



Appeal Decision

Hearing held on 4 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
27 April 2005

Appeal Ref: CROW/8/M/04/3452 (Appeal A)

Site address: Land south of Bunny Hill Farm, South Cliffe, near Market Weighton, East Yorkshire

Appeal Ref: CROW/8/M/04/3454 (Appeal B)

Site address: Land at The Rush, South Cliffe, near Market Weighton, 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 The Trustees of Lord Manton's 1966 Children's Settlement, and are 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 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: The appeals are dismissed.

Preliminary Matters

1. 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. The Agency demonstrate how they come to conclude that the subject land so qualifies.
2. In the course of the hearing it became apparent that evidence as to vegetation, character and mapping boundaries could be best examined on the appeal sites. At an appropriate point, therefore, I adjourned the hearing and resumed at the sites.

Appeal A

3. A preliminary issue concerns the adequacy of boundaries and whether for mapping purposes, as the appellants submit, the site forms part of a larger parcel within which arable land predominates. The Agency do not disagree, and suggest that the western boundary could be withdrawn to a ditch crossing the site.
4. In support of their submission, the appellants draw my attention to paragraphs 59 to 61 in the Agency's published Mapping Methodology for England (the Methodology). I note that a change in vegetation is not listed among the priority tiers for selecting appropriate boundaries set out in paragraph 60. However, the Methodology does refer, at paragraph 59, to vegetation features being used in some circumstances.

5. From my inspection, I note that a low post and wire fence has been taken up and left lying along the western boundary. Beyond that, the undisputed heath vegetation continues across a strip of unimproved grassland to the edge of an extensive area of arable farmland that the appellants argue is part of the same land parcel. The mapped boundary is not readily identifiable on the ground, nor is the former track that the provisional map suggests once occupied the grass strip. For this reason, I do not accept the Ramblers' Association's submission that the line of either the former fence or the former track is an adequate boundary to define the parcel.
6. A few metres beyond the mapped boundary, the abrupt change from unimproved grassland to arable land is clearly visible. At this point the character of the land changes dramatically. It was stated for the appellants that nothing could be done, practically, to improve the heath vegetation, from which I infer that the boundary between heath and arable land has a degree of permanence adequate for the purposes of this issue. These considerations lead me to conclude that the appeal site should be viewed in a wider context on its western boundary, but that the appropriate limit to the larger area occurs at the point where heath vegetation ends and arable land begins. I approach the appeal on this basis.
7. On the appeal site's eastern side, where the former site boundary fence has also been removed, it is obvious to me that adjoining mapped land is heath. In view of my conclusions on the main issue it is not necessary for me to consider whether the appeal site should also be regarded as part of a larger area in relation to this land, as the appellants submit. Similarly, in respect of this appeal it is not necessary for me to have regard to the ditch that crosses the site as a potential mapping boundary.

Appeal B

8. In this appeal, a preliminary issue concerns the site's underlying geology. In their Statement of Case, the appellants assert that it is neither chalk nor limestone. In the course of the hearing it was conceded on their behalf that it may be limestone although, it was submitted, the soils and vegetation are not calcareous in nature. The Agency maintain that the geology is limestone, and the Ramblers' Association say that it is oolitic limestone.
9. From my site inspection, I note that the site forms part of the west facing slope which defines the eastern edge of the Vale of York, within which there are remnants of former stone quarries, and that occasional loose fragments having the appearance of oolitic limestone are evident on the surface. Accordingly, I am satisfied that the appeal site is underlain by limestone, and so is not disqualified from being classified as down by virtue of its geology.
10. A second preliminary issue concerns the appellants' contention that the Methodology is flawed and has been wrongly applied to this site. They challenge the Methodology on three 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 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.

11. Firstly, the appellants maintain 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. 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.
12. 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.
13. Secondly, it is alleged that survey records made as part of the Methodology lack specific detail as to the vegetation present and the means by which the surveyor came to a judgement regarding the predominance of qualifying land cover. That may be so, but the records contain clear opinion as to whether land qualifies as 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.
14. Finally, the appellants develop the above challenge by asserting 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 Annexe 5.4 3 that botanical composition will usually be the overriding criterion.
15. 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.
16. 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.

The Main Issue

17. The main issue is the extent to which the appeal sites qualify as mountain, moor, heath or down, in these cases respectively heath and 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 of the statutory ground of appeal need not be considered.

