
Application Decision

Site visit made on 16 December 2015

by Alan Beckett BA MSc MIPROW

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

Decision date: 18 January 2016

Application Ref: COM 725

Land at Beam Heath Common, Alvaston Business Park, Middlewich Road, Nantwich
Register Unit Number: CL 24

Land at Beam Heath Common, Poole Old Hall Lane, Nantwich
Register Unit Number: CL 114

Commons Registration Authority ('CRA'): Cheshire East Council

- The application, dated 13 August 2015, 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 the Beam Heath Estate.
 - The release land comprises 51500m² of CL 114 and 3700m² of CL 24.
 - The replacement land comprises 56800m² of land at Minshull Lane, Church Minshull.
-

Decision

1. The application is granted.

Procedural Matters

2. Section 16 (1) of 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').
3. I carried out an unaccompanied inspection of the release land and the replacement land on Wednesday 16 December 2015.

The Application

4. Beam Heath was registered as common land under the Commons Registration Act 1965. The land which comprises the common is owned by the Beam Heath Trust ('the Trust') and administered under the provisions of the Beam Heath Act 1823. Beam Heath is the commonable lands of the ancient parish of Nantwich on which the residents of the town could graze their livestock. Beam Heath is made up of a number of individual parcels of land situated to the north and east of Nantwich.

The Release Land

5. The release land comprises 55200m² of the 2,503,600m² of Beam Heath registered as common land. The land proposed to be deregistered comprises

two parcels of land, one in each of register units CL 24 and CL 114 (edged red on plans 1 and 2 of Appendix A).

The Replacement Land

6. The replacement land comprises 56800m² of land adjacent to Minshull Lane (edged green on appendix B). The replacement land is detached from the remainder of the currently registered common.

The Statutory Requirements

7. Section 16 (6) of the 2006 Act requires that in determining this application regard should be had to the following:
 - (a) the interests of persons having rights in relation to, or occupying, the release land;
 - (b) the interests of the neighbourhood;
 - (c) the public interest¹;
 - (d) any other matter considered to be relevant.

Representations

8. Two representations were received as a result of the published notice² of the application; one from the Open Spaces Society and one from Natural England. The Open Spaces Society did not object to the application as the proposal would provide a larger area of common land albeit at some distance from the existing registered common. However, this non-objection was conditional upon the replacement land being freely accessible to the public either by gaps in the field boundaries or via gates to BS5709. Although Natural England did not object to the application, it noted that the replacement land was distant from the release land and was concerned that the replacement land would not serve the same community.
9. Responding to the representation from Natural England, the Trust submitted that there is a lack of available land for purchase in the area of the existing common; consequently the Trustees had had to look further afield when purchasing land to be held by the Trust. The quantity of land for which de-registration was sought was small compared with the remainder of each register unit which would still serve the community to the north and east of Nantwich. It is the applicant's view that the replacement land would provide access opportunities for the wider community.
10. With regard to the representation from the Open Spaces Society, the Trust submitted that access to the replacement land was freely available via the two gates currently located on the south side of Minshull Lane which were set back from the road. The land had contained livestock in the past and was likely to do so again in the future; the current gates were the least restrictive option which also served to stock-proof the land. I saw at my site visit that these gates were chained but not padlocked and found that they could be easily opened.

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.

² A public notice appeared in the Crewe Chronicle on 26 August 2015. Notices were also posted on site.

