
Application Decision

Site visit made on 15 January 2019

by Alan Beckett BA MSc MIPROW

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

Decision date: 28 January 2019

Application Ref: COM 3199 623

Land at Yateley Common, Yateley, Hampshire

Register Unit Number: CL 24

Commons Registration Authority: Hampshire County Council

- The application, dated 22 August 2018, is made under section 16 of the Commons Act 2006 ('the 2006 Act') to deregister and exchange land registered as common land. The application is made by Hampshire County Council ('the Council').
 - The release land comprises 607m² of CL 24.
 - The replacement land comprises 714m² of land south of Heathlands Cemetery and Cottage Farm, Yateley.
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Decision

1. The application is granted.

Procedural Matters

2. Section 16 (1) of 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 ('the replacement land').
3. I carried out an inspection of the release land and the replacement land on Tuesday 15 January 2019 in the company of Claire Collins and Nicki Paton of the Council.

Main Issues

4. I am required by Section 16 (6) of the 2006 Act to have regard to the following in determining the application:
 - (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest¹;

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.

(d) any other matter considered to be relevant.

5. In determining the application I have had regard to Defra's Common Land Consents Policy Guidance ('the 2015 Guidance') which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

The Application

6. Yateley Common was registered as common land under the Commons Registration Act 1965 and comprises an extensive area of heathland with much of the common being designated as a Site of Special Scientific Interest (SSSI). The common also forms part of the Thames Basin Heaths Special Protection Area (SPA) and is also a Site of Importance for Nature Conservation (SINC).
7. Yateley Common is subject to the provisions of section 193 of the Law of Property Act 1925 ('the 1925 Act') as a result of a revocable deed made on 5 May 1927 ('the 1927 Deed') by the Ecclesiastical Commissioners for England as Lords of the Manor and Hundred of Crondall.

The Release Land

8. The release land comprises 607m² of the 1,930,000m² of Yateley Common which is registered as common land. The land proposed to be deregistered comprises that part of the common on which the dwelling known as The Rangers House is built (edged red on plans 1 and 2 appended to this decision). The Rangers House was built on the registered common to provide accommodation for the Site Ranger following consent being granted by the Minister on 23 September 1971. A condition of the planning permission granted for the construction of the house was that it could only be occupied by the Site Ranger.
9. In 2013 the Countryside Service of the Council confirmed that The Rangers House was no longer required for operational use in line with the Council's policy of reducing its stock of service housing. Planning permission has subsequently been obtained to use the property without a service tie. As The Rangers House is no longer needed for operational purposes, the Council is seeking to dispose of the property on the open market. The Council considers that de-registration of the land on which the house is built will facilitate such a disposal.

The Replacement Land

10. The replacement land comprises 714m² of land which is contiguous with that part of the common to the south of Heathlands Cemetery and Cottage Farm and is shown edged light green on plans 1 and 3 appended to this decision².

Representations

11. The application under consideration is an amendment of the application as originally made and advertised. The original application for the de-registration of the land on which The Rangers House is built sought to offer as replacement

² The key to plans 1 and 3 refers to the replacement land as 'exchange' land.

- land a parcel of land to the east of The Old Cricketers and to the north east of The Cricketers public house. This land is owned by the Council but is not registered as common land.
12. Four representations were received as a result of the published notice³ of the original application; from the Open Spaces Society, from Mr P J Tipton, from Mr R Shrubshall and from Blackwater & Hawley Town Council ('the Town Council'). The representation from the Town Council was supportive of replacement land being offered.
 13. Responding to the points raised by Mr Shrubshall the Council submitted that it was seeking to de-register the minimum amount of land necessary in order to meet the objective of disposing of The Rangers House. The Council did not consider it was necessary to seek de-registration of the driveway shared by The Rangers House and Woodpeckers to achieve this.
 14. The gist of the representations from the OSS and Mr Tipton was that the replacement land proposed had been open to the public and managed by the Council for at least 40 years⁴. As the land being offered as replacement land was likely to already be subject to a public right of access for air and exercise, there was no benefit to the public from the exchange of this land for the de-registration of the land on which the Rangers House stood.
 15. Within the copy of the 1927 Deed submitted by the OSS is a copy of an Order of Exchange made by the Minister of Agriculture, Fisheries and Food dated 21 November 1958 ('the 1958 Exchange'). The 1958 Exchange demonstrates that Yateley Parish Council acquired the land originally proposed as replacement land from Moreland's Brewery in exchange for land to the south-east of The Cricketers which now forms part of the beer garden and car part of the public house.
 16. The 1958 exchange does not stipulate whether the provisions of section 193 of the 1925 Act transferred to the land that Yateley Parish Council acquired via the 1958 exchange; if it had done so then the public would already have a right of access over it. However, given that the land originally put forward has been in public ownership for over 60 years and appears to be held by the Council as public open space and for the purposes of public open space, it is likely that the public already has a right of access over it, and consequently could not be considered as replacement land.
 17. Mr Tipton submitted that the Council had other land contiguous with the common which it could offer as replacement land. In 1978 the Council had acquired 8,795m² of land to the south of Cottage Farm for use as exchange land in the event of road widening schemes. The Council's response to the matters raised by the OSS and Mr Tipton regarding replacement land has been to amend the application⁵ to provide replacement land from the 5,270m² of land south of Cottage Farm which remained of the land set aside for exchanges.
 18. In response to the amended application, the OSS were prepared not to object to the proposed exchange if (a) any fencing present on the southern boundary

³ Notice of the application was published in the Hampshire Independent on 30 March 2018

⁴ Mr Tipton's period of residence in Yateley

⁵ Notice of the revised application was published in the Hampshire Independent on 24 August 2018

of the replacement land and on the southern and eastern boundaries of the land previously added to the common was removed; (b) the Council amended the commons register to recognise the exchanges previously made; and (c) for the replacement land to be subject to s193 of the 1925 Act in perpetuity.

