



Appeal Decisions

Hearings were held on 21-24 March 2005

by **Paul Dignan BAgSc MAgSc PhD**

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

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Appeal Refs: CROW/8/M/04/3505 to 3527.

Numerous parcels of land in the vicinity of, and to the east of, Kirby Underdale, Great Givendale and Bishop Wilton, East Yorkshire.

- These 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.
- The appeals are made by Halifax Estates, and are dated 3 September 2004.
- The provisional map was issued by the Countryside Agency (the Agency) under section 5 of the 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 open country, they should not have done so.

Summary of Decisions: Appeals 3505, 3509, 3510, 3513, 3514, 3516, 3517, 3519, 3520, 3525 and 3527 are dismissed. Appeals 3506, 3507, 3508, 3512, 3521, 3522, 3523, 3524 and 3526 are allowed. Appeals 3511, 3515 and 3518 are allowed in part. The provisional map is modified accordingly.

Preliminary Issues

1. This group of appeals relates to 23 appeal sites, all in the same general area and made by the same appellant. The appeals were heard on four consecutive days, on each of which the same people represented the main parties, and the general arguments and type of evidence were the same in each case. For simplicity, therefore, and to minimise repetition, I propose to deal with all the appeals in this single decision. I shall refer to the individual appeal sites by the four digit number at the end of the relevant appeal reference.

The Main Issue

2. In considering whether the appeal sites should have been mapped as open country, the main issue to be determined, in my opinion, is whether they qualify as mountain, moor, heath or down (in this case down) as a result of their vegetation, and their general character.
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 part of any of the appeal sites 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

Generally

4. The Agency, on the basis of site visits, assessed 21 of the 23 appeal sites, or parts thereof, as being predominantly downland qualifying vegetation, as set out in their published *Mapping Methodology for England* (MME). They maintain that all of the sites or parcels which they consider to be predominantly downland vegetation also meet the open character description of downland in MME. The Ramblers' Association oppose the appeals on the other two sites.
5. Based on ecological surveys carried out for them in August 2004, the appellants contend that all of the appeal sites are predominantly covered by non-qualifying vegetation for down. In most cases this consists of improved or semi-improved grassland, with dense scrub, woodland, tall ruderal vegetation, marshy grassland or bare ground also present on some sites.
6. Their ecological surveys are based on Phase 1 Habitat Survey Methodology, including mapping of habitat types with the cover of each type calculated using computer-based planimetry. They submit that this methodology, which they say identifies improved, semi-improved and unimproved grassland following the guidelines in paragraphs 70-73 of MME, confirmed at the hearing as being mainly on species composition, is a more effective and robust way of identifying whether or not land is predominantly mountain, moor, heath or down qualifying vegetation than that of the Agency. In particular the appellants consider that the failure of the Agency to use species composition, or at least the dominant or 'indicator' species, as the core of their assessment of grassland types, and their failure to accurately map the relevant grassland types, means that the process adopted by them is not sufficient to adequately recognise and map open country qualifying and non-qualifying vegetation cover types.
7. The Agency refute this argument, pointing to their consultation with a wide range of stakeholders in preparing the MME, and on paragraph 3.13 of *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 a Provisional Map* (the DEFRA Guidance), issued by the Department of Environment Food and Rural Affairs in August 2003, which states that "in the interests of gaining consistency in appeal decisions, it is appropriate for the MME to be used as the starting point for all mapping appeals." They also note that all sites have been assessed by surveyors trained in recognising mountain, moor, heath and down in accordance with the MME.
8. The appellants interpret the Ramblers' Association's various representations as supporting them in their position, since the Ramblers' Association's classification of the appeal sites is generally based on datasets which identify the grassland communities in accordance with the descriptions set out in the National Vegetation Classification (NVC), which depends on species composition. However, they argue that this approach is far too detailed and complex and is, in any case, inappropriate since the NVC was never designed to distinguish between unimproved and semi-improved grassland and is ineffective in doing this. They also note that the vegetation data sets used by the Ramblers' Association date from the early eighties and are therefore no longer reliable, and furthermore that other sources used by the Ramblers' Association in support of their position, namely the National Landscape

- Typology, Countryside Stewardship Schemes and Aerial Photographs, are either not relevant or are not reliable.
9. The Ramblers' Association's response to these criticisms is set out in a paper submitted and discussed at the hearing. Briefly, they note that their initial use of the datasets referred to was in support of comments made at the draft map stage, and that their continued reliance on them in many cases is partly caused by an inability to properly survey many of the appeal sites due to a lack of access to them. They maintain however that NVC data remains relevant in the absence of more recent evidence to the contrary.
 10. My view is that the approach of the Ramblers' Association is entirely understandable in the circumstances, and whilst it is the appellant's prerogative to present evidence to refute the Agency's position, the key evidence in any case is, as the DEFRA Guidance makes clear, what the inspector sees on the ground at the site visit.
 11. The appellants also addressed the difference in the outcomes of their surveys and those of the Agency. Essentially they believe that grassland which they have assessed as semi-improved is mistakenly considered by the Agency to be unimproved. They attribute this to the failure of the Agency to base their assessment on species composition and to appreciate subtle ecological differences between semi-natural or unimproved grassland and that which diverges from this condition, for whatever reason, which they consider to be semi-improved. In particular, they point to two forms of semi-improved grassland common in the Wolds, namely grassland communities dominated by either tor grass (*Brachypodium pinnatum*) or false oat-grass (*Arrhenatherum elatius*), almost to the exclusion of all else, and grassland communities where indicators of improvement are found together in a sward with scattered and infrequent calcareous plants. They contend that both of these grassland types are transition states that arise as a result of previous agricultural improvement, such as chemical treatments or run-off from adjoining land and/or intensive grazing regimes, and that they should therefore be recognised as semi-improved grassland types, in accordance with paragraph 72 of MME.
 12. As the appellants point out, semi-improved grassland is not clearly defined, other than as a transition category between improved and unimproved, but guidance to recognising it is given in paragraph 73 of MME and paragraph 5.9 of the DEFRA guidance, which describe it as "any grassland which appears to have a species composition and structure which is more akin to improved grassland than unimproved." I take this to mean, in the absence of more specific guidance, that transition categories may qualify as unimproved grassland, but that whether they do or not, in the context of mapping appeals, is down to the inspector's judgement, based mainly on the current composition of the grassland. I shall take this approach in reaching my decision on each appeal.

