



Appeal Decision

Hearing held on 31 March 2005

by **P H Bentham-Hill BA MRTPI**

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

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date
16 May 2005

Appeal Refs: CROW/8/M/04/3484 - 3487

Land at Goodmanham Dale, Goodmanham, East Riding of 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 Mr P R and Mrs C Sawyer, 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 has exercised its 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, it should not have done so.

Summary of Decisions:

Appeals CROW/8/M/04/3484, 3485 and 3487 are allowed and the provisional map is modified accordingly.

Appeal CROW/8/M/04/3486 is dismissed.

Preliminary Matters

1. Part of site 3484 (Snever Dale/Rifle Butts Quarry) coincides with the area of a similar appeal by the Yorkshire Wildlife Trust which is the subject of a separate decision (CROW/8/M/04/3045 – Rifle Butts Quarry).
2. At the hearing, an application was made by the appellants for a partial award of costs against the Ramblers' Association in respect of appeal reference CROW/8/M/04/3484. This application is the subject of a separate report to the Secretary of State.

The Appeal Sites

3. The four appeal sites are located in Goodmanham Dale to the east of Market Weighton, two on the northern slopes of the dale and two on the southern.

The Main Issue

4. The main issue in my view 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 other surface characteristics and their general character, especially their degree of openness.
5. The Agency has not exercised its discretion under s4(5)(b) of the 2000 Act to treat either the whole or any part of the appeal sites which is not open country as forming part of a larger area of such country. This aspect of the statutory ground of appeal is therefore not at issue.

Reasons

6. With the exception of site No 3484 (Snever Dale/Rifle Butts Quarry), which it concedes as being non-qualifying land, the Agency maintains that the appeal sites are correctly mapped as open country on account of the predominance within them of semi-natural grassland and associated vegetation and their generally open character. In contrast, the appellants maintain that all four sites consist predominantly of improved or semi-improved grassland and, in view of their setting in productive agricultural land are not of a downland character. The Ramblers' Association takes a similar stance to the Agency but considers that all four sites qualify as open country.
7. A particular feature of the evidence presented is the difference of approach to the classification of the vegetation adopted by the three parties. The Agency has relied for its assessments on the principles set out in the *Mapping Methodology for England* whereas the appellant has commissioned expert evidence on the basis of the methodology adopted in the Nature Conservancy Council's 1992 *Phase I Habitat Survey*. The Ramblers' Association however has had regard to the *Phase II Survey* dating from 1982, supplemented by more recent observations.
8. As a result of these different approaches there is generally much common ground in the assessments of the Agency and the Ramblers' Association but the appellants tend to take a different and more generous view of the perceived levels of improvement in the grassland present on the appeal sites. Typically, grassland identified by the Agency as semi-improved is considered by the appellants as improved and much of that which the Agency considers to be unimproved is held by the appellants to be semi-improved. However, in the interests of consistency, it is appropriate for the *Methodology* to be used as a starting point in the determination of appeals and, whilst acknowledging the different approaches adopted, it is that to which I shall principally have regard in reaching my decisions.

CROW/8/M/04/3484 – Snever Dale/Rifle Butts Quarry

9. The Agency has accepted that this site consists of woodland and improved and semi-improved grassland and is not therefore wholly or predominantly mountain, moor, heath or down. Whilst this view obviously coincides with that of the appellants, the Ramblers' Association differs in its consideration that the site is predominantly unimproved. The Association has, however, presented no convincing evidence in support of its view and my own observations on site endorse the stance taken by the two principal parties. Over the main part of the site, improved and semi-improved grassland is clearly predominant, with unimproved areas confined to the steeper banks. The separately fenced Rifle Butts Quarry is predominantly woodland and likewise fails to qualify as open country in respect of both its vegetation and general character.

