



Application Decision

Hearing held on 13 October 2015

by **Michael R Lowe** BSc (Hons)

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

Decision date: 26/10/15

Application Ref: COM 666

Westwood and Hurn Common, Beverley

Register Unit No. CL 28

Registration Authority: East Riding of Yorkshire Council

- The application, dated 21 January 2015, is made under Section 16 of the Commons Act 2006 to deregister and exchange common land.
 - The application is made by the East Riding of Yorkshire Council (the Council).
 - **The release land** comprises 710m² of land forming part of Westwood and Hurn Common, Beverley (Register Unit CL 28), comprising a strip of land approximately 0.5m wide and 1.2km in length located along Keldgate Road (B1230).
 - **The replacement land** comprises 4047m² of land situated on the eastern border of the common, south of Walkington Road and west of Minster School playing field and formerly known as Fishwick Mill.
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Decision

1. The application to deregister and exchange common land at Westwood and Hurn Common, Register Unit No. CL 28, is granted in accordance with the terms of the application Ref: COM 666, dated 21 January 2015, and the plan submitted therewith.

Preliminary matters

2. I held a hearing at the Beverley Leisure Centre on 13 October 2015. I carried out a site visit after the hearing accompanied by those parties who so requested.
3. Section 16(1) of the Commons Act 2006 (the 2006 Act) provides, amongst 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).
4. In this case there are 710m² of release land owned by the Council. The replacement land comprises 4047m² adjoining Westwood and Hurn Common also owned by the Council.

Main issues

5. I am required by section 16(6) of the 2006 Act to have regard to the following in determining this application:
 - (1) The interests of persons having rights in relation to, or occupying, the release land;

- (2) The interests of the neighbourhood;
 - (3) The interests of the public¹; and
 - (4) Any other matter considered to be relevant.
6. I will also have regard to Defra's Common Land Consents Policy Guidance in relation to the determination of applications under section 16, which has been published for the guidance of both the Planning Inspectorate and applicants.

Reasons

The application

7. The application is made by the Council as the owner of the land. The release land is proposed to be used to widen the footway alongside Keldgate Road so as to provide a shared pedestrian and cycle route widened by approximately 0.5m to approximately 2m in width. This cycle route will join with an existing section thereby linking Beverley and Walkington.
8. Westwood and Hern Common is governed by a scheme of management established by an Act of Parliament dated 1836 for the better regulation of certain common pastures within the Borough of Beverley. This Act also enacted that nothing in the Act shall authorize the pasture freemen or pasture masters to exclude or debar the public from resorting to the common pastures for the purpose of exercise, amusement and recreation, as freely as they had been permitted and accustomed before.
9. Common rights are registered and exercised over the common by several parties, the main party being the Pasture Masters, the Freemen and widows of Freemen of the Borough of Beverley.
10. The application follows the granting of consent under section 38 of the 2006 Act for works on the common in October 2012 under reference COM 310. That consent included the construction works for the shared pedestrian and cycle route, replacement of fencing, tactile crossing points, minor earth works and the relocation and erection of traffic signs.

The release land

11. The application is to deregister 710m² of land, which is a very small part of the 248ha (614 acres) of the registered common.

The replacement land

12. The 4047m² of replacement land comprises the site of former Fishwick Mill, which was demolished in 1861. This land is now grassland, it is not fenced from the common and is not readily distinguishable from the common. This land was provisionally registered as part of the common, but was deleted following the decision of the Chief Commons Commissioner dated 29 July 1977 under reference 264/D/16.
13. I have inspected the commons register prepared under the Commons Registration Act 1965 and I am satisfied that the register has been amended to show the effect of the Commissioner's decision and the register map shows the

¹ Section 16(8) of the 2006 Act provides that the public interest includes the public 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 archaeological remains and features of historic interest.

former Fishwick Mill site hatched black, in accordance with the relevant regulations, as being deleted from the registered common. It would appear that this black hatching was not appreciated when the Countryside Agency prepared the maps of 'open country' and consequently the land is now 'access land' until such time as these maps are reviewed.

