

Application Decision

Site visit made on 29 November 2016

by **Alison Lea MA (Cantab) Solicitor**

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

Decision date: 08/03/2017

Application Ref: COM 3156299

Land to east of Loxwood Road, Alfold Crossways, Surrey

Register Unit No: CL185

Registration Authority: Surrey County Council

- The application is made under Section 16 of the Commons Act 2006 for consent to deregister and exchange common land.
 - The application is made by Eversheds LLP on behalf of Catesby Estates Limited.
 - **The release land** comprises 332 square metres of land located alongside Loxwood Road immediately to the north of Woodland Grange School (Postcode GU6 8HP).
 - **The replacement land** comprises 657 square metres of land located alongside Loxwood Road to the north of Woodland Grange School (Postcode GU6 8HR).
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Decision

1. Consent is granted in accordance with the terms of the application and the plans submitted with it. For the purpose of identification only a plan showing the location of the release land and the replacement land is attached to this decision.

Preliminary Matters

2. 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 200 square metres a proposal must be made to replace it with other land to be registered as common land ("the Replacement Land").
3. I carried out a site visit on 29 November 2016 accompanied by Mr Harper of Catesby Estates Limited and by Mr Craddock of the Open Spaces Society.

Main Issues

4. 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 persons exercising rights of common over it);
 - (b) The interests of the neighbourhood;

- (c) The public interest, which includes interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) Any other matter considered to be relevant.
5. I will also have regard to the published guidance¹ in relation to the determination of applications under Section 16 of the 2006 Act.

The Application

6. The application has been made because part of the registered common land is required to provide access to a new residential development permitted by planning permission reference WA/2015/2261 granted on 15 April 2016 (the Planning Permission).

The Release Land

7. Registered common land unit CL185 is essentially an area of highway verge situated alongside Loxwood Road. The Release Land consists mainly of an area of the verge required for vehicular access to the residential development plus a small area to the north of that required for a separate pedestrian access. The highway verge can be accessed by the public but the majority of the Release Land itself is currently overgrown with untended trees and shrubs.

The Replacement Land

8. The Replacement Land abuts the common land and is an area of agricultural land. The intention is that it would form an area of open space to the front of the residential development and would be accessible from the remaining part of CL185. Currently there are secure measures in place to prevent public access. However, a supplemental agreement entered into under Section 106A of the Town and Country Planning Act 1990 (the 1990 Act) and dated 20 February 2017 (the Second Supplemental Agreement) provides that the current boundaries would be removed to ensure that public access would be available within 28 days of an Order being made.

Objections and Representations

9. One objection was submitted in response to the application. This was by the Open Spaces Society (OSS) who pointed out that, once the development was constructed, the Replacement Land would be adjacent to a row of houses and was therefore likely to be excepted land under Schedule 1 of the Countryside and Rights of Way Act 2000 (the 2000 Act) to which rights of access would not apply. A supplemental agreement entered into under Section 106A of the 1990 Act and dated 5 January 2017 (the Supplemental Agreement) provides that a management plan will ensure that the Replacement Land will be subject to all of the rights that the public have over land that is access land by virtue of Section 2 of the 2000 Act. Although the OSS has expressed concern over the wording of the Supplemental Agreement I am satisfied that rights of access would apply to the Replacement Land.
10. Two representations were also received. Natural England noted the amount of land being provided in exchange but commented that it appeared to be more

¹ Common Land Consents Policy Guidance, November 2015, Defra

for recreation than nature. Historic England stated that they had no comments.

Assessment

The interests of those occupying or having rights over the release land

11. There are no rights of common recorded in the Register of Common Land. The landowner is Waverley Borough Council, who is a party to the application, and the land is currently highway verge. There is nothing to indicate that any party occupying or having rights over the Release Land would be adversely affected by the application.

The interests of the neighbourhood

12. The exchange would result in an overall increase in the area of common land. The Release Land is untended and due to the covering of shrubs and trees does not lend itself to the exercise of access rights or recreational use. I have not been provided with any information regarding the extent to which local residents or members of the public in general exercise their rights of access but from my own observations, this would appear to be limited. I will consider rights of access to the Replacement Land in relation to the public interest but note that there are no obvious negative impacts on the neighbourhood arising from the application and that no-one has expressed any concerns in this regard.

