



## Application Decision

Inquiry opened on 30 January 2018

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: 18 May 2018

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**Application Ref: COM/3170236**

**Therfield Heath, Hertfordshire**

Register Unit: CL 92

Registration Authority: Hertfordshire County Council

- The application, dated 6 January 2017, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister and exchange land registered as common land.
  - The application was made on behalf of the Therfield Regulation Trust ("the applicant").
  - **The release land** comprises of an area of 0.67 hectares situated at the corner of Sun Hill and Briary Lane<sup>1</sup>.
  - **The replacement land** comprises of an area of 0.67 hectares and is located between Therfield Road and the land known as Fox Covert.
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### Decision

1. The application is refused.

### Preliminary Matters

2. I held a public inquiry into the application at the Coombes Community Centre, Royston during the periods of 30 January 2018-2 February 2018 and 5-8 February 2018. I carried out an unaccompanied site visit prior to the inquiry and a more extensive visit following the close of the inquiry when I was accompanied by the interested parties.
3. Over 140 objections<sup>2</sup> and 70 representations of support were submitted in response to the advertisement of the application. The applicant was represented at the inquiry by Mrs Sharples and she called four witnesses (Dr Combe, Mr Gourd, Ms Brockless and Mr Smith). Other individuals spoke in support of the application. A number of people gave evidence in opposition to the application with Mr Shewan, Mrs Pearson<sup>3</sup> and Mr Hall attending all or most of the inquiry sessions. Ms Denton of Hertfordshire County Council and Ms Harper and Ms Orchard of Natural England ("NE") also spoke in opposition to the application. I shall refer to "the objectors" when addressing matters that are applicable to a number of objectors.

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<sup>1</sup> It does not encompass the land used to access the property known as 52 Sun Hill

<sup>2</sup> Including a petition signed by a number of additional people

<sup>3</sup> Mr Shewan and Mrs Pearson co-ordinated the objections from a number of local residents

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4. A late representation, in relation to a consultation involving an additional housing development off Briary Lane, has been circulated and I have had regard to the invited submissions in respect of this matter (see paragraph 71-72 below).
5. A plan showing the location of various features in the area, helpfully provided by Ms Brockless, is attached to this decision. However, in terms of the precise extent of the release land and the replacement land, reference should be made to the plans included with the application.

### **Main Issues**

6. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as common land may apply for the land to cease to be so registered. If the area of the release land is greater than 200m<sup>2</sup> a proposal must be made to replace it with other land to be registered as common land.
7. 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<sup>4</sup>;
  - (d) any other matter considered to be relevant.
8. Section 40(1) of the Natural Environment and Rural Communities Act 2006 imposes a duty on every public authority when exercising its functions to have regard to the conservation of biodiversity.

### **Procedural Matters**

9. Before considering the main issues above, I shall address certain procedural matters in relation to this application. In particular, Mr Hall draws attention to issues he submits impact upon the validity of the application. I address the issue of alternative proposals later in this decision. The failure of the applicant to list any alternative proposals does not invalidate the application.
10. A letter from the Planning Inspectorate of 32 [sic] February 2017 drew the applicant's attention to particular matters arising from the application that needed to be remedied. One issue was the failure of the draft notice to specifically name the common. Mr Hall points out that the published notice described the proposed common land to be deregistered as "*SUN HILL ROYSTON HERTFORDSHIRE SG8 9AY (CL 92)*".
11. Regulation 7(2)(b) of the relevant regulations<sup>5</sup> requires the notice to contain the name of the common land affected by the proposal. The notice clearly does not contain a reference to Therfield Heath. I am not convinced in light of the information contained in the notice that this was a deliberate attempt to

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<sup>4</sup> 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.

<sup>5</sup> The Deregistration and Exchange of Common Land and Greens (Procedure) (England) Regulation 2007

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mislead the public. The notice identifies the piece of land proposed to be deregistered by reference to a post code in the title and the release land and replacement land are set out in the Schedule. Further, the unique reference number (CL 92) identifies the common in Hertfordshire concerned. Although the notice does not strictly comply with the relevant regulation, I consider the issue to be minor given the matters outlined above. I do not find that anyone is likely to have been prejudiced by this issue and it would be unreasonable at this stage to require the notice to be re-advertised. In these circumstances I am permitted to waive this requirement<sup>6</sup>.