Reasons

Appeal A

18. The appeal parties agree that the vegetation on the appeal site qualifies as heath. My inspection bears this out and, having regard to my conclusion set out in paragraph 5, I also conclude that this applies equally to the slightly larger area forming the appropriate context in which the site should be considered.
19. The appellants argue that the site does not combine with other land to create an open vista which would satisfy the open country criteria set out in the Methodology. However, I do not interpret those criteria, set out in footnote 9 to paragraph 68 of the Methodology, as meaning that an appeal site must combine with others in order to form a landscape that provides open vistas. Such an interpretation would rule out a single appeal site irrespective of its size and individual character. In any event, the appeal site does adjoin an area of undisputed heath vegetation to the east.
20. The fences that are present on some boundaries are not visually significant, and there are no features within the site to interrupt views across and beyond it. Distant views are available in most directions across low lying countryside, only interrupted by trees in a manner and to an extent consistent with the description of heath given in the Methodology. These observations accord with the views of the Agency and the Ramblers' Association that the site is open in character, and therefore I conclude that in terms of its general character the site qualifies as heath.

Appeal B

21. I note that much of the lower, western portion of this site is occupied by a mixture of woodland and scrub that is dense in parts. This is broadly consistent with the map at Figure 1 in the appellants' Statement of Case. However, the presence of scattered scrub within the area shown on that map as woodland/dense scrub indicates to me that the proportion of non-qualifying woodland and dense scrub is significantly less than the 28% of the total site asserted by the appellants. Bearing this in mind, a key to determining whether the site qualifies as down in terms of its vegetation is whether the grassland, which with scattered scrub covers the remainder of the site, can be characterised as semi-improved having regard to the Methodology.
22. The appellants point out that machine access is readily available to the site, but it is not submitted that the site has been ploughed at any time, or that machinery has been used to carry out agricultural improvement to the land. Rather, they refer to the impact of natural fertilisation through intensive stocking over many years. The Agency argue that stocking and natural fertilisation have little impact on the nature of grassland. Be that as it may, Defra Guidance makes clear at DG5.9 that the key consideration is the current composition of the grassland, rather than the extent of improvement in the past.
23. Consistent with the appellants' submissions, I note the presence of improved grass species and clover, together with patches of nettles and scattered thistles in places. However, except at the entrance to the site and occasionally on less steep parts of the slopes, these indicators of improvement are found among more extensive areas of unimproved grassland to which the Agency and the Ramblers' Association refer. Throughout this grassland, anthills occur frequently.

24. None of the parties submits evidence as to the proportion of improved species within the sward, but from my observations I estimate that it is less than the 25-50% which the Handbook, at Annexe 5.4 3, quotes as an approximate guideline indicator of semi-improved grassland. Accordingly, I am not satisfied that the grassland as a whole is semi-improved in the terms described in the Methodology. Having taken into account the limited extent of semi-improvement, and the incidence of non-qualifying woodland and dense scrub, it is still obvious to me that in terms of its vegetation more of the appeal site qualifies as down than does not.
25. Turning to the site's general character, I note that the woodland and dense scrub create some sense of enclosure on the lower parts of the site. In addition, trees inhibit the aspect to the north and south, and except from the highest points on the eastern edge there are no views of land further to the east. Even so, from the majority of the site there are distant and largely uninterrupted views which extend from Lincolnshire in the south to the Pennines to the west and north west, beyond the Vale of York.
26. The appellants' submission that the open vistas are not over undulating countryside is correct. However, having regard to footnote 10 to paragraph 68 of the Methodology, it is not a requirement that they should be. The site extends for almost 700 metres from north to south, and for around 130 metres as it rises eastwards from the Vale floor. Its extent and topography, and the breadth of distant views available from within it, lead me to consider it to be open in character consistent with the Methodology's description of down.

Other matters

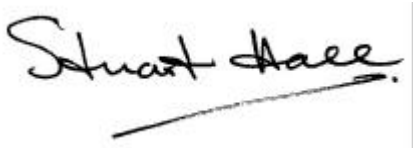
27. The appellants contend that to show the appeal A site on the conclusive map would be contrary to the interests of conservation, and that the inclusion of appeal site B would serve no useful purpose. However, these submissions do not relate to the statutory grounds of appeal, and are not matters to which I can attach weight in reaching my decision.

Conclusions

28. Bearing in mind the above points, with regard to the main issue I conclude that in terms of both their vegetation and general character, including openness, appeal site A qualifies as heath and appeal site B qualifies as down. I have had regard to all other matters raised in the two appeals, but none alters these conclusions. I further conclude, therefore, that both sites have been correctly shown as open country on the provisional map. It follows that the appeals fail.

Formal Decisions

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



INSPECTOR

APPEARANCES

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FOR THE COUNTRYSIDE AGENCY:

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INTERESTED PERSONS

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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