



Appeal Decision

Hearing held on 11 October 2004

by Roger Vickers BA (Hons).

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

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Date
11/11/2004

Appeal Ref: CROW/5/M/04/2401

Site Address: Land known as Fairy Dale, near Birdsall, Malton, 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 Birdsall Estate Company Limited and is dated 12 February 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the said 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 such country they should not have done so.

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

Preliminary Matters

1. The appeal site consists of three parcels A, B and C and I agree with both parties that parcel C contains a predominance of none qualifying land cover. I am satisfied that parcel C does not qualify as down and has adequate boundaries with the surrounding land and can be considered separately from the remainder of the site. In my opinion parcel C should not have been mapped as open country and my decision will find accordingly.
2. During the hearing it became apparent that evidence would be most usefully presented at the appeal site. At an appropriate point in the proceedings the hearing was therefore adjourned to continue on site.

The Appeal Site

3. Parcel C is situated towards the south-eastern boundary of the appeal site and adjoins parcel B, which forms a fairly narrow strip of land near to the south-western boundary. Parcel A is the larger part of the site, situated to the north of the other parcels and rises steeply on either side of a fairly level valley floor. The whole of the appeal site has a surface area of approximately 40 hectares.

The Main Issue

4. The main issue is the extent to which the appeal site qualifies as down as a result of its vegetation and general character, including openness. There is no evidence that the Agency have exercised their discretion under section 4(5) (b) of the Act, so the second part of the ground of appeal does not need to be considered.

Reasons

5. I saw that parcel C consists of a disused quarry, woodland, a domestic garden and part of a disused railway track, separated from the rest of the appeal site by well maintained fencing. I agree that parcel C does not contain a predominance of qualifying land cover and for this reason it is not down. I therefore have no reason to consider the general character of parcel C and conclude that this parcel should not have been mapped as open country. To that extent the appeal succeeds. The rest of this decision will deal with the remainder of the appeal site, parcel A (appellant's compartments 3 and 4) and parcel B (appellant's compartment 2).
6. The appellants present evidence from an ecological and landscape assessment, which draws attention to paragraphs 54-56 of the Agency's published Mapping Methodology for England (the methodology). The Agency points out that these paragraphs apply only to the draft map stage and not to appeals against the provisional map. Be that as it may, Defra guidance at paragraph 5.16, advises that the test to be applied on appeal is whether or not the land consists wholly or predominantly of (in this case) down. The guidance also interprets 'predominantly' suggesting that if an Inspector considers that in his or her judgement it is obvious that more of the land consists of the relevant qualifying habitat than does not, then the conclusion is likely to be that the land consists predominantly of down. This decision will follow Defra guidance.
7. The appellants say that the site was aerially fertilised up until 1993, when it was entered into countryside stewardship, under the rules of which fertilisation has ceased and the land has been grazed by stock. Their ecological assessment classifies parcel B as semi-improved grassland with thick scrub and some patches of unimproved grassland; and parcel A as semi-improved grassland.
8. The ecological evidence submitted by the appellants is challenged by the Ramblers' Association who provide details from the Phase I and II habitat surveys. These indicate that parcels A and B contain many calcareous indicator species including some, (tor grass, salad burnet and thyme associated with anthills) identified as being present by the appellants ecological evidence. The Ramblers' Association says that the appeal site has not received any recent agricultural improvement and supports the Agency's view that the site is predominantly unimproved calcareous grassland and correctly mapped as open country.
9. The Agency say that when considering whether or not to map land as open country they do not conduct ecological evaluations, but follow their methodology, which was produced following wide consultation and is based on landscape assessment rather than an ecological approach. The Agency correctly points out that Defra guidance suggests that the methodology should form the basis for the consideration of all mapping appeals.
10. All parties agree that in line with the methodology, improved and semi-improved grassland should not be mapped as open country. The appellants suggest that in judging whether grassland is semi-improved it is helpful to place it on a continuum between improved grassland, at one end of a scale, and natural grassland at the other. The appellants contend that the vegetation on this site is nearer the 'improved' than the 'natural' category. The Ramblers' Association agree that judging whether or not grassland is natural or improved is a matter of scale, but that the presence and frequency of calcareous plant species, including those identified by the appellants, indicates that the appeal site is much nearer natural, than improved.

