



Appeal Decision

Site visit held on 31 March 2005

By Philip Pinney

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

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26 April 2005

Appeal References: CROW/8/M/04/3460 and CROW/8/M/04/3534

Land at Elvin Lear and Cowlam Bottom, Cottam, Driffield, East Riding of Yorkshire

- The appeals are 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.
- Appeal CROW/8/M/04/3460 (M3460) is made by Mr S P Mason, and is dated 2 September 2004.
- Appeal CROW/8/M/04/3534 (M3534) is made by Mr P H Mason, and is dated 6 September 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the 2000 Act, and relates to the East of England (Region 8).
- The ground of the appeals is that the appeal site does not consist wholly or predominantly of mountain, moor, heath or down, and to the extent that the 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: Appeals CROW/8/M/04/3460 and CROW/8/M/04/3534 are allowed in part, and the provisional map is modified accordingly.

Procedural Matter

1. Although the M3534 appellant calls the site 'Grassland forming part of Cottam House', both appeals cover the same land. Therefore, as the evidence submitted in respect to each appeal is broadly similar, this decision covers both appeals.

The Appeal Site

2. The appeal site covers about 26 hectares and lies on the generally west-facing slopes of a valley, which it follows for about 1.8 kms. I will consider it in three parcels (southern, central and northern) as portrayed on an annotated extract of the provisional map at page 6 of this decision. I consider the boundaries between the parcels and around the outside of the appeal site are clear and appropriate within the terms of MME guidance¹. All distances, areas and directions (N, S, E & W) are approximate.

The Main Issues

3. I consider the main issues to be the extent to which the appeal site qualifies as mountain, moor, heath or down (MMHD) as a result of its:
 - a. vegetation; and
 - b. general character, especially its degree of openness.
4. As the Agency have stated that they have not 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, this part of the ground of appeal does not apply.

¹ The Agency's *Mapping Methodology for England* (MME) paragraphs 59-60.

Reasons

5. The M3460 appellant says the steep valley slope topography is typical of Yorkshire Wold Dales and acknowledges that the site has calcareous underlying soil. Both appellants variously say that the site lies within and/or forms part of a CSS and SSSI and is either grazed or suitable for grazing. They also say it consists predominantly of improved or semi-improved grassland (IG & SIG), is not predominantly down or unimproved grassland (UIG) and is not of an open character. They say it should not be mapped as open country.
6. Although the parish council said at the draft map stage that the site was IG, I cannot give undue weight to their evidence as it appears to relate to many sites in this general area.
7. The Agency say the site is down and open country, being predominantly UIG in an area of chalk geology. They also say it has open vistas along and across the valley and has an open character. Although the M3534 appellant says the Agency's survey forms show the site not to be down, in that they mention non-qualifying SIG in all parcels, I note the survey forms show that each part of the site has a predominance of qualifying vegetation and also highlight qualifying types of vegetation.
8. The Ramblers' Association (RA) say the site is predominantly semi-natural (unimproved) grassland in an area of chalk and qualifies as down on vegetation and general character grounds. They also produce evidence, which relies in part on the Phase 2 Habitat survey, showing many indicator species and a sward composition that corresponds to NVC CG2d and CG4a/b sub-communities, which are characteristic of unimproved calcareous grassland.
9. Both appellants submitted evidence from a consultant with Environet Consulting Ltd (ECL) who comments on the RA responses to sites in Crow Region 8 (East of England). I note that these comments appear to be about the region in general and give no indication that the author has seen this site. I also note the consultant questions (amongst other points) the methodology used by the Agency and various aspects of the RA's analysis and findings (some based upon NVC assessments). He also makes some comments that appear to be based, at least in part, on his own methodology. Be that as it may, my considerations on these appeals will follow the guidance given in the Defra Guidance (DG)² and the Agency's MME as detailed in documents relating to the Act and available to the public.
10. I note that some parties appear to rely, in part, on evidence taken from aerial and other photographs, some of which may not be current. As I saw the site on a clear day, I have not relied on the photographs in the considerations leading to my decisions.