The public interest

13. The vehicular access would only be constructed when the residential development takes place. Prior to construction any impact on nature conservation or on the landscape would be negligible.
14. Following implementation of the Planning Permission, about 20 metres of hedge/trees would be cleared to provide the vehicular access to the residential development. Accordingly there would be some loss of habitat. However, there is no suggestion that the Release Land is of other than limited ecological interest and I note that a condition to the Planning Permission requires compliance with recommendations in the Ecological Appraisal submitted with the planning application. This includes the establishment of new hedgerow.
15. The introduction of a surfaced access would have a negative impact on the landscape. However, mitigation in the form of screening is proposed and the Replacement Land together with the remaining common land would form an attractive area of open space to the front of the development. Overall I consider that the effect of the application on the landscape would be minimal. There is no evidence of any archaeological remains or features of historic interest on the Release Land.
16. The Release Land can be accessed from the highway but is overgrown and has very limited potential for recreational use. The Replacement Land is part of a field adjacent to the common land and is of a greater area than the Release Land. It would be made accessible to the public within 28 days of an Order being made, whether it had been registered by the Commons

Registration Authority within that time or not. In the unlikely event that it was registered prior to being made accessible I am satisfied that, given the short length of time, any prejudice to the public right of access during that period would be negligible. I also note that during construction, vehicular access over the Replacement Land may be required from time to time. The Second Supplemental Agreement contains a covenant that during that temporary period no construction materials would be stored on the Replacement Land and I am satisfied that the effect on public access would not be significant.

17. As part of the residential development the Replacement Land would be turfed. A planning agreement made under Section 106 of the 1990 Act and dated 13 April 2016 (the Planning Agreement) provides for the future management of the Replacement Land. Once the development is constructed the Replacement Land will be accessible from the remaining common land, from Loxwood Road and from both the new vehicular access and footpath to be constructed in accordance with the Planning Permission.
18. Taking all of these matters into account I consider that overall the exchange would result in a benefit to the public.

Any other matter considered to be relevant

19. The Release Land is required to provide access to a residential development which has been granted planning permission by Waverley Borough Council. I note that the Council's report to committee states that the current housing land supply for the Borough falls short of the 5 year supply specified in the National Planning Policy Framework and that there is a considerable need for affordable housing in the Borough. The Planning Agreement secures 40% of the dwellings (a total of 22) as affordable housing.

Conclusions

20. Overall, there is nothing to suggest that the proposed deregistration and exchange would have any adverse effect in respect of any relevant interests. The proposed exchange would lead to an increase in the extent of the registered common and increased access opportunities for local residents and the public in general. It would also be in the wider public interest as it would facilitate the provision of much needed housing, and in particular affordable housing, in the Borough.
21. I therefore conclude that the application should be granted and an Order of Exchange should be made.

Alison Lea

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 Surrey County 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 no. CL185 to exclude the Release Land; and
- (b) To register the Replacement Land as common land, by amending Register Unit no. CL185 to include the Replacement Land.

First Schedule – the Release Land

Colour on Plan	Description	Extent
Red	Land forming part of Common Land Register Unit no. CL 185 to the east of Loxwood Road, and immediately to the north of Woodland Grange School, Alfold Crossways	332 square metres

Second Schedule –the Replacement Land

Colour on Plan	Description	Extent
Blue	Land to the east of Loxwood Road, Alfold Crossways forming part of proposed residential development	657 square metres

Alison Lea

Inspector



Willows

CHILTON CLOSE

Grasslands

Que Sera

Pound Cottage

Little Pond

The Pond

Old Pound Cottage

Tanglewood

Hunters

Albany Place

Bays

Willowslea

Tmimi

Oak Bank

SACHEL COURT DRIVE

LOKWOOD ROAD

Orecombe

Garden Cottage

Alford Cottages

Aloma

Mercedes

Woodland Grange @ Alfold

9.62

67.2

9.5

11.13

503867E
134545N

+