



# Appeal Decision

Site visit made on 26 October 2004

by **Kathleen Wiggins BA(Hons), MA**

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

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Date  
15/11/2004

**Appeal Ref: CROW/5/M/04/2238**

**Site Address: Land at Thixendale, 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 Charles and Gilda Brader, and is dated 8 June 2003.
- The provisional map was issued by the Countryside Agency (the 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 Agency have exercised their 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 such 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 comprises six parcels of land, all situated within about one mile of the village of Thixendale. The six parcels are shown and identified by letters on the map attached to this decision, and the parcel letters are those used by the Agency in their statement of case. Parcel A, known as Vessey Pasture Dale, lies furthest from Thixendale village, being about a mile to the north-west. Parcels B and C are situated almost half a mile south of Parcel A and comprise the two sides of Water Dale, separated by a narrow, unclassified road running along the bottom of the dale. Parcel D lies south of Parcel C and is described as Thixendale on the relevant Ordnance Survey Explorer map, although the appellants refer to it as Cooper Dale on their Appeal Form. Parcel E, also known as Thixendale, runs almost due south from Thixendale village, and a small part of its boundary adjoins the eastern end of Parcel F, known as Long Dale, which lies roughly at a right angle to Parcel E. All of the parcels are enclosed by stock-proof post and wire fences.

## The Main Issue

2. The main issue is the extent to which each of the parcels of land qualifies as mountain, moor, heath or down as a result of its vegetation and general character. There is no evidence that the Agency have exercised their 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 such country, so the second part of the statutory ground of appeal does not apply to this case.

### Reasons

3. In determining whether land comprises mountain, moor, heath or down, the starting point is the Agency's published Mapping Methodology for England (MME), which describes the primary and associated habitats for each of the categories of open country. At paragraph 68 of the MME, *down* is defined as "land comprising semi-natural grassland in areas of chalk or limestone geology generally within an open landscape. The typical vegetation type is unimproved grassland often with scattered scrub. It does not include agriculturally improved or semi-improved grassland, but may include areas of scattered trees, dwarf shrubs, streams, springs, or a mosaic of these."
4. The appellants submit that the appeal site comprises good grassland, which they farm to modern standards and manage for grazing by sheep and horses. They state that, until about 10 years ago, they regularly fertilised the various parts of the site either once or twice a year. They also state that they have carried out bush clearance and that they use part of the site for training their racehorses.
5. A representative of the East Yorkshire and Derwent area of the Ramblers' Association has made submissions, including botanical, geological and topographical evidence, to show that all of the parcels comprised in the appeal site qualify as down by virtue of their vegetation and open character and that they are all "steep sided valleys typical of the Yorkshire Wolds".

### Parcel A

6. Parcel A comprises the north-facing slope of a steep-sided dale, about half a mile long from east to west, which adjoins land mapped as open country to the north and west. The Wolds Way separates the eastern side of the parcel from a further dale running to the east and the north. I noted that a mixed hedge has been recently planted along the fence-line which marks the highest, southern boundary of the parcel. On my site visit I observed hawthorn and occasional gorse bushes dotted over the parcel, with some semi-natural grassland growing amongst them. However I also saw significant amounts of improved and semi-improved grassland, together with thistles, nettles and buttercup, consistent with the appellants' statement that this parcel received twice-yearly applications of fertiliser. I estimate that more than 50% of this parcel comprises improved and semi-improved grassland, and it is clear to me therefore that it does not contain a predominance of qualifying habitat cover. I conclude that Parcel A is not wholly or predominantly mountain, moor, heath or down in terms of its vegetation, and, that being so, there is no need for me to consider the issue of general character. I further conclude that Parcel A should not have been mapped as open country and I note that the Agency have also conceded that this is the case.

### Parcel B

7. Parcel B comprises the south-facing slope of Water Dale, with a flat area in the bottom, adjacent to the road dividing it from Parcel C, and a further relatively flat area at the top. At its western end it adjoins further land mapped as open country. On my site visit I observed large numbers of sheep grazing on this parcel. I also saw hawthorn bushes scattered across much of the parcel, and areas of improved and semi-improved grassland on the flatter areas at the top and bottom of the parcel. On the steeper slopes however I observed significant

areas of semi-natural grassland, with a wide diversity of plant species, including wild thyme, yellow wort, carline thistles and harebells.

8. The Agency estimate that this parcel contains more than 75% qualifying habitat cover, comprising predominantly calcareous grassland, scrub and scattered regenerating trees, with less than 50% semi-improved grassland, mainly in the bottom of the dale.
9. In my view the predominant vegetation over this parcel matches the description of down given in paragraph 68 of the MME. I concur therefore with the views of both the Agency and the Ramblers' Association in finding that, in terms of its vegetation, Parcel B is predominantly down.
10. In terms of its overall character, I noted that there are extensive views over the surrounding countryside from the higher parts of Parcel B. Whilst, inevitably, the views from the bottom of the dale are restricted by the steep valley sides, the parcel as a whole forms part of a typical chalk landscape, and I consider that it can reasonably be described as having an open character.

