



# Appeal Decision

Site visit made on 27 September 2004

**by Janet E Forbes BSc(Hons) MSc MLI AIEMA**

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

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date  
1/10/2004

**Appeal Ref: CROW/5/M/04/2396**

**Land at Brubber Dale and Thixendale near Fridaythorpe, North 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 P D & H A Burton and is dated 12 February 2004.
- The provisional map was issued by the Countryside Agency (the CA) under section 5 of the 2000 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 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 Matter

1. Although my site visit was unaccompanied, by chance I met Mr Burton, one of the appellants, on Brubber Dale. I explained that I was unable to discuss his appeal and continued with my site visit alone.

## The Appeal Site

2. The appeal site consists of parts of two separate grass dales, Thixendale to the west and Brubber Dale to the east of Gill's Farm. The Wolds Way passes through both parts of the appeal site.

## The Main Issue

3. The main issue to consider is whether the appeal site qualifies as mountain, moor, heath or down (MMHD) as a result of its vegetation/surface characteristics and general character especially its openness.
4. The Agency have confirmed that they did not exercise their discretion under section 4(5)(b) of the Act referred to above. The second part of the statutory ground of appeal therefore does not need to be considered.

## Reasons

5. In determining whether the land comprises MMHD, and in this case down, the starting point is the Agency's published *Mapping Methodology for England (MME)* which describes the vegetation and character of each of the categories of open country. In order to qualify as MMHD, an appeal site must pass both the above mentioned vegetation test and general character test.

6. The appellants state that the appeal site comprises two comprehensively fenced and enclosed grass dales which are improved grassland. They submit that the typical vegetation of the area is not unimproved grassland but arable crops or improved grassland. They further state that the appeal site has been previously fertilised and intensively grazed and is therefore improved/semi-improved grassland. As such it is excluded from the definition of open countryside and should be removed from the provisional map.

*Vegetation/surface characteristics*

7. I observed, as the appellants submit, that both parts of the appeal site have been subject to a degree of improvement and active management. Improvement is particularly noticeable in the valley bottoms and on the slightly less steep upper slopes of the sites. I found these areas to consist of improved/semi-improved grassland indicated by the presence of fodder grasses including rye grass and white clover.
8. However, over by far the greater part of these steep sided dale sites such improvement measures as the appellants may have carried out are not particularly evident because semi-natural chalk grassland is clearly in the majority. I formed this view because of the types of grass species present, the plant species diversity and the presence of typical chalk grassland indicator species such as Tor grass, scabious, rough hawkbit, thyme, and salad burnet. The appellants agree that the land is in an area of chalk geology.
9. Semi-natural grassland in areas of chalk or limestone geology is, as paragraph 68 of the Agency's published *Mapping Methodology for England* notes, one of the primary vegetation types characteristic of down. On the first limb of the main issue therefore, I consider that the Agency's assessment of the site as between 50 – 75% semi-natural calcareous grassland is broadly correct. The Ramblers' Association also submitted evidence which supports this finding. I conclude that the appeal site comprises predominantly qualifying vegetation and now turn to the second part of the main issue regarding the general character of the site.

*General Character including openness*

10. My observations are consistent with the views of the Agency and the Ramblers' Association that whilst the areas are surrounded by post and wire fences with the occasional hedge, the predominant characteristic of the two parts of the appeal site is that of a generally open landscape typical of down. The sites in both Thixendale and Brubber Dale have vistas across undulating countryside comprising steep sided 'scarp' slopes and dry valleys with more limited views as described in footnote 10 of paragraph 68 of the MME. These factors together with the topography of the surrounding land, the size and context of the sites and the views along the lengths of the dales lead me to consider that both parts of the appeal site could reasonably be described as having an open character.
11. I therefore conclude that both parts of the appeal site are of open character typical of down.

**Other Matters**

12. I note that the appellants state the part of the appeal site is a Site of Special Scientific Interest and the other part is in the Countryside Stewardship Scheme. In this connection, the appellants may wish to consider the provisions within the 2000 Act for applying for temporary access restrictions and closures to safeguard nature conservation interests.

**Conclusion**

13. I have considered all other matters raised but none alter my conclusion that the appeal site is predominantly down and should be mapped as open country. The appeal therefore fails.

**Formal Decision**

14. 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.

A handwritten signature in black ink, appearing to read 'James', with a stylized flourish extending to the right.

INSPECTOR