



# Appeal Decision

Hearing held on 7 October 2004

by John Conder BSc (Hons) Dip TP MRTPI

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

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date  
5/11/2004

**Appeal Ref: CROW/5/M/04/2347**

**Site Address: Land at Nine Springs Dale, Duggleby, Nr. Malton, 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 Nicholas Smith, Frazer Hart as Trustees of the 1961 Marriage Settlement and Sir Richard Storey Bt CBE, and is dated 12 February 2004.
- The provisional map was issued by the Countryside Agency under section 5 of the 2000 Act, and relates to North East 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 has exercised its 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 open country, it ought not to have done so.

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

## Preliminary Matters

1. This appeal site extends to about 28.5 hectares and comprises a long valley running roughly from the north-east to the south-west, with a valley spur running off this to the north-west.
2. The Countryside Agency has not contested the majority of the site, some 24 hectares (the part that it describes as Parcel B, see Plan 1), as it considers it to be semi-improved grassland and recommends that it be excluded from the conclusive map of open country. The remainder of the appeal site, some 4.5 hectares (Parcel A), it considers to qualify as mountain, moor, heath or down. Parcel A is a Site of Special Scientific Interest (SSSI). Most of parcel B was formally an SSSI but was denotified in 1982.
3. At the hearing an application was made for costs against the Countryside Agency. This application is the subject of a separate decision.

## The Main Issues

4. In determining whether the appeal site should have been mapped as open country, I consider the main issues to be:
  - a) whether the boundaries to the site area are appropriate, and whether there are any internal boundaries within the site which should be considered which may provide appropriate boundaries which separate qualifying and non-qualifying vegetation types;

- b) the extent to which each separate parcel that I identify qualifies as mountain, moor, heath or down by virtue of its vegetation and character, including openness.
5. As the Countryside Agency did not in this case seek to exercise their discretion under section 4(5)(b) of the 2000 Act, I need not consider the second part of the ground of appeal.

### **Reasoning**

6. The evidence of the appellants and the Countryside Agency is consistent to the extent that they both find that Parcel A has qualifying vegetation, whereas Parcel B does not. However the appellants do not accept that the site should be divided into two separate parcels and, in respect of Parcel A, consider that it does not qualify in terms of its character, particularly as it is not open, and by its size, in that having an area of less than five hectares it serves no useful purpose as open country.
7. The Ramblers' Association were not able to gain access to the site prior to the Hearing and had submitted written representations based on existing data. From this they concluded that the entire site qualified by its vegetation as down. They considered that the ecological evidence presented by the appellants is not conclusive, in that some of the species identified are not necessarily indicative that the land is improved or semi-improved grassland but could equally indicate that this is a semi-natural grassland which qualifies as down. The Ramblers' Association were able to refine their assessment at the site inspection, when they concluded that the appeal site was composed of both qualifying and non-qualifying vegetation types, but overall they believe the site to be predominantly down.
8. The Ramblers' Association further suggested that it would be appropriate to sub-divide the site by projecting a line eastwards from the northern side of the north-western spur across the appeal site. They say that all of the land north of that, comprising the eastern slopes of the valley (that is Parcel A) and the western slopes of Nine Springs Dale, is qualifying downland which should be retained on the map of open country.
9. There is no physical division along the line suggested by The Ramblers' Association and I do not consider, having regard to paragraph 60 of the Countryside Agency's Mapping Methodology, that the projection of a landscape feature would be sufficiently recognisable or form an adequate boundary between qualifying and non-qualifying land. Accordingly I do not agree with the sub-division proposed by The Ramblers' Association.
10. The only clear internal boundary which I found on my site inspection is that identified by the Countryside Agency which they used to define their Parcels A and B. Parcel A is separately fenced and comprises the eastern valley slope. In my mind it has a clear separate entity and I do not agree with the appellants that it should be considered as part of the remaining appeal site as a single area. The appellants accepted during the hearing that it was appropriate for the Inspector to exercise his discretion in sub-dividing sites.
11. In respect of Parcel B I find, like The Ramblers' Association, that the northern end of this Parcel does have qualifying vegetation. However, over the majority of Parcel B, I find the lack of species diversity and the vegetation present suggests that the land is semi-improved grassland. I am mindful of the advice contained in Defra's 'Guidance on Appeals under Section 6 of the Countryside and Rights of Way Act 2000' where it states in paragraph 5.16:

*‘that if [ ...] in the light of the evidence produced by the parties an Inspector considers that in his or her judgement it is obvious that more of the land consists of relevant qualifying habitat than does not then the conclusion is likely to be that the land consists predominantly of mountain, moor, heath or down. Conversely, if the Inspector is doubtful that this is the case the likely conclusion will be that the land will not consist predominantly of mountain, moor, heath or down.’*

It is not obvious to me that more of Parcel B consists of relevant qualifying habitat than does not and, indeed, on balance, I believe that the majority of the land does not qualify. Accordingly I conclude that Parcel B has been wrongly mapped as open country.

