



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**

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

date
27 April 2005

Appeal Ref: CROW/8/M/04/3453

**Site address: Land north west of Warren Cottage, South Cliffe, near Market Weighton,
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 The Trustees of Lord Manton's 1987 Children's Settlement, 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. In their Statement of Case, the appellants submit that part of the eastern boundary of the appeal site is indistinct and is linked to an arable field. Also, the hearing revealed that fencing on part of the western boundary had been removed since the date of the appeal. At the time of my inspection, the appeal site was fenced save for some 300 metres on its eastern boundary and some 400 metres to the west. Together, I estimate that these open lengths represent around 25% of the perimeter of this roughly rectangular 31 hectare site. A preliminary issue, therefore, is to determine the appropriate area to be considered in deciding the appeal.
2. Where fencing is absent to the east, there is nevertheless a marked change at the appeal site boundary as undisputed heath vegetation abuts a recently ploughed field. I note the appellants' submission that the Agency's published Mapping Methodology for England (the Methodology) does not include vegetation features in the description of strong physical boundaries.
3. However, having regard to the relatively short unfenced length, the abruptness of the change in vegetation, and its straight alignment between fenced portions of the appeal site, I consider that at this point the appeal site boundary is clear and readily identifiable on the ground. In this respect, therefore, I conclude that the appeal site does not form part of a larger parcel for mapping purposes.

4. Beyond the unfenced section of the western boundary, and running away at an angle from it, a ditch bisects the adjoining land. The appellants maintain that this is not a readily identifiable boundary. However, I found it to be a substantial, clearly visible feature that is difficult to cross on foot. Having regard to the Methodology, I consider that in combination with a post and wire fence returning from it to the appeal site this ditch forms an adequate boundary for mapping purposes. To this extent only, therefore, the appeal site forms part of a larger parcel, and I approach the appeal on this basis.
5. A second preliminary matter concerns the appellants' challenge to the Methodology on the ground that it should include reference to improvement by managed grazing, and the subsequent application of organic fertiliser, in the definitions of semi-improved and improved grassland. However, 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.
6. Furthermore, the Handbook 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. For these 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.
7. In their letter dated 7 January 2005, the Agency concede that the site comprises mainly semi-improved grassland and woodland, and so does not qualify as mountain, moor, heath or down. However, during the hearing they reconsidered their stance, and submitted that the site forms part of an identifiable mapping parcel that is predominantly heath.
8. 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 site. At an appropriate point, therefore, I adjourned the hearing and resumed at the site.

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 heath, 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. It is common ground between the parties to the appeal and interested persons that the appeal site can be described as comprising three sections roughly equal in area. It is also agreed that the northern section is unqualifying woodland, and that this merges gradually, without any line of demarcation capable of being mapped, into a central section of heath. From my inspection of the site I find no cause to depart from these agreed views. I also note, and it is not disputed, that the heath vegetation continues westwards into the adjoining area to which I refer in paragraph 4.

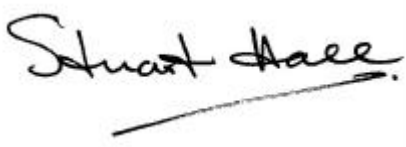
11. The third section of the appeal site lies to the south of a substantial dyke crossing the site from west to east. In the north east corner there is an area of scrub, and the remainder contains heather among grassland. I note the appellants' contention that the grassland is predominantly semi-improved, and that prior to the hearing this was not disputed by the Agency. I also note the appellants' observation that the Ramblers' Association's evidence relies on historical data, with no evidence as to the current composition of the grassland.
12. However, there is no evidence that works of agricultural improvement have been applied, and there are few signs of improvement on the ground. Rather, in my estimation unimproved acid grassland is clearly dominant and, having regard to the Methodology, it is obvious to me that in terms of its vegetation this part of the appeal site, like the central section, is heath. It is undisputed that the central and southern sections comprise some two thirds of the appeal site. Therefore, in common with the Agency's revised assessment and taking account of the larger area to which I refer in paragraph 4, I conclude that the site as a whole comprises predominantly heath vegetation.
13. With regard to the site's general character, I share the appellants' view that it is set within a wider area of mainly arable farming. However, there is nothing in the description of heath in the Methodology to indicate that this alone should disqualify the site as open country. Bearing in mind the appellants' evidence that the site occupies over 31 hectares, I find no cause to support their contention that the site, and the larger area of which it forms a part, is not open heath in terms of its scale. Rather, notwithstanding that part of it is occupied by woodland and there are some wooded areas nearby, the site has a generally open character with extensive views both across it and, in most directions, to distant countryside. From this I conclude that in terms of its character the appeal site qualifies as heath.

Conclusions

14. I have considered all other matters raised, including comments on the draft map. I have had regard to the appellants' questions as to the credibility of the Agency's survey methods, bearing in mind the Agency's change of stance in the course of the hearing. However, none of these matters overrides my conclusion on the main issue that the site qualifies as heath in terms of both its vegetation and general character. I further conclude, therefore, that the appeal site has been correctly shown on the provisional map as open country. It follows that the appeal fails.

Formal Decision

12. 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.

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

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D P Atkinson	Dee Atkinson & Harrison, The Exchange, Drifffield, East Yorkshire YO25 6LD
Dr M McLellan	1 Plexfield Road, Rugby, CV22 7EN

FOR THE COUNTRYSIDE AGENCY:

Mr A Best	The Countryside Agency, Bristol
-----------	---------------------------------

INTERESTED PERSONS

Mr M Biggs	The Ramblers' Association, 7 Caedmon Close, York YO31 1HS
Dr P Ayling	The Ramblers' Association, 25 Westland Road, Kirk Ella HU 10 7PH
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