



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**

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
04 May 2005

Appeal Ref: CROW/8/M/04/3376

Site Address: Land at Wandale, near 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 G H West & Sons, and is dated 23 August 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

The Appeal Site

1. The appeal site comprises the upper, south western part of a dry valley, which falls towards the north east, with steeply sloping sides and a narrow valley floor. On its north western long edge the site boundary coincides with a pronounced break of slope, beyond which is undulating cultivated land. On its south eastern side the easing of the slope is more gradual, and is mainly contained within the site, leaving a strip of some 20 metres of gently sloping ground inside the site boundary. The site is fenced, and has hedges on its long sides. There are no internal divisions or enclosures, save for some remnants of a former hedge line on a small part of the south eastern slope. It is not disputed that the site lies on chalk geology.

The Main Issue

2. 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

3. From my inspection of the site, I note that rye grass and clover are abundant on the less steep ground towards the top of the valley side to the south east. This bears out the appellants' statement that this part of the site has been ploughed and re-seeded within the last twenty years, and has since been regularly sprayed and fertilised. This evidence of improvement is also apparent for some twenty metres down the steep slope, which illustrates the stated ability to reach that far from the top of the bank with machine spraying.

4. Below this area, there is a sharp transition to calcareous grassland where, as the appellant confirms, such treatment has not been possible. The narrow valley floor comprises mainly rye grass and nettles, which again illustrates the appellants' evidence of past ploughing and re-seeding. The steep south east facing valley side is almost wholly covered in calcareous grass with scattered scrub. At its top, a thin strip of ground abutting the adjoining unmapped cultivated land appears to be colonised by more nutrient demanding grasses.
5. From my inspection, I am not convinced that, as the Agency submit, calcareous grassland and scattered scrub occupy more than 75% of the site. However, it is obvious to me that more of the site is occupied by these vegetation types than is not. The Agency's published Mapping Methodology for England (the Methodology) explains that these types are typical of down, and published Defra Guidance, at DG3.13, says that it is appropriate for the Methodology to be used as the starting point in all mapping appeals. No reasons have been advanced why the Methodology should not apply in this case. Accordingly, I conclude that the appeal site passes the vegetation test set out in the main issue.
6. Turning to the site's character, the appellants rightly point out that it is entirely fenced and is partly bordered by mature and well maintained hedging. However, it does not follow, as they assert, that the site cannot therefore be open country. Having regard to the size and topography of the site, these boundary features are not visually significant, and do not detract materially from the general sense of openness experienced on the site. This sense is less apparent on the valley floor, but this is a common occurrence in a down landscape.
7. The Methodology explains, at footnote 10 to paragraph 68, that a dry valley with more limited views may nevertheless be regarded as being generally within an open landscape. In this case, there are extensive views of surrounding countryside from the higher parts of the site, which cause me to favour the Agency's submission that, in relation to the main issue, the appeal site also qualifies as down in terms of its general character including openness.

Other matters

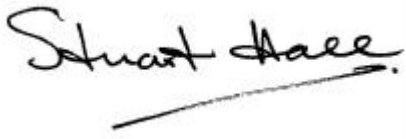
8. The appellants put forward further arguments, including their concern that bio-security must be maintained on the site, the absence of paths or rights of way linking the appeal site to other land, and the fact that shooting takes place on the site. However, these are not matters which relate to the statutory grounds of appeal, and so I cannot attach weight to them in reaching my decision. I refer the appellants to the 2000 Act, which makes provision for the exclusion or restriction of access to land in given circumstances.

Conclusions

9. I have had regard to all other matters raised, including the appellants' comments on the draft map and the views of the Ramblers' Association. Bearing in mind the above points, on the main issue I conclude that the appeal site does qualify as down in terms of its vegetation and general character. Therefore, the site has been shown correctly as open country on the provisional map. It follows that the appeal must fail.

Formal Decision

10. 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 form.

A handwritten signature in black ink, reading "Stuart Hare", with a long horizontal stroke extending from the end of the name. The signature is positioned to the left of a vertical line.

INSPECTOR