Assessment

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

11. The release land is owned by the Trust. The Trust has been unable to obtain a copy of the rights register from the Commons Registration Authority³ as the register appears to have been misplaced during the recent local government reorganisation (LGR) of Cheshire. The Trust has made inquiries at the Cheshire Record Office and also with the Cheshire West and Chester Council in case the registers had remained with that authority following LGR. Neither of these bodies holds the rights register. In the absence of the primary source material, the Trust has referred me to the information regarding rights over Beam Heath which is recorded in the database of registered common land in England⁴; according to this source there are no common rights extant over Beam Heath.
12. I understand that when the common lands of Nantwich were inclosed in the nineteenth century, the grazing rights enjoyed by certain residents of Nantwich were surrendered in return for an annual monetary payment distributed by the Trust from the rents and profits obtained from the inclosed lands. Whereas the available evidence is that there are no common rights extant on Beam Heath, residents within the ancient Parish of Nantwich who satisfy the relevant residency criteria are beneficiaries of the Trust and receive a portion of the rents and profits arising from the common land held by it.
13. I am aware that the misplacement of the rights register has caused difficulties for the Trust in making its application but I am satisfied on the basis of the information that the Trust has been able to supply that there are no rights of common in existence over the release land.
14. The Trust wishes to sell part of CL 24 near the Alvaston Business Park as this land is isolated from the remainder of the estate by main and access roads and is of little agricultural value. The Trust has been approached by a developer who wishes to develop this field; in addition the roundabout at the eastern end of the site may require enlargement in the future which would further reduce the agricultural viability of the land. The Trust will use the proceeds from the sale of the land to purchase better agricultural land elsewhere to increase the revenue available to the Trust for distribution to the beneficiaries of the Trust.
15. The Trust considers part of the land comprising CL 114 at Poole Hall Lane can be re-let at an advantageous agricultural rent if the existing tenancy can be terminated. The existing tenant has refused to consider surrendering the tenancy unless certain fields on neighbouring land can be transferred to them free of common rights. To enable the effective management of its land, the Trust seeks to release the land at Poole Hall Lane from its status as common and register the land at Minshull Lane as common in its place.
16. The proposed deregistration and exchange is in the interests of the applicants. As the proceeds of the sale of part of CL 24 are likely to be used to purchase other agricultural land in the area any increase in the revenue of the Trust would be in the interests of the beneficiaries of the Trust. The lease of part of

³ Cheshire East Council holds the Ownership register but does not hold the Rights register.

⁴ www.gov.uk/guidance/managing-common-land

CL114 on more advantageous terms would also be in the interests of the Trustees and the beneficiaries of the Trust.

17. The public also has a right of access on foot to the release land under the provisions of the Countryside and Rights of Way Act 2000 and I deal with the effect of the proposal in this respect in the following sections.

The interests of the neighbourhood

18. There is no definition within the 2006 Act of the term 'neighbourhood'. Whereas the 'neighbourhood' might be regarded as the town of Nantwich, equally it may be that the neighbourhood of Beam Heath is those villages and settlements in the immediate vicinity of the various separate land units which make up the common.
19. As part of the application, the applicant consulted with the current tenants of the release and exchange land, with Nantwich Parish Council and with Cheshire East Council. None of those consulted made any response to the proposal. No evidence has been presented from which it could be concluded that the proposed deregistration and exchange would have any material effect upon the way those in the neighbourhood make use of the common.

The public interest

20. In its response to the Trust's consultation, Historic England noted that there were no listed buildings, registered parks and gardens, scheduled ancient monuments or non-designated nationally important archaeological sites on the release land. The CL 24 land is improved grassland and is unlikely to contain any significant wildlife interest; the majority of the CL 114 release land is arable farmland with small areas of scrub woodland. The nature conservation interest in these areas is also unlikely to contain significant wildlife interest.
21. In one part of the CL 114 land is a pond known as Jackson's Lake which is a water managed by the Nantwich Angling Society. Whilst the pond provides a different habitat from the remainder of the CL 114 release land and is likely to provide some nature conservation interest, I do not consider that the public's interest will be adversely affected by the deregistration of this part of the land as a public footpath runs close to the pond and the information boards located at its edge.
22. The registered common land of Beam Heath will increase by 1600m² as a result of the proposal. The replacement land is agricultural land of a similar character and quality to the remaining registered common. I do not consider that the character of the landscape will be affected by this proposal.
23. There is currently no public access to the replacement land and as the public's right of access on foot to the registered common will transfer from the release land to the replacement land, public access to the common will not be adversely affected by the proposal. I consider that the gates already present on Minshull Lane would provide a suitable means by which the public could access the replacement land.