Southern Parcel:

Vegetation:

11. The southern parcel³ consists of a steep sided dale on the east side of a road and is about 350 metres long and 70-100 metres wide with some fairly level ground at the bottom. It also has a small dry valley that runs NE from the road for about 270 metres.
12. On my unaccompanied visit, I found IG and SIG on the wide, lower strip and in the dry valley, much as suggested by the appellants who say it was arable land until 1991 when it

² *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 the Provisional Map* [Department for Environment, Food and Rural Affairs, July 2003] (henceforth DG).

³ The southern parcel covers M3460/area 1, M3534/areas 1, 2 & part of area 3 and Agency/parcel A.

was sown in grass. They say it is now fertile and IG. I also saw an extensive area of SIG along the top of the site leading south from the dry valley and noticed that SIG with nettles and thistles often extends into the sloping parts. In addition, I found many areas of dense scrub along the slopes and in the north of the parcel. I consider that none of the above count as qualifying vegetation in the MME guidance⁴.

13. I also found scattered scrub on parts of the slope, much as suggested by the appellants, and UIG. I consider this qualifying vegetation does not cover half the parcel, notwithstanding the Agency surveyor's assessment that the southern parcel comprises 50-75% qualifying and less than 50% non-qualifying vegetation.
14. From the above observations and evidence, including that from the RA, it is obvious to me that the relevant qualifying vegetation occupies less than half of this parcel. Therefore, in accordance with Defra Guidance⁵, I conclude that the southern parcel does not qualify as down under the first test. As it follows that it is not necessary for me to consider its general character and as it has a clear boundary with the central parcel, I also conclude that the southern parcel is not open country.

Central Parcel:

15. The central parcel⁶ is a steep sided dale about 70-90 metres wide, which runs north along the east side of the road for another 350 metres to a prominent and fenced-in chalk quarry.

Vegetation:

16. The appellants variously describe the central parcel as scrubby bankside and rough grassland and the Agency's surveyor says it has more than 75% qualifying cover (in conjunction with the northern parcel). The RA submitted some detailed evidence to reinforce their claim that this parcel qualifies as down.
17. I found extensive areas of qualifying rough semi-natural UIG and some scrub on most parts of this steep sided parcel and in the fenced-in quarry, and only found a few, small patches of non-qualifying SIG.
18. In the light of my observations and the evidence submitted, it is obvious to me that more of this parcel is occupied by the relevant qualifying vegetation than is not. In accordance with Defra Guidance, I conclude that the central parcel qualifies as down under the first test, and must now turn to the second issue regarding its general character and openness.

General Character, especially its degree of openness:

19. I saw wide vistas across undulating countryside from most parts of this relatively narrow and steep sided scarp. As it lies generally within an open and typical chalk landscape, I consider it has the open character expected of down in the MME guidance⁷. Noting that the RA and the Agency also report on its character in a similar manner, I conclude that the central parcel has the general character and openness needed to pass the second test. Therefore, as it qualifies under both tests, I also conclude that it is MMHD.

⁴ MME paragraphs 68-73.

⁵ DG paragraph 5.16.

⁶ The central parcel covers M3460/areas 2 & 3, M3534/area 3 (the remaining parts) and Agency/parcels B & C. It includes the chalk quarry, which is also M3460/area 3 and Agency/parcel C.

⁷ MME paragraph 68, footnote 10.

Northern Parcel:

20. The northern parcel⁸ turns NE away from the road and continues for about 1100 metres to the steep slopes of Elvin Lear and gradually increases in width from about 90 metres near the road to about 300 metres. It then increases further to about 580 metres at the NE boundary.

