

**Third Party Submission:** PINS Ref. CROW/5/M/04/ 2396 Brubber Dale & Thixen Dale

**RA Ref. 23 areas G & K Brubber Dale: Cow Dale**

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## **1 Introduction**

This submission is made on behalf of the Ramblers' Association (RA) in the interests of those who wish to exercise the right to enter and remain on access land for the purposes of open air recreation as conferred by the Countryside and Rights of Way Act 2000 (CROW).

The submission seeks to prove that the site qualifies as 'down' under the terms of the CROW Act and that the appeal is invalid.

## **2 Methodology**

**2.1 Botanical evidence:** the botanical evidence consists of an analysis of historical survey data which was supplemented by site visits by a team of specially trained volunteers. The basis for this analysis is fully described in Annexe A, 'Habitat classification systems and data sets used'. All the submissions were edited by Sonia Donaghy BSc and Tom Halstead BA DPhil.

**2.2 Geological evidence:** we have cited the National Landscape Typology Definitive Attributes Survey (taken from [www.magic.gov.uk](http://www.magic.gov.uk)) as geological proof of the calcareous nature of the underlying soil where it applies to the site being submitted.

**2.3 Topographical evidence:** we have described the topography of the site as observed

from the site visits and in many cases have submitted photographs to support our view that the area does qualify as ‘open country’. We have also cited countryside stewardship agreements and archaeological evidence where appropriate.

2.4 **Previously submitted** evidence: much of the evidence referred to above was submitted to the Countryside Agency (CA) at the Draft Map stage. Where this is the case, we have simply summarised the main points in this submission as we understand that the CA will have sent copies of all such evidence to the inspector.

### **3 Comments on the Grounds of Appeal**

This appeal relates to two separate areas: one in Brubber Dale and the other in Thixen Dale. Here we deal with the appeal for Brubber Dale. We disagree with the appellant’s Grounds of Appeal, which are as follows:

#### **3.1 Ground 1: ‘The subject land ... is comprehensively fenced and enclosed’**

3.1.1 The description of down given in MME [1] is as follows: ‘In describing down as being ‘generally within an open landscape’ we mean that, whilst individual land parcels might comprise enclosures of varying size, they will be part of a typical chalk or limestone landscape, sometimes with open vistas across undulating countryside and sometimes comprising steep-sided ‘scarp’ slopes and dry valleys with more limited views.’ Recent photographs (Figs.1c & 1d) show the visual character of the area. The viewpoint of Fig.2d also offers an extensive 180° vistas to the N, E and S along the length of Brubber Dale and over undulating arable land. We think that the visual characteristics of this area are consistent with the MME description. A section of the Yorkshire Wolds Way runs across the area.

#### **3.2 Ground 2: ‘The subject land... [is] improved grassland... The land is an area of chalk geology. The typical vegetation of the area is not unimproved grassland. The area is typically vegetated by arable crops or improved grassland’**

3.2.1 Chalk geology (National Landscape Typology attributes are RLE) is an essential characteristic of down [1].

3.2.2 A recent walk-through (22 May 2004), the photographs shown in Fig.1c&d and the aerial photograph taken in 2000 (Fig.1b), show that the appeal site is not vegetated by arable crops.

3.2.3 In the Phase II Survey [2] the area marked 1 on Fig.1a was classified as CG2d. Five grasses and 34 other herbs, including 17 calcicolous indicator-species were recorded. The characteristic chalkland herbs: Autumn gentian *Gentianella amarilla*, clustered bellflower *Campanula glomerata*, rock rose *Helianthemum nummularium*, lady's bedstraw *Galium verum*, glaucous sedge *Carex flacca*, small scabious *Scabiosa columbaria*, rough hawkbit *Leontodon hispidus*, purging (fairly) flax *Linum catharticum*, salad burnet *Sanguisorba minor*, lesser (hairy) hawkbit *Leontodon taraxacoides*, bulbous buttercup *Ranunculus bulbosus*, burnet saxifrage *Pimpinella saxifraga* and wild thyme *Thymus*

*praecox* were components of a sward dominated by sheep's fescue *Festuca ovina*. The yellow flowers visible in the foreground of Fig.2c are bulbous buttercups.

3.2.4 The area (edged in blue) known as Ing Dale and marked 2 in Fig. 1a was surveyed in late July 1999 as a Site of Importance for Nature Conservation (SINC) by Martin Hammond (Bullen Consultants, Bradford). In the BioDAT report of this survey [3], it was classified as unimproved calcareous grassland. The site was described as follows: 'The south-facing bank opposite Ings Plantation supports short calcareous turf interspersed with patches of *Brachypodium pinnatum*. The shorter areas are characterized by mixtures of *Thymus praecox*, *Pilosella officinarum*, and *Festuca ovina*; associated species include *Carlina vulgaris*, *Sanguisorba minor* and *Scabiosa columbaria*.