### **Parcel C**

11. Parcel C lies on the north-facing side of Water Dale, and comprises a steeply-rising slope with a long, narrow, flat area at the bottom, adjacent to the road running through the dale. It is used for grazing and on my site visit I noted large numbers of sheep on this parcel. Several large trees grow along the highest, southern boundary, and occasional hawthorn bushes are scattered across the parcel, although noticeably fewer than on Parcel B. I observed a certain amount of semi-natural grassland, including clumps of tor grass, growing on the steeper slopes of this parcel, but also large areas of semi-improved grassland together with nettles and thistles, particularly on the flatter areas at the bottom of the dale.
12. The Agency estimate that Parcel C has between 50 and 75% qualifying habitat cover, comprising calcareous grassland, scrub and scattered regenerating trees, with less than 50% semi-improved grassland.
13. In my estimation, however, the proportion of semi-improved grassland on this parcel exceeds 50%, and on that basis I conclude that the parcel does not qualify as mountain, moor, heath or down and should not have been mapped as open country.

### **Parcel D**

14. Parcel D comprises the eastern end of a dale which forks into two at its western end, all of which is mapped as open country. Both sides of the dale slope steeply upwards from a flat area at the bottom, along which runs a bridleway with a number of jumps for horses. At the western end of the parcel there are a number of mature trees, mainly ash, and an area of hawthorn bushes. There are also two prominent ash trees high on the north-facing slope. The appellants state that this parcel was re-seeded some twenty years ago, and received regular applications of fertiliser until about ten years ago. I consider that the effects of re-seeding and fertilisation are particularly noticeable in this parcel and that the resultant areas of improved and semi-improved grassland are sufficient to exclude it from being a qualifying downland habitat. That being so, I conclude that the parcel should not have been mapped as open country, and I note that the Agency have also conceded that this parcel comprises predominantly semi-improved grassland and should not appear on the provisional map.

### **Parcels E and F**

15. Parcel E comprises a steeply-sloping area, facing east, with the Wolds Way running along the bottom edge of the parcel. Parcel F adjoins Parcel E and comprises a south-facing slope with a flat area at the bottom and a small pond at its eastern end. Land to the south and west of Parcel F is also mapped as open country. On my site visit I saw a large number of sheep and five horses grazing on Parcel F, and it was apparent to me that the flat area along the bottom of this parcel is used as a gallop for horses. There are occasional trees, mainly ash, and scattered hawthorn bushes on both parcels, and on the flatter parts of Parcel F, at the bottom and at its eastern end, I saw some improved and semi-improved grasses. However I also saw that the steep slopes of both parcels contain large areas of semi-natural grassland with a diversity of flora, including wild thyme, harebells and carline thistle amongst many others.
16. The Agency state that both parcels are predominantly calcareous grassland, with scrub, scattered regenerating trees, and, in the case of Parcel F, water features. They estimate that both parcels contain less than 50% semi-improved grassland.
17. In my view, the predominant vegetation over both parcels matches the description of down given in paragraph 68 of the MME. I concur therefore with the views of both the Agency and the Ramblers' Association in finding that, in terms of their vegetation, Parcels E and F are predominantly down.
18. In terms of character, both parcels have some open views from the higher parts of the slopes. Views from the lower ground are inevitably more limited, being enclosed by the steepness of the adjacent slopes, but this is not inconsistent with the description of downland character set out in the footnote to paragraph 68 of the MME. Overall, I consider these parcels to be part of the typical chalk landscape associated with the Yorkshire Wolds and I note that the Ramblers' Association have commented similarly. I conclude therefore that Parcels E and F both form part of an open landscape and have the character of down.

### **Other Matters**

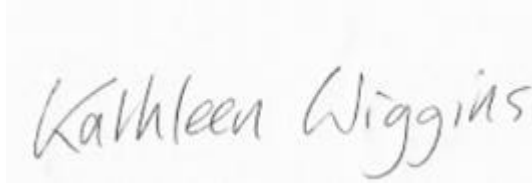
19. The appellants raise concerns on their appeal form about the use of Parcel F for training racehorses, which, they state, is a valuable part of their farm business, and any potential conflict which may arise if open access is allowed to this land. Whilst this issue does not constitute a ground of appeal under the provisions of the 2000 Act, I would nevertheless refer the appellants to Schedule 1 to the 2000 Act which describes those categories of land excepted from the right of access under Part 1 of the 2000 Act, including, in paragraph 12, "land habitually used for the training of racehorses".

### **Conclusion**

20. Having regard also to all other matters raised, I conclude that Parcels A, C and D, shown hatched black on the map attached to this decision, are not wholly or predominantly mountain, moor, heath or down and should not have been mapped as open country. The appeal therefore succeeds in respect of Parcels A, C and D. I further conclude that Parcels B, E and F have been correctly mapped as open country and the appeal fails in respect of those parcels.

**Formal Decision**

21. 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 from it of Parcels A, C and D shown hatched black on the map attached to this decision.

A handwritten signature in cursive script that reads "Kathleen Wiggins". The signature is written in dark ink on a light-colored, slightly textured background.

INSPECTOR

