



Appeal Decision

A hearing was held on 13 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/04/2487

Land north of the road at Waterdale, west 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 7 ha, set on the south- and west-facing slope of a relatively wide valley or dale. It is part of the Water 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 scrub, 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, with no non-qualifying cover recorded. However, at the hearing the Agency agreed with the appellants' view that much of the scrub present on site was dense rather than scattered and, as such, was not qualifying cover for down according to the description in MME.
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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 32% dense scrub, 11% poor semi-improved grassland and wetland and 57% semi-improved calcareous grassland. A map of the site submitted by them shows the approximate distribution of each of these habitats. They also contend that it is not of open character, being a steep sided area surrounded by arable land.
6. The Rambler's Association consider the site to be down. They argue that the grassland on the site is more correctly classified as unimproved calcareous grassland, based on Phase I and II habitat survey data and the site's SSSI citation. They also submit that the site is typical of the Yorkshire Wolds in terms of landscape and complies precisely with the description of the open character of down given in MME.
7. Both the appellants and the Ramblers' Association contend that their assessment should be preferred to the other, for reasons including survey timing, reliance on historic information and the appropriateness or otherwise of Phase II survey and National Vegetation Classification (NVC) classes 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 weight to be accorded to each party's submissions.
8. I found the site to be predominantly covered by lightly grazed grassland with some scattered hawthorn scrub. There was an area of dense scrub at the western end, covering about 30% of the site, which I agree does not comprise qualifying vegetation for down. My assessment of the grassland covering most of the remainder of the site, however, is that it is most appropriately classified as unimproved calcareous grassland, being relatively species rich and containing a high frequency of species indicative of semi-natural calcareous grassland. The appellants argue that, whilst the species composition of the main area of grassland on the site is undisputedly typical of calcareous grassland, the relative frequency of the species present is not consistent with unimproved or semi-natural calcareous grassland in the area. They argue that the composition of the sward has been sufficiently modified by previous agricultural management for it to be considered semi-improved. I disagree. I saw no evidence of recent agricultural improvement and I am satisfied that the high frequency of tor grass on the site, which the appellants maintain is due to historic agricultural improvement, is, on the balance of probability, far more likely to have resulted from a reduction in agricultural inputs, including grazing, rather than indicating any persistent evidence of historic improvement.
9. Overall I considered that in excess of 60% of the site's vegetation was qualifying cover for down as set out in MME. I considered whether part of the site, the area of dense scrub comprising the western part of the site, should be assessed as a separate parcel for the purposes of mapping open country. However, it is my view that a boundary delineated by dense scrub alone does not comprise a satisfactory open country boundary and I saw no other feature within the site that would suffice as an open country boundary. Accordingly I consider that the appeal site should be considered as a single parcel. My conclusion on the

first aspect of the main issue, therefore, is that the appeal site as a whole qualifies as down on the basis of its predominant vegetation cover.

10. 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 steep valley slope topography is, in my opinion, typical of the area's chalk landscape, and it provides extensive views across the surrounding farmland to the south and west. This is consistent with the description of down in paragraph 68 of MME, and 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

11. 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

12. 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:

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For the COUNTRYSIDE AGENCY:

Chris Smith Access Appeals Officer, The Countryside Agency.

For the RAMBLERS' ASSOCIATION

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DOCUMENTS

Document 1 List of persons present at the hearing.