12. I now turn to the notice of the inquiry issued by the Planning Inspectorate. Mr Hall refers to the absence of my name from the notice<sup>7</sup> and the address from where documents could be obtained from the Planning Inspectorate. I outlined at the inquiry that I considered no prejudice arises from these matters and it remains my view that this is the case. My name was notified to the interested parties in August 2017 along with my requirements for the inquiry. In terms of obtaining particular documents, the notice states these could be inspected at the offices of the Therfield Regulation. I understand that arrangements were subsequently made for an additional set of documents to be placed on deposit at Royston Library.
13. The Commons Regulation (Therfield) Provisional Order Confirmation Act 1888 ("the Act") and an Award of 1893 entrusted the management of the common to elected Conservators. Therfield Heath itself was owned by the Church Commissioners. On 1 May 1979, a Trust Deed had the effect of creating the Therfield Regulation Trust and on the same day the ownership of the common was transferred to the newly formed Trust. The Trust Deed appointed the Conservators at the time as the trustees to hold the property for the charitable purposes of public access to the common and public recreation thereon.
14. Mr Hall questions whether the application was made by the landowner and he draws attention to references in the application form to the "*Therfield Regulation*". However, the application form is signed on behalf of the "*Therfield Regulation Thrursts*" [sic]. Clearly the land was transferred to a trust to be known as the Therfield Regulation Trust in 1979 and Land Registry Title number HD396640 records the trustees of the Therfield Regulation Trust as the landowner. It is also apparent that the trustees support the application. I therefore take the view that the application was made by the owner of the release land.
15. In terms of the point raised by Mr Hall regarding the need for particular documents to be signed by two trustees, I do not consider that this invalidates the application as there is the potential, if required, for this matter to be remedied before any consent is granted. It is not necessary for me to comment on other matters raised that lie outside of the scope of this application. How the Trust is administered is not a matter for me to address for the purpose of my decision.
16. Reference is made by the objectors to Clause 2 in the Act, which states "*The Land Commissioners are hereby empowered to sanction the sale or exchange of portions of Therfield Heath, or of the whole or any part of the Greens, except such portion of the Heath as lies near to or adjoins the town of Royston, not*

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<sup>6</sup> Regulation 6(7)(c)

<sup>7</sup> Regulation 10(2)(e)

*exceeding in the whole twenty-five acres, for the purpose of obtaining a recreation ground adjacent to the village of Therfield".*

17. I do not accept the above clause prohibits the sale or exchange of the release land. The clause merely gave the Land Commissioners a specific power at the time to sell or exchange land (excluding land adjacent to Royston) for a particular purpose. It does not prevent the release land being sold or exchanged in other circumstances. However, there is no express power in the Act to do so.
18. The applicant acknowledges that there is no right in the award or the trust deed to dispose of property. However, it is submitted that there are, in common with other unincorporated charities, statutory powers to enable this to happen by reference to Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 and Sections 117 and 119 of the Charities Act 2011. In support, reference is made to a letter of 25 September 2014 from the Charity Commission which expresses the view that the Trust has the power to dispose of land. Having regard to these matters, I see no reason to conclude that an exchange of common land could not happen.
19. Reference is made by the objectors to the lack of consultations with reference to the published document known as 'Common Purpose' which is endorsed by the Defra National Common Land Stakeholder Group. Whilst this document sets out the best practice on common land matters, the failure to follow any of the recommendations is not a reason for me to turn down the application. Nor is it for me to instruct the trustees to undertake any future applications in a particular manner. However, clearly a more extensive consultation exercise may have resolved some of the issues raised at the inquiry.

### **The Application**

20. The aim of the proposed exchange is to enable the release land to be sold with the benefit of planning permission. It is intended that the funds raised from the sale will be used for the management of Therfield Heath and the maintenance and improvement of facilities at the heath. These proposals are addressed later in this decision. However, issues relating to whether it was appropriate to grant planning permission are not relevant to my decision.
21. The release land is located between Bridleway 13 (known as Briary Lane) and properties on Sun Hill, Echo Hill and The Dell. It comprises mainly of an area of grassland. A proportion of the site contains vegetation, predominantly comprising of sycamore trees. There is also a small car park within the land adjacent to Briary Lane. The land is relatively flat compared to other parts of the common with a difference in height of approximately 5 metres.
22. The replacement land is located on the southern boundary of the common in the locality of Therfield Road. It is an area of woodland with a permissive path running between the road and the land known as Fox Covert. The replacement land is owned by Quickpure Limited who is a party to the application. If the application is successful, the applicant has agreed to purchase the land.

