 68.

Other matters

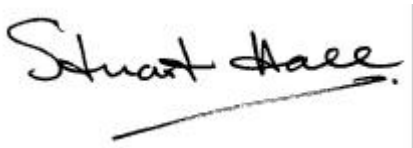
7. I note the appellants' concerns about the possible harm to ecological interests if public access to the appeal land is allowed, and the Ramblers' Association's view that such harm is unlikely to arise. Be that as it may, it is not a matter that relates to the statutory grounds of appeal, or one to which I could attribute weight in reaching my decision.

Conclusions

8. I have had regard to all other matters raised. Bearing in mind the above points, I conclude that the appeal site qualifies as down in terms of its vegetation and general character, including openness. Therefore, the site has been correctly shown on the provisional map as open country. It follows that the appeal fails.

Formal Decision

9. 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 forms.



INSPECTOR