
Application Decision

Site visit made on 23 August 2016

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 1 September 2016

Application Ref: COM 782

Register Unit: VG 13

Registration Authority: East Riding of Yorkshire Council

- The application, dated 4 March 2016, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister common land or village green.
 - The application is made by Barmby Moor Parish Council.
 - The release land comprises 56m² of land.
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Decision

1. The application is granted in accordance with the terms of the application [Ref: COM 782] dated 4 March 2016, and the plan submitted therewith.

Preliminary Matters

2. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as common land or village green 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. In this case the release land is less than 200m² and no replacement land has been offered.
4. I made an inspection of the site on 23 August 2016 when I was able to view the release land. I was accompanied at the inspection by Zoe Plummer, Director, Quicksilver Homes, for the applicant.
5. I attach a copy of a plan submitted with the application for reference purposes. This shows land registered as village green hatched in green and the proposed release land coloured solid brown. The land shown hatched in brown is not part of the current application.

The Application

6. The land proposed to be deregistered is part of Barmby Moor Village Green which was registered under the Commons Registration Act 1965. The village green comprises several parcels of land situated off Main Street and Becksides, Barmby Moor. There are no rights registered in respect of the land.

7. The application has been made by the owner of the village green, Barmby Moor Parish Council, in order to allow the construction of an access road to approved residential development of land to the north of the village green.

The Release Land

8. The release land is part of a grassed area which effectively forms a wide highway verge on the north side of Main Street, Barmby Moor.

The Statutory Requirements

9. 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;¹
 - (d) any other matter considered to be relevant.
10. I will also have regard to published guidance in relation to the determination of applications under Section 16².

Representations

11. The Open Spaces Society has objected to the deregistration on the grounds that it offers no benefit to the public to compensate for the loss of village green. I consider the effect of the deregistration on the interests of the neighbourhood and the public later.

Assessment

12. The official guidance referred to above states that "*In considering an application which does not propose replacement land, the Secretary of State is required³ to have "particular regard ... to the extent to which the absence of such a proposal is prejudicial to the interests specified in section 16(6)(a) to (c)" (i.e. the 'private' interests, the interests of the neighbourhood, and the public interest)". In general, the Secretary of State will grant consent where no replacement land is offered only in exceptional circumstances. Such circumstances are most likely where a public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land.*" It further states that "*It follows that an application for deregistration where no replacement land is offered is most unlikely to be granted if no compelling public interest is served by the deregistration*".
13. Accordingly, it is clear that the current application should only be granted if it is demonstrated that the proposed deregistration of part of the village green without the offer of replacement land will serve a public interest that mitigates any prejudice caused by the loss of the release land.

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 Common Land Consents Policy, November 2015, Defra.

³ Section 16(7) (of the 2006 Act).

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

14. The applicant is the owner of the release land, Barmby Parish Council, which is satisfied that the proposed deregistration will have a beneficial effect for the community it represents. No other party has rights over the land.

The interests of the neighbourhood

15. The 2006 Act does not define the term 'neighbourhood'. However, in this case it seems logical to consider the village of Barmby Moor to be the appropriate neighbourhood.
16. On behalf of the applicant it is argued that the proposed deregistration will have minimal adverse effect on the interests of the neighbourhood. The area of village green that would be lost is small and even though an access road will be constructed over it, the public will not be excluded from it. It is also proposed that an existing paved driveway across the green serving the property known as Jesfield will be returned to grass thereby improving the appearance and usefulness of the green. The construction of the new access would necessitate the removal of an ornamental tree but it is proposed that a replacement tree will be planted so the negative effect of this should only be temporary.
17. On the positive side, the proposed deregistration will allow residential development of land to the north of the release land to take place. This land is currently in a neglected and overgrown condition. Planning permission has already been granted for the construction of 10 houses on this land. It is suggested that the addition of these much needed family houses will be beneficial in maintaining the vitality of the village and accords with the government's policy of encouraging housing development. The residential development was permitted by the Secretary of State on appeal and the inspector in his decision concluded that the scheme would enhance the character and appearance of the village and the village green in particular and would accord with local plan policies.
18. In addition, if the application is granted, the developer of the new houses will pay the sum of £75,000.00 to the parish council for an easement to allow access to the houses. This money will then be available to fund projects for the benefit of residents of the village.

The public interest

Nature Conservation

19. There is no evidence that the proposed deregistration will have any adverse effect on nature conservation.

Landscape

20. As stated above, when the residential development that will be enabled to proceed if the proposed deregistration takes place, the character of the village and the village green in particular, in the opinion of the planning inspector who granted planning permission for it, will be enhanced. I have no reason to disagree with this conclusion.

21. Any short term effects of the construction of a new access should be mitigated by the reinstatement of an existing driveway and the planting of a replacement tree.

Public Access

22. The proposed deregistration would have no significant effect on public access to or over the village green.

Archaeological remains and features of historic interest

23. There are no known issues relating to archaeological remains or features of historic interest.

Other relevant matters

24. I am aware that applications to deregister the same area of land have been made on a number of previous occasions, most recently in April 2015, and that for various reasons these have either been refused or not proceeded with. I do not know what evidence or argument in support of these applications was submitted and, in any event, any application must be determined on its own merits. I have therefore made my decision solely on the basis of the evidence submitted in connection with the current application.

Conclusions on the public interest

25. Overall, it is my view that the proposed deregistration would have no adverse effect on the public interest. However, it would have a positive effect in contributing to the delivery of much needed new housing and enhancing the character and appearance of the village.

Conclusion

26. As already made clear it is unusual for an application which proposes a reduction in the amount of village green available to be approved. However, it is my view that this case is exceptional in a number of respects. The proposal will not be prejudicial to the interests of either the neighbourhood or the wider public but will bring tangible benefits to both the inhabitants of the neighbourhood and the public. The owner of the land, being the parish council, which acts on behalf of the inhabitants of the village, can also be said to benefit in a similar manner. Overall, therefore, it is my view that, having paid particular attention to the interests specified in section 16(6)(a) to (c) of the 2006 Act, the benefits of the proposal are sufficient to justify approval of the application.

Barney Grimshaw

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** East Riding of Yorkshire Council, as commons registration authority for the area in which the release land is situated:

- to remove the release land from its register of town and village greens, by amending register unit VG 13 to exclude the release land;

Schedule – the release land

Colour on plan	Description	Extent
Coloured solid brown	Land to the north of Main Street, Barmby Moor.	56m ²

Barney Grimshaw

INSPECTOR



**Land Registry
Official copy of
title plan**

Title number **YEA55363**
Ordnance Survey map reference **SE7748NE**
Scale **1:1250** enlarged from 1:2500
Administrative area **East Riding of Yorkshire**

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