Representations

14. The consultations produced representations in support of the application from Walkington Parish Council, the local Member of Parliament and 31 local residents. Objections were received from the Open Spaces Society, Beverley and District Civic Society, East Yorkshire Ramblers' and 2 local residents.

Assessment

Interests of persons having rights in relation to, or occupying, the release land

15. The application proposes to increase the area of common land and the replacement land is of equivalent quality pasture for grazing. The Pasture Masters support the application. Whilst the nature of the release land would be affected by the provision of a tarmac surface for the proposed cycle track, the public would not be prevented from gaining access.
16. The release land is subject to a public right of access for air and exercise under section 193 of the Law of Property Act 1925. The replacement land is presently available for public access as 'access land' under the Countryside and Rights of Way Act 2000. However, as that designation appears to have been in error, and such an error is expected to be corrected in due course, the public will retain a right of access over the replacement land as a result of the deregistration and exchange.

Interests of the neighbourhood

17. The Council submits that the proposed cycle track is of significant benefit to the neighbourhood. They say it is the final part of a network of off-road pedestrian/cycle routes connecting Beverley with the surrounding villages and the City of Hull, and that the link between Beverley and Walkington village will provide a safer and more attractive route for commuters and pupils at schools in Beverley. The Council and its supporters point to the many advantages of promoting cycling in terms of healthy lifestyles and quality of life. Whilst support for the cycle scheme is not unanimous, from the representations submitted and those who attended the hearing, I am in no doubt that the scheme enjoys substantial popular support. Representations and objections have been made to the design of the cycle track involving a crossing in the vicinity of the junction with Walkington Road and seeking a wider route. Whilst such representations may or may not have merit, I am only able to consider the proposal before me for the exchange of land set out in the application and I am not able to promote a different scheme for the deregistration of more land.
18. In my view the proposals in the application will have substantial benefits to the neighbourhood.

Public interest

19. In addition to the rights of access enjoyed by the public considered above, the public interest includes nature conservation, landscape, archaeological remains and features of historic interest. Inevitably, the proposal will result in some

additional highway signs and the tarmac cycle track will increase the impact of such features upon an important historical landscape. Westwood Common has a documented history starting with a charter in 1380 confirming the rights of common. It is a defining feature of Beverley. Whilst no adverse impacts upon nature conservation interests or archaeological remains have been identified I recognise that the proposal will have some adverse impact upon the landscape.

Conclusion

20. The deregistration and exchange proposal would not significantly adversely affect the interests of any person having rights in relation to the release land. The proposal would have substantial benefits to the neighbourhood. The proposal would have some adverse impact upon the landscape. Overall, I consider that the benefits outweigh the harm and, in particular, the stock of common land will be increased with the provision of additional land of at least equal benefit. Having regard to the criteria in section 16(6) of the 2006 Act, I conclude that the application should be granted and an Order of Exchange should be given.

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** the East Riding of Yorkshire 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 28 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL 28 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 28) 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 28.

First Schedule – the release land

Colour On Plan	Description	Extent
Edged red	Land forming part of common land known as Westwood and Hurn Common, register unit CL 28, comprising a strip of land approximately 0.5m wide and 1.2km in length located along Keldgate Road (B1230).	710m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged light green	Land situated to the eastern border of Westwood and Hern Common, south of Walkington Road and west of Minster School playing field and formerly known as Fishwick Mill.	4047m ²

Michael R Lowe

INSPECTOR

APPEARANCES

East Riding of Yorkshire Council

Steve Parker
Mark Jessop
John Attwood

Legal Officer
Principle Transport Policy Officer
Highway Engineer

Supporters

Michael Blake
Amanda Millson
Allan English
Cllr. George Southern

Pasture Master Chairman
Walkington Parish Council

Objectors

Mike Jackson
Kieran Sheehan
Richard Lidwell

Open Spaces Society & Ramblers
Beverley & District Civic Society

Inspector's assistant

Alison Hodgson

DOCUMENTS (submitted at the Hearing)

- 1 Photographs from Amanda Millson
- 2 Extract from The Advertiser, 7 October 2015 (re parking)
- 3 Extract from Highway Code
- 4 Highways Act 1835 s 72