
Application Decision

Accompanied site visit made on 11 August 2015

by Heidi Cruickshank BSc MSc MIPROW

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 September 2015

Application Ref: COM 697

Crockham Hill North Common, Kent

Register Unit No: CL.12

Commons Registration Authority: Kent County Council

- The application, dated 16 April 2015, is made under Section 16 of the Commons Act 2006 for consent to deregister and exchange common land.
 - The application is made by Josephine and Nicholas Naismith, Crockham Hill Farm, Kent Hatch Road, Crockham Hill, Kent, TN8 6SU.
 - **The release land** comprises 1,255 m² of land on the western side of Kent Hatch Road.
 - **The replacement land** comprises 1,600 m² of land north west of Crockham Hill Farm and the release land.
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Decision

1. The application to deregister and exchange common land at Crockham Hill Common ("the Common"), Register Unit No. CL.12 is granted in accordance with the terms of the application, reference COM 697, dated 16 April 2015. For the purposes of identification only a copy of the application plan is attached to this decision.

Procedural Matters

Site visit

2. I carried out a site inspection of the release land and replacement land accompanied by the applicant, Mr Naismith.

Reasons

3. Section 16(1) of the Commons Act 2006 ("the 2006 Act") provides that the owner of any land registered as common land may apply for land ("release land") to cease to be so registered. If the area of release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land ("replacement land").
4. The Department for Environment, Food and Rural Affairs *Common Land Consents Policy Guidance* ("the *Guidance*") published in July 2009 sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process under section 16 of the 2006 Act. The outcome relevant to deregistration is that "*...our stock of common land and greens is not diminished – that, on balance, any deregistration of registered land is balanced by the registration of other land of at least equal benefit.*"

5. 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 the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) any other matter considered to be relevant.
6. The *Guidance* lists some of the considerations which should be taken into account in relation to the above and of relevance in this case are the following:
 - i. Does the proposed replacement land add something that will positively benefit the neighbourhood?*
 - ii. Are there potential benefits to nature conservation from carrying out the proposals? It may be appropriate to consider indirect benefits.*
 - iii. What will be the impact on the landscape if the proposals proceed? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green (e.g. if development of any release land might spoil the view or impair the conservation of wildlife on the remaining part)?*

The application

The Common

7. The Common has an area of 227 acres, lying to the north of the village of Crockham and is recorded in the *Register of Common Land* ("the RCL") under the Commons Registration Act 1965. The Common is woodland, adjoining other woodland, as well as farmland and properties. Goodley Stock Road forms the western boundary.
8. The largest central area of the Common is crossed by footpaths and bridleways, with roads separating it from other areas of the Common. To the east the B2026, Hosey Common Road, separates another relatively large area of the Common, which lies to the north of Mariner's Hill. This area, in places bounded by Mapleton Road, is also crossed by rights of way.
9. The B269, Kent Hatch Road ("the road"), separates a smaller area of Common to the south-west over which no public rights of way are recorded. The application relates to this south-western area, with Crockham Hill Farm ("the Farm") on the southern boundary and two properties to the north-west.

Planning Permission

10. On 6 August 2012 Sevenoaks District Council ("the District Council") granted planning permission for the formation of a new vehicle access from the road to the Farm, to include new gate posts, retaining walls and road finish, reference SE/12/02036/FUL. The permission was subject to a number of conditions.

11. The application for this new access was made due to an accident and several near misses on entering and exiting the previous entrance to the Farm, which was to the south of the release land. The release land was purchased in order to build the new access.

The release land

12. The access road is now in place and was formed by the removal of parts of a 'bank', which runs alongside the road, in order to provide an entrance down from the road into the Farm. This entrance is gated with fencing up the banks preventing access onto that part of the release land. The unaltered areas of the release land on either side remain populated with mature holly, beech, silver birch and oak, adjacent to the rear of a barn to the south and contiguous with the rest of the Common on this side of the road to the north.

The replacement land

13. The replacement land is adjacent to the south-western boundary of the Common and is of similar biodiversity as the former release land, judging by the remaining areas, with holly, beech, silver birch and oak trees. The topography is similar, running from higher ground to the north-east downhill to the south-west. It is less steep than the release land.
14. There is currently an old line of fencing on the boundary, however, it has clearly been unused for some time, lying on the ground. It is to be removed, ensuring no boundary between the Common and the replacement land. The northern-most part of the boundary is against a garden fence whilst the south-western boundary is stock-fenced against the field and animal handling areas lying below the land. There is currently no fencing bounding the north-western end of the replacement land.

