



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/04/3462

Land at Cottam Well Dale and the western 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 G M T Megginson 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 allowed in part and the provisional map is modified accordingly.

Preliminary Matters

1. Mr C P Hood & Mrs Diann Atkin, who farm the land as tenants/lessees, also made an appeal on the same area of land (Appeal ref CROW/M/94/3532). The outcome of this appeal would have been the same whether or not another appellant had lodged an appeal. For clarity, I have chosen to write separate decision letters for each appeal.
2. During the hearing it became apparent that evidence would be usefully presented on site. At an appropriate point in the proceedings, the hearing was therefore adjourned to continue on the appeal site.
3. At the hearing, the appellant's agent made an application for an award of costs against the Countryside Agency. This application is the subject of a report to the Secretary of State, whose decision on the matter will be issued separately.
4. The Agency divided the appeal site into 4 separate parcels. Having visited the site and observed the fences and gates, I consider that it is more appropriate to subdivide the Agency's parcel B into two parts. For simplicity, I have renumbered the parcels 1 - 5 as shown on the plan attached to this decision.

The Appeal Site

5. The appeal site comprises five adjoining parcels of land two in Cowlam Well Dale and three on the western side of Phillips' Slack.

The Main Issue

6. In considering whether the appeal site, or any part thereof, should have been mapped as open country, the main issue to be determined is whether it qualifies as down as a result of its vegetation and its general character including openness.
7. 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

Parcels 1 and 2 (part of Cowlam Well Dale)

8. The appellant's view, based on his ecological survey, is that the vegetation on these two parcels consists only of improved grassland. The Agency and the Ramblers' Association disagree with the appellant's classification of the grassland and state that the land is predominantly unimproved grassland in an area of chalk geology within an open landscape. The Agency survey form considered the whole appeal site to be between 50-75% qualifying land cover and less than 50% non qualifying land cover. They did not indicate any specific percentages within separate parcels. However, during the site visit, the Agency representative indicated that these two parcels might be nearer to semi-improved grassland than had been suggested in their written evidence.
9. On my site visit, I found the vegetation on these parcels to fall broadly into three grassland types. The relatively confined flat land, mainly along the dale bottom adjacent to the woodland, was generally good quality grasses and clover. In my view, this area is best described as improved grassland. The majority of the remaining parts of these parcels contained a sward containing a mixture of lush grasses with low species diversity and frequent thistles and nettles indicating agricultural improvement. In my opinion, these areas are best described as semi-improved grassland. There are a few small isolated patches within these parcels comprising the steeper more inaccessible slopes of the dale which were covered by unimproved calcareous grassland and tor grass with increased species diversity. The unimproved calcareous grassland is, in my view, qualifying vegetation for down as set out in the MME. However, in my opinion, the semi-improved/improved grassland predominates and the overall extent of qualifying vegetation on each of these parcels amounts to considerably less than 50% of their cover. Accordingly my conclusion is that parcels 1 and 2 do not qualify as down on account of their vegetation.
10. I therefore accept the appellant's submissions that parcels 1 and 2 are predominantly non-qualifying land cover and I conclude that these parcels are not down by reason of their vegetation. This being the case, I need not consider the general character of these parcels.

Parcels 3, 4 and 5 (part of Phillips' Slack)

11. The appellant's ecological survey found parcel 3 to be 100% improved grassland and parcel 4 to be exclusively game cover crops and parcel 5 to be a mixture of improved (52%) grassland, semi-improved grassland (44%) and unimproved calcareous grassland (4%). However, at the site visit the appellant's representative had some difficulty pointing out the boundaries between the three different types of grassland shown on his plan of this area.
12. On the basis of my observations, I consider that within parcels 3 and 5 the unimproved calcareous grassland on the steep valley slopes predominates. I accept that some of the

flatter areas have been subject to agricultural improvement and consist of improved or semi-improved grassland but, in my opinion, these areas occupy under 50% of each of these parcels. The description of down set out in the *MME* states that the typical vegetation is unimproved calcareous grassland in an area of chalk or limestone geology. Thus, in my view, the predominant cover on parcels 3 and 5 is consistent with this description and therefore, my conclusion on the first aspect of the main issue is that parcel 3 and 5's vegetation cover qualifies it as down.

13. The small fenced off area comprising parcel 4, consists of a strip of planted game cover (brassicas) and ungrazed unimproved calcareous grassland with scattered gorse and tor grass. The unimproved calcareous grassland is, in my opinion, qualifying vegetation and predominates within this parcel. Parcel 4 thus also qualifies as down by virtue of its vegetation.
14. On the second part of the main issue, the parcels' general character including their openness, I find them to be set within a generally open landscape typical of the Yorkshire Wolds. I accept that some of the surrounding land is intensively farmed, but I consider this to be quite typical of this landscape. Furthermore, the site's landform as steep-sided dales is typical of the area's chalk landscape and is, in my opinion, consistent with the description of down set out in the *MME* which allows that the features typical of downland landscapes may provide more limited views in some circumstances. My conclusion on this aspect of the main issue, therefore it that the general character and openness of these three parcels qualify them as down.

Conclusion

15. Having considered all other matters raised, my conclusion is that Parcels 1 and 2 do not qualify as down on the basis of their vegetation cover and were therefore incorrectly mapped as open country. Parcel 3, 4 and 5 qualify as down on the basis of both their vegetation cover and general character and were correctly mapped as open country, The appeal therefore succeeds on Parcels 1 and 2 and fails on Parcels 3, 4 and 5.

Formal Decision

16. For the above reasons, I allow the appeal in part and, in so far as it relates to the appeal site, approve the provisional map subject to the deletion from it of the area shown hatched black on the attached plan.



INSPECTOR

APPEARANCES

For the Appellant

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Map of appeal sites 3532 and 3462. The area hatched black to be deleted from the provisional map of open country

(not to scale and indicative only)

