



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/04/2489

Part of Brown Moor Dale extending south to Queen Dike, 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, mainly comprising the east and south-east facing slope of a narrow dale or valley. It is fully enclosed by post and wire fencing with no internal divisions.

The Main Issue

2. In considering whether the appeal site 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 predominantly covered by calcareous grassland with associated cover of scattered trees and scrub. A site survey carried out for them in May 2004 found that although there was some semi-improved grassland on the parcel, more than 75% of the vegetation cover was qualifying land cover for down, as set out in their published *Mapping Methodology for England* (MME). They also say that the site is of open character. The Rambler's Association support the Agency's position on both aspects of the main issue.

5. The appellants accept that the predominant vegetation cover on the appeal site is qualifying cover for down, being predominantly unimproved calcareous grassland, but they contend that it is not of open character, being a steep sided dale surrounded by arable land and improved grassland, and providing linear rather than open views.
6. There is no dispute therefore between any of the parties with regard to the site's predominant vegetation, and having seen the site I am satisfied that it qualifies as down by virtue of its vegetation cover. I noted, as the appellants submit, areas of semi-improved grassland on the north-western end of the site and along the valley bottom forming the eastern and south-eastern parts of the site, but I considered that the majority of the site, the steep valley slope, was covered by unimproved calcareous grassland.
7. On the second aspect of the main issue, my impression is that the parcel is set within a generally open landscape, and, whilst accepting that the surrounding land use is more intensive than might be expected of open country, I consider that in the context of land use in the Yorkshire Wolds this is not unusual. Furthermore, extensive views are available from the site itself, across farmland to the north and east and along the steep-sided valley or dale of which the appeal site forms a part, and which is one of the landscape features typical of the area. This is consistent with the explanatory footnote to the description of down in paragraph 68 of MME, which allows that the features typical of downland landscapes may provide more limited views in some circumstances. My conclusion on this aspect of the main issue, therefore, is that the appeal site's general character is consistent with its classification as down.

Other Matters

8. The appellants also suggest that if appeals which they have made against the inclusion of adjoining areas on the provisional map as open country are upheld, the site would be isolated and would not be a beneficial area of open country. However, this is not a matter that falls within the statutory ground of an appeal under section 6(3) of the Act, and is not therefore a matter to which I can attribute material weight.

Overall Conclusion

9. Having considered all other matters raised, my conclusion is that the appeal site qualifies as down on the basis of both its vegetation cover and its general character, and was therefore correctly mapped as open country.

Formal Decision

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



INSPECTOR

APPEARANCES

For the APPELLANTS:

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

For the COUNTRYSIDE AGENCY:

Chris Smith Access Appeals Officer, The Countryside Agency.

For the RAMBLERS' ASSOCIATION

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

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DOCUMENTS

Document 1 List of persons present at the hearing.