



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/04/2484

Part of Long Dale, north of Fotherdale Farm, 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 dismissed.

The Appeal Site

1. The appeal site is an area of about 9 ha, comprising part of the steep north-facing slope of a long narrow valley or dale running roughly west to east. It is part of the Thixen Dale and Long Dale Site of Special Scientific Interest (SSSI).

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 consider the appeal site to be down, being of open character with a predominant cover of calcareous grassland, scattered trees and scrub, 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.
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5. The appellants' view, based on an ecological survey carried out for them, is that no more than 9% of the site's cover is qualifying cover for down, unimproved calcareous grassland in this case, the remainder of the site being, in their opinion, semi-improved neutral grassland and poor semi-improved grassland, possibly due to higher grazing levels than normal on such north-facing 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 the predominant grassland on the site as semi-improved, and argue it is more correctly classified as unimproved calcareous grassland, based on Phase II habitat survey data and the site's SSSI citation. They also submit that the site is part of a steep-sided dale typical of the Yorkshire Wolds landscape and they argue that it complies precisely with the description of the open character of down given in MME.
7. I found the site to be largely covered by grassland whose species composition and structure were consistent with a classification of unimproved calcareous grassland. The level of species diversity was only moderate, but this is reasonably typical of north facing slopes in this area. Parts of the valley bottom and the eastern end of the site supported more improved grassland, but, in my opinion, this amounted to no more than 20% of the site's cover. I saw no evidence of agricultural improvements on the site, nor were there any indications that the grazing pressure was sufficiently high as to alter the composition of the grassland toward an agriculturally semi-improved condition. On the basis of my observations, therefore, I consider that the site is predominantly covered by qualifying vegetation for down, and my conclusion on the first aspect of the main issue is that it qualifies as down on the basis of its vegetation.
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 topography is, in my opinion, typical of the area's chalk landscape and is consistent with the description of down in paragraph 68 of MME. My conclusion on this aspect of the main issue, therefore, is that the appeal site's general character and degree of openness qualifies it as down.

Overall Conclusions

9. Having considered all other matters raised, my overall conclusion is that the appeal site qualifies as down by virtue of both its vegetation and its general character, and was therefore correctly mapped as open country.

Formal Decision

10. For the above reasons I dismiss the appeal and, insofar as it relates to the appeal site, approve the provisional map without modification.



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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