



Appeal Decision

Hearing held on 11 October 2004

by Roger Vickers BA (Hons).

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

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Date
11/11/2004

Appeal Ref: CROW/5/M/04/2405

Site Address: Land known as Vessey Pasture, near Birdsall, Malton, 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 Birdsall Estate Company Limited and is dated 12 February 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the said 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 such country they should not have done so.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. During the hearing it became apparent that evidence would be most usefully presented at the appeal site. At an appropriate point in the proceedings the hearing was therefore adjourned to continue on site.

The Main Issue

2. The main issue is the extent to which the appeal site qualifies as down as a result of its vegetation and general character, including openness. There is no evidence that the Agency have exercised their discretion under section 4(5) (b) of the Act, so the second part of the ground of appeal does not need to be considered.

Reasons

3. Dealing firstly with vegetation, the appellants say that the appeal site is a Site of Special Scientific Interest (SSSI) and produce an ecological and landscape assessment. This suggests that a reseeded area near to the east, a small compartment to the west and a track running along the lower part of the site contains improved or semi-improved grassland. However, the appellants acknowledge that the appeal site contains 73% qualifying land cover, consisting of calcareous grassland and scrub.
4. The appellants suggest that as the appeal site contains between 50-75 % qualifying habitat paragraphs 54-56 of the methodology should be applied in reaching a decision on its status. The Agency points out that these paragraphs relate only to decisions taken by them at draft stage and not to appeals against the Provisional Map. Be that as it may, Defra guidance at paragraph 5.16 advises that the test to be applied on appeal, is whether or not the land consists wholly or predominantly of (in this case) down. The guidance also interprets

‘predominantly’ suggesting that if an Inspector considers that in his or her judgement it is obvious that more of the land consists of the relevant qualifying habitat than does not, then the conclusion is likely to be that the land consists predominantly of down. This decision will follow Defra guidance.

5. Ecological evidence submitted by the Ramblers’ Association concedes that the reseeded area and a track running through the lower part of the appeal site are improved grassland but points out that the Phase I and 11 Habitat surveys and the SSSI citation for the site classifies it as unimproved calcareous grassland.
6. I saw that the reseeded area and parts of the track running along the lower parts of the site consist largely of semi-improved grassland. However, well over a half of the site contains a short calcareous grass sward with frequently occurring calcareous indicator species. I also noted the presence of scattered scrub and several more mature trees. This finding is broadly consistent with the views of all parties and also matches the classification of down contained within the Agency’s published Mapping Methodology for England (the methodology). I therefore reach the conclusion that the appeal site is down by reason of its vegetation.
7. Turning to general character the appellants acknowledge that the appeal site is contiguous with open dale on most of its southern boundary but is enclosed on three sides by arable land. I saw that although the boundaries are marked by well maintained fencing, given its size and topography these do not detract from a sense of openness. Although views are sometimes restricted by steeply sloping valley sides, the site forms a part of a typical limestone landscape and provides views across undulating countryside, within the site itself, across the valley to the south and along the valley to the east. This finding is broadly consistent with the views of the Agency and also accords with the open character definition contained in the methodology. I therefore conclude that the appeal site is down by reason of its general character, including openness.

Other Matters

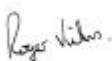
8. The appellants suggest that unrestricted public access may be detrimental to the proper management of the appeal site as an SSSI. This is not a relevant ground of appeal and I am unable to take it into account when reaching my decision. However, the Act contains provision that may enable public access to be restricted for land management purposes.

Conclusion

9. Having regard to the above and also to all other matters raised I conclude that by virtue of its vegetation, character and openness, the appeal site is down and correctly shown as open country on the Provisional Map. The appeal therefore fails.

Formal Decision

10. For the above reasons I hereby dismiss the appeal and, in so far as it relates to the appeal site, approve the Provisional Map without modification.



INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dr M McLellan	1 Plexfield Road Rugby Warwickshire CV22 7EN
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MR M Willoughby	Estate Office Birdsall, Malton North Yorkshire NYO17 9NU
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Mr S Fairbank	As above
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FOR THE AGENCY

Mr C Smith	Appeals Officer Countryside Agency 1 Redcliff Street Bristol BS1 6NP
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THE RAMBLERS' ASSOCIATION

DR T Halstead	1 Derwent Drive Wheldrake York YO19 6AL
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Ms S Donaghy	The Bungalow Back Lane Osgodby, Selby North Yorkshire YO8 5HS
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DOCUMENTS

Document 1.	List of persons present at hearing.
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