



Appeal Decision

A hearing was held on 13 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/04/2486

Milham Dale, extending west from Thixen 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 in part and the provisional map is modified accordingly.

The Appeal Site

1. The appeal site is a narrow dale of about 8 ha in area, running west to east. It comprises two separately fenced areas, a small paddock of about 0.4 ha in the north-west of the site and the remainder of the site to the south and east. In their evidence the Agency refers to them as parcels B and A respectively. I shall use these designations in my decision.

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. On the basis of a field survey carried out for them in response to this appeal, the Agency now consider that parcel B is predominantly covered by semi-improved grassland, which is excluded from the definition of mountain, moor, heath or down under section 1(2) of the Act. Accordingly they no longer consider it to be open country and recommend that it be removed from the provisional map. On the basis of my observations I am also satisfied that parcel B is predominantly semi-improved grassland, and my conclusion therefore is that it

does not qualify as mountain, moor, heath or down on the basis of its vegetation. It follows that I do not need to consider the general character aspect of the main issue in relation to parcel B.

5. The Agency maintain, however, that parcel A is open country. Their field survey assessed it as being an area of open character whose vegetation cover is more than 75% calcareous grassland and scrub. They say that this meets the description of down set out in their published *Mapping Methodology for England* (MME). Their survey also recorded the presence of semi-improved grassland, but it was assessed as covering less than 50% of the parcel's area.
6. The appellants accept that the predominant vegetation cover on parcel A site is qualifying cover for down, being predominantly unimproved calcareous grassland. However, they contend that it is not of open character, being a steep sided dale surrounded by arable land and improved grassland, and providing linear rather than open views.
7. In their written submissions the Rambler's Association made no reference to a sub-division of the site and argued that the entire site's vegetation cover is unimproved calcareous grassland. However, at the hearing they amended their estimate of qualifying vegetation on the site and now consider that it is predominantly, rather than wholly, covered by unimproved calcareous grassland. At the site visit they also agreed that parcel B comprised a separate parcel that appeared to be semi-improved grassland.
8. There is no dispute therefore between any of the parties with regard to the predominance of mountain, moor, heath or down qualifying vegetation on parcel A. On this basis and as a result of my observations I am satisfied that it qualifies as down by virtue of its vegetation cover.
9. On the second aspect of the main issue in relation to parcel A, its general character and degree of openness, I found it to be set within a generally open landscape, and, whilst accepting that the surrounding land use is more intensive than might be expected of open country, I consider that in the context of land use in the Yorkshire Wolds this is not unusual. Furthermore, the site's narrow valley topography is one of the features typical of the area's chalk landscape, and good views are available within the site itself and across the adjoining dale and farmland to the east. This is consistent with the explanatory footnote to the description of down in paragraph 68 of MME, which allows that the features typical of downland landscapes may provide more limited views in some circumstances. My conclusion on this aspect of the main issue, therefore, is that parcel A's general character is consistent with its classification as down.

Other Matters

10. The appellants also suggest that if an appeal which they have made against the inclusion of adjoining land on the provisional map as open country is upheld, the site would be isolated and would not be a beneficial area of open country. However, this is not a matter that falls within the statutory ground of an appeal under section 6(3) of the Act, and is not therefore a matter to which I can attribute material weight.

Overall Conclusion

11. Having considered all other matters raised, my conclusion is that parcel A qualifies as down on the basis of both its vegetation cover and its general character, and was therefore

correctly mapped as open country, but that parcel B does not so qualify and should be removed from the provisional map.

Formal Decision

12. For the above reasons I allow the appeal in part and, in so far as it relates to the appeal site, approve the provisional map subject to the deletion from it of the land shown cross-hatched black on the attached map.



INSPECTOR

APPEARANCES

For the APPELLANTS:

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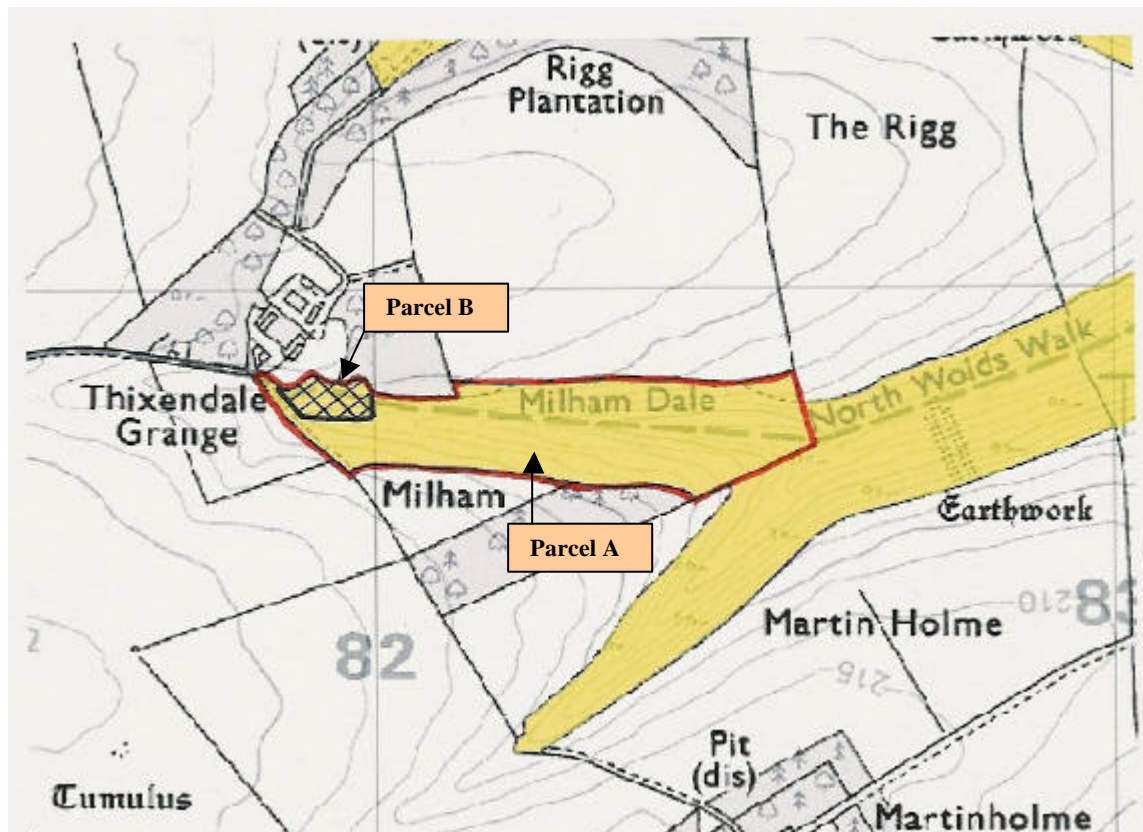
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DOCUMENTS

Document 1

List of persons present at the hearing.



Map of the appeal site, outlined red. The area cross-hatched black is to be deleted from the provisional map of open country.