## **Reasons**

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

23. It has not been shown that the mineral rights retained by the Church Commissioners have any relevance to the proposed deregistration of the release land.
24. A number of parties have the right to graze sheep on the common (known as stint holders). The applicant states that none of the stint holders have grazed or expressed a wish to graze sheep on the common. There is nonetheless an agreement in place with NE for another party (Mr Law) to graze sheep on parts of the common and the applicant has consented to this arrangement.
25. The proposed removal of the fencing next to the replacement land means that sheep could have access to this land in the future. However, I generally agree with Ms Denton that this area of woodland is not suitable grazing land. Whilst there is the potential loss of grazing land arising out of the proposed exchange, it is accepted that grazing has not taken place on the release land for many years. As discussed later, the release land has in the past been used for recreational purposes. Ms Orchard also accepts that there are practical difficulties in grazing sheep on the release land. In particular, she agrees that the number of sheep that could be placed on it would be limited. Ms Brockless estimates that between three to ten sheep could be grazed on this land. Overall the information supplied indicates that the use of the release land for the grazing of sheep is not presently a viable option. Nor is there anything to suggest that this is likely to change in the near future.
26. In light of the above, there is nothing to indicate that any party occupying or having rights over the release land would be adversely affected by the application to any significant extent.

### ***The interests of the neighbourhood***

27. I consider that the neighbourhood should be taken to encompass the inhabitants of Royston and Therfield. It is within these settlements that the common is located. However, the impact of the exchange will be felt more by those residents who live closest to the release land and therefore the greatest weight should be given to the interests of these local inhabitants. In this respect, I note that there are a number of properties near to the release land. The replacement land in contrast is located within a rural setting.
28. Notwithstanding my comments above, I agree with Mrs Sharples that the replacement land does not need to be the same character as the release land and may be some distance away from the release land. In support, reference is made to the case of *R on the Application of Tadworth and Walton Residents' Association Mr Clive Elcome v Secretary of State for Environment, Food and Rural Affairs v Walton Heath Golf Club Limited, Reigate and Banstead Borough Council 2015*. However, the location and character of the release land and the replacement land clearly need to be considered in respect of this application.
29. There are presently three main sources of income for the Conservators, which are generated by leases for a golf course, racehorse gallops and sports centre and cafe. There are also other ad hoc sources of income, for instance funfairs and circuses. Reference is made by the objectors to the relatively healthy finances of the Conservators. In response, it is stated that these reserves are

not enough to allow any substantial capital investment in facilities and not enough to generate an income for the Conservators. Further, the Conservators are concerned about the future and point to the risk of particular tenancies ceasing.

30. It is intended that the funds generated from the sale of the release land will be used for the benefit of local residents and the public generally. In this respect, the funds need to be held in an endowment due to the charitable status of the land. The objectors question whether sufficient funds can be raised from the investment of the capital from the sale of the release land to fund particular projects. I accept that there are some doubts regarding the amount of income that could be derived from the investment of the money raised from the sale of the release land. However, it is estimated that the sale could generate in the region of £1.4 million.
31. The common has historically been used for sporting activities. Presently parts of the common comprise of a golf course, racehorse gallops, rugby pitches, tennis courts and a hockey pitch (no longer used for matches). There are changing rooms and a cafe located near to the sports pitches. It is also clearly the case that the common is used to a significant extent for other activities and recreational pursuits.
32. The applicant outlines a desire to provide enhanced facilities linked to particular sports which would be consistent with the objectives of the Conservators. It is considered that the provision of a fenced artificial turf pitch ("ATP") would generate a rental income. An ATP would primarily be used by Royston Hockey Club but it could be hired by junior footballers and other groups. I acknowledge the point raised by the objectors regarding the charging for the use of facilities or membership costs for particular clubs. However, the provision of sporting facilities can be viewed as being beneficial to the neighbourhood and potentially the wider public.
33. Mr Gourd (the chairman of Royston Hockey Club) outlines how the club played on a grass pitch on the heath between 1958 and 1990. A change in rules has meant that there is a need for adult league games to be held on an ATP. The club has had to play at different home grounds and are now based at Cambridge. This has led to a decline in membership as the majority of members live in Royston. He expresses concerns about the future viability of the club given the circumstances. Conflicting figures have been provided in relation to the provision of the pitch and the income that can be generated from it. In terms of the costs associated with the pitch I place greater reliance on the information provided by Mr Gourd. The maintenance costs would also appear to be limited. However, until a facility is up and running there will be some uncertainty regarding the revenue that can be generated and the extent to which particular groups can be accommodated. Nonetheless, I accept that the provision of an ATP would be of benefit to the neighbourhood.
34. Planning permission was obtained on 6 February 2015 for the ATP but this has now expired. There is no guarantee that a further permission will be granted but equally there is nothing to suggest that a similar application will be refused. However, its construction would require consent under Section 38 of the 2006 Act or an exchange under Section 16 of the Act. Whilst Mrs Sharples asserts that Section 38 is relevant in this case, no such application is presently under consideration. An application would need to be resubmitted at a later date to encompass the pitch as well as the proposed fencing.

