



# Appeal Decision

Site Visit made on 27 September 2004

by **Michael J Gibbons**

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

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**Appeal Ref: CROW/5/M/04/2276**

**Land east of Thixendale, East Yorkshire.**

**Parcel east of Huggate Hill Road and Parcel on southern part of south east bank of Water Dale.**

- 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 Henry Watson and is dated 6 February 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under Section 5 of the 2000 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 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 dismissed.**

## **The Appeal Site**

1. The appeal site comprises two elongated areas on steeply sloping valley sides to the east and south east of the village of Thixendale. For convenience I use the nominations in the Agency's statement of case. The northern parcel is Appeal Area "A" and the southern parcel is appeal Area "B".
2. Area "A" is some 450 metres to the east of Thixendale and is on the south eastern side of Water Dale valley. The area is mainly a steep slope of north western aspect that lies adjacent to the minor road from Thixendale towards Raisthorpe Manor. Area "B" is located approximately 500 metres south east of Thixendale and lies on the eastern side of Thixendale valley. It comprises the upper and intermediate slope of the valley side and is immediately to the east of the minor road called Huggate Hill.

## **The Main Issues**

3. When determining whether any part of the appeal areas should have been mapped as open country I consider that the main issues are the extent to which the appeal areas qualify as mountain, moor, heath or down (in this case down) as a result of its vegetation and other surface characteristics and its general character including its degree of openness.
4. The Agency have confirmed that they did not exercise their discretion under Section 4(5)(b) of the 2000 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. Therefore, the second part of the statutory ground of appeal does not need to be considered.

## **Reasons**

### **In Respect of Appeal Area “A”**

#### *Vegetation and Other Surface Characteristics*

5. The appellant maintains that the land does not match the definitions of open country because it is improved farming land.
6. The Agency maintain that the appeal site qualifies as down under the terms of paragraph 68 of the published Mapping Methodology for England. It is claimed that the field survey of the area of 6 July 2004 shows that it consists predominantly of calcareous grassland, regenerating trees on qualifying habitat and scrub. Non-qualifying ground cover in the form of semi-improved grassland is recorded but this is deemed to occupy less than 50% of Area “A”. The Ramblers’ Association support the inclusion of this area as open country and submit information gained from ecological and topographical surveys of the site.
7. Area “A” has a general descent from its highest eastern boundary to the valley of Water Dale with the relatively shallow uppermost slopes of the valley forming a narrow strip along the eastern edge. The majority of the site consists of the steep intermediate part of the valley side. (The shallow lower slopes of the valley lie outside the site to the west of the road.) My observations show that, in my estimation, some 25-30% of the site, particularly on the upper eastern part of the area on a strip adjacent to the southern boundary, consists of a sward that contains a number of broad-leaved grass species together with a certain amount of clover and other common indicators of improvement such as nettles and thistles. In my view this is consistent with the appellant’s evidence that he considers the land to be improved.
8. However, over the remainder of Area “A” steeply sloping ground supports a more species-rich semi-natural sward containing considerably more bent and fescue grasses and herbs that is in my view typical of calcareous grassland. Indicators of improvement appear to be much less common on these slopes and there are, in addition, a number of patches of scrub and also a number of individual trees.
9. On the primary issue of whether Area “A” qualifies as down as a result of its vegetation, having inspected the area and in the light of the evidence produced by the parties, it is obvious to me that any relevant qualifying vegetation occupies more than half of the land. I conclude, therefore, that Area “A” qualifies as down under this test. I now turn to the allied issue regarding the general character of the site.

#### *General Character Including Openness*

10. The setting of Area “A” within Water Dale is in my view typical of a down landscape in that it lies on the upper and intermediate slopes of a relatively steep and narrow river valley that cuts through a fairly level area of upland. The sloping aspect the area together with the relative absence of trees and other dense vegetation means that extensive views may be seen within the site. In addition, broad ranging vistas in all directions may be seen from the uppermost parts of the area and also the elevation of much of the site allows views to be seen generally to the north west across Thixendale village, the valleys of Water Dale and Court Dale and the higher ground beyond.

11. When the above factors are taken into account I find that Area “A” also qualifies as down by virtue of its general character and degree of openness.

### **In Respect of Appeal Area “B”**

#### ***Vegetation and Other Surface Characteristics***

12. In common with Area “A” the appellant says that the land has been improved and so therefore does not match the criteria for open country.
13. The Agency believe that Area “B” qualifies as down under the terms of paragraph 68 of the published Mapping Methodology for England. The field survey of Area “B” of 6 July 2004 shows that the area consists predominantly (between 50% and 75%) of calcareous grassland, scattered regenerating trees on qualifying habitat and scrub. Non-qualifying semi-improved grassland is recorded as less than 50% of the total area. Once again the Ramblers’ Association have submitted ecological and topographic evidence to support the inclusion of this land as open country.
14. Although Area “B” is slightly more elevated than Parcel “A” it is located on ground that is generally less sloping because it consists almost entirely of the upper slopes of the south western parts of the Thixendale Valley. In my view, the least sloping parts of Area “B” that form a strip adjacent to the eastern boundary and an area at the northern end support a sward that contains a number of broad-leaved grass species together with other common indicators of improvement such as nettles and thistles and a certain amount of clover. However, in my estimation this area of improvement that illustrates the appellant’s view amounts to no more than 40% of Area “B”.
15. The remainder of Area “B” has an appreciable gradient with a ground cover consisting of a species-rich semi-natural sward containing considerably more bent and fescue grasses and herbs and is in my estimation typical of calcareous grassland. Indicators of improvement are much less common on these slopes and there are also patches of scrub and a number of individual trees.
16. On the primary issue of whether Area “B” qualifies as down as a result of its vegetation, having inspected the area and in the light of the evidence produced by the parties, it is obvious to me that any relevant qualifying vegetation occupies more than half of the land. I conclude, therefore, that Area “B” does qualify as down under this test. I now turn to the allied issue regarding the general character of the site.

#### ***General Character Including Openness***

17. In my view the setting of Area “B” on Huggate Hill is typical of a down landscape in that it consists of the upper slopes of an incised river valley set within an area of upland. Wide ranging vistas in all directions may be seen from the most of the area and also the elevation of much of the site allows views to be seen to west across the Thixendale valley and the higher ground of Thixendale Wold beyond.
18. When the above factors are taken into account I find that Area “B” also qualifies as moor by virtue of its general character and degree of openness.

**Conclusion**

19. My overall conclusion is that both the mapped areas of the appeal site contain sufficient qualifying vegetation for them to conform to the description of down in the Mapping Methodology. In addition both Area "A" and Area "B" have an open character. No other matter raised carries sufficient weight to override that and therefore these parts of the appeal site are correctly mapped as open country and the appeal fails accordingly.

**Formal Decision**

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



INSPECTOR