12. It is common ground between all parties that Parcel A has qualifying vegetation. The appellants consider however, that the Parcel should be excluded from the map of open country on the basis of its character, particularly the lack of open views from the site. However in paragraph 68 of the Countryside Agency’s Mapping Methodology, down is defined and, in the relevant footnote, it says:

*‘In describing down as being ‘generally being within a 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.’*

I consider that Parcel A fully meets this description as it is a steep sided scarp slope forming part of a typical limestone landscape and, although the views from the land are somewhat confined, they are still quite extensive.

13. The appellants suggest that Parcel A serves no useful purpose as open country. Although this was a criteria used by the Countryside Agency for producing draft and provisional maps, this is not part of the ground of appeal and it is therefore a matter to which I cannot attach any weight.
14. Accordingly I find that Parcel A qualifies by its vegetation and character as mountain, moor, heath or, as in this case, down and should, therefore, be retained on the map of open country.

## **Conclusion**

15. I conclude, on the main issues that:

- a) the appeal site can reasonably be divided into two areas corresponding to the Countryside Agency’s Parcels A and B;
- b) Parcel A is correctly mapped as open country;
- c) Parcel B is incorrectly mapped as open country.

16. I have considered all other matters raised but have found none to carry sufficient weight to override my conclusions.

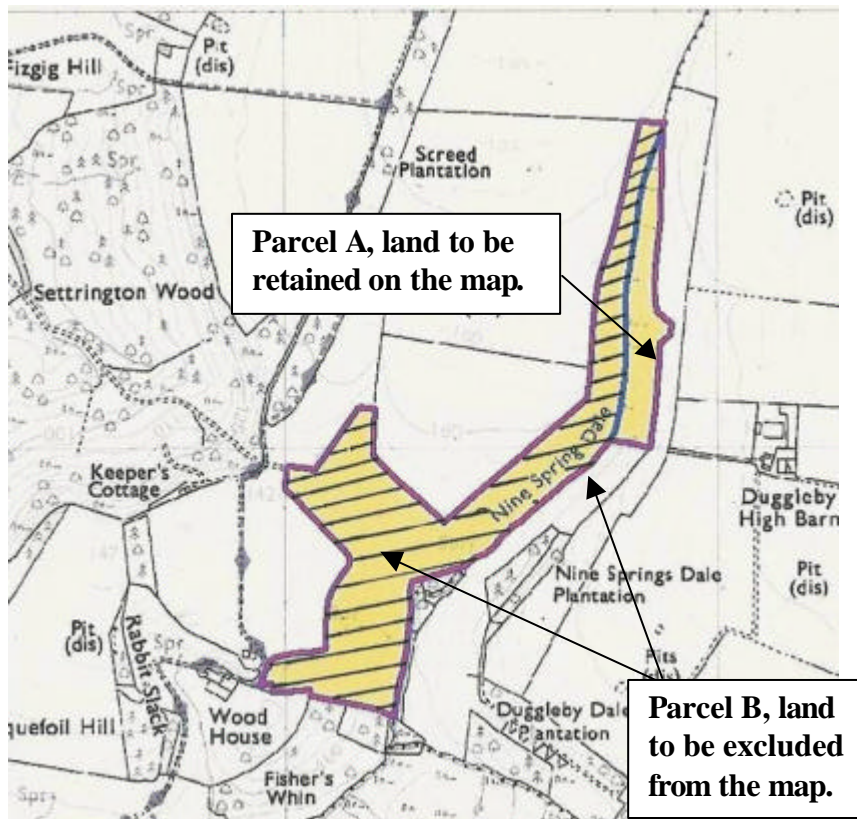
### Formal Decision

17. For the above reasons, I hereby allow the appeal in respect of Parcel B, the area hatched black in Plan 1, and delete this part of the site from the map of open country before it is issued in conclusive form, but dismiss the appeal in respect of Parcel A.

*Tolm Lundel*

INSPECTOR

**Plan 1, showing land to be excluded from the map of open country.**



**Appearances**

*For the Appellant*

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Appeals Officer

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**Document**

Document 1      List of persons present at the hearing