19. I saw on my site visit the remains of an old post and wire fence on the southern boundary of the proposed replacement land and that this fence was to the north of the ditch and bank which marked the historic boundary of the common. The removal of the remnants of this fence would remove any artificial barrier between the existing and proposed parts of the common although the holly thicket along the southern side of the boundary ditch may present a natural barrier to access between these parcels of land.
20. In responding to the points raised by the OSS, the Council has confirmed that it will take steps to ensure that all old and broken fencing within the land recently designated as common will be removed. The Council has also agreed that it will update the commons register to reflect previous exchanges, and has requested that the Secretary of State makes provision in the order of exchange (if granted) for s193 to irrevocably apply to the replacement land.

Assessment

The interests of persons occupying or having rights over the land

21. There are rights to pasture, pannage, turbary, estovers, piscary and soil extant over CL 24. It is not known which commoners exercise their rights over the common but the Council has received anecdotal evidence that this does occur. No representation was received which suggested that commoners would be disadvantaged or otherwise adversely affected by the proposed exchange.
22. The release land is owned by the Council who now wishes to dispose of the property on the open market as the house is no longer required to house a Site Ranger. The Council submits that it is seeking de-registration of the minimum amount of registered common land in order to be able to meet that aim. The proposed deregistration and exchange is in the interests of the applicants.

The interests of the neighbourhood

23. The 2015 guidance indicates that the issues to be considered in this context includes whether the exchange would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common.
24. The release land is subject to rights of access under the provisions of section 193 of the 1925 Act. It is not clear how the public's right of access for air and exercise was addressed when consent for the construction of The Rangers House was granted in 1971, but at the very least those rights of access over the release land are likely to have been suspended during the period when the land was required to house the Site Ranger engaged in the management of the common. If the proposed exchange is approved, the section 193 rights which the release land remains subject to will transfer to the replacement land under the provisions of section 17 (6) of the 2006 Act. The OSS has suggested, and the Council has agreed, that the transferring section 193 rights should apply irrevocably to the replacement land.

25. As part of the registered common, the release land is also subject to access rights under part 1 of the Countryside and Rights of Way Act 2000 ('the 2000 Act'). The replacement land will also become subject to the access provisions under the 2000 Act although those access rights will not come into effect until a review of the maps prepared under part 1 of the 2000 Act has taken place.
26. Given that the section 193 rights of access would be transferred to the replacement land irrevocably if the exchange were approved, there would in my view be no detriment to the neighbourhood in terms of access to the land.

The public interest

The protection of public rights of access

27. In respect of the effect of the proposed exchange on public rights of access I refer to my observations in paragraphs 23 to 26 above in relation to the interests of the neighbourhood which are equally applicable to the interests of the public. Bearing in mind my previous observations, I do not consider that the proposed exchange would have any adverse effect upon public rights of access.

Nature conservation

28. Natural England has been consulted on the application and has made no representation in response. The release and replacement land are adjacent to but excluded from the designated SPA and SINC (as shown on appended plans 2 and 3). The release land comprises a private dwelling and associated garden space and the replacement land is an area of grassland which contains some young trees and scrub. I do not consider that the proposed exchange will have any adverse impact upon biodiversity or nature conservation.

Conservation of the landscape

29. The release land is within the Cricket Hill Conservation Area. Other than de-registration of the release land, there will be no discernible impact upon the fabric of the Conservation Area arising from the proposed exchange. I do not consider that the character of the landscape will be affected by this proposal.

Archaeological remains and features of historic interest

30. Historic England has been consulted on the application and has made no representation in response. There are no listed buildings, scheduled ancient monuments or non-designated nationally important archaeological sites on the release land. There is no evidence before me that the exchange will have any adverse effect on archaeological remains or features of historic interest.

Other relevant matters

31. The replacement land to be provided is 714m² in area whereas the release land is 607m². There is therefore a net increase in common land which accords with Government objectives that the stock of common land should not be diminished.
32. As noted above, section 17 (6) of the 2006 Act provides for the transfer of the section 193 rights of access from the release land to the replacement land on the date on which the Commons Registration Authority amends the register.

The 1927 Deed which applied the provisions of section 193 of the 1925 Act to the common was a revocable Deed; consequently without further action, the section 193 rights which transfer will remain as revocable rights.

33. The Council has requested that supplementary provision be made in the Order of Exchange for those transferring rights to be applicable to the replacement land irrevocably. If an Order of Exchange is to be given, I propose to make such provision.

Conclusions

34. Having regard to these and all other matters raised in the application and in the written representations I conclude that the exchange will not have any adverse effect on those with rights over the land. There will also be no adverse effect upon the interests of the neighbourhood or the public.
35. I conclude that the application should be granted and an Order of Exchange should be given.

Alan Beckett

Inspector

Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17 (1), (2), (6), (7) (b) (ii) and (8) of the