Appeal 3505: Woo Dale

13. Woo Dale comprises some of the north facing slope of Long Dale with a side dale running roughly north-south. A small part of this enclosed field, its north-west corner, falls outside the appeal site, and is in fact mapped as open country as part of Region 5. The Agency consider the site to be part of a mapping parcel consisting of the whole field, and they assessed the appeal site on this basis. The boundary between the appeal site and the part of the field in Region 5 is the bottom of Long Dale. In the circumstances I consider this to be an adequate boundary in that, although its exact position would be difficult to establish to the nearest metre, it runs along a relatively narrow valley and, since the piece of land

outside the appeal site is in any case already mapped as open country, the outcome of the appeal does not carry the risk of the public inadvertently trespassing on it. I will therefore consider the merits of the appeal in respect of the appeal site as submitted.

14. The Agency assessed the site as being 50-75% covered by qualifying vegetation for down, as set out in MME, consisting of calcareous grassland with scrub and gorse. They also say that it meets the open character requirements of down, with views up and down the valley and being, in their view, part of a typical chalk down landscape. The appellants accept that there is some downland vegetation, unimproved calcareous grassland, but they maintain that this amounts to less than 12% of the site's cover. The Ramblers' Association support the Agency's position, noting that it is part of a Site of Special Scientific Interest (SSSI), the management statement for which requires it to remain agriculturally unimproved.
15. I found the site to be largely covered by grassland whose species composition and structure I considered to be consistent with a classification of unimproved calcareous grassland. The level of species diversity was only moderate, but this is typical of north facing slopes in this area. There were areas of hawthorn and gorse scrub, mainly on the east facing slope of the side valley, which the appellants describe as being dense scrub and not therefore qualifying cover for down. My view is that these areas of scrub fit within the description of down in MME, '*...often with scattered scrub*', since they were not extensive in area and fell within the general grassland area. I did observe that parts of the valley bottom and the southern end of the site supported more improved grassland, but, in my opinion, this was clearly not predominant. I saw no evidence of agricultural improvements on the site, nor were there any indications that the grazing pressure was high enough to alter the composition of the grassland toward an agriculturally semi-improved condition. On the basis of my observations, therefore, I consider that the site is predominantly covered by qualifying vegetation for down.
16. 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 and typical of the area's chalk landscape, consistent with the description of down in paragraph 68 of MME.
17. My conclusion, therefore, is that the appeal site's vegetation and general character qualify it as down.

Appeals 3506-3508: Uncleby Brow and along Uncleby Beck

18. These appeal sites form a contiguous area of about 15 ha.

Appeal 3508

19. The larger part, appeal site 3508, is a single enclosure of just over 12 ha consisting of a steep dale end at its eastern end, becoming quite level as it extends to the west on the northern side of Uncleby Beck. The Agency assessed this site as being 50-75% covered by qualifying vegetation for down, consisting of calcareous grassland with scattered trees, scrub and water features. They also say that it meets the open character requirements of down, and is part of a typical chalk down landscape.
20. The appellants, however, say that large parts of 3508 have been consistently improved by fertiliser and herbicide application and they do not consider that there is any downland vegetation present. Their assessment is that it is roughly equal proportions of improved grassland and semi-improved grassland with a small area of thick scrub. The semi-improved

grassland identified by them is a tor-grass dominated sward, mainly on the steep dale sides at the eastern end. My view of this grassland is that it is clearly coarse, unmanaged and undesirable from an agricultural point of view. Furthermore, whilst it may have its origins in well managed grassland that has had periods of neglect or reduced grazing pressure, it is undoubtedly, in this instance, far closer in terms of structure and composition to unimproved grassland than to improved. In my view, and in line with paragraph 73 of MME, it cannot therefore be classified as semi-improved grassland. I have no hesitation in classifying it as unimproved grassland and therefore qualifying vegetation for down. However, I did observe that much of 3508 was covered by reasonably good quality grassland which I would classify as semi-improved grassland, roughly coincident with the area mapped by the appellants as improved grassland. It was not obvious to me which of the two types of grassland was predominant, and, in line with paragraph 5.16 of the DEFRA guidance, I conclude that the appeal site does not qualify as down on the basis of its vegetation cover, and that it was therefore incorrectly mapped as open country.

