



Appeal Decision

Hearing held on 7 April 2005

by Roger Vickers BA (Hons).

**an Inspector appointed by the Secretary of State for
Environment, Food and Rural Affairs**

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email: enquiries@planninginspectorate.gsi.gov.uk

Date
09 May 2005

Appeal Ref: CROW/8/M/04/3419

Site Address: Land known as Greenland Slack and Cow Dale, near Sledmere, East 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 Sir Tatton Sykes and is dated 31 August 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the said Act, and relates to the East of England (Region 8).
- 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 in part and the provisional map is modified accordingly.

Preliminary Matters

1. The appeal site consists of two separate land parcels, identified by the Agency as parcel A and parcel B (Cow Dale). I agree with the principal parties in their view that parcel B contains a predominance of non-qualifying vegetation. I am satisfied that this parcel does not qualify as down and has adequate boundaries with the surrounding land and can be considered separately from the remainder of the site. In my opinion parcel B should not have been mapped as open country and my decision will find accordingly.
2. 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 Appeal Site

3. Parcel A has a surface area of about 12 hectares and forms an irregular shaped area of land adjoining Greenland Slack at its eastern boundary. From that point it divides into two valleys, one running approximately north-west and the second turning south-west to its boundary with parcel B (Cow Dale).

The Main Issue

4. 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

5. I saw that parcel B (Cow Dale) contains a mosaic of qualifying and non-qualifying land cover. The vegetation along the valley bottom, along a plateau at the top of the south-eastern valley side and much of the north-western slope of this parcel is predominantly semi-improved grassland. Parcel B is separated from the rest of the appeal site by well maintained fencing. I agree with both the principal parties that this part of the appeal site does not contain a predominance of qualifying land cover and for this reason it is not down. I therefore have no reason to consider the general character of parcel B and conclude that it should not have been mapped as open country. To that extent the appeal succeeds. The rest of this decision will deal with the remainder of the appeal site, parcel A.
6. All parties agree that in line with the Agency's published Mapping Methodology for England (the methodology) improved and semi-improved grassland should not be mapped as open country. However, the appellant says that the methodology is not sufficiently robust to differentiate between improved and semi-improved grassland. As a result, the Agency tends to regard improved grassland as semi-improved and semi-improved grassland as unimproved. In response, the Agency and the Ramblers' Association say that it is unnecessary to make a distinction between the two improved types, as both are non-qualifying and readily recognisable from unimproved grassland.
7. Defra Guidance 3.13 suggests that it is appropriate to use the methodology as a starting point when considering appeals. Paragraph 70, footnote 11 of the methodology suggests that improved and semi-improved grasslands will be less species rich than unimproved grasslands. Paragraph 5.9 of the Access Inspectors Handbook (March 2004), points out that there may be overlaps between improved and semi-improved grassland, but that it is not necessary to distinguish between them. Following this advice I make no distinction between improved and semi-improved grassland, but recognise that an appeal site containing a predominance of either or both will not qualify as open country.
8. The appellant suggests that in judging whether grassland is semi-improved it is helpful to place it on a continuum between improved grassland, at one end of a scale, and unimproved flower rich grassland at the other. The appellant contends that the vegetation on this parcel passes a threshold enabling it to be classified as improved grassland. Fertiliser was applied up to two years ago, but ceased when the site was entered into Countryside Stewardship. The appellant says that parcel A is typical of land recovering from intensive treatment and classifies it as improved grassland, consisting largely of ryegrass and white clover with scattered and locally dense scrub.
9. The evidence submitted by the appellants is challenged by the Ramblers' Association who say that the inclusion of the appeal site within the Countryside Stewardship (Chalk and Limestone, 2002) Agreement, suggests that the vegetation is more likely to be akin to unimproved rather than improved calcareous grassland.
10. I saw that areas along the valley bottom, a gentle slope running west from the centre of the parcel and level areas near the top of slopes contain undisputed areas of semi-improved grassland with some clover. However, it is apparent to me that past fertilisation of the site has had limited effect on the steeper slopes making up most of the parcel and these are dominated by unimproved calcareous grassland with some scrub. I noted that tor grass is quite common and the Ramblers' Association pointed to the presence of salad burnet and cowslip which are calcareous indicator species. Adopting the concept of a continuum

between improved and unimproved grassland suggested by the appellant, I reach the conclusion that the predominant vegetation on parcel A is much more akin to unimproved calcareous, rather than improved or semi-improved, grassland. This finding is broadly consistent with the views of the Agency and the Ramblers' Association. I conclude that more than a half of parcel A contains a predominance of unimproved calcareous grassland and that by reason of this it is down.

