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| **Application Decision** |
| Site visit made on 15 December 2021 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State pursuant to Regulation 4 of The Commons**  **Registration (England) Regulations 2008 to determine the application.** |
| **Decision date: 17 January 2022** |

###### Application Ref: COM 3276653

###### Holmwood Common, Holmwood, Dorking, Surrey

Register Unit CL 86

Registration Authority: Surrey County Council

* The application, dated 25 May 2021, is made under section 16 of the Commons Act 2006 (the 2006 Act) to deregister and exchange land registered as common land.
* The application is made by Miss Celia Meacham, an Estate Manager for the owner of the common, the National Trust (‘the Trust’).
* **The release land** comprises 812m2 of land (in two parcels edged red on the plan appended to this decision), part of Holmwood Common.
* **The replacement land** comprises 812m2 of a woodland adjoining Holmwood Common on its southern side (edged light green on the plan appended to this decision). Both the release land and the replacement land are owned by the Trust.

Decision

1. Consent is granted in accordance with the application dated 25 May 2021, and the plans submitted with it, to deregister and exchange common land at Holmwood Common, Register Unit No. CL 86. For the purposes of identification only, a copy of the application plan is attached to this decision.

###### Preliminary matters

1. Section 16 (1) of the 2006 Act provides, among other things, that the owner of any land registered as common land may apply for the land (‘the release land’) to cease to be so registered. If the area of the release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land (‘the replacement land’).
2. I carried out an unaccompanied inspection of the release land and the replacement land on Wednesday 15 December 2021.

###### The application

1. The land proposed to be deregistered is part of Holmwood Common registered under the Commons Registration Act 1965. There are rights of common registered in respect of the land. The application has been made by the Trust as owner of the common in order to regularise the parking of adjacent resident’s vehicles on those parcels of land for which de-registration is sought. The Trust intends to instigate a licencing system for the parking of cars on its land. De-registration of the land as common will resolve the unlawful driving and parking of motor vehicles on the common which is currently occurring.

###### The release land

1. The release land is comprised of two small plots within the common, the first of which is located to the north-west of Orchard and Spring Cottages (Parcel A edged red on the appended plan) and comprises 573m2. The second plot is located to the east of Spring Cottages (Parcel B on the appended plan) and comprises 239m2. Parcel A has a rough, potholed gravel surface, and water was standing in some of the potholes at the time of my site inspection. There was limited vegetation on this part of the common which appeared to have been in use as an informal car park for some time. Parcel B had a grass and earth surface with the vegetation cover being sparse at the northern end due to the use of the land for the parking of vehicles.
2. Vehicular and other access to and from Orchard and Spring Cottages is via a narrow roadway which leads to the southbound carriageway of the A24 Horsham Road. Public footpath 230 commences at the junction with the A24 on this access roadway and runs immediately to the east of Parcel B. The northern tip of Parcel A lies within the boundary of the Surrey Hills AONB.

###### The replacement land

1. The replacement land, with an area of 812m2 (edged light green on the appended plan), abuts the southern edge of Holmwood Common to the east of the property known as Brampton. Public footpath 233 runs immediately to the east of the replacement land. The southern boundary of the replacement land is unfenced and appears to abut other land owned by the Trust; the Trust has confirmed that the replacement land is part of its inalienable property.
2. The northern boundary of the replacement land is marked by a bank and shallow ditch with the decaying remains of a post and wire fence visible along parts of the boundary. In addition, the vegetation on the southern edge of the common is dense although it would not prevent access on foot to the replacement land.

###### The Main Issues

1. I am required by section 16 (6) of the 2006 Act to have regard to the following

in determining this application:

(a) the interests of persons having rights in relation to, or occupying, the

release land;

(b) the interests of the neighbourhood;

(c) the public interest, which includes its interest in nature conservation, the conservation of the landscape, the protection of public rights of

access to any area of land, and the protection of archæological

remains and features of historic interest.

(d) any other matter considered to be relevant.