Appeals 3506 and 3507

21. Appeal sites 3506 and 3507 adjoin 3508 along its south-eastern side, and together amount to just under 2 ha. Site 3506 is a game holding pen which is currently being extended to its east to include part of 3507. Based on current boundaries, the Agency assessed the combined sites as comprising four parcels, the original game pen (site 3506), the game pen extension (parcel B of 3507), the hillslope to the north of the extended game pen (parcel A of 3507), and a small enclosed field on the valley bottom to the west of the game pen (parcel C of 3507).
22. All parties now agree that the area included in the game pen is enclosed woodland and not therefore mountain, moor, heath or down. Having seen the site I agree, and I conclude therefore that site 3506 and parcel B of 3507 do not qualify as mountain, moor, heath or down on the basis of their vegetation cover and should not be mapped as open country.
23. The Agency consider parcel A of 3507 to be down, consisting predominantly of calcareous grassland, scattered trees and scrub, with an open character, views to the west and part of a typical chalk downland landscape. The appellants' ecological report deals with 3506 and 3507 as a single site that is assessed as 92.3% woodland, with the remaining 7.7% being a small area of semi-improved grassland in the northwest corner. They now accept that the Agency's subdivision of the site is appropriate, but they maintain that parcel A is about two thirds woodland and dense scrub with the remainder being semi-improved grassland.
24. I found parcel A to be a small area of steep hill which appeared to be in a state of neglect with hawthorn scrub encroaching from the adjoining woodland along its eastern and southern sides over what I considered to be unimproved grassland, generally rank in appearance and dominated by agriculturally undesirable grasses. The scrub graded from scattered to dense, but overall I considered that parcel A was predominantly covered by qualifying vegetation for down, namely unimproved grassland and scattered scrub. Accordingly I conclude that it qualifies as down on the basis of its vegetation. On the general character aspect of the main issue, however, I do not agree with the Agency that parcel A is open in character. A row of mature trees along its lower side, combined with its relatively small size and high frequency of scrub, severely restricts the views available from many parts. Furthermore, its setting on a steep slope largely surrounded by woodland and mature field trees results, in my view, in a sense of enclosure rather than openness. I

conclude therefore that it does not meet the open character requirements for down set out in MME, and that it was incorrectly mapped as open country.

25. The Agency no longer consider parcel C of 3507 to be downland qualifying vegetation, and the Ramblers' Association also came to that conclusion at the site visit. I found it to be generally semi-improved grassland and tall ruderal vegetation with marshy grassland areas, which I do not consider to be qualifying vegetation for mountain, moor, heath or down, and I conclude therefore that it does not qualify as open country on the basis of its vegetation.
26. Parcel C of 3507 separates site 3508 and Painsthorpe Dale, a large valley to the south that is mapped as open country but which is not the subject of an appeal. Whilst acknowledging that it does not qualify as mountain, moor, heath or down on the basis of its vegetation, the Ramblers' Association suggested that the appeal in relation to parcel C should nevertheless be dismissed on the ground that, in line with paragraphs 5.17 to 5.19 of the DEFRA guidance, it forms part of a larger area of land which does consist of open country, namely Painsthorpe Dale and site 3508. However, in the light of my decision that site 3508 does not consist wholly or predominantly of mountain, moor, heath or down, this circumstance does not arise and I do not need to consider the issue further.

Appeal 3509: Fordham Dale

27. This site is a fully enclosed field of about 16 ha comprising a long narrow dale running roughly north:south with two short spurs extending westwards at its northern end. The appellants say that it has been subject to considerable agricultural improvement, including aerial application of fertiliser. They accept that there is some unimproved grassland present on the dale sides and the south facing slopes at the northern end, but they say that it amounts to only 45.3% of the total area, the remainder being improved or semi-improved grassland. The Agency assessed the site as being greater than 75% qualifying cover for down, unimproved calcareous grassland with scattered trees and water features. The Ramblers' Association also submit that it is clearly predominantly unimproved.
28. Although I agree with the appellants that the more level ground on the southern and northern parts of the site support grassland that is at least semi-improved, and that it may well have been more improved in the past, my assessment of the site as a whole is that it is now predominantly unimproved grassland, and that it therefore qualifies as down on the basis of its vegetation cover. On the second aspect of the main issue, both the Agency and the Ramblers' Association consider that it satisfies the open character description of down set out in MME, whereas the appellants point out that it is surrounded by arable land to the north, east and west and that the connecting dales have generally been planted with coniferous woodland. I found the site 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 or planted with conifers, 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. My conclusion therefore is that the appeal site qualifies as down on both aspects of the main issue, and was correctly mapped as open country.

Appeal 3510: Wayrham Dale

29. This site is a fully enclosed field of about 11 ha, comprising part of a generally steep-sided north:south running dale. A public right of way runs along the valley bottom. The appellants say that it has been subject to considerable agricultural improvements, with 93.4% of the site being improved or semi-improved grassland, the remainder being unimproved calcareous grassland on the more inaccessible parts of the dale sides. The Agency, however, consider it to be predominantly downland qualifying vegetation, namely unimproved calcareous grassland and scrub. The Ramblers' Association also consider it to be down, noting that it contains a diversity of grasses and four characteristic calcicolous indicator species. They observed differences in the grassland composition on either side of the dale, but point out that in the Wolds, aspect can have a significant influence on grassland composition, and that such differences do not necessarily indicate agricultural improvement.
30. On the basis of my observations I also consider the grassland on the dale sides to be relatively species rich unimproved grassland. I noted some better quality grassland on the valley bottom and the topsides, but in my view the unimproved grassland on the dale sides was clearly the predominant vegetation cover on the site, qualifying it as down on the first aspect of the main issue.
31. The Agency also consider the site to be of open character, with views from the higher parts, and part of a typical downland landscape. The Ramblers' Association says that it complies precisely with the description of down in MME, being part of a steep-sided dale typical of the Yorkshire Wolds. The appellants, however, point out that it is surrounded by arable land to the east and west and that the connecting dale to the north has been planted with woodland. As noted above, I consider that this situation is relatively typical of the Yorkshire Wolds landscape, and I am satisfied that the site is generally open in character, despite having restricted views from lower in the valley, and that it meets the description of down set out in MME, which allows that downland may have restricted views in some circumstances. I conclude therefore that the appeal site meets the vegetation and character requirements of down and was correctly mapped as open country.