35. There is uncertainty regarding whether the hockey pitch will be constructed as it relies on consent being granted which is outside of the applicant's control. In the circumstances, the aspirations of the applicant and the hockey club for the provision of an ATP and the potential benefits arising from it can carry only minimal weight. On this issue, Mr Hall points to a large proportion of the representations in support relating to the provision of an ATP.
36. Reference is made in support of the application to other secondary proposals for the provision of sporting facilities on the common, for instance new changing rooms. The rugby club is stated to be in special measures due to the current mixed-sex changing rooms. However, it is apparent that the additional proposals are dependent upon other sources of funding. Again commons consent is likely to be required for particular works to take place. Due to the uncertainty regarding what will happen in terms of the provision of additional facilities it is difficult to give weight to any suggested proposals.
37. The applicant points to the poor condition of the release land and its lack of current use. In contrast, the objectors say that a lack of maintenance has contributed to this situation. Reference is also made to problems elsewhere, including fly tipping near to the replacement land. Further, I concur with NE that instances of unlawful activities could be addressed by management and enforcement action.
38. In terms of the twenty-four responses<sup>8</sup> obtained by Ms Denton from residents living near to the release land, she accepts her questions may have influenced some of the responses. Nonetheless, the responses are supportive of use of the release land by children in the not so distant past. This view is further endorsed by the other submissions from the objectors, including those who appeared at the inquiry. Mr Shewan says the land was used by local children and was not limited to children living in properties on Sun Hill and Echo Hill. NE refers to the fact that the right to play is set out in Article 31 of the United Nations Convention on the Rights of the Child, which was ratified by the UK Government in December 1991. Further, Play England<sup>9</sup> has provided a play charter stressing the importance of local space where children can play independently.
39. Reference is made to the use of the release land for ball games, picnics, scouting activities and playing in trees. Football goal posts were in place from around 1995 until an agreement with North Herts District Council ceased in late 2012. A pitch and signs of wear associated with use are evident on an undated aerial photograph provided by Mr Shewan. The photographs provided and my observations of the site are also supportive of the existence of worn paths across the release land.
40. The objectors draw attention to the different nature of the replacement land which means that it could not be used for certain activities that have occurred on the release land, for instance ball games. Nonetheless the replacement land could be used for other activities and it will have some value. In terms of the availability of land elsewhere on the common for play, this would not mitigate the loss of the release land for local residents. Overall, I find that residents in the immediate locality of the release land will suffer loss from the proposed exchange of common land.

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<sup>8</sup> A total of fifty properties were targeted

<sup>9</sup> A government advisory body on play

41. I address below in relation to the public interest particular matters which are also likely to impact on the neighbourhood. The interests of both the neighbourhood and the public will need to be considered in relation to such matters when reaching my conclusion on the application.

***The public interest***

42. Planning permission was granted for the construction of eight houses on 29 May 2015 and Mr Smith outlined at the inquiry his expectation that an application for the approval of the reserved matters will be made before the expiration of the period in the consent. Although not strongly pursued by the applicant, it is submitted that there would be some public benefit in the provision of these houses. I accept that this is the case but I do not consider it to be a significant point given the number of houses involved.