Conclusions

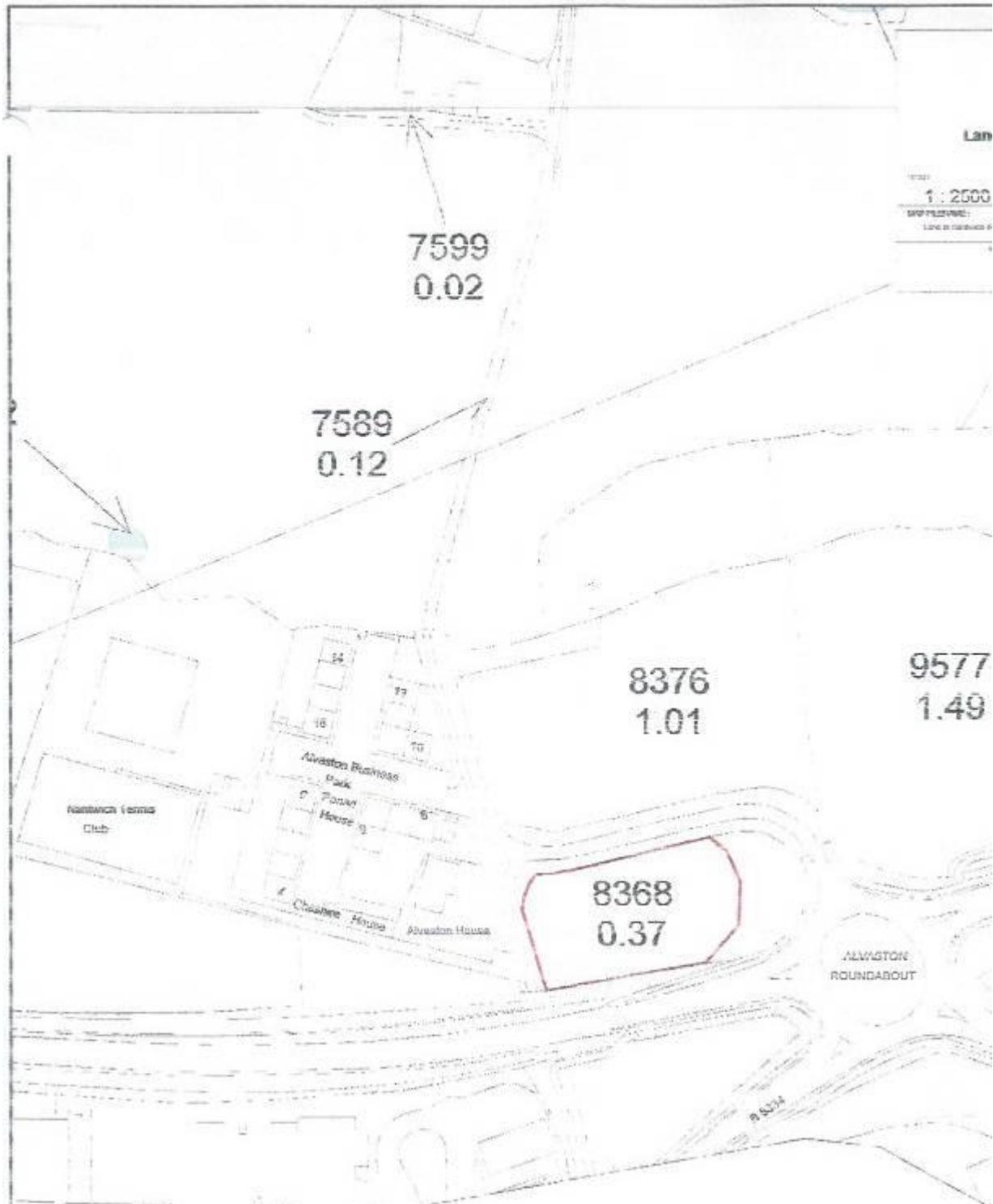
24. Overall, there is nothing to suggest that the proposed deregistration and exchange would have any adverse effect in respect of the interests set out in

paragraph 7 above. The exchange of common land would lead to an increase in the extent of the registered common and would lead to increased access opportunities for local residents and the public in general. Therefore I conclude that the application should be granted and an Order of Exchange should be given.