Vegetation:

21. The Agency's surveyor says the northern parcel (in conjunction with the central parcel as already mentioned) has more than 75% qualifying cover, and the RA submit evidence about its downland vegetation and nature that appears to be credible and substantive.
22. The appellants say the northern parcel is IG or SIG. In respect to its individual parts, the M3534 appellant says fertilizer and herbicides were regularly applied to the sloping parts (his area 4) pre-1985 and both appellants say that the steeper parts are now SIG. Be that as it may, I consider that these steep parts are now extensively covered with qualifying UIG and have many downland indicator species, much as reported by the RA and the Agency. Indeed, I only found a few relatively small areas of non-qualifying SIG on the steep parts.
23. The appellants say the remaining parts of this parcel, namely along the bottom and upper NE parts (M3534/areas 5 & 6), were arable pre-1985 and then sown to grass (their subsequent inclusion in the SSSI, stock feeders and spot applications of herbicide were also mentioned). They say these parts are now IG and/or SIG and, at the draft map stage, the M3534 appellant also said that the upper part of the northern parcel (similar to area 6 in his appeal) was previously cropped and cultivated.
24. I found non-qualifying IG and/or SIG on most of the lower parts, much as suggested by the appellants. On the upper parts, though, I saw relatively few areas of non-qualifying SIG (most of which lay close to the upper NE and SE facing boundaries). Elsewhere on these upper parts, although I found areas that appear to have been cropped and cultivated in the past as mentioned by the appellants, I saw that these areas now have an extensive cover of UIG and a diversity of downland species. Notwithstanding the appellants' evidence to the contrary, I note that my observations are similar to the detailed evidence submitted by the RA and the assessments from Agency.
25. Taking the above evidence into account, it is obvious to me that more of the northern parcel is occupied by the relevant qualifying vegetation than is not. In accordance with Defra Guidance, I conclude that it qualifies as down under the first test and must now turn to the second issue regarding its general character and openness.

General Character, especially its degree of openness:

26. Even though some of the vistas from the bottom parts are more limited in extent, I saw many wide vistas extending over wide arcs across undulating countryside from nearly all middle and upper parts of this large parcel. Therefore, as it has many extensive steep sided and prominent scarps, and lies generally within an open and typical chalk landscape, I consider it has the open character expected of down in the MME guidance⁹.
27. Noting also that the RA and the Agency report on its character in a similar manner, and notwithstanding the fact that it is surrounded by unmapped land, I conclude that the

⁸ The northern parcel covers M3460/area 4, M3534/areas 4, 5 and 6 and Agency/parcel D.

⁹ MME paragraph 68, footnote 10.

northern parcel has the general character and openness needed to pass the second test. Therefore, as it qualifies under both tests, I also conclude that it is MMHD and open country.

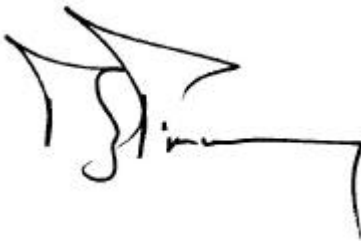
Conclusions

28. Having regard to these and all other matters raised, I conclude that:

- a. the southern parcel of the appeal site (as shown on my map extract at page 6) does not qualify as MMHD and should not be mapped as open country; and
- b. the central and northern parcels of the appeal site do qualify as MMHD and should be mapped as open country.

Formal Decision

29. For the above reasons, I hereby allow appeals CROW/8/M/04/3460 and CROW/8/M/04/3534 in part and, in so far as it relates to the appeal site, approve the provisional map subject to the deletion therefrom of the southern parcel (cross-hatched on the map extract at page 6 below).



