



Appeal Decision

Hearing held on 7/8 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
10 May 2005

Appeal Ref: CROW/8/M/04/3482

Site Address: Land known as Cow Dale, White Hill, Rabbit Dale and a part of Harper Dale, near Huggate, 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 G A Warburton 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 allowed in part and the Provisional Map is modified accordingly.

Preliminary Matters

1. 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

2. The appeal site consists of four land parcels known as Cow Dale, White Hill, Rabbit Dale and Harper Dale. Harper Dale is situated some little distance to the north of the other three parcels, which together form a strip of land mapped as open country, from Cow Dale at the south, travelling north-east, through White Hill and Rabbit Dale.

The Main Issue

3. 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

4. At the start of the hearing the Agency recommended that Harper Dale should be removed from the Provisional Map as it contains a predominance of semi-improved grassland. During the site visit the Agency revised this view and suggested that whether or not the parcel contains a predominance of qualifying vegetation is a close run thing. The Ramblers' Association say that parcel contains predominantly unimproved grassland. I saw that semi-

improved grassland is very much the predominant vegetation along the valley floor and on quite substantial areas near to the west and south-west of the parcel boundaries. The vegetation on the slope rising from the valley toward the south contains a mixture of semi-improved and unimproved grassland and although I noted frequent small amounts of clover I also saw some tor grass. The slope rising toward the north from the valley contains mostly unimproved calcareous grassland with some scrub. I agree with the Agency that qualifying and non-qualifying vegetation are almost equally represented on the parcel and this being the case I am doubtful that more of the parcel contains qualifying vegetation than does not. Following Defra guidance (paragraph 5.16) I therefore conclude that this parcel does not qualify as down by reason of its vegetation. This being the case I have no reason to consider its general character.

5. Dealing next with Cow Dale, White Hill and Rabbit Dale, the appellant says that all three parcels are enclosed, have been fertilised and are stocked in an appropriate fashion so as to produce improved farmland. He says that this has resulted in the presence of rye grass, clover nettles and thistles, which indicate improvement, but acknowledges that the more steeply sloping areas receive less nutrients and are somewhat less improved.
6. I saw that the flatter valley bottoms within all three parcels contain a predominance of semi improved grassland. Semi-improved grassland is especially evident when entering Rabbit Dale near to its northern boundary and on an area at the top of the southern slope, which the appellant says was ploughed some years ago. However, steeper slopes account for the greater area of all three parcels and these, while sometimes containing small infrequent amounts of clover, contain an overwhelming proportion of unimproved calcareous grassland, with some scattered scrub or trees. The Ramblers' Association point to the presence of several calcareous indicators, including tor grass, which is common within the parcels and is identified as a key downland indicator species at 7.3 of the Access Inspectors Handbook. I reach the conclusion that more than a half of each parcel contains vegetation matching the classification of down contained within the Agency's published Mapping Methodology for England (the methodology) and that by reason of this these parcels are down. This finding is broadly consistent with the submissions of the Agency and the Ramblers' Association.
7. Turning to general character, I saw that although the parcel boundaries are marked by well maintained fencing, given their size and topography these do not detract from a sense of openness. The parcels form a part of a typical limestone landscape and views are occasionally restricted by steeply sloping valley sides or adjacent woodland. However, views that sometimes stretch for many miles across undulating countryside are available from various parts of each parcel. 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 these parcels are down by reason of their 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, steep earthworks and suckling cows. 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 elsewhere in the Act may assist the appellant in addressing these matters.

Conclusion

9. Having regard to the above and also to all other matters raised, my overall conclusion is that Harper Dale is not down and should not have been mapped as open country. To that extent the appeal succeeds. By virtue of their vegetation, character and openness, Cow Dale, White Hill and Rabbit Dale are down and correctly shown as open country on the Provisional Map.

Formal Decision

10. 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

APPEARANCES

FOR THE APPELLANT

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DOCUMENTS

Document 1. List of persons present at hearing.

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LAND HATCHED IN BLACK TO BE REMOVED FROM THE PROVISIONAL MAP