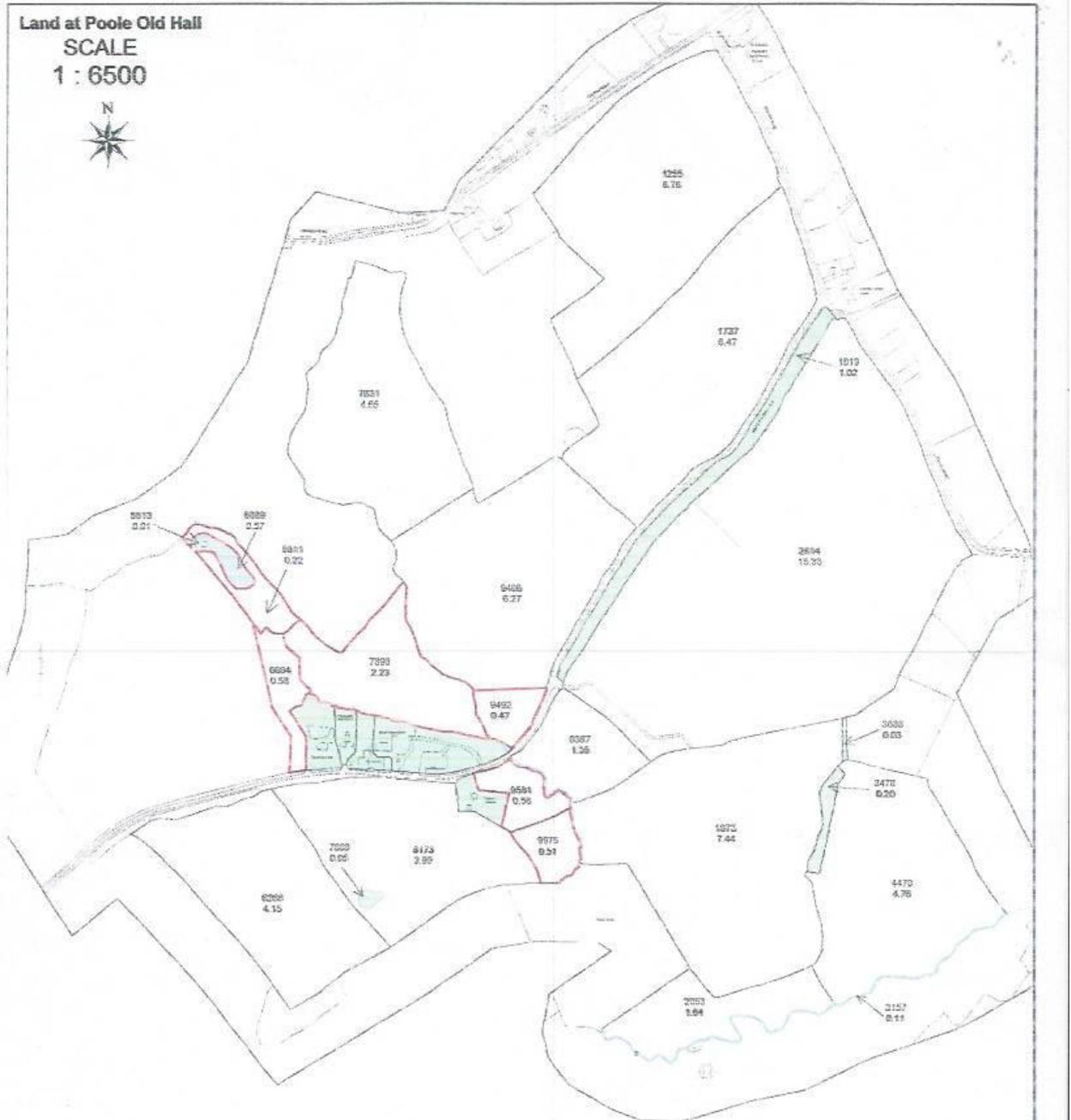
Alan Beckett

Inspector

APPENDIX A – plan 1 CL 24 release land



APPENDIX A – plan 2 CL 114 release land



APPENDIX B – the replacement land



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** East Cheshire Council, as Commons Registration Authority for the area in which the release land and replacement land is situated:

- (i) to remove the release land from its register of common land, by amending register unit CL 24 to exclude the release land, and
- (ii) to remove the release land from its register of common land, by amending register unit CL 114 to exclude the release land, and
- (iii) to register the replacement land as common land.

First Schedule – the Release land

Colour on plan	Descriptions	Total Extent
Edged red	<p>Firstly, 3700m² of land adjacent to Alvaston Business Park, Middlewich Road, Nantwich.</p> <p>Secondly, 51500m² of land to the north and south of Poole Old Hall Lane, in the parishes of Poole and Aston juxta Mondrum.</p>	55200m ²

Second Schedule – the replacement land

Colour on plan	Descriptions	Total Extent
Edged green	56800m ² of land lying to the south of Minshull Lane, Wades Green, Nantwich.	56800m ²

Alan Beckett

Inspector