Appeals 3511 to 3516: South Wold Brow, South Wold Dale, Hundle Dale and Megdale

32. These appeal sites are a contiguous area of about 46 ha, forming part of a wide dale opening to the west. Site 3511 is subdivided, but the other sites are individual enclosed fields. The Ramblers' Association note that the group of sites are listed in the Grassland Inventory and that they have been managed within a Countryside Stewardship Agreement since at least 2003.

Appeal 3511

33. Site 3511 lies at the head of the dale at the eastern end and consists of two enclosed areas, the northern end which is planted with trees, and the main part of the site which is mainly grassland. The Agency now accept that the fenced off planted woodland part of the site, which they refer to as parcel B, is not qualifying vegetation for mountain, moor, heath or down and recommend that it be removed from the provisional map. However, they maintain that the remainder of the site, parcel A, is down, being of open character and predominantly calcareous grassland, scattered trees and scrub. The appellants however, say that only a small proportion of the Agency's parcel A, about 10%, is downland qualifying vegetation,

unimproved calcareous grassland, the remainder being improved or semi-improved grassland, tall ruderal vegetation and bare ground.

34. I agree that parcel B is an enclosed area of planted woodland and there is no dispute that it should not be mapped as open country. My assessment of parcel A is that is predominantly unimproved grassland. I saw no evidence whatsoever of agricultural improvement and I considered that the sward on the very steep slope in particular, which comprised most of parcel A, was of very poor quality from an agricultural point of view, dominated primarily by coarse grasses. My conclusion on the first part of the main issue, therefore, is that parcel A of site 3511 qualifies as down on the basis of its vegetation.
35. On its general character of parcel A of 3511, the appellants note that it is partly bounded by plantation woodland with arable land beyond, whilst the Agency and the Ramblers' Association consider that it meets the description of down set out in MME. I found it to be of a generally open character providing extensive views from many parts, and I am satisfied that it qualifies as down on the basis of both its open character and its vegetation, and was therefore correctly mapped as open country.

Appeal 3512

36. Appeal site 3512 lies to the west of 3511, on the south-facing slope of the dale. The two sites share a short boundary, but are separated for the most part by a fenced area of woodland used as a game pen. The appellants say that 3512 is mostly (73.7%) improved or semi-improved grassland, with only 26.3% qualifying vegetation for down, unimproved calcareous grassland, present on the more inaccessible parts of the dale side. The Agency, however, assessed it as being predominantly downland vegetation, namely unimproved calcareous grassland and scattered trees. My assessment of the cover on this site is that there were extensive areas of unimproved calcareous grassland on the steeper banks, whilst the more gently sloping areas and the valley bottom were covered by grassland that I considered to be semi-improved. It was not obvious to me which of the two grassland types was in the majority. Accordingly, in line with paragraph 5.16 of the DEFRA guidance, I conclude that the site does not qualify as downland on the basis of its predominant vegetation cover and was therefore incorrectly mapped as open country. It follows that I do not need to consider the general character aspect of the main issue in relation to site 3512.

Appeal 3513

37. Appeal site 3513 lies directly opposite 3512 and immediately to the west of 3511. It forms part of the north-facing bank of the dale. It is generally moderately sloping, but becomes very steep on its western side. The Agency assessed it as consisting of more than 75% qualifying cover for down, namely unimproved calcareous grassland and scattered trees, whereas the appellants say that although a degree of species richness is present, downland vegetation covers no more than 3% of the site. I found the upper slopes in particular to be covered by a relatively diverse, unimproved sward, becoming less diverse but not significantly more improved on the lower slopes. I saw little evidence of agricultural improvement across the site, and my overall conclusion was that it was predominantly unimproved grassland. I also found it to be, in line with the Agency's submission, generally open in character with excellent views from most parts of the site, consistent with the description of down in MME. My conclusion, therefore, is that it qualifies as down on the basis of both its vegetation and its general character and was correctly mapped as open country.

Appeal 3514

38. This site is immediately west of 3513, again forming part of the north facing slope of the dale. Topographically it comprises a steep bank along the upper part of the site, sloping away more gently towards the bottom. The Agency say that it is predominantly downland vegetation, namely calcareous grassland, scattered trees and scrub, whilst the appellants maintain that no more than 33% of the site is unimproved calcareous grassland, the remainder being extensive areas of nettle, scattered scrub, localised subsidence and rich grassland, improved along the bottom and semi-improved on the valley sides.
39. My assessment of the site was that it was dominated by two distinct grassland types, the steep bank being covered by coarse unimproved calcareous grassland, with the sward on the more gently sloping land consisted largely of finer grasses with an understorey of mosses and interspersed with tufts of coarser grass with, in some places, rushes. Whilst this latter broad grassland type is not necessarily indicative of calcareous conditions, I considered nevertheless that it was agriculturally unimproved, and therefore qualifying vegetation for down, occurring as it does in an area of chalk geology. Overall I considered this site to be predominantly covered by unimproved grassland and therefore downland qualifying on the basis of its vegetation. I also found it, in line with the Agency's submission, to be of a generally open character with excellent views, and I am satisfied that it meets the open character requirements for down set out in MME. I conclude therefore that it qualifies as down on the basis of both its vegetation and its general character and was correctly mapped as open country.

