



Application Decision

Site visit made on Tuesday 5 April 2016

by Helen Slade MA FIPROW

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

Decision date: 25/04/16

Application Ref: COM 764

St Breward Common (Hamatethy Common)

Register Unit No. CL 195

Registration Authority: Cornwall Council

- The application, dated 14 December 2015, is made under Section 16 of the Commons Act 2006 to deregister and exchange common land.
- The application is made by the Executors for Mrs Y G Hall (in respect of the Release Land) and Messrs R J Caiger-Smith and P M Throssell (in respect of the Replacement Land) .
- The Release Land comprises 6282.24 sq.m of land situated at Lower Hamatethy, St Breward, Cornwall, PL30 4PG.
- The Replacement Land comprises 6352.81 sq. m of land situated at Mine Hill, near Fellover, St Breward, PL30 4PQ Cornwall.

Decision

1. Consent is granted in accordance with the application dated 14 December 2015 and the plan submitted with it to deregister and exchange common land at Lower Hamatethy, St Breward, Cornwall (Register Unit No. CL 195). For the purposes of identification only, a copy of the application plan is attached to this decision.

Preliminary matters

2. 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 interests of the public¹; and
 - d. any other matter considered to be relevant.

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.

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3. I must 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 applicants².

The Application

4. The application has been made because the Release Land forms part of the garden and woodland closely associated with the property at Lower Hamatethy.

The Release Land

5. The Release Land comprises of an area of land just over 6000 square metres in size lying to the immediate south and west of the property at Lower Hamatethy. Part of the land is a semi-formal woodland garden with a stream running through it, and the remaining land is mixed deciduous and coniferous woodland abutting the stream to the north and the highway to the south. The woodland is separated from the semi-formal garden area by a sheep-netting fence.
6. There is a pedestrian gate into the garden area from the adjacent access track but there is no direct access into the woodland area except via the garden. The land falls quite steeply down towards the stream.

The Replacement Land

7. The Replacement Land forms a strip of land, also just over 6000 square metres in size, abutting the same highway but on the south side of it. It comprises open mixed woodland with a wall dividing the parcel along its length, parallel to the highway. Access to the area is possible from the highway (at the western end) and from the adjoining area of common land to the east.
8. The land to the south of the wall has the appearance of an old sunken track, with a bank forming the southern boundary, and the wall forming the northern boundary. To the north of the wall and abutting the highway the land falls steeply from the wall to the road.

Representations

9. No objections or representations have been made to the application.

Assessment

The interests of persons having rights in relation to, or occupying, the Release Land

10. The Common as whole has a large number of rights registered which encompass grazing rights for sheep, ponies and cattle, and rights of turbary. The Commoners are represented by a Commoners Association and full consultation has taken place. The applicant has stated that no rights are exercised whatsoever over the Release Land.
11. It was evidence from my site visit that the Release Land is used solely as part of the garden and extended woodland belonging to the property at Lower Hamatethy. The only access being exercised for any purpose at all is from the adjoining domestic garden. There was no evidence of grazing, and no peat or turf suitable for cutting.

² Most recent edition published in November 2015

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12. The Replacement Land would provide similar vegetation to the Release Land, in the unlikely event that anyone wished to exercise their rights. I am therefore satisfied that none of the registered commoners will be adversely affected by the loss of the Release Land.
13. With respect to public rights of access, the deregistration of the Release Land will not immediately remove it from the maps of Access Land produced under the Countryside and Rights of Way Act 2000 ('the CROW Act'). This cannot happen until the Access Maps are reviewed by Natural England – a process not currently scheduled to take place until 2019/2020. The description of Access Land is set out in Section 1 of the CROW Act and encompasses land which is shown as registered common land on such maps. Thus the public will retain its current right of access to the Release Land until the review of Access Land has taken place.
14. The Replacement Land, on the other hand, will not appear as registered common land on Access Maps until after the review has taken place. It will therefore not satisfy the definition of Access Land given in Section 1 of the CROW Act. Thus the public will have no legal right of access to the Replacement Land before 2019/2020 unless the relevant landowner enters into a dedication agreement under Section 16 of the CROW Act beforehand.
15. This state of affairs results in the potential for confusion and difficulty for both the public and the landowners concerned, but its effect in this case is likely to be minimal in the light of my comments below regarding *Recreation and Access*.