CROW/8/M/04/3485 – Land to the east of Rifle Butts Quarry

10. There is general agreement that the more level grassland below and above the bank which runs along the length of the site is non-qualifying land, whether described as improved (as by the appellant), or semi-improved (as by the Agency and the Ramblers' Association). The bank itself is, however, the subject of conflicting views. Whereas the appellant maintains that this area consists predominantly of semi-improved grassland, the Agency and the Ramblers' Association consider it to be mainly unimproved with associated scrub which, when taken with other scrub and scattered trees at the western end of the site justifies the description of the whole as down.

11. I agree with the Agency and the Ramblers' Association that the bank consists predominantly of unimproved grassland but note that the stand of mature trees towards the western end of the site would be more correctly described as woodland. As such, and taken together with the extent of the improved and semi-improved grassland on the flatter parts of the site, I consider that the amount of non-qualifying land exceeds that of the unimproved area lying along the bank. The appeal site cannot therefore be regarded as down.
12. As the predominant vegetation of the appeal site fails to qualify as down in respect of the first part of the test contained in the main issue, and as satisfaction of both parts of this test is essential for qualification as open country, it is not necessary for me to consider the second part, relating to its general character.

CROW/8/M/04/3486 – Round Hill

13. It is clear from the evidence of the principal parties that the steeper slopes of the north-facing bank which forms the greater part of this site consist predominantly of unimproved calcareous grassland with large amounts of associated scrub. However, opinions differ as to the amount of non-qualifying semi-improved grassland which is to be found at the more gently sloping western and eastern ends of the site and along the top of the bank, with the appellants asserting that much of this is improved rather than semi-improved. Be that latter point as it may, it seems to me that the area of unimproved grassland and scrub is more extensive than that of the non-qualifying vegetation and that in that respect, the appeal site is correctly described as down.
14. The general character of the appeal site is strongly influenced by the chalk geology of the area which produces an open undulating landscape, intersected by steep-sided dry valleys such as Goodmanham Dale. Whilst broader and more extensive views are naturally limited to its upper slopes, this is not untypical of a downland landscape and is a situation clearly recognised in the criteria for down contained in the *Methodology*. Accordingly, in this respect also, I consider that the appeal site fulfils the requirements for classification as down.

CROW/8/M/04/3487 – The Dale

15. The appellants contend that, apart from the slopes at the side of the Dale itself, located at its eastern end, this site is almost wholly non-qualifying land, in the form of either improved or semi-improved grassland. However, this assessment appears to disregard the obvious presence of a large area of unimproved grassland and associated scrub and scattered trees on the steep bank in the central part of the site. Both the Agency and the Ramblers' Association maintain that the vegetation of this area qualifies as down, with the latter pointing to the presence of several indicator species. Nonetheless, I consider that the acknowledged areas of semi-improved grassland along the top of the bank and at both the western and eastern ends of the site are more extensive than the unimproved areas to be found on its steeper slopes, and that the greater part of the site consists of non-qualifying vegetation.
16. As with site 3485, the predominant vegetation of the appeal site fails to qualify as down in respect of the first part of the test contained in the main issue, and thus it becomes unnecessary for me to consider its general character with regard to the second part.

Conclusions

17. Having regard also to all other matters raised, I conclude that three of the appeal sites (Nos. 3484, 3485 and 3487) consist predominantly of semi-improved grassland with, additionally,

woodland present in the first two instances, and are thus non-qualifying land that should not have been mapped as open country. These appeals should therefore succeed, with the map modified accordingly.

18. Site No. 3486 is predominantly down, as described in the criteria set out in the *Methodology*, and has been correctly mapped as open country. This appeal should therefore be dismissed.

Formal Decisions

Sites 3484, 3485 and 3487

19. For the above reasons, I hereby allow the appeals and, in so far as it relates to the appeal sites, as illustrated by the plans accompanying the appeal forms, approve the provisional map subject to the deletion of the sites therefrom.

Site 3486

20. For the above reasons, I hereby dismiss the appeal and, in so far as it relates to the appeal site, approve the provisional map without modification.



INSPECTOR

APPEARANCES

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DOCUMENTS

Document 1 List of persons present at the hearing.