



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/04/2481

Land at Bradeham Dale, south 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 dismissed.

The Appeal Site

1. The appeal site is an area of about 15 ha, divided by a post and wire fence into two separate fields, comprising the southern end of a long narrow valley or dale running roughly south to north. 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 water features, 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 located mainly on a central track running along the floor of the valley, was also recorded, but this was assessed as covering less than 50% of the site's area.

5. The appellants' view, based on an ecological survey carried out for them, is that none of the site's cover is qualifying cover for down. Their survey assessed it as comprising 96% semi-improved calcareous grassland, covering the valley sides, and 4% improved grassland along the base of the valley. They say that the site has been reseeded and fertilised in the past and they submit that, in combination with overgrazing and possible run-off of fertiliser from the arable fields above the site, this has resulted in the sward losing much of its unimproved characteristic. They also contend that it is not of open character, being a steep sided valley surrounded by arable land and coniferous woodland.
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 an extensive complex of dry calcareous grassland valleys typical of the Yorkshire Wolds landscape. They argue that this is consistent with the description of the open character of down given in MME.
7. Both the appellants and the Ramblers' Association agree that the valley sides are covered by a sward that is dominated by tor grass, a species associated with calcareous grassland and which is undesirable from an agricultural viewpoint. At the hearing the appellants accepted that the site had not been subject, as far as they were aware, to any recent agricultural improvements, and that the predominance of tor grass could well have arisen through a reduction in agricultural inputs. However, they argue that whatever the cause of this predominance, it is a digression from the species diversity associated with unimproved calcareous grassland and cannot therefore be so classified. I am not convinced by this argument. On the basis of my observations I do not consider that the current structure and species composition of the grassland on the valley slopes, which amounts to more than 90% of the site, could be considered as anything other than unimproved from an agricultural point of view, regardless of whether or not it is ecologically desirable. The description of down in MME states that the typical vegetation type is unimproved grassland in an area of chalk or limestone geology. In my view the predominant cover on the appeal site is entirely consistent with this description, and accordingly my conclusion on the first aspect of the main issue is that the appeal site's vegetation cover qualifies it as down.
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, 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 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.
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DOCUMENTS

Document 1	List of persons present at the hearing.
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