43. I have addressed the past use of the release land for particular activities above. The replacement land is crossed by a permissive path which forms part of two well-established long distance walks. Although Ms Denton believes it is unlikely that the permissive path will be withdrawn, use of this path was granted by permission of the landowners. On this issue, I note that the permissive path agreement is between Hertfordshire County Council and the former landowners (Mr and Mrs Dawson). However, there is nothing to suggest that action has been taken to discourage use after the sale of the land in 2013. Ultimately the status of the path within the woodland is not for me to determine. Whilst I accept that there would be some benefits arising from permanent access to Fox Covert, access to it can be obtained from elsewhere. It is also possible to access Penn Hill and Church Hill from the common.

44. The objectors refer to an issue involving access to the replacement land at the present time due to the difficult structure (described as a rambler gate) that needs to be negotiated at the entrance off Therfield Road. In response, it is stated that a more suitable means of access will be provided at this point and the boundary which borders the common at the present time would be removed. Ms Brockless says it is planned to provide a better path through the replacement land which would include a graded slope and accessible entrance gate.

45. I accept that if the exchange is granted measures could be implemented to provide better access for the public, including those people who have limited mobility. However, access to the replacement land involves travelling over fairly demanding terrain via the common or Therfield Road. Reference has been made by the objectors to this road being subject to fast moving traffic given that vehicles are permitted to travel up to 60 miles per hour along it. In comparison, Ms Mukherjee refers to the low frequency and speed of traffic in the vicinity of the release land.

46. Ms Mukherjee draws attention to the interests of the black, Asian and minority ethnic ("BAME") community. She says few BAME people make use of the main heath but she has seen use by them on the release land. I accept that generally members of the BAME community may have historically felt a sense of unease when visiting the countryside and could continue to do so. However, I do not consider that I have evidence that points to the exchange having a specific adverse impact on the BAME community.

47. Some of the supporters accept that the replacement land has been used by the public for some time. Mrs Pearson and Mr Shewan state that the land has been



used for generations. This point was accepted by Cllr Hunter at the inquiry. Mr Hall refers to playing within the replacement land as a child in the 1970s. This is distinct from the permissive path addressed above. Reference is also made to a former information board at the entrance to the replacement land. Mr Keep says he was previously under the impression that the replacement land was part of the common.

48. Mr Shewan and Mr Hall have provided documentation relating to the options considered by the Conservators for an exchange of common land in 1976. The replacement land was not considered suitable land in exchange for an area of common lost because of a road scheme on two grounds. The second ground was that the public already enjoyed rights over it.
49. It states in the first bullet point of paragraph 4.5 of Defra's Common Land Consents Policy that "*the Secretary of State would not normally grant consent where the replacement land is already subject to some form of public access, whether that access was available by right or informally, as this would diminish the total stock of access land available to the public*". Whilst I do not say the replacement land is used by right, the evidence points to it having been used informally for a number of years. This issue will weigh in favour of the refusal of the application. In reaching this conclusion, I agree with Mr Hall that any continuing use of the release land, should the exchange be granted, is likely to be a temporary arrangement bearing in mind the applicant's intention to sell the land with the benefit of planning permission.
50. I now turn to the car park that sits within the release land off Briary Lane. The documents provided by Mr Hall reveal that this car park was provided by the Conservators. Works were undertaken in the spring of 1997 and followed the grant of planning permission in 1996. It was evident during my visits to the site that people make use of this facility and this was endorsed by the objectors. Mr Hall says the car park is rarely empty in daylight hours and it is often full. The evidence of Mr Shewan is that people meet here on a daily basis for the purpose of walking and running.
51. I accept that there are car parks elsewhere on the common but the loss of this facility would impact on people who park in this area to access the common. The evidence indicates that it is a fairly well used public facility and its removal may lead to cars parking on the surrounding streets to the detriment of local residents. The applicant points to the potential for vehicles to be parked within the proposed development. However, it is unclear from the outline planning permission the extent to which the parking of vehicles by members of the public could be accommodated. In terms of the replacement land, there is an unofficial parking area on Therfield Road. This area can accommodate a few cars but Mr Hall points to the problem of safely exiting this area given the nature of the road.
52. In addition to the stated aim to improve sporting facilities on the common, the applicant wishes to use some of the funds generated by the sale of the release land to maintain and improve the common. In this respect, reliance is placed on a draft management plan ("the plan") produced by Ms Brockless. A number of criticisms have been made in relation to the timing of this plan and the extent to which any proposals will be implemented. There is nonetheless general agreement that the heath needs to be properly managed and protected.

