



Application Decision

Site visit on 15 November 2016

by **Sue M Arnott FIPROW**

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

Decision date: 29/11/2016

Application Ref: COM 3154213

Ham Common, London Borough of Richmond upon Thames

Register Unit No.: CL64

Registration Authority: London Borough of Richmond upon Thames

- The application, dated 5 July 2016, is made under Section 16 of the Commons Act 2006 to deregister land that is currently registered as common land.
 - The application is made on behalf of the London Borough of Richmond upon Thames to provide for the installation of operational equipment by Thames Water Utilities Ltd.
 - **The release land** comprises 1.23m² of land in woodland between Ham Farm Road and Beechrow, Ham. No **replacement land** is proposed.
-

Preliminary Matters

1. 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.
2. In this case the release land is limited to some 1.23 m² within a clearing in woodland at the edge of Ham Common. Given the minor nature of the proposal, no replacement land has been proposed.
3. In order to inform my determination of the application I carried out an inspection of the release land (for which I was not accompanied).

The release land

4. The area at issue lies close to the south-western boundary of Ham Common which is registered as CL 64 under the Commons Registration Act 1965. The registration of CL 64, being undisputed, became final on 1 October 1970. In total the common extends to some 48.689 hectares.
 5. The Register records the Council of the London Borough of Richmond upon Thames as the owner of CL 64 but no common rights are registered over the land.
 6. Those parts of Ham Common which lie between Ham Farm Road and Church Road consist of reasonably dense mixed woodland with informal paths providing links between the two roads. The application site lies to the side of one of these paths close to Beechrow.
-

The application

7. The application to deregister a small part of this common has been made by agents for the London Borough of Richmond upon Thames (LBR) in order to facilitate improvements to the existing operational equipment forming part of the sewage pumping station known as 'Parkleys'.
8. At present the whole of the installation (including the inspection equipment) lies below ground. All that is visible are the access covers which lie flat in a grassed area to the side of an informal path that links Ham Farm Road with Church Road as it leads through a small clearing.
9. In order to reduce the Health and Safety risks to operational personnel, it is proposed to erect a small kiosk above ground to house a motor control centre (MCC) so that it is no longer necessary to go underground to carry out maintenance or emergency work.
10. This kiosk measures 2m x 0.55m with a height of 1.5m, is coloured dark green and would stand to one side of the present covers on a concrete plinth measuring 2.05m x 0.6m x 0.1m. Having a volume of just 1.65 cubic metres, this proposal constitutes permitted development for planning purposes. Although other sites were considered, including a location off the common, it is essential to have a direct sightline to the pumping station and no other positions were found to be suitable.
11. It is intended that the MCC kiosk will be set at such an angle that it will be least conspicuous to people entering the common, especially from the Beechrow direction, and barely seen at all when leaving the common. Being sited so close to the pumping station, installation of the kiosk will require no trenches for services and connections.

Main Issues

12. 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 (and in particular any persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest;¹ and
 - (d) any other matter considered to be relevant.

Representations

13. A public notice was published in the 15 July 2016 edition of the Richmond and Twickenham Times and on the site. The application was publicly displayed at

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.

Ham Library for the statutory 28 day period. Consultation letters were sent to interested parties as required by the 2006 Act². A response was received from Natural England. No adverse representations were received to this proposal.

Assessment

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

14. Although the application has been made on behalf of the owner (LBR), the proposal has been discussed between LBR and Thames Water Utilities Ltd since the intended kiosk will be operated by the latter. LBR's conditional agreement to the proposal is confirmed in a letter dated 9 December 2015 from the Head of Parks and Open Spaces.
15. There are no rights registered over the release land; the site is not occupied at present and there is no evidence to suggest that LBR's interests as owner of the common would be prejudiced by the proposed deregistration.

The interests of the neighbourhood

16. The 2006 Act does not define the term 'neighbourhood' but in this context I consider the relevant area will extend to the village of Ham and its environs.
17. The applicant explains that the pumping station's below ground controls need to be replaced because the current equipment is out of date, increasing the risk of failure which would result in adverse impacts on the sewer network. To meet current electrical and Health and Safety requirements, equipment at such locations now need to be located above ground. It is submitted that the proposal therefore is in the public interest.
18. Whilst I agree with that assessment in general terms, I consider it to be of benefit to the neighbourhood first and foremost. The installation of the MCC kiosk is associated with the safe and efficient operation of the sewerage network serving the locality. Any failure of the pumping station could adversely impact on the amenity of both the common and local residents.
19. Whilst local access to the 1.23 m² plot on which the MCC kiosk is proposed to stand will no longer be available, in the context of the common as a whole, this is unlikely to have any noticeable impact. Although the path which provides access into the common from Ham Farm Road is not recorded as a definitive public right of way, it is clearly well used. So too is the access leading from the private road Beechrow, although to a lesser extent. Neither of these two paths would be affected by the proposed kiosk or the temporary barriers around the site during the 2-3 week period necessary for the works to take place.
20. Taking this into account, I am satisfied that the proposed MCC kiosk would positively benefit the neighbourhood in terms of security of the sewage system and that deregistration of the release land to accommodate it would not be detrimental to its inhabitants.