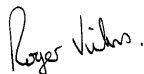
11. Turning to general character, although the boundaries of parcel A are marked by well maintained fencing, given its size and topography this does not detract from a sense of openness. Although views are sometimes restricted by steeply sloping valley sides, the parcel forms a part of a typical limestone landscape and provides views, both within the site itself and across nearby and distant undulating countryside. This finding is broadly consistent with submissions from the Agency and the Ramblers' Association and also accords with the open character definition contained in the methodology. I conclude that parcel A is down by reason of its general character, including openness.

Conclusion

12. Having regard to the above and also to all other matters raised, my overall conclusion is that parcel B contains a predominance of non-qualifying land cover and is therefore not down and should not have been mapped as open country. To that extent the appeal succeeds. By virtue of its vegetation, character and openness, parcel A is down and correctly shown as open country on the Provisional Map.

Formal Decision

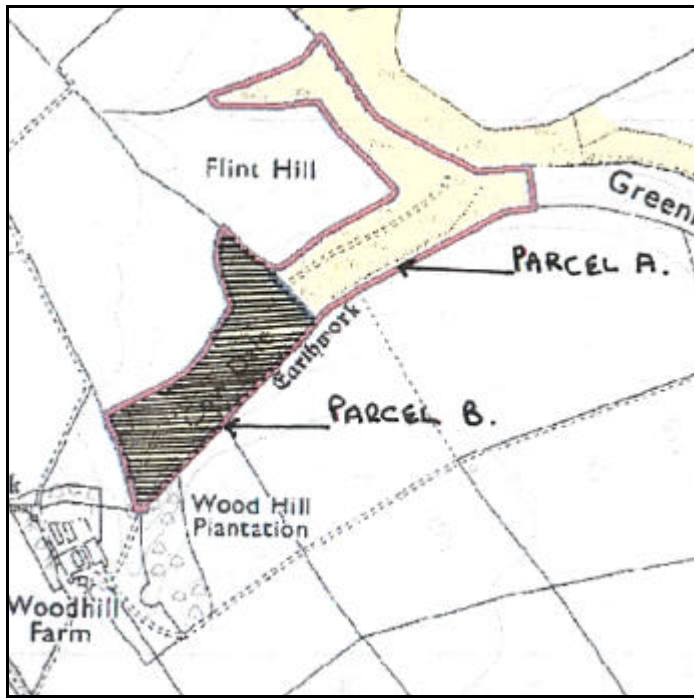
13. For the above reasons I hereby allow the appeal in part and, in so far as it relates to the appeal site, approve the Provisional Map subject to the deletion therefrom of the land hatched in black on the map attached hereto.



INSPECTOR

CROW/8/M/04/3419

Land hatched in black to be removed from the Provisional Map.



APPEARANCES

FOR THE APPELLANT

Dr M McLellan

1 Plexfield Road
Rugby
Warwickshire
CV22 7EN

MR P F Till

North Yorkshire Law
Bondgate
Helmsley
YO52 5BS

Col. A Wilson

Sledmere Estate Office
Sledmere, Drifffield
YO62 5BS

FOR THE AGENCY

Mr A Best

Appeals Officer
Countryside Agency
1 Redcliff Street
Bristol
BS1 6NP

THE RAMBLERS' ASSOCIATION

DR T Halstead

1 Derwent Drive
Wheldrake
York
YO19 6AL

Ms S Donaghy

The Bungalow
Back Lane
Osgodby, Selby
North Yorkshire
YO8 5HS

DOCUMENTS

Document 1.

List of persons present at hearing.