53. I consider the fact that some of the funds could ultimately be spent on maintaining greens elsewhere in Therfield, which are the responsibility of the Conservators, to not be material to my decision. It is also apparent from the evidence of Mr Smith that the expenditure of the Conservators is mainly spent on Therfield Heath.
54. Ms Brockless was approached to draw up the plan in September 2017. She states a plan would have been produced in any event and this was endorsed by Mr Smith. However, it is unfortunate that it was commissioned at such a late stage in terms of the application. The plan itself will remain in draft form until Ms Brockless can complete some final details in the spring/summer with survey work. Before the plan can be finalised there will need to be a consultation exercise which will potentially lead to some changes before it is approved by NE. Until the final version is in place no part is securely costed and Ms Brockless confirms that not all of the proposals will necessarily be implemented.
55. The plan sets out a vision for the management of Therfield Heath and potential projects for the future. It is clear from the information provided that the heath is of significant ecological value and the majority of it is a site of special scientific interest ("SSSI") and local nature reserve. Of particular importance is the protection of the areas of chalk grassland and the potential increase in chalk grassland in the future. For instance, the area around Church Hill is known for its abundance of the nationally rare pasque flowers. Ms Brockless outlines that chalk grassland has suffered from intensified agricultural practices and loss of sheep grazing. Therefore the remaining sites are of high conservation value. Without constant management the biodiversity of the chalk grassland declines very quickly.
56. Information regarding the high costs of maintaining chalk grassland was presented to the inquiry. Presently, the chalk grassland is maintained to a certain extent but some areas are neglected due to a lack of funds. Significant funds are stated to be required to manage the site in accordance with the plan.
57. Other suggestions in the plan include the maintenance of pathways to discourage additional routes across the common from being used, the creation of assessable routes elsewhere, the purchase of a low impact four wheeled drive vehicle to periodically transport less able visitors to key spots and employment of a full time warden. Longer-term goals include the provision of toilets and a visitor centre.
58. Dr Combe supports the appointment of a full-time warden who would be able to monitor activities on the heath, carry out ongoing maintenance and engage with the public. In addition, she would like to see improved information and interpretation boards at strategic places. Dr Combe stresses the importance of well-maintained dog and litter bins and the costs involved. She says resources are stretched and they cannot do everything they want to.
59. I accept that a number of proposals in the plan, if implemented, would be beneficial for the management of the common and in the public interest. I do not doubt that funds raised from the sale of the release land would be spent to some extent on the management of the common. However, it is not certain what measures will be taken forward. This means it is difficult to attribute weight to specific proposals.

60. The release land is not a SSSI or designated nature reserve. Its use has primarily been for recreational activities. Ms Brockless says that the level of cutting (or lack of it) has led to species such as the barn owl being seen in this area. They hunt over the area but if the grass is cut they would go elsewhere. She says the release land is surrounded by rich habitats so a diverse range of butterflies and birds would be expected. However, the species are not dependent upon the release land. Overall I accept that in general terms the release land is of limited ecological value.
61. Ms Brockless says the biodiversity of the release land could be improved by felling the sycamores and re-planting with a selection of native shrubs and some small trees. This would also make its appearance more appealing. In terms of the suggestion that the release land is returned to chalk grassland, this is likely to be a lengthy and costly exercise. It would also detract from the main recreational use of the land. Ms Brockless accepts the gardens of the proposed houses will not necessary lead to better habitats.
62. The replacement land is stated to predominantly be designated as a SSSI and a local nature reserve. It comprises of a tree belt of beech and other species which are a source of habitat for particular species. Whilst it would be possible to restore the replacement land to chalk grassland, Ms Brockless accepts that this would be a complex and potentially controversial proposal. It would also conflict with public access through this area of land. The position of the permissive path through the site will limit the improvements that can be made to some extent. Ms Orchard says there is an expectation that the SSSI will be managed irrespective of whether it is common land. The view of Ms Brockless is that this site could be better managed.
63. Mr Keep refers to the long distance views of Cambridge that are visible from part of the release land and these were evident during my visit. However, the release land itself is of limited landscape value. There were some wide reaching views available during my visit from the replacement land but these may be more limited in the summer months. Nonetheless, I note that the applicant has indicated that some trees could be removed from the replacement land to open up the views more. The replacement land itself is a visible feature in the surrounding landscape. In terms of the presence of beech trees, a beech belt is a natural character area and such a feature adds to the value of the land.
64. There is nothing to suggest that the exchange will impact upon any archaeological remains or features of historic interest.

