



# 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/04/2490**

**Land at Brown Moor 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 and the provisional map is modified accordingly.**

## The Appeal Site

1. The appeal site is an area of about 27 ha, consisting of a grassland valley or dale running roughly west to east with a small side valley running to the south and a long narrow valley side running north from the main valley.

## 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 between 50% and 75% qualifying cover. Non-qualifying cover, consisting of semi-

improved grassland located mainly along the floor of the valley, was also recorded, but this was assessed as covering less than 50% of the site's area.

5. The appellants' view, based on an ecological survey carried out for them, is that no more than 4% of the site's cover is qualifying cover for down, unimproved calcareous grassland in this case, with non-qualifying vegetation cover of semi-improved calcareous grassland (43%), semi-improved neutral grassland (32%) and poor semi-improved grassland and wetland (21%). 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 valley surrounded by arable land.
6. The Rambler's Association disagree with the appellants' classification of the grassland on the valley sides as semi-improved calcareous or neutral grassland, and argue that all of it is more correctly classified as unimproved calcareous grassland, based on Phase I habitat survey data and a BioDAT report. They also submit that the site is a steep-sided dale typical of the Yorkshire Wolds, which, in their opinion, complies precisely with the description of the open character of down given in MME.
7. I found the site's vegetation to fall into three broad classes, roughly following the site's topography. The relatively flat land, mainly along the valley and on a small plateau near the farmyard adjoining the site, was generally tightly grazed good quality grasses and clover, whilst the wide, moderately sloping north facing banks had a well grazed sward of moderate species diversity. In my view the grassland on these areas is best described as semi-improved grassland. The remainder of the site, comprising the steep south facing slope of the main valley and the slopes of the two side valleys, were covered by rough unimproved calcareous grassland and scattered or dense scrub, mainly hawthorn. With the exception of the dense areas of scrub, all of this vegetation is, in my view, qualifying vegetation for down, as set out in MME. However, in my opinion the overall extent of qualifying vegetation on the site amounts to just less than 50% of its cover, and accordingly my conclusion on the first aspect of the main issue is that it does not qualify as down on the basis of its vegetation.
8. 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 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 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.
9. Accordingly, and having considered all other matters raised, my overall conclusion is that the appeal site does not qualify as mountain, moor, heath or down by virtue of its vegetation and was therefore incorrectly mapped as open country.

### **Formal Decision**

10. For the above reasons I allow the appeal and, insofar as it relates to the appeal site, approve the provisional map subject to the site's deletion from it.



INSPECTOR

### **APPEARANCES**

For the APPELLANTS:

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For the COUNTRYSIDE AGENCY:

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### **DOCUMENTS**

Document 1

List of persons present at the hearing.