1. There are additional requirements in section 40 of the Natural Environment and Rural Communities Act 2006, under which I must have regard to the Secretary of State’s duty to conserve biodiversity.
2. Defra’s *Common Land Consents Policy Guidance*, published in November 2015, sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process in section 16 of the 2006 Act. The Secretary of State’s policy is “*not to allow our stock of common land and greens to diminish*” and that the interests of the landowner, commoners, and the wider public will be no worse off in consequence of the exchange than without it. The expectation is that the exchange land is at least equal in area to the release land and equally advantageous to the interests such that on balance, any deregistration of registered land is balanced by the registration of other land of at least equal value.
3. The Guidance also list some of the considerations which should be taken into account under the headings in section 16 (6) set out in paragraph 10 above. Of relevance in this case are the following questions it suggests should be asked:

* What effect will the proposal have upon the ability of commoners to exercise their rights, or those with rights of access across the land? Will the proposal cause any financial loss to rights holders or would the benefits arising from the proposal outweigh those losses?
* Does the proposed replacement land add something that will positively benefit the neighbourhood?
* Does the loss of the release land mean that local people will be prevented from using the common in the way they are used to, or interfere with future use and enjoyment of the land as a whole?
* Are there potential benefits to nature conservation from carrying out the proposals?
* What will be the impact on the landscape if the proposals succeed? Is the landscape in a specially designated area? What will be the impact upon archaeological remains or features of historic interest?
* What effect will the proposals have on those wishing to use the common for air and exercise? Consent would not normally be granted where the replacement land is already subject to some form of public access (whether by right or informally) as that would diminish the stock of access land available to the public. (In the case of any exchange, it should be assumed that the release land will cease to be available for recreation and access, unless a legally binding provision is intended to be made to assure continued use).

**Representations**

1. Three representations were received in response to the notice of the application published in the Surrey Mirror on 10 June 2021. Natural England considered that the replacement land was of at least equal value in terms of access, biodiversity, and landscape, although reservations were expressed regarding the status of the replacement land and whether or not access was already available on a de facto basis.
2. The Open Spaces Society did not object to the proposal in principle but requested clarification as to whether (a) the fence and bank at the boundary of the replacement land with the common provided a physical obstacle to the public and commoners accessing the replacement land; (b) the status of the replacement land and whether it was inalienable; (c) whether the adjacent householders had any rights over the release land; and (d) what steps the applicant proposed to take to prevent further encroachment onto the common.
3. Historic England offered no comment on the proposal.

###### Assessment

###### *The interests of persons occupying or having rights in relation to the release land*

1. There are rights of herbage, grazing and estovers registered over the common. In addition, a number of residential properties adjacent to the common have rights of access over the common to reach those properties. The Trust submits that the rights of herbage, grazing and estovers are not exercised on the release land. Given the nature of the surface of the release land and its current use as an informal turning and parking space for adjacent householders’ vehicles, it is unsurprising that the registered rights are not exercised over Parcels A and B. The proposed exchange would not adversely impact upon the interests of those having rights in relation to the release land.
2. The Trust states that there are various different access agreements in place with the property owners that live adjacent to the release land. Although vehicular rights of access are registered to a number of properties abutting Holmwood Common, none of these appear to apply to the private residences at Orchard or Spring Cottages; vehicular and other access over Parcels A and B is therefore likely to be by agreement with the Trust. The Trust submits that deregistration would have no impact upon these access agreements and that the licensing system envisaged would seek to prevent further encroachment onto the common.
3. The Trust is the owner of the release land and it is the Trust’s intention to regularise the current unlawful use of the release land for parking by means of a licence or permit system. Deregistration would enable the Trust to provide allocated vehicle parking spaces to adjacent householders in an area where it is not possible lawfully to park a vehicle due to the current status of Parcels A and B as registered common land.
4. At the time of my site inspection, the north western side of Parcel A was in use for the parking of vehicles. In addition to vehicles, a skip was also located on the land. The remainder of Parcel A unoccupied by vehicles was clearly in use as a turning area in front of the cottages which abut the common. The Trust seeks to regularise the use which is already being made of the land. I conclude that the interests of the owner of the common are served by the application.