² Letters initially invited comments on the proposed siting of a kiosk in the context of an application for consent under Section 38 of the 2006 Act. Responses to this consultation were received from Natural England, Historic England, the Open Spaces Society and from a representative of a residents group for the Ham Farm Road and Beechrow area. However it was subsequently established that this was not the appropriate mechanism by which to authorise the intended works. An application was therefore made under Section 16 for deregistration of the release land.

The public interest

21. None of the evidence suggests that deregistration of the release land would affect any nature conservation interests, or that archaeological remains or features of historic interest lie anywhere near the site. The effect on public access is likely to be as minimal as I have noted above in terms of its effect on the inhabitants of the neighbourhood. The MCC kiosk may be seen but it is unlikely to affect public access to the common nor reduce enjoyment of the local landscape to any material extent.
22. I conclude that, on balance, the public interest would not be adversely affected by deregistration of the release land.

Other relevant matters

23. The published guidance³ confirms that this criterion allows other issues to be taken into account when assessing an application for deregistration including, for example, a major infrastructure project.
24. In this case, the fundamental reason for the application to deregister the release land is to enable such a project to proceed, to the benefit of a significant number of residents in this part of Ham. Consequently, I consider this factor deserves consideration.
25. Section 16(7) of the 2006 Act states that in cases such as this, where the amount of village green proposed to be deregistered is less than 200m² and no replacement land has been offered, particular regard should be paid to the extent to which the absence of replacement land would be prejudicial to the interests of specified persons which in this case include the interests of the neighbourhood and the public interest.
26. The guidance⁴ indicates that consent for deregistration where no replacement land is offered will only be granted in exceptional circumstances, and is most unlikely unless a compelling public interest is being served by the deregistration.
27. Given the relatively insignificant amount of land to be deregistered (1.23 m² or 0.003% of the total common), and the reason for deregistration, I accept that in these circumstances the lack of replacement land is not fatal to the otherwise broad acceptability of the proposal.

Conclusions

28. For the reasons set out above, I have concluded that the loss of this relatively small piece of land on the edge of Ham Common would have no substantive negative effects on the interests of the inhabitants of the neighbourhood. I consider the public interest will not be prejudiced to any noticeable extent. There are no individual rights over the release land to be taken into consideration.
29. Balanced against this, deregistration would result in benefits both to residents in the neighbourhood and to property holders in a wider area. It would enable substantial improvements to be made to the operation of the Parkleys sewage

³ Common Land Consents Policy Guidance, November 2015, Defra.

⁴ At paragraph 5.3

pumping facility which in turn may prevent adverse impacts on the surrounding area were the sewer network to fail at this point.

30. These factors lead me to conclude that this is an exceptional case of the type envisaged in the guidance, where consent for deregistration should be granted but without the offer of replacement land being proposed for registration in exchange. Overall, having regard to the criteria in Section 16(6) of the 2006 Act, I conclude that the application should be granted and an order for the requested deregistration should be made with no replacement.

Formal Decision

31. The application to deregister land is granted in accordance with the terms of the application (Ref: COM 3154213) dated 5 July 2016. For the purposes of identification only a copy of the application plan is attached to this decision.

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 Council of the London Borough of Richmond upon Thames, as commons registration authority for the area in which the release land is situated, to remove the release land described in the Schedule below from its register of common land and village green.

Schedule

Colour On Plan	Description	Extent
Edged red	Land situated to the east of Ham Farm Road and north-west of Beechrow, Ham, forming part of Ham Common: Register Unit CL 64 in the London Borough of Richmond upon Thames.	1.23 m ²

Sue Arnott

INSPECTOR

Parkleys SPS - Release Land Location Plan



Thames Water
Map

Printed By : ccolloff
 Print Date : 22/06/2016
 Map Tile Name: 57632

0 15 30 60 90 120
 Meters
 Current Scale : 1:2,500



Comments:

Scale 1:2500 @ A4

Boundary of Ham Common —
 Release Land —

Disclaimer: Based on the Ordnance Survey Map with the Sanction of the Controller of H.M Stationery Office License Number:- 100019345

The position of any boundary or apparatus shown on this plan is given without obligation and warranty, and the accuracy cannot be guaranteed.

Service pipes are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by Thames Water for any error or omission. The actual position of mains and services must be verified on site before any works are undertaken.

Copyrights: Unauthorised reproduction prohibited. Crown Copyright Reserved.

