



Appeal Decision

Hearing held on 6 April 2005

by Janet E Forbes BSc(Hons) MSc MLI AIEMA

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

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date
22 April 2005

Appeal Ref: CROW/8/M/04/3451

Land on the east side of Phillips' Slack near Cowlam, east of 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 Mr R M Bannister and is dated 2 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 appeal is that the land 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: The appeal is dismissed

Preliminary Matter

1. During the hearing it became apparent that evidence would be most usefully presented on site. At an appropriate point in the proceedings, the hearing was therefore adjourned to continue on the appeal site.

The Appeal Site

2. The appeal site, which extends to about 26 hectares forms part of Phillips' Slack. It is located on the east side of the extensive dale and slopes steeply downwards generally to the west. There are no internal boundaries within the appeal site which forms one long grazing unit. External boundaries are generally post and wire fences.

The Main Issues

3. The main issue to consider is whether the appeal site qualifies as mountain, moor, heath or down (MMHD), in this case down, as a result of its vegetation and other surface characteristics and its general character including openness.
4. 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 statutory ground of appeal does not need to be considered.

Reasons

5. It is agreed between all parties that the appeal site is within an area of chalk and limestone geology.

6. The appellant's view, based on an ecological survey, is that 10.7% of the site qualifies as down. His survey also assessed the remaining 89.3% of the appeal site as comprising 19.1% improved grassland, 70.0% semi-improved grassland and 0.2% bare ground. He states that the field has been cultivated in the past and improved over many years. It is managed grassland which is stocked mainly with cattle and some sheep.
7. The Agency and the Ramblers' Association disagree with the appellant's classification of the predominant grassland. The Agency carried out a field survey and assessed its vegetation cover as being more than 75% qualifying cover consisting of calcareous grassland. Non-qualifying cover, consisting of semi-improved grassland was also recorded. The Ramblers' Association state that the appeal site is more correctly classified as predominantly unimproved calcareous grassland, based on field surveys and an aerial photograph. They also submit that the site is part of an extensive complex of dry valleys typical of the Yorkshire Wolds landscape. They argue that this is consistent with the description of the general character of down given in the Agency's *MME*.

Vegetation and surface characteristics

On the basis of my observations, I consider that the appeal site, as noted by the Agency and the Ramblers' Association, is predominantly unimproved calcareous grassland with a variety of herbs and grasses, including tor grass, a species associated with calcareous grassland and which is undesirable from an agricultural point of view. As the appellant maintains, there are signs of some agricultural improvement within this area particularly in the dale bottom and on the flatter more accessible areas. However, following my site inspection, I consider that these sporadic occurrences do not materially detract from the clear evidence that down vegetation, as defined in the Agency's *Mapping Methodology for England* (MME), is overwhelmingly predominant on the appeal site.

9. The Agency stated that the total qualifying land cover was in excess of 75% which I consider to be an overestimate; nevertheless it is obvious to me that the qualifying vegetation predominates on this site. I therefore consider the appellant's estimate of 10.7% unimproved calcareous grassland to be a gross under-estimate.

General character including openness

10. On my inspection, I noted that the area enjoys extensive views along the dale. The dale side has vistas across undulating countryside comprising steep sided 'scarp' slopes and dry valleys with more limited views as described in footnote 10 of paragraph 68 of the *MME*. In my opinion, this appeal site is typical of the Yorkshire Wolds landscape. These factors together with the topography of the surrounding land, the size and context of the site and the views along the lengths of the dale lead me to consider that the appeal site could reasonably be described as open and having the general character of down.

Conclusion

11. Having regard to all other matters raised, I conclude, therefore, that the appeal site has the vegetation and character of down and should be mapped as open country and that

the appeal site has been correctly shown as open country. Consequently, the appeal fails.

Formal Decision

12. For the above reasons, I hereby dismiss the appeal and approve the provisional map without modification in so far as it relates to the appeal site.



INSPECTOR

APPEARANCES

For the Appellant

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