



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**

The Planning Inspectorate
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Date
11/11/2004

Appeal Ref: CROW/5/M/04/2406

Site Address: Land known as Dimple Hole, 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 allowed, and the provisional map is modified accordingly.

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. The appellants say that the appeal site consists of two compartments, the first an area of flat pasture running across the north of the site which has been reseeded and the second, a southerly facing slope dominated by thick hawthorn scrub. Although the appellants acknowledge the presence of some calcareous indicator plants they say that the appeal site is not down. Having considered the appeal the Agency says that the appeal site is mostly semi-improved grassland and recommend that it should be removed from the map of open country. Although the Ramblers' Association had submitted evidence suggesting that the appeal site is down, during the adjourned hearing on site, they too agreed that qualifying vegetation is not predominant. I am satisfied that less than a half of the appeal site contains vegetation matching the classification of down contained within the Agency's published Mapping Methodology for England. I therefore conclude that the appeal site is not down by

reason of its vegetation. This being the case I need not consider the general character of the site.

Conclusion

4. Having regard to the above and all other matters raised, I conclude that the appeal site is not down and should not have been mapped as open country. The appeal therefore succeeds.

Formal Decision

5. For the above reasons I hereby allow the appeal and, in so far as it relates to the appeal site, approve the Provisional Map subject to the site's deletion from it.



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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