### **Alternatives**

65. The objectors assert that the applicant has not considered any alternative proposals. Given that the objective of the exchange is to raise funds, the issues put forward at the inquiry primarily related to alternative sources of funding. No viable options have been put forward in terms of the provision of an alternative piece of replacement land.
66. Planning permission has been granted for a new housing development known as Ivy Farm, which will be located on the northern side of Baldock Road opposite part of the common. It is proposed to allocate money to the Conservators as part of an agreement pursuant to Section 106 of the Town and Country Planning Act 1990. Mrs Sharples outlines that this would involve £1000 per house (a maximum of £279,000). The money is to address the

increased use of Therfield Heath arising from residents of the development. An additional £100,000 is proposed for visitor facilities. Ms Brockless says £279,000 from the development would be a starting point for the implementation of the proposals. It would not in her view remove the need for the additional funding.

67. Although it is likely that the money outlined above will be forthcoming in the future, it is not guaranteed at the present time. A Section 106 agreement has not yet been signed and it is anticipated that the money will only be paid once a proportion of the houses are built. It is estimated that the construction process will not commence until 2019-20. Further, as Mrs Sharples points out the allocated money needs to be spent on specific matters.
68. Mr Smith does not consider that there are any alternative means of securing sufficient funding to manage the common and particular suggested alternatives would generate limited funds. He also says that the sports organisations have explored funding from other sources and this was endorsed by Mr Gourd. In response to Mr Hall's suggestion that a charge could be made for parking, Mr Smith states that this has not been pursued as it may discourage use of Therfield Heath and it would impact upon the less wealthy and people with limited mobility. Whilst some additional suggestions have been put forward by the objectors, there is no evidence to indicate that they would deliver the levels of funding required by the Conservators.
69. Mr Smith viewed the suggested setting up of a 'Friends of Therfield Heath' scheme as providing assistance with maintenance projects rather than a fund raising exercise. There is at the present time a part time warden (Mr Thompson) who spoke with great enthusiasm at the inquiry regarding the heath. He outlined the need for a full time warden. Dr Combe has initiated the setting up of a group of volunteers to work on the maintenance of the common and to start the process of community engagement (the first meeting was held on the Sunday before the inquiry). In my view, if a sufficient number of people are persuaded to volunteer regularly this would provide some much needed assistance and could potentially reduce particular maintenance costs. It may also be possible to raise some additional funds from people becoming members of a 'Friends of Therfield Heath' scheme.

### **Other Matters**

70. In terms of the preservation of biodiversity on the common, the additional funds raised from the sale of the release land would assist with this aim. It is also likely to provide an opportunity for other works to be undertaken to improve the common. However, I consider the benefits to the replacement land arising out of the proposed exchange to be more limited. Although Ms Brockless accepts that the biodiversity on the release land could be improved if some works were undertaken, it is apparent that this is unlikely to happen at the present time.
71. I now address the late representation and the invited submissions regarding a consultation by another party (Gladman Land) for a proposal to build 120 homes on land off Briary Lane to the south of the release land. This consultation commenced after the close of the inquiry and the proposal was not disclosed by the applicant for confidentially reasons. I share the concerns about the late disclosure of this information which prevented the issue from being aired at the inquiry. However, I am satisfied that I can address this matter from the written submissions provided.

72. It seems to me that the relevant issues that could possibly arise out of the proposal are the potential for funds to be raised by the applicant, which may mean that the release land would not need to be sold; the possibility that a fresh application for planning permission for the release land will be submitted; and the impact of Briary Lane serving as the access road to the proposed 120 houses. However, no planning application has been submitted and the process is at an early stage. It cannot be said that an application will be pursued let alone that permission will be granted. Therefore, I do not consider that I can give any weight to the potential impact of the general proposals contained in the consultation document.
73. I have been asked to address some additional matters, including other works that have taken place on the common. However, I consider these to be beyond the scope of my decision.