Appeal 3515

40. Site 3515 is the field immediately to the west of 3514, also forming part of the dale's north-facing bank but extending further onto the valley floor. It contains a row of mature trees crossing the site towards its southern end, which the Agency has used as an internal boundary to subdivide the site into parcels A and B, the northern and southern sections of the site respectively. They assessed parcel A as being predominantly semi-improved grassland and not therefore mountain, moor, heath or down. Accordingly they recommend that it should not appear on the provisional map. However, they consider parcel B to be predominantly qualifying cover for down, namely calcareous grassland. The appellants' survey did not specifically address the vegetation cover of these separate parcels, but their vegetation map shows parcel B to be improved grassland with an area of tall ruderal vegetation, whilst parcel A is almost entirely semi-improved grassland. At the hearing they also expressed the opinion that they saw little difference between the vegetation on the two parcels identified by the Agency.
41. Having seen the site I am satisfied that the internal boundary identified by the Agency is sufficiently clear on the ground to constitute a satisfactory open country boundary, and furthermore that the vegetation cover on the two parcels is sufficiently different for them to be considered separately. I agree with both main parties that the grassland on parcel A is of sufficient quality for it to be classified as semi-improved grassland, and I conclude that it does not therefore qualify as open country on the basis of its vegetation. Parcel B comprises a steep bank and some relatively level land, some above the bank but mainly at its base. There was some evidence of nutrient enrichment below the bank, but, in my view, the majority of the parcel, the bank and much of the more level area above and below,

comprised unimproved grassland, and accordingly the parcel qualifies as down on the basis of its vegetation.

42. The second aspect of the main issue only needs to be addressed in relation to parcel B. The Agency consider it to be open in character, with great views to the north and part of a typical chalk down landscape, whereas the appellants point out that it is bounded by woodland to the south and a mixture of grassland and arable land to the north. However, this is, in my view quite typical of the chalkland landscape in this area and I agree with the Agency that the parcel is open in character and consistent with the description of down in MME. I conclude therefore that parcel B of site 3515 meets both the vegetation and character requirements of down and was correctly mapped as open country, but that parcel A does not consist predominantly of mountain, moor, heath or down vegetation and was incorrectly mapped as open country.

Appeal 3516

43. This site comprises the western end of this group of appeal sites. It has steep banks with occasional terraces on the south, east and west sides, with the centre and northern parts being relatively level. It contains some small watercourses and hollows. The appellants consider all of it to be non-qualifying vegetation for mountain, moor, heath or down, principally improved grassland and relatively diverse semi-improved grassland on the banks with marshy vegetation along the watercourses. The Agency assessed it as being predominantly downland vegetation, unimproved calcareous grassland in this case, and therefore down. They did note some semi-improved grassland, but they maintain that it is not predominant. My assessment of the site's cover is broadly in line with that of the Agency. The banks, in my view, comprised unimproved grassland with a diversity of species, and, whilst some of the grassland on the lower parts of the site was of reasonable agricultural quality, I saw no evidence of any recent agricultural improvement. I considered the majority of the grassland on the site to be unimproved and therefore qualifying vegetation for down, occurring as it does in an area of chalk geology.
44. On the site's general character, the Agency consider it to be of open character with good views to the north and west and part of a typical chalk downland landscape. The appellants point out that it is bounded to the north and south by plantation woodland with arable land beyond, but, in my view, this is quite typical of the chalk landscape in this area. I agree with the Agency that it is generally open and provides good views in many directions, and I consider that it meets the description of down in MME. I conclude therefore that it meets both the vegetation and character requirements for down and was correctly mapped as open country.

Appeal 3517: Cot Nab Dale

45. Cot Nab Dale is a complex dale with a variety of aspects, comprising a principal dale running roughly north:south with a spur extending to the north-east and is a large flat area above the dale on the south-western part of the site. It is part of the Bishop Wilton Deep Dale Site of Special Scientific Interest (SSSI). The appellants say that much of it has been improved. They accept that a degree of species richness is present, but say that it is restricted to the steeper banking with only a small proportion considered to be unimproved, amounting to about 5.5% of the site. The Agency consider the site to be two separate mapping parcels, parcels A and B; parcel A being the greater part of the site and parcel B a small triangular area on its south-eastern side, both parcels being fully enclosed by post and

wire fencing. They say that both parcels consist of downland qualifying vegetation, calcareous grassland, scattered trees and scrub in each case.

46. Having seen the site I am satisfied that the Agency's subdivision of the site is appropriate, based as it is on physical boundaries. I am also generally in agreement with them on the sites vegetation cover. The dale sides, which make up by far the greater proportion of parcel A and all of parcel B, consist, in my opinion, of coarse unimproved grassland and qualify as down on the basis of their predominant vegetation. I also found the site to be open in character, in line with the Agency's submission, and although, as the appellants point out, it is partly bounded by woodland and arable land, it is, in my view, typical of the chalk landscape in this area, consistent with the description of down in MME. I conclude therefore that it qualifies as down on the basis of its vegetation and its general character.