Representations

15. The required notice and consultations have been carried out, with the only response coming from the Open Spaces Society ("the OSS"). They noted that the application was retrospective but had no objection as the replacement land was well-placed and a larger area than the release land.

Assessment

The interests of those occupying or having rights in relation to the release land

16. Kent County Council, the Commons Registration Authority, have confirmed that they do not hold a Rights section for the Common on the RCL. The notes regarding a claim, and denial, of rights in relation to Windmill Bank and a claim to maintain the main telegraphic route under the land do not appear to relate to the release land.
17. It is in the interests of the current owners of the release land, the owners of the Farm, that the land be removed from the RCL so that they can continue to use the altered entrance into the Farm, rather than reinstate the original entrance on the blind bend of the road.
18. There is no evidence of other rights over this land, with the 1997 biological survey noting there to be none. The owners and occupiers would benefit from the exchange.

The interests of the neighbourhood

19. The 2006 Act does not define the term 'neighbourhood', however, the *Explanatory Memorandum to the Deregistration and Exchange of Common Land and Greens (Procedure) (England) Regulations 2007¹* refers to this as the 'local inhabitants'.
20. This Common, along with other commons, is sited within easy reach of a number of towns and villages. Crockham Hill to the south is the closest village, with the larger Westerham to the north, as well as a number of detached properties around and within the commons themselves. A number of parking places exist off the surrounding roads, encouraging access, and there is clear evidence of such use on the two larger areas of the Common.
21. The affected area of the Common is much smaller and there was no evidence of public use, probably due to limited access from the road and the topography. I do not consider that there would be any disbenefit to the neighbourhood in the exchange of land and note that the proposed replacement land would be of greater area than the release land. I agree with the OSS that this would be beneficial in adding to the stock of common land in the neighbourhood.

The public interest

Nature Conservation

22. The planning report notes that this part of the Common is part of a Local Wildlife Site and a Site of Nature Conservation Interest. The planning report noted the loss of connectivity between the northern and southern areas of the woodland, although changes in design were made to ensure that only a small area remained to the south of the new access road.
23. Taking account of the findings of the Extended Phase 1 Habitat Survey Report, 29 October 2012, I note the findings of low potential in relation to the support of species, with the exception of birds, and the conclusion that the location of the site should not affect the integrity of the Local Wildlife Site. I consider that the addition of the replacement land, already designated as part of the Local Wildlife Site, will increase the nature conservation potential of the Common as a whole.
24. The discharge of condition 8 of the planning permission, requiring works to safeguard the biodiversity of the area, will also improve the former area of common, providing connectivity potential for bats, birds and dormice. This condition does not seem to have been approved by the District Council yet.

Conservation of the Landscape

25. The Common is within an area of outstanding natural beauty and there is no doubt that the changes have altered the appearance, forming a gated entrance, flanked by close cropped grass banks, rather than the densely wooded area seen on the adjacent Common. However, I consider that the area to be given in exchange is of similar landscape value to the former condition of the release land, judging by the adjacent remaining Common. It benefits from integrity to the remaining Common area, only running alongside a garden for a short stretch, and the location away from the road.

¹ 2007 No. 2589

Protection of the public rights of access to any area of land and the right to air and exercise

26. As noted, there is evidence of public use on the other areas of the Common but no evidence of public use on this smaller area. Given the general topography, trees and understorey alongside the road I consider that there is little likelihood of public recreational use of this part of the Common.
27. The replacement land is better in terms of topography to allow public access. If there is any access on the rest of the Common on this side of the road then I consider that the replacement land would be an improvement over the release land for this purpose. It is not available for public access at present.

The protection of archaeological remains and features of historic interest

28. No archaeological remains or features of historic interest have been identified in this area. I am satisfied that the proposal has no impact in this respect.

Conclusions

29. Having regard to these and all other matters raised in the written representations, and to the criteria in section 16(6) of the 2006 Act, I conclude that granting the application would be beneficial to the landowners, there being no indication of any other interests or rights in relation to the release land. I consider there is likely to be a positive benefit to the neighbourhood in improving connectivity and greater potential for public access. I consider it to be an advantage that an area of land with greater biodiversity potential would be added to the stock of common land and also that this land would then have further protection by its registration. I conclude, therefore, that the application should be granted and an Order of Exchange should be made.

