



Appeal Decision

Site visit undertaken on 9 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
11/03/2005

Appeal Ref: CROW/8/M/04/3477

Land at Hasley Dale, Towthorpe, East Riding of 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 J Weatherill, 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 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 Decision: The appeal is dismissed.

The Appeal Site

1. The appeal site is about 13.35 hectares in extent, and consists of almost the full length of Hasley Dale, to the south-east of Towthorpe.

The Main Issue

2. The main issue in my view 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 other surface characteristics and its general character, especially its degree of openness.
3. 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 site 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

4. The appellant claims that although the appeal site is in an area of chalk geology, its vegetation is typically semi-improved grassland which, it is suggested, has reverted towards a more natural composition following a reduction in intensive treatment as a result of inclusion in a Countryside Stewardship Scheme. It is also stated that the appeal site offers no views of undulating countryside, but only those internal to the site itself, and is therefore not of an open character.
5. The Agency submits that the vegetation of the appeal site is predominantly unimproved calcareous grassland with scattered regenerating trees and that it is generally of an open character, having good views from the top of the slopes. Accordingly, it is considered to meet the criteria for classification as down set out in the *Mapping Methodology for England*.

6. Having noted the evidence produced by the parties and inspected the appeal site, I observed that whilst the bottom of the dale consists of semi-improved grassland, the greater part of the site, formed by the steep slopes on each side, is characterised by semi-natural, unimproved grassland, with some scattered trees towards the western end. In terms of the criteria set out in the *Methodology*, the predominant vegetation and other surface characteristics of the site are undoubtedly those of down and thus, under the first part of the main issue, qualify it for inclusion as open country.
7. The appeal site is set within an open, undulating landscape, typical of areas of chalk geology, which is intersected by steep-sided dry valleys such as Hasley Dale. Whilst long views are only possible from the boundaries of the site, on the top of the valley sides, or along the length of the dale, I do not consider that this detracts from its generally open character as it is not untypical of a downland landscape and is a feature of down recognised by the criteria the *Methodology*. Accordingly, I consider that the general character of the appeal site satisfies the second part of the main issue and qualifies it as down.

Other Matters

8. The appellant points out that Towthorpe Cottages, at the entrance to the dale, may lie within 20 metres of the appeal site and will be affected by the provisions of Schedule 1 to the 2000 Act. The effect of paragraph 3 of Part I of the Schedule will be that any part of the appeal site that lies within 20 metres of the cottages will become excepted land, which means that the public right of access cannot be exercised on that part of the site. It does not, however, provide a reason for not mapping qualifying land as open country and, to that extent, has carried no weight in my decision.
9. It is also claimed that the Agency did not apply the *Methodology* correctly at the draft stage. However, the matters identified are primarily applicable to the individual consideration of parcels of less than 5 hectares in extent, whereas the appeal site is in excess of that size. Furthermore, the points concerned do not fall within the scope of the statutory ground of appeal and, except insofar as they impinge on the main issue, have not been taken into account in my decision.

Conclusion

10. Having regard also to all other matters raised, including representations from the Ramblers' Association, I conclude that the appeal site is predominantly down and has been correctly mapped as open country and the appeal should be dismissed accordingly.

Formal Decision

11. 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