Appeal 3518: Deepdale

47. Deepdale lies to the south and east of Cot Nab Dale. It comprises a steep sided dale running roughly east:west and a generally west facing bank running north to Cot Nab Dale. With Cot Nab Dale it makes up the Bishop Wilton Deep Dale SSSI. The Agency consider it to comprise three separate parcels, based on existing boundaries consisting of post and wire fencing, which they refer to as parcels A, B and C. Parcel A is a narrow strip along the top of the northern side of the dale, which the Agency now say is planted with trees and therefore woodland and not mountain, moor, heath or down. They recommend that it be removed from the provisional map. Parcels B and C comprise the greater part of the site, divided by a fence running along the valley bottom. They are, roughly, the northern and southern parts of the site respectively. The Agency considers both of them to be predominantly downland qualifying vegetation, namely calcareous grassland, scattered trees and scrub. The appellants, however, say that both parcels are wholly or predominantly non-qualifying cover for down, with about 28% unimproved calcareous grassland present on the steeper parts of parcel B and no downland vegetation on parcel C.
48. Other than the fencing, which was relatively recent, and scrub clearing work which was apparently being carried out to enhance the downland grassland habitat, I saw no evidence of agricultural improvement on either parcel. My assessment of the vegetation cover on both of the parcels is that the predominant vegetation is unimproved calcareous grassland, covering most of the dale sides, with additional downland habitat comprising hawthorn scrub. On the second aspect of the main issue, the general character of the site, I agree with the Agency's submission that it is open in character, providing good views and comprising part of a typical chalk downland landscape. I accept, as the appellants point out, that some of the surrounding land is plantation woodland and arable land, but, in my view, this is quite typical of downland in this area and does not conflict with the description of down in MME. Accordingly I conclude that parcels B and C qualify as down on the basis of both their vegetation and general character and were therefore correctly mapped as open country, but that parcel A does not so qualify and was incorrectly mapped as open country.

Appeal 3519: Mingle Dale

49. Mingle Dale is an area of about 9 ha lying south of sites 3517 and 3518 along the same valley. It is generally steep sided, facing south-east to north-east, with some relatively level land above the slope on its south-western end and along the valley bottom. The appellants say that it is predominantly improved or semi-improved grassland, the improved areas located along the valley bottom and the southern edge, whilst the sides are mainly semi-

improved. They accept that there is some unimproved calcareous grassland present on the upper slopes, but they say that this amounts to only 4.6% of the site. The Agency's assessment of the site is that it is predominantly downland qualifying habitat, consisting of calcareous grassland, scattered trees and scrub.

50. My assessment of the site is that it consists predominantly of unimproved grassland, consisting of calcareous grassland on the steeper slopes and less diverse, but nevertheless, in my view, agriculturally unimproved grassland over much of the rest of the site. This is qualifying vegetation for down, occurring as it does in an area of chalk geology, and I conclude that it qualifies as down on the basis of its vegetation cover. On the site's general character, whilst I accept the appellants' argument that it is surrounded by woodland, I nevertheless agree with the Agency that it is open in character, due to its generally convex shape and the good views available from its upper slopes, and I am satisfied that it meets the description of down set out in MME. My overall conclusion therefore is that it qualifies as down on the basis of both its vegetation and its general character and was correctly mapped as open country.

Appeal 3520: Part of Deep Dale and Whitekeld Dale

51. This is a long narrow east-facing dale of about 12 ha. Generally steep at its northern end, it has a steep bank running down the centre of the site to the south with some relatively level land above and below the slope. The soil on the steep bank is thin, with scree accumulating along the lower slopes. The appellants consider it to be mainly semi-improved grassland, with some improved grassland on the more level land at the foot of the slope, whilst the Agency assessed it as being predominantly covered by downland qualifying vegetation, namely calcareous grassland, scattered and dense trees, scrub and water features. In this instance I am broadly in agreement with the Agency. I considered the broad sloping area on the north of the site to be agriculturally unimproved, whilst the grassland on the steep bank along the centre of the southern part of the site was clearly unimproved calcareous grassland. I am entirely satisfied that the overall extent of unimproved grassland comprises well over half of the site, and that it therefore qualifies as down on the basis of its vegetation cover. I am also satisfied that it meets the description of down set out in MME, being of a generally open character with good views and part of a typical downland landscape. Accordingly I conclude that it qualifies as down on the basis of both its vegetation and its general character and was correctly mapped as open country.

Appeals 3521 and 3522: part of Whitekeld Dale and Given Dale

52. These two appeal sites are adjoining, relatively gently sloping fields. The appellants say that both fields are entirely lush improved grassland, and, having seen the sites, the Agency and the Ramblers' Association now agree, and no longer consider them to be open country. I am also satisfied that neither site is wholly or predominantly mountain, moor, heath or down and I conclude therefore that they were wrongly mapped as open country.

Appeals 3523 and 3524: Church Dale

53. These two sites comprise a long, relatively wide but steep-sided dale of about 15 ha. Site 3523 makes up the greater part of the site, with site 3524 being a narrow fenced off strip of about 1.5 ha along the west facing slope of the dale.

Appeal 3523

54. The appellants say that site 3523 has been subjected to considerable agricultural improvements, parts of it being heavily improved. They maintain that it contains no more than 2% downland qualifying vegetation. Both the Agency and the Ramblers' Association now agree that it is not wholly or predominantly mountain, moor, heath or down, and the Agency recommend that the site be removed from the provisional map. However, the Ramblers' Association suggest that the steep bank forming the eastern part of the site could be considered as a separate parcel, defined by the break of slope on its western side, that is predominantly unimproved calcareous grassland and therefore down. However, having seen the site I am not satisfied that there is a sufficiently clear break of slope to provide a satisfactory open country boundary, and in any case, I do not consider the relevant bank to be predominantly downland vegetation. Overall I am satisfied that the site as a whole is not predominantly covered by downland vegetation and that it does not therefore qualify as open country. It follows that I do not need to consider its general character.

