



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**

the Planning Inspectorate
09 Kite Wing
Temple Quay House
The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
✉ mail: enquiries@planninginspectorate.gsi.gov.uk

date
7/11/2004

Appeal Ref: CROW/5/M/04/2488

Land running from Queen Dike to Rigg Plantation, south of the road at Water Dale, 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 allowed in part and the provisional map is modified accordingly.

The Appeal Site

1. The appeal site is a fully enclosed area of about 24 ha, divided by a post and wire fence into two separate fields. The westernmost field, which I shall refer to as Field A, is an area of about 10.5 ha comprising part of the north facing slope of Water Dale, a relatively wide valley or dale, and part of the west and north-west facing slope of a narrow side valley running south from Water Dale to Queen Dike. The eastern part of the site, which I shall refer to as Field B, consists of part of the north facing slope of Water Dale and part of a short narrow valley extending to the south-west from about the middle of the field. Both fields are separately enclosed by post and wire fencing and, in my view, can be considered as individual parcels for the purposes of mapping open country.
2. The appeal site is part of the Water Dale Site of Special Scientific Interest (SSSI).

The Main Issue

3. 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.
4. 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

5. 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 at the base of the slope along Water Dale, 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. The survey also noted evidence of scrub clearance. The Agency's statement of case did not differentiate between the two fields and they confirmed at the hearing that they considered them individually to qualify as down, by virtue of both their vegetation and their general character.
6. The appellants' view, based on an ecological survey carried out for them, is that the overall site has qualifying cover for down of about 40%, consisting of unimproved calcareous grassland, with the remainder of the site being classified by them as semi-improved neutral grassland (22%), semi-improved calcareous grassland (5%), poor semi-improved grassland and wetland (27%) and dense scrub (6%). A habitat map submitted by them shows most of the vegetation cover in Field A to be unimproved calcareous grassland with scattered scrub, which is qualifying cover for down according to MME. They contend, however, that the site as a whole is not of open character, being a steep sided area surrounded by arable land and coniferous woodland.
7. The Rambler's Association disagree with the appellants' classification of some of the grassland on the site as improved or semi-improved. They argue that it 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.
8. My assessment of the vegetation cover in Field A is that it was predominantly unimproved calcareous grassland, comprising areas of rough tor grass dominated grassland along the steep west-facing side, with a lightly grazed diverse herb-rich sward on the more gently sloping north facing bank containing a high frequency of species typical of unimproved calcareous grassland. There was evidence of recent scrub clearance on the west-facing bank, but I saw no other evidence of agricultural improvement on this part of the site. My conclusion therefore is that the vegetation cover on Field A qualifies it as down.
9. By contrast, the second part of the site, Field B, appeared to be more intensively managed. The sward along the main north-facing bank and the flatter areas above and below it was more heavily grazed and extensive scrub clearance had evidently taken place recently. It was only moderately species diverse and contained a reasonable frequency of good quality grasses, whilst having a relatively low frequency of species typical of unimproved calcareous grassland. The remainder of the site, the main valley slope at the eastern end of the site and the small valley running to the south-west, were covered by a more unimproved sward, including some areas where tor grass was predominant and areas of gorse or hawthorn scrub, but my overall estimation was that the predominant vegetation cover on Field B was semi-improved grassland, which is not qualifying vegetation for mountain,

moor, heath or down. Accordingly my conclusion in relation to Field B is that it does not qualify as down on the basis of its vegetation cover.

10. On the second aspect of the main issue, the appeal site's general character and degree of openness, I found both fields 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 Field B.

Overall Conclusions

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

Dr Mark McLellan 1 Flexfield Rd, Rugby, Warwickshire CV22 7EN.

Charlotte Robinson Halifax Estates, Estate Office, Bugthorpe, York YO41 1QG.

For the COUNTRYSIDE AGENCY:

Andrew Best Access Appeals Officer, The Countryside Agency.

For the RAMBLERS' ASSOCIATION

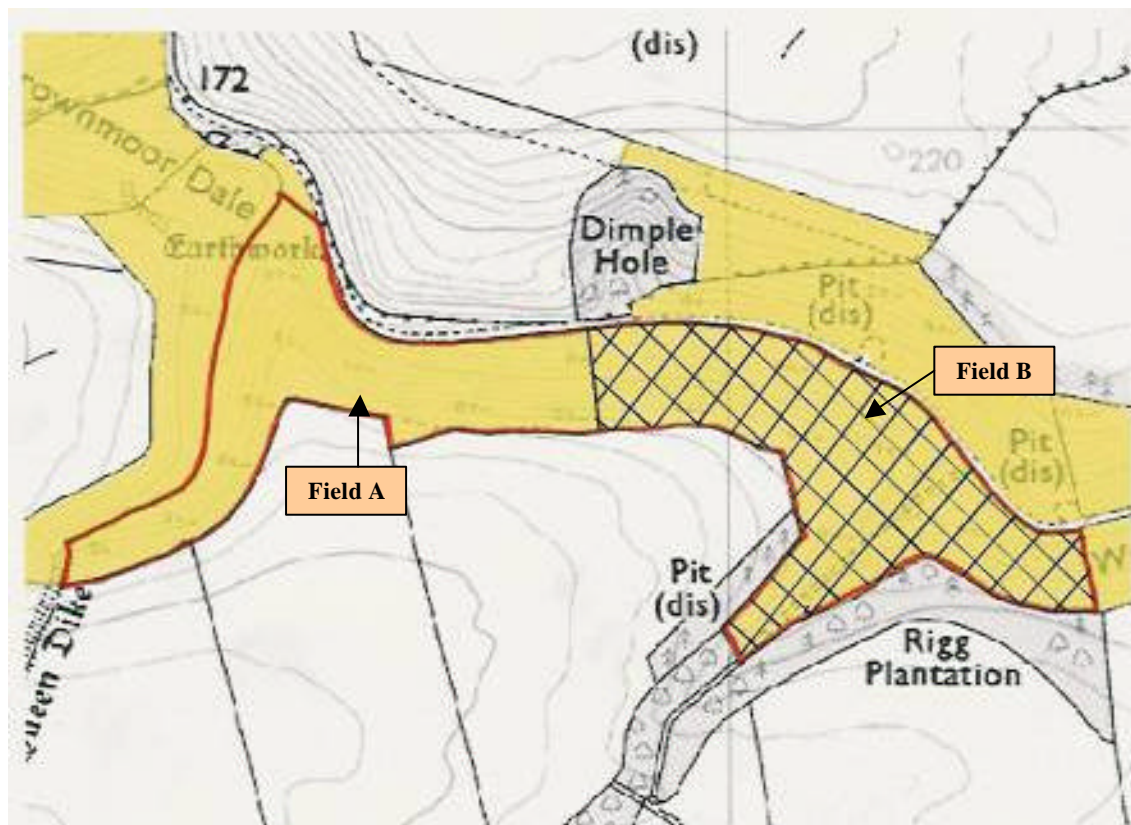
Sonia Donaghy The Bungalow, Back Lane, Osgodby, Selby YO8 5HS.

Tom Halstead 1 Derwent Drive, Wheldrake, York YO19 6AL

Robert Clutson 151 Stepney Rd, Scarborough YO12 5NT.

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.