



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/04/2483

Land at Thixen Dale and South Breckenholme 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 allowed in part and the provisional map is modified accordingly.

The Appeal Site

1. The appeal site is a fully enclosed area of about 14 ha, divided by a post and wire fence into two separate fields, mainly comprising part of the east facing slope of a long narrow valley or dale running roughly south to north. The appellants refer to the northernmost field as Compartment I and the southernmost field as Compartment II. I shall use these designations where relevant.

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 and scattered trees, 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 areas where machine access was easiest, was also recorded, but this was assessed as covering less than 50% of the site's area and was not considered separable from the rest of the site.

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 Compartment II, an area of about 4.5 ha, as comprising entirely semi-improved calcareous grassland, and Compartment I as semi-improved neutral grassland on the valley slope with improved grassland along the base of the slope along the eastern side. They say that the site has been fertilised in the past and they submit that, in combination with 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 area surrounded by arable land.
6. The Rambler's Association disagree with the appellants' classification of the grassland on the site as improved or semi-improved. They maintain that the species recorded by the appellants in Compartment I all occur in National Vegetation Classification (NVC) communities which can be considered unimproved calcareous grassland, whilst the tor grass dominated sward in Compartment II is very characteristic of chalk grassland in the Yorkshire Wolds. They add that the lack of fertilisation within the last ten years suggests that the site should be more akin to unimproved than improved calcareous grassland. On the general character of the site, they submit that its visual appearance is consistent with the description of down in the relevant footnote to paragraph 68 of MME, and note that the site is a contiguous part of an extensive complex of dry calcareous grassland valleys.
7. Both the appellants and the Ramblers' Association contend that their assessment of the grassland present should be preferred to the other, for reasons including survey timing, reliance on historic information and the appropriateness or otherwise of NVC classification for the determination of the status of land as open country for the purposes of the Act. However, whilst any party is entitled to refute or otherwise challenge the evidence of another, the guidance provided by DEFRA (*Guidance on Appeals under Section 6 of the Countryside and Rights of Way Act 2000: Appeals against the showing of land as Open Country or Registered Common Land on a Provisional Map*) makes it clear that the key evidence in an appeal under section 6(3) of the Act is the vegetation present at the time of the site visit. For this reason I do not consider it necessary in the circumstances to address the question of the relative weight to be accorded to each party's submissions.
8. My assessment of the vegetation cover in Compartment I is that it mainly comprises a mixture of semi-improved and unimproved grassland. I found much of the northern and central parts to be covered by a moderately diverse sward containing a high proportion of agriculturally desirable grasses, which I considered to be most appropriately classified as semi-improved grassland. The southern part of Compartment I was largely covered by a rough tor grass dominated sward which, in my view, falls into the category of unimproved calcareous grassland. I estimated, however, that the predominant cover on Compartment I was semi-improved grassland, which is excluded from the definition of mountain, moor, heath or down under section 1(2) of the Act, and my conclusion therefore is that it does not qualify as down on the basis of its vegetation cover.

9. I observed, in line with the appellants' survey, that Compartment II was 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 in Compartment II 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 vegetation cover on Compartment II qualifies it as down.
10. On the second aspect of the main issue, the appeal site's general character and degree of openness, I found both compartments to be set within a generally open landscape with good views, 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 slope 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. I agree therefore with the Agency and the Ramblers' Association that the appeal site's general character and degree of openness are consistent with a classification of down. However, this does not override my conclusion on the vegetation aspect of the main issue in relation to Compartment I.

Overall Conclusions

11. Having considered all other matters raised, my overall conclusion is that Compartment I does not qualify as down on the basis of its vegetation and was incorrectly mapped as open country, but that Compartment II qualifies as down by virtue of both its vegetation and its general character, and was therefore correctly mapped as open country.

Formal Decision

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



INSPECTOR

APPEARANCES

For the APPELLANTS:

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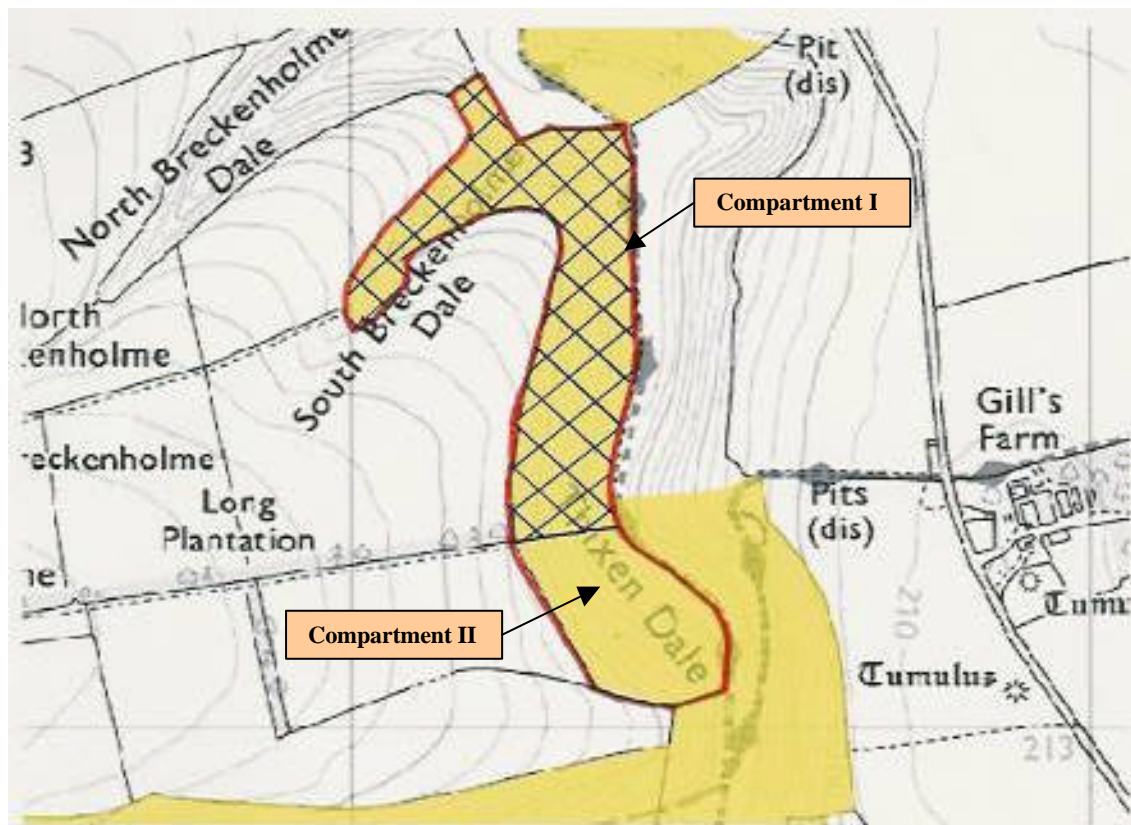
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DOCUMENTS

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.