Appeal 3524

55. The Agency consider this narrow strip to be wholly downland qualifying cover, consisting of calcareous grassland, scattered trees and scrub, whilst the appellants have assessed it as being entirely non-qualifying cover for down, namely improved or semi-improved grassland. They describe it as being rank grassland, but with aspects of former richness. My assessment of the site is that it has clearly been unmanaged for some years and now comprises a relatively rank sward which contains a reasonable amount of agriculturally desirable grasses, but is nonetheless clearly unimproved in terms of structure, containing many grasses typical of neglected pasture. Accordingly I consider that it comprises, in the main, unimproved grassland in an area of chalk or limestone geology and therefore qualifies as down. On the second aspect of the main issue, however, I do not accept the Agency's proposition that it forms part of a typical chalk down landscape. In my view, due to its small size and its setting within a clearly improved dale, it is more of an anomaly than part of the general landscape. I do not feel that it is consistent with the description of down set out in MME, and accordingly I conclude that it does not qualify as down on the basis of its general character.

Appeals 3525 and 3526: Stonetable Hill

56. These two sites comprise a contiguous area of about 21 ha.

Appeal 3525

57. Site 3525 is a shallow, generally west and south-west facing dale containing some large hollows, mature field trees, a substantial area of valley floor and a watercourse. The appellants say that it has clearly been improved using chemical fertilisers and herbicides, resulting in a sward of wholly improved grassland. The Agency, however, assessed it as being predominantly downland qualifying cover, namely calcareous grassland, dense and scattered trees, scrub and water features. I agree to some extent with the appellants in that I accept that the site has been improved in the past. However, the current species composition and structure is, in my view, indicative of unimproved and relatively neglected, extensively grazed pasture, with no evidence of recent agricultural improvement. Given its setting in an area of chalk geology, this amounts to qualifying vegetation for down. I also found it to be, in line with the submissions of both the Agency and the Ramblers' Association, open in

character and entirely consistent with the description of down in MME. Accordingly I conclude that it qualifies as down on the basis of both its vegetation and its general character, and was therefore correctly mapped as open country.

Appeal 3526

58. Site 3526 is a shallow, generally west-facing dale with a spring-fed stream rising within it. The appellants say that it has clearly been improved using chemical fertilisers and herbicides, resulting in a sward of wholly improved grassland. This view is supported by an invoice submitted with comments on the draft map which indicates that fertiliser was spread as recently as 2003. The Agency however, consider that it is predominantly qualifying vegetation for down, namely calcareous grassland, scattered trees, scrub and water features. On the basis of my observations I am satisfied that the site is well managed grazing land with a well grazed sward containing a high frequency of species associated with agricultural improvement. I consider that it is most appropriately classified as semi-improved grassland, which is not qualifying vegetation for mountain, moor, heath or down. Accordingly I conclude that it does not qualify as mountain, moor, heath or down on the basis of its vegetation and it follows that I do not need to consider its general character.

Appeal 3527: Worsendale

59. This site is an area of about 5.4 ha forming part of Worsendale, a relatively narrow dale running roughly north:south. It is steep sided on its eastern side and less steep on the western side. The appellants say that it is entirely improved or semi-improved grassland, improved on the valley bottom and semi-improved on the dale sides. The Agency, however, say that it is predominantly qualifying cover for down, namely calcareous grassland and scrub. I agree with the Agency in this instance. My assessment of the site is that it is almost entirely unimproved grassland, with coarse grasses on the slopes and a finer, but nonetheless unimproved sward, in my opinion, on much of the flatter land. Semi-improved grassland was confined to a narrow strip along the centre of the dale and a small area at the entrance to the field. I also agree with the Agency's position on the site's general character. I found it to be open with good views to the south and south west from many parts. Furthermore, I consider it to be typical of the chalk landscape in this area. I conclude therefore that it qualifies as down on the basis of both its vegetation and its general character and was correctly mapped as open country.

Summary of Conclusions

60. Having considered all other matters raised, I conclude that appeal sites 3506, 3507, 3508, 3512, 3521, 3522, 3523, 3524, 3526, parcel B of 3511, and parcels A of 3515 and 3518 were incorrectly mapped as open country. My conclusions in relation to sites 3505, 3509, 3510, 3513, 3514, 3516, 3517, 3519, 3520, 3525, 3527, parcel A of 3511, parcel B of 3515 and parcels B and C of 3518 are that they qualify as down on the basis of both their vegetation and their general character and were therefore correctly mapped as open country.

Formal Decision

61. For the above reasons I dismiss appeals 3505, 3509, 3510, 3513, 3514, 3516, 3517, 3519, 3520, 3525 and 3527. I allow appeals 3506, 3507, 3508, 3512, 3521, 3522, 3523, 3524, 3526, and I approve the provisional map subject to their deletion from it. I allow appeals

3511, 3515 and 3518 in part, and approve the provisional map subject to the deletion from it of the land shown cross hatched black on the map attached to this decision.

A handwritten signature in black ink that reads "Paul Dignan". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

INSPECTOR

APPEARANCES

For the APPELLANTS:

Dr Mark McLellan	c/o Environet, 1 Plexfield Rd, Rugby, Warwickshire CV22 7EN.
Charlotte Robinson	Halifax Estates, Estate Office, Bugthorpe, York YO41 1QG.