###### *The interests of the neighbourhood*

1. The published guidance assumes that in a case of deregistration and exchange that the deregistered land will cease to be available for public access. Whilst Parcels A and B will be removed from the register of common land, the proposal will have little impact upon public access as access to the Common via footpath 230 would be unaffected.
2. Deregistration of the land is therefore unlikely to have any negative impact on those wishing to use the common for air and exercise or prevent the public from using the common in the way to which they are accustomed. Overall, I conclude that deregistration of the release land would have little, if any, adverse impact upon the interests of the neighbourhood.
3. The replacement land is immediately adjacent to the current southern boundary of Holmwood Common and would provide an area of equal size over which the public could take air and exercise. Although Natural England has reservations as to whether the replacement land was already an area of de facto access, my site inspection did not reveal any obvious signs that the public had habitually used the replacement land for access or air and exercise; the nature of the vegetation on site suggested that the replacement land had been unvisited and undisturbed for some time.
4. The shallow ditch and tree-lined bank which marks the current boundary of the common would not pose a barrier to those who currently use the common for air and exercise should they choose to venture away from footpath 233 to explore the southern extremity of the common. The remnants of the old boundary fence should be cleared away as the rusted barbed wire would present a hazard to anyone seeking to access the replacement land. The registration of the replacement land would provide an area of land of equal size to that being deregistered and would be of greater value for use for air and exercise than either Parcels A or B.

###### *The public interest*

###### *Nature conservation: the release and replacement land*

1. I have not been provided with details of any habitat surveys which may have been conducted in relation to the release or replacement land and it may be that the Applicant did not consider that such surveys were necessary given the physical characteristics and current use of Parcels A and B. The area of compacted gravel which comprises the surface of Parcel A and the grass and earth surface of Parcel B are unlikely to be of significance in terms of biodiversity. There is no evidence before me from which it could be concluded that the deregistration of Parcels A and B would have any impact upon protected species. I conclude that the proposal is unlikely to have an adverse impact upon the nature conservation interest in the land.
2. The replacement land is a continuation of the wooded area of Holmwood Common and the mature and semi-mature trees within the parcel, together with the unmanaged understorey are likely to be more species diverse than the release land. In this respect, I consider that the replacement land would be of equal if not greater value and that the granting of consent would not be contrary to the Secretary of State’s duty to conserve biodiversity.

###### *Archaeological interest*

1. There is no evidence before me that any archaeological remains or features of historic interest would be affected by deregistration of the release land.

###### *Landscape conservation*

1. The northern tip of Parcel A lies within the Surrey Hills AONB. Given that Parcel A is currently used as a parking and turning area and that current land use would not change if the application were successful, the deregistration of Parcel A is unlikely to have any adverse effect upon the criteria for which the Surrey Hills AONB has been designated.

###### *Public rights of access*

1. No public right of access to any other land would be affected by deregistration of the release land.

**Other relevant matters**

1. The replacement land to be provided is of equal area to the release land. The exchange would accord with Government objectives that the stock of common land should not be diminished.

**Conclusions**

1. Having regard to these and all other matters raised in the application and in the written representations I conclude that the exchange will not have any adverse effect upon those with rights over the release land. There will also be no adverse effect upon the interests of the neighbourhood or the public.
2. I conclude that the application made on 25 May 2001 should be granted, and an Order of Exchange should be given in respect of it.

Alan Beckett

Inspector

**Order**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17 (1) of the Commons Act 2006, I HEREBY ORDER Surrey County Council, as commons registration authority for the area in which the release land and replacement land are situated:

1. to remove the release land from its register of common land, by amending register unit CL 86 to exclude the release land;
2. to register the replacement land as common land, by amending register unit CL 86 to include the replacement land; and
3. to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL 86) any rights of common which immediately before the date on which the release land is removed from the register, are registered as exercisable over the release land and the remainder of the land comprised in register unit CL 86.

**First Schedule – the release land**

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| **Colour on plan** | **Description** | **Extent** |
| Edged red | Land forming part of Holmwood Common, register unit CL 86, located to the north-west of Orchard and Spring Cottages  Land forming part of Holmwood Common, register unit CL 86, to the east of Spring Cottages | 573m2  239m2 |

###### Second Schedule – the replacement land

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| **Colour on plan** | **Description** | **Extent** |
| Edged light green | Land situated to the south of Holmwood Common, register unit CL 86, and to the east of ‘Brampton’. | 812 m2 |

###### Alan Beckett

###### Inspector

Appendix – location plan (not to scale)