The interests of the neighbourhood

16. The Replacement Land is of similar appearance to the wooded part of the Release Land, and not unlike the semi-formal garden area. This is unlikely to change. There are consequently no obvious impacts on the neighbourhood arising from the application and no-one has expressed any concerns in the matter.

The public interest

Recreation and Access

17. As a consequence of my site visit it is evident that members of the public do not seem to be exercising their rights of access to the Release Land. This may be due to the difficulty of gaining access to it, the proximity to the dwelling (and thus its more domesticated appearance) or it may simply be because people are not aware that it is registered common land and that it may therefore be Access Land. Part of it is likely to be Excepted Land in any case due to its use as a garden and its proximity to the dwelling³.
18. The Replacement Land is marginally more accessible in that there is a direct access from the highway at the western end (albeit obstructed) which provides a means of getting to both parts of it (i.e. either side of the dividing wall). In fact the blocked gateway leads most directly into the land on the south side of the wall which, as I have already indicated, resembles an old sunken trackway.

³ Schedule 1 to the CROW Act, Part 1 – Excepted Land

19. Although access to the Replacement Land is currently less than ideal, measures exist under the CROW Act for the Access Authority to take steps to improve access to Access Land if necessary. As I have set out in paragraph 14 above, the public will not enjoy a right of access to the Replacement Land until the Access Maps have been reviewed, or unless it is dedicated as Access Land.

20. Once the public has a right of access to the Replacement Land, in terms of recreation and access the Replacement Land is likely to be a benefit to the public interest as the area of Access Land will be marginally greater. Given the level of likely use of the land by the public, I do not consider that the delay in securing the right of access will be of any significant consequence.

Nature conservation

21. I noted on my site visit that there was an active badger sett in the bank on the Replacement Land, but I do not consider that the possible small increase in public access to the area would have a detrimental effect on this protected species.

22. The similarity in the general vegetation between the relevant parcels of land is such that there is unlikely to be any impact on nature conservation, positive or negative.

Conservation of the landscape

23. The application land lies just outside the boundary of the Cornwall Area of Outstanding Natural Beauty. There is no indication that any works are likely to be undertaken which would impact on the landscape.

Archaeological remains and features of historic interest

24. The Release Land follows the line of a stream which has, in the past, been dammed to provide water for a water mill below. This will not be impacted by the exchange of land, but it will result in the public not having access to this industrial archaeological feature.

25. Whilst this may be a slight disadvantage to the deregistration of the Release Land, it is not a factor which appears to have prompted any concern during the consultation period. The stream itself runs through other parts of the common land which are unaffected by the application and it will therefore remain accessible elsewhere. I do not consider that the small loss of amenity resulting from the application in this regard is sufficient to defeat it.

Conclusion

26. Having regard to these and all other matters relevant to the application, the Replacement Land is, in my view, of equal size and equal value to the Release Land and the substitution will not give rise to any significant adverse effects. The application is allowed.

Helen Slade

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** Cornwall 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 195 to exclude the Release Land;
- (b) to register the Replacement Land as common land, by amending register unit CL 195 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 195) 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 195.

First Schedule – the Release Land

Colour On Plan	Description	Extent
Edged red	Land forming part of common land known as Hamatethy Common, part of St Breward Common, register unit CL195, being part of a garden and woodland situated at Lower Hamatethy (Land Registry Title Number CL83242)	6282.24 square metres

Second Schedule – the Replacement Land

Colour On Plan	Description	Extent
Edged light green	All that parcel of land abutting the western boundary of part St Breward Common (Hamatethy Common) register unit CL195 and comprising Ordnance Survey field number 3193 and part 3290 on map no. SX0977 being to the east of Tucking Mill and south of Mine Hill road.	6352.81 square metres

Helen Slade

INSPECTOR

