



# 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**

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Date  
29 April 2005

**Appeal Ref: CROW/8/M/04/3498**

**Site Address: Land south of Lang Dale, near Fordon, 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 Mr T R and Mrs R Fenton and is dated 3 September 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 dismissed.**

## Preliminary Matters

1. The northern boundary of this appeal site coincides with the boundary between mapping regions 5 and 8. Following an appeal, adjacent land to the north, within area 5, was deemed to be open country. Although a fence is present a little way into area 5, the appellants suggest that the actual boundary between the two mapping regions, this appeal site, and the land to the north (now deemed to be open country), is not easily recognisable on the ground. Be that as it may, as my decision will go on to find that this appeal site is correctly mapped as open country, there is no need for a recognisable boundary between this site and adjacent open country to the north.
2. The appellants say that the boundary issue is critical to their case as this appeal site has a surface area of a little under 5 hectares. It should therefore be excluded as serving no useful purpose, as outlined within the Agency's published Mapping Methodology for England (the methodology). The Agency says that the site fits the criteria set out at paragraph 64 of the methodology, in that it provides a link to adjacent access land. I agree with both parties, in that the site matches some of the criteria at paragraph 64 and is a little less than 5 hectares in area. However, paragraph 64 of the methodology was formulated to help the Agency decide whether small areas should or should not be shown on the Draft Map of open country. This appeal is against the showing of the appeal site on the Provisional Map and the ground of appeal is limited under the Act to that shown in the fourth bullet point (above). I will therefore deal with the appeal on that basis.
3. 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 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. The appellants describe land improvement measures carried out on the site over very many years. However, they acknowledge that the site has been a part of a Countryside Stewardship scheme for about ten years and this has limited grazing and the types of herbicides they are able to use. The appellants recognise that some indicator species for unimproved calcareous grassland may be present on the site, but say it also contains nettles, thistles and white clover and is not down, but mostly semi-improved grassland.
6. I saw that areas around a track near to the eastern boundary of the site show some signs of improvement. The improvement is most evident near to the north-eastern area of the site and here I noted the presence of rye grass and clover, as well as the nettles and thistles described by the appellants. However, from the track, the larger part of the site slopes down quite steeply to the west and I saw that this contains a predominance of calcareous grassland with scrub and scattered trees. The Ramblers' Association pointed to the presence of calcareous indicator species including rock rose, which is identified as a key downland indicator species at 7.3 of the Access Inspectors Handbook. I reach the conclusion that well over a half of the site contains vegetation matching the classification of down contained within the methodology and that by reason of this it is down. This finding is broadly consistent with the submissions of the Agency and the Ramblers' Association.
7. Turning to general character, the appellants say that reference to the Encyclopaedia Britannica suggests that this appeal site is not down. However, Defra Guidance 3.13 suggests that it is appropriate to use the methodology as a starting point when considering appeals and I see no reason to depart from that guidance. I will therefore determine this issue by reference to the methodology. I saw that although most of the appeal site boundaries are marked by well maintained fencing these do not detract from a sense of openness. The site forms a part of a typical limestone landscape and provides views sometimes stretching for many miles across 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 therefore conclude that the appeal site is down by reason of its general character, including openness.

**Other Matters**

8. The appellant says that the area is already well served by public footpaths and raises concern about public danger arising from vermin control, suckling cows and the possible presence of unexploded mortar rounds. He also suggests that public access may be detrimental to land and animal conservation. These matters do not provide a ground of appeal under the Act and I am unable to consider them in reaching my decision. However, provision is made elsewhere in the Act, which may be capable of addressing these matters.

**Conclusion**

9. Having regard to the above and also to all other matters raised, I conclude that by virtue of its vegetation, character and openness, the appeal site is down and correctly shown as open country on the Provisional Map. The appeal therefore fails.

**Formal Decision**

10. For the above reasons I hereby dismiss the appeal and, in so far as it relates to the appeal site, approve the Provisional Map without modification. The appeal site is as shown at Annex A within the Agency's statement of case.

 Roger Vickers.

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT**

Mr M Caley	512 Holderness Road Hull HU9 3DS
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Mr T Fenton	North Fordon Farm Y0253HX
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**FOR THE AGENCY**

Mr A Best	Appeals Officer Countryside Agency 1 Redcliff Street Bristol BS1 6NP
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**THE RAMBLERS' ASSOCIATION**

DR T Halstead	1 Derwent Drive Wheldrake York YO19 6AL
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Ms S Donaghy	The Bungalow Back Lane Osgodby, Selby North Yorkshire YO8 5HS
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**DOCUMENTS**

Document 1.	List of persons present at hearing.
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