Heidi Cruickshank

Inspector

Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17(1) and (2) of the Commons Act 2006, **I HEREBY ORDER** Kent County Council, as commons registration authority for the area in which the release land and the replacement land are situated:

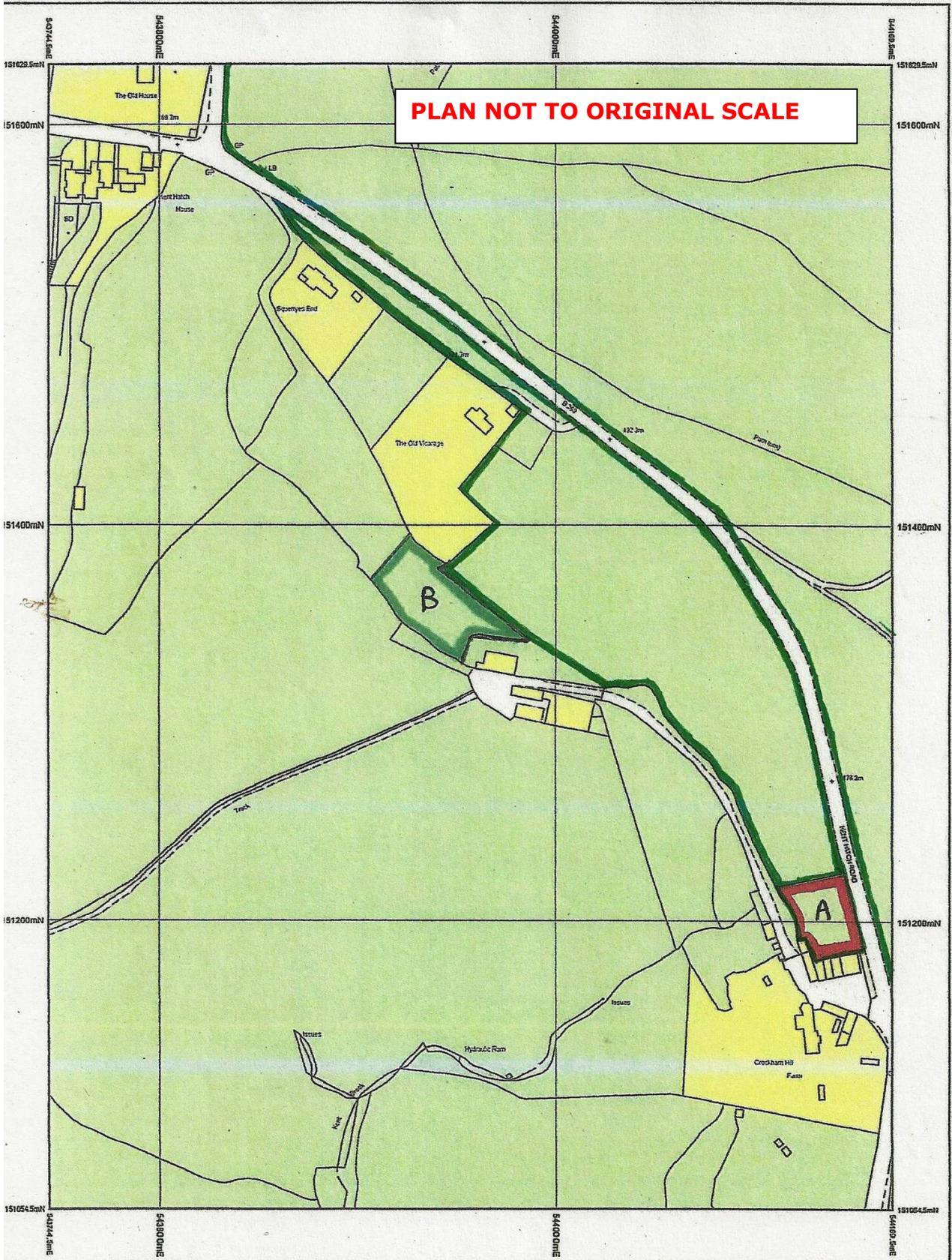
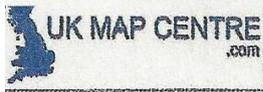
- (a) to remove the release land from its register of common land, by amending register unit CL.12 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL.12 to include the replacement land; and
- (c) to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL.12) 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.12.

First Schedule – the release land

Colour On Plan	Description	Extent
Edged red	Land forming part of common land known as Crockham Hill Common, register unit CL.12, lying adjacent to the western side of the B 269, Kent Hatch Road, Kent. The land comprises a block to the north of the barn at Crockham Hill Farm and is comprised of an access track and verge.	1,255 m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged light green	Land abutting part of Crockham Hill Common, register unit CL.12, to the north west of Crockham Hill Farm, Kent Hatch Road, Crockham Hill, Kent. The land contains mature trees, shrubs and other vegetation.	1,600 m ²



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0 50 m
Scale: 1:2500



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