



Appeal Decision

Site visit made 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/04/3532

Land at Cottam Well Dale and the western side of Philip's 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 C P Hood & Mrs Diann Atkin and is dated 6 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 G M T Megginson, the freehold owner of the land, also made an appeal on the same area of land (Appeal ref CROW/8/M/04/3462) but also included an additional zone of land to the south-east of Well Dale Plantation. 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. 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. I have therefore renumbered the parcels 1 - 5 as shown on the plan attached to this decision.

The Main Issue

3. 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.
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 ground of appeal does not need to be considered.

Reasons

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

6. The appellants consider the land is not down as it comprises improved grassland or semi-improved grassland. They further state that the land is not within a Site of Special Scientific Interest or within a Countryside Stewardship Scheme. Part of the land was arable land and artificial fertilisers and herbicides have been applied in part by ground machines and in part from the air together with spot herbicide applications.
7. 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 site to be between 50-75% qualifying land cover and less than 50% non qualifying land cover. They did not indicate specific percentages within the separate parcels.

Parcels 1 and 2 (part of Cowlam Well Dale)

8. On my site visit, I found the vegetation on these parcels to fall broadly into three grassland types. The relatively 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 two 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.
9. I therefore accept the appellants' submissions that parcels 1 and 2 are predominantly improved and semi-improved pasture 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)

10. On the basis of my observations, I consider that the unimproved calcareous grassland on the steep valley slopes predominates on these parcels. 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. In my view, the predominant cover on parcels 3, 4 and 5 is consistent with this description and therefore, my conclusion on the first aspect of the main issue is that parcel 3, 4 and 5's vegetation cover qualifies it as down.
11. 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 a steep-sided dale 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 issues, therefore it that the general character and openness of Parcels 3, 4 and 5 qualifies them as down.

Conclusion

12. 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

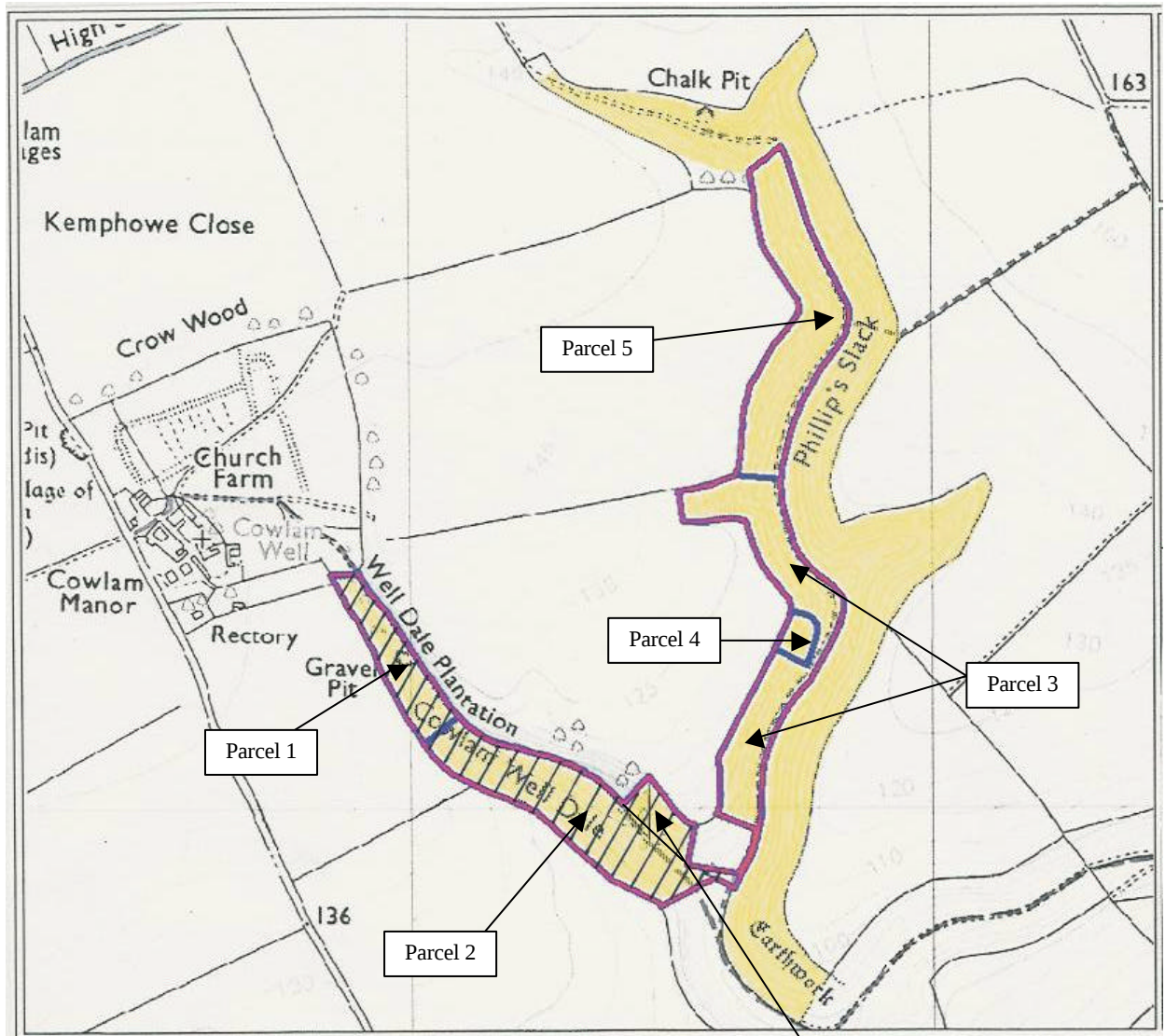
13. For the above reasons, I allow the appeal in part and, in so far as it relates to this appeal site, approve the provisional map subject to the deletion from it of the area shown hatched black on the attached plan.



INSPECTOR

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)



Area of land to the south-east of Well Dale Plantation included in Appeal 3462 and not in appeal 3532