11. At the appeal site, the appellants and the Ramblers' Association pointed out some of the plant species described in their ecological evidence. I saw that some of the more level parts of the parcels contain areas of semi-improved grassland with clover, but that the steeper valley sides are dominated by calcareous grassland with some scattered scrub, which is somewhat more common in parcel B. I also saw a fair frequency of downland indicators including tor grass, wild thyme and salad burnet on areas of the valley side where the grasses are shorter, also noting the presence of anthills. I note that fertilisation of the site ceased in 1993 and adopting the concept of a sliding scale suggested by the appellants, I conclude that the predominant vegetation on parcels A and B is now very much more akin to natural, than improved or semi-improved, grassland. This finding is broadly consistent with the views of the agency and also accords with the description of down contained within the methodology. I conclude that very much more than a half of parcels A and B contain a predominance of qualifying vegetation and that by reason of this, these parcels are down.
12. Turning to general character, although the external and internal boundaries of parcels A and B are marked by well maintained fencing, given the size and topography of the parcels, these do not detract from a sense of openness. Although views are sometimes restricted by steeply sloping valley sides and trees, the site forms a part of a typical limestone landscape and provides views across undulating countryside, both within the site itself and across the valley to the south and west. This finding is broadly consistent with the views of the Agency and also accords with the open character definition contained in the methodology. I therefore conclude that parcels A and B are down by reason of their general character, including openness.

Conclusion

13. Having regard to the above and also to all other matters raised, my overall conclusion is that parcel C contains a predominance of none qualifying land cover and is therefore not down and should not have been mapped as open country. To that extent the appeal succeeds. By virtue of their vegetation, character and openness, parcels A and B are down and correctly shown as open country on the Provisional Map.

Formal Decision

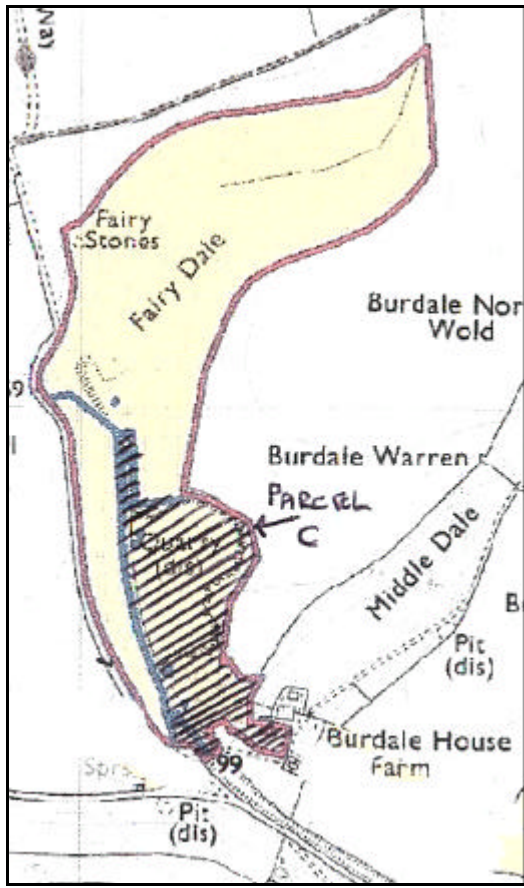
14. For the above reasons I hereby allow the appeal in part and, in so far as it relates to the appeal site, approve the Provisional Map subject to the deletion therefrom of the land hatched in black on the map attached hereto.



INSPECTOR

CROW/5/M/04/2401

LAND HATCHED IN BLACK TO BE REMOVED FROM THE PROVISIONAL MAP.



APPEARANCES

FOR THE APPELLANT

Dr M McLellan	1 Plexfield Road Rugby Warwickshire CV22 7EN
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MR M Willoughby	Estate Office Birdsall, Malton North Yorkshire NYO17 9NU
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Mr S Fairbank	As above
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MR G L Bell	The Old Vicarage Thixendale, Malton North Yorkshire YO17 9TG
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FOR THE AGENCY

Mr C Smith	Appeals Officer Countryside Agency 1 Redcliff Street Bristol BS1 6NP
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THE RAMBLERS' ASSOCIATION

DR T Halstead	1 Derwent Drive Wheldrake York YO19 6AL
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Ms S Donaghy	The Bungalow Back Lane Osgodby, Selby North Yorkshire YO8 5HS
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DOCUMENTS

Document 1.	List of persons present at hearing.
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