INSPECTOR

EXTRACT OF THE PROVISIONAL MAP

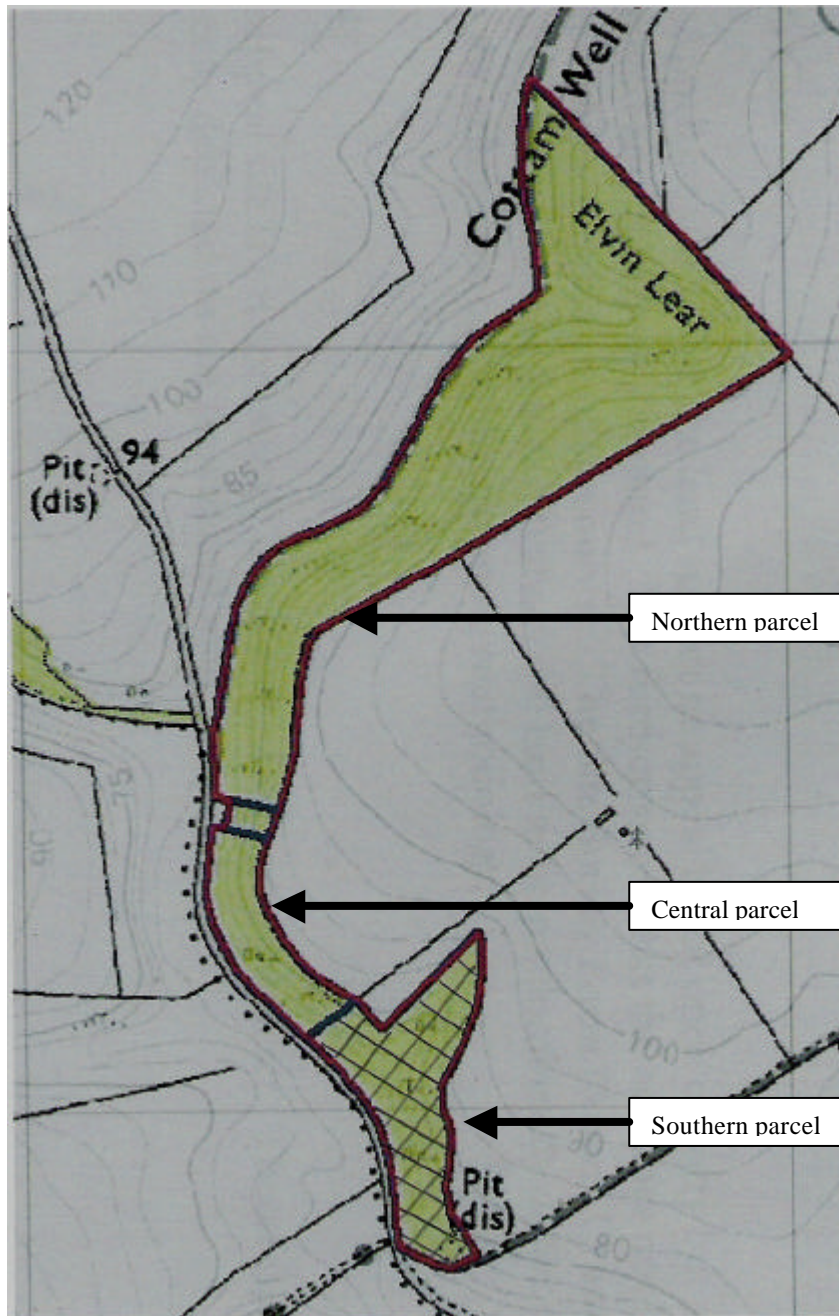
Approximate Scale - 1: 10,000

Key: Area outlined by red line

The site of appeals M3460 and M3534.

Cross-hatched area

The parcel to be deleted from the provisional map.



Notes:

1. The southern parcel covers M3460/ area 1, M3534/areas 1, 2 & part of area 3, and Agency/parcel A.
2. The central parcel covers M3460/areas 2 & 3, M3534/area 3 (the remaining parts) and Agency/parcels B & C.
3. The northern parcel covers M3460/area 4, M3534/areas 4, 5 & 6 and Agency/parcel D.