3.2.5 The area (edged in blue) known as Cawdale Leys and marked 3 in Fig. 1a was also surveyed as a SINC. In the BioDAT report of this survey [3], it was classified as unimproved calcareous grassland. The site was described as follows: The east-facing bank of Brubber Dale is dominated by a dense sward of *Brachypodium pinnatum* with *Arrhenatherum elatius*. This is generally species-poor although a variety of chalk grassland herbs survive here and there in gaps between the tussocks. These include: *Sanguisorba minor*, *Campanula roundifolia*, *Pimpinella saxifraga*, *Lotus corniculatus* and *Briza media*. *B. pinnatum*, which occurs only in CG2, CG3 and CG4 communities in the Yorkshire Wolds [2,4], is a 'key plant indicator species for downland in England'[5a].

3.2.6 In summary, we think that this whole area should be classified as predominantly unimproved calcareous grassland.

### **3.3 Ground 3: 'The subject land was previously fertilized and intensively grazed and is therefore improved grassland. The land is now not fertilized and is part of a Countryside Stewardship Scheme. However it is still grazed'**

3.3.1 The MME methodology [1] makes it clear that the key consideration is the current composition of the grassland rather than the extent of improvement in the past.

3.3.2 The fact that the Countryside Stewardship (Chalk and Limestone) agreement for the whole of the site has recently been renewed suggests that the site is likely to be more akin to unimproved than improved calcareous grassland, because the specific objectives for these agreements include: conserve grassland and archaeological sites by adjusting grazing or scrub control; return cultivated areas to downland, especially where linked to existing grassland or to protect archaeology; create new access to open downland [6].

3.3.3 Commenting on 'Conservation and Management Characteristics' DEFRA states 'Downland .... is a habitat created by, and dependent on, the grazing of domesticated stock or rabbits.' '....in recent years conservation organizations have been .... reintroducing grazing in order to restore traditional downland landscapes and ecosystems' [5b]. Therefore the fact that the site has been, and is still, grazed should have helped to restore the grassland to its semi-natural state.

### **3.4 Ground 4: 'The land is not open countryside. It is semi-improved grassland'**

**and as such is excluded from the definitions of open countryside'**

3.4.1 We think that the visual characteristics of the area (see photographs Figs.1c&d) are consistent with the MME description of open country [1] (see comments in 3.1.1 above).

3.5 Access was part of the Countryside Stewardship scheme for this site and it appears on DEFRA's 'Conservation Walks' website [7] as Gill's Farm, Fridaythorpe. The second sentence reads 'The dale side path allows walkers to enjoy good views along this peaceful dale'. The second paragraph begins 'The grassland in Brubberdale is being managed to encourage a wider range of wildflowers typically found in unimproved chalk areas'. Thus DEFRA appears to think that the area has an open character and is unimproved calcareous grassland.

3.6 **Summary.** The Agency's criteria for identifying Down include (a) the equivalence of 'down' to 'unimproved calcareous grassland', which in the Yorkshire Wolds particularly is represented by the NVC communities CG2, CG3, CG4, CG5, CG7 and MG5 (where it occurs in mosaics with CG communities), and (b) the recognition of the Yorkshire Wolds as being part of the English downland. We think that on the basis of the information we have provided previously [8] and the additional information provided by us, and the appellant, this area qualifies as down as a result of its vegetation, which is predominantly unimproved calcareous grassland, and its degree of openness.

## **References**

- [1] Mapping Methodology for England, Countryside Agency, (revised) July 2002.
- [2] A Survey of Chalk Grassland in Humberside and North Yorkshire, England Field Unit, Project 30, M J Wigginton (Coordinator), 1985. 2a Section 7 Site Assessment.
- [3] Biological Database & Information Management System (BioDAT), 1999-2000, Heritage Unit, Environmental Service, North Yorkshire County Council.
- [4] British Plant Communities, Vol. 3, J.S. Rodwell (Ed.) CUP, 1992.
- [5] Inspectors' Handbook, (a) Annexe 5.4.7.3. (b) Annexe 5.4.7.2.
- [6] DEFRA Topic Report on Calcareous Grassland Agreements, C Short, June 1999.
- [7] DEFRA Conservation Walks, <http://countrywalks.defra.gov.uk/displaySite.asp?site=4245>
- [8] Ramblers' Association's Comments on the Draft Map, Ref. 23, areas G & K, Brubber Dale - Cow Dale, June 2003.

## **4 Conclusion**

**We therefore conclude the Countryside Agency has correctly mapped the area as open country on the Provisional Map.**