



# Appeal Decision

A hearing was held on 12 October 2004

by **Paul Dignan BAgSc MAgSc PhD**

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

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date  
7/11/2004

**Appeal Ref: CROW/5/M/04/2480**

**Land at Back Warren Dale, west of Thixendale, North Yorkshire.**

- This appeal is made under section 6(1) of the Countryside and Rights of Way Act 2000 (the Act) against the above land having been shown on a provisional map as open country.
- The appeal is made by The Halifax Estates Management Company, and is dated 17 February 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the Act, and relates to the North East of England (Region 5).
- 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 Countryside Agency have exercised their discretion under section 4(5)(b) of the Act to treat land which is not open country as forming part of an area of open country, they should not have done so.

**Summary of Decision: The appeal is allowed and the provisional map is modified accordingly.**

## Preliminary Matters

1. The appeal site is an area of about 19 ha, comprising part of the eastern and south-eastern slopes of a chalk valley or dale. At some stage the site has been divided into two fields by a fence across its narrowest part. Parts of this fence remain, and the Agency has used it to divide the site into two separate mapping parcels, which they refer to as parcel A, the northern part of the site amounting to about 7 ha, and parcel B, an area of about 12 ha comprising the southern part of the site. On the basis of my observations, however, I do not consider that the remnants of the fence are sufficiently clear a feature as to constitute a satisfactory open country boundary, nor did I see any other feature within the site that would suffice. Accordingly I consider that the site is most appropriately assessed as a single mapping parcel and I shall consider the appeal on that basis.

## The Main Issue

2. In considering whether the appeal site, or any part of it, should have been mapped as open country, the main issue to be determined, in my opinion, is whether it qualifies as mountain, moor, heath or down (in this case, down) as a result of its vegetation, and its general character, especially its degree of openness.
3. The Agency confirmed that they have not exercised their discretion under section 4(5)(b) of the 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 in issue.

## Reasons

4. The Agency say that the northern part of the appeal site, parcel A, is down, being of open character with a predominant cover of calcareous grassland, scattered trees, scrub and water features, which they say meets the description of down set out in paragraph 68 of their published *Mapping Methodology for England* (MME). A field survey carried out for them assessed its vegetation cover as being more than 75% qualifying cover. Non-qualifying cover, consisting of semi-improved grassland, was also recorded, but this was assessed as covering less than 50% of the site's area. They no longer consider the southern part of the site, parcel B, to be open country, being, in their view, predominantly semi-improved grassland, which is excluded from the definition of mountain, moor, heath or down by section 1(2) of the Act.
5. The appellants' view, based on an ecological survey carried out for them, is that only 6% of the site's cover is qualifying cover for down, unimproved calcareous grassland in this case. The rest of the site, in their opinion, is covered by semi-improved grassland, wetland and scrub. They say that heavy to moderate grazing and other improvements has led to the area becoming largely improved, exceptions being the steeper banks. They also contend that it is not of open character, being a steep sided area surrounded by arable land.
6. The Rambler's Association disagree with the appellants' classification of most of the grassland on the site as semi-improved, and argue that it is more correctly classified as either unimproved calcareous grassland or unimproved grassland, largely on the basis of the species lists submitted by the appellants. They agree that the southern part of the site is less species-diverse than the north, but they consider that it is still more akin to unimproved grassland than improved. They also submit that the site is typical of a chalk landscape and that the visual characteristics of the site satisfy the criteria for openness set out in MME.
7. My assessment of the site's vegetation cover is that it comprises unimproved calcareous grassland on the steeper valley sides in the northern part of the site, but that the more moderate slopes, which make up the majority of the site, are covered mainly by species poor semi-improved grassland. There was some scrub encroachment, particularly towards the centre of the site, but this was generally dense scrub which is not qualifying vegetation for down. Overall I considered that no more than 40% of the site's vegetation was qualifying cover for down as set out in MME. My conclusion on the first aspect of the main issue, therefore, is that the appeal site as a whole does not qualify as down on the basis of its predominant vegetation cover.
8. On the second aspect of the main issue, the site's general character and degree of openness, I found it to be set within a generally open landscape, and, whilst accepting, as the appellants contend, that some of the surrounding land is intensively farmed, I consider that in the context of land use in the Yorkshire Wolds this is quite typical. Furthermore, the site's valley slope topography is, in my opinion, typical of the area's chalk landscape and is consistent with the description of down in MME. I agree therefore with the Agency and the Ramblers' Association that the appeal site's general character and degree of openness are consistent with a classification of down. However, this does not override my conclusion on the vegetation aspect of the main issue.
9. Accordingly, and having considered all other matters raised, my overall conclusion is that the appeal site does not qualify as mountain, moor, heath or down by virtue of its vegetation and was therefore incorrectly mapped as open country.

**Formal Decision**

10. For the above reasons I allow the appeal and, insofar as it relates to the appeal site, approve the provisional map subject to the site's deletion from it.



INSPECTOR

**APPEARANCES**

For the APPELLANTS:

Dr Mark McLellan	1 Flexfield Rd, Rugby, Warwickshire CV22 7EN.
D J Lord	Halifax Estates, Estate Office, Bugthorpe, York YO41 1QG.
Charlotte Robinson	Halifax Estates, Estate Office, Bugthorpe, York YO41 1QG.

For the COUNTRYSIDE AGENCY:

Andrew Best	Access Appeals Officer, The Countryside Agency.
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For the RAMBLERS' ASSOCIATION

Sonia Donaghy	The Bungalow, Back Lane, Osgodby, Selby YO8 5HS.
Tom Halstead	1 Derwent Drive, Wheldrake, York YO19 6AL
Robert Clutson	151 Stepney Rd, Scarborough YO12 5NT.
Brian Odell	65 Field Lane, York YO10 5JL.
Peter Ayling	25 Westland Rd, Kirk Ella, Hull HU10 7RH.

**DOCUMENTS**

Document 1	List of persons present at the hearing.
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