For the COUNTRYSIDE AGENCY:

Chris Smith	The Countryside Agency.
Tess Jackson (21-22 March 2005)	The Countryside Agency

For the RAMBLERS' ASSOCIATION

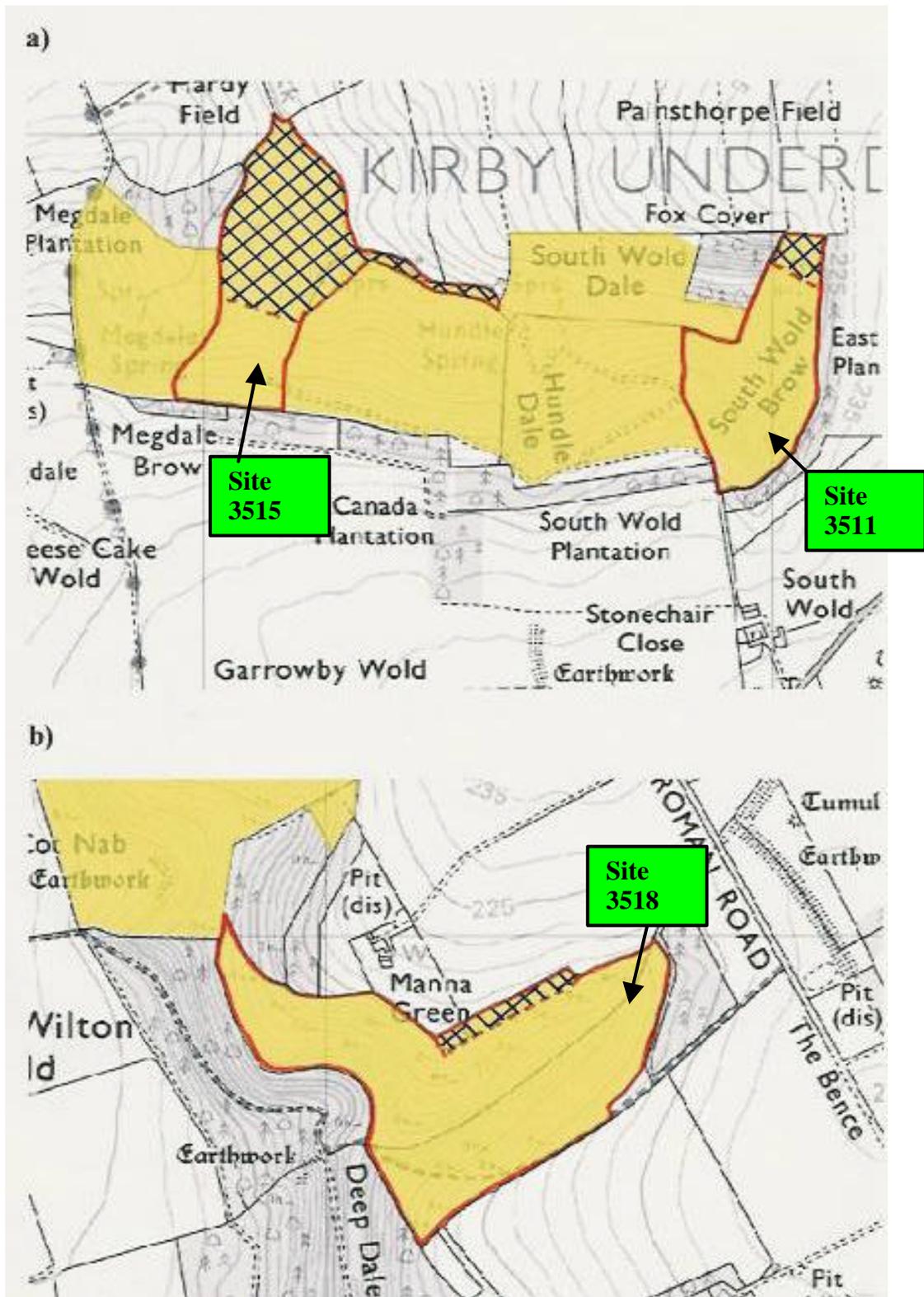
Tom Halstead	1 Derwent Drive, Wheldrake, York YO19 6AL
Brian Odell	65 Field Lane, York, YO10 5JL.
Martin Biggs	Wynstow, 7 Caedmon Close, York YO31 1HS
Sonia Donaghy (21-22 March 2005)	The Bungalow, Back Lane, Osgodby, Selby YO8 5HS.
Peter Ayling (21 & 24 March 2005)	25 Westland Rd, Kirk Ella, Hull HU10 7PH.
Peter Leese (21 March 2005)	c/o Ramblers' Association.

INTERESTED PERSONS

Alexander Holland (22 & 24 March 2005)	32 Mew Walk, Beverley HU17 7DJ
Maureen Greenwold (23 March 2005)	Whinny Hill Farm, Kilnwick Percy Lane, Millington, YO42 1TH.
Margaret Caukill (23 March 2005)	Oak Lea, North Duffield, Selby, YO8 5DF.
Dennis Parker (24 March 2005)	20 St Matthew's Court, Minster Moorgate, Beverley, HU17 8JH.

DOCUMENTS

Document 1	List of persons present at the hearing.
Document 2	Submission by the Ramblers' Association responding to comments by the appellants on their representations.



Appeals 3511, 3515 (map a) and 3518 (map b) are allowed in part. The areas cross-hatched black on the maps above are to be deleted from the provisional map.