### **Conclusions**

74. There is nothing to show that the exchange would have a significant impact in terms of the interests of any person occupying or having rights over the release land.
75. Whilst there is uncertainty regarding the extent to which particular proposals within the draft management plan will be implemented, the intention to spend some of the funds raised by the sale of the release land on the maintenance and improvement of the common would clearly be of benefit to the neighbourhood and the public in general. Certain proposals would assist with the preservation of the biodiversity on the common. However, in respect of the proposals for the sporting facilities, it cannot be determined to any reasonable extent whether these will be implemented and the weight to be attached to these proposals will be limited. I do not consider that significant weight should be attached to the provision of eight additional homes.
76. The exchange itself will lead to the loss of land that has in the past been used for recreational purposes and this will impact upon those people who live in the immediate locality of the release land. The replacement land has a different character but this does not necessarily make it less valuable. In landscape terms, I find the replacement land to have greater value. However, I consider that its landscape value is likely to endure irrespective of the outcome of the application. In particular, aside from the permissive path, there is evidence of the replacement land being widely used by the public since at least the 1970s. This factor alone weighs heavily against the granting of consent for the exchange. The exchange would also lead to the loss of the car park sited on the release land to the detriment of the public. I am not satisfied it can be determined that there would be adequate provision within the proposed development to compensate for the loss of this facility.
77. Following consideration of the potential benefits put forward in support of the application and my other conclusions regarding the release land and the replacement land, I do not find on balance that consent for an exchange of common land should be granted.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **For the Applicant:**

Mrs D. Sharples

Solicitor instructed by the applicant

She called:

Dr C. Combe

Conservator and Trustee

Mr S. Gourd

Chairman of Royston Hockey Club

Ms S. Brockless

Mr D. Smith

Clerk to the Conservators and the Therfield Regulation Trust

### **Additional Supporters:**

Mr R. Kennedy

Cllr T. Hunter

Cabinet Member for Community Engagement and Rural Affairs at North Herts District Council

Cllr F. Hill

Member of North Herts District Council

Cllr F. Smith

Leader of Royston Town Council

Mr V. Thompson

### **The Objectors:**

Mr C. Hall

Mr D. Shewan

Mrs K. Pearson

Mr N. Keep

Mr D. Ferguson

Ms S. Mukherjee

Mr R. Ketteringham

Ms H. Denton

Ms N. Harper

Ms N. Orchard

Mr O. Barros

Mr W. Anderson

Mrs J. Munden

For Hertfordshire County Council  
Representing Natural England  
Representing Natural England

### **Interested Party:**

Mr D. Aggett










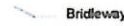

## **DOCUMENTS**

1. Opening statement for the applicant
2. Opening presentation on behalf of the group of objectors
3. Additional documents tendered by Mrs Pearson
4. SSSI Impact Assessment for the proposed Ivy Farm development
5. Plan showing an area of 300 metres from the centre of the release land
6. Lighting figures
7. Extract from Section 177 of the Charities Act 2011
8. Letter of 22 January 2018 from Royston Town Football Club

9. North Herts District Council report for the proposed Ivy Farm development
10. Minutes from meetings of the Conservators
11. Response to Mrs Pearson's figures in relation to an ATP
12. Statement of Mr Kennedy
13. Statement of Mr Aggett
14. Statement of Mr Anderson
15. Documentation relating to the car park at Briary Lane
16. Revised figures of Mrs Pearson in relation to an ATP
17. Google Earth photograph of the release land
18. Opening statement of Mr Hall
19. Letter to the inquiry from Mrs Hogan
20. Letter of 19 April 2017 from NE to North Herts District Council
21. Closing presentations on behalf of the group of objectors
22. Closing statement of Mr Hall
23. Closing statement for the applicant
24. Site plan produced by Ms Brockless



### Therfield Heath Key Areas

- |   |   |
|---|---|
|  Existing Chalk Grassland                    |  The main horse practise area on Gallops |
|  Car parking                                 |  Mature Beech Woodland                   |
|  Grass with fewer chalk grassland indicators |  Recent woodland                         |
|  Sports pitches                              |  Bridleway                               |
|  Public Rights of Way                        |  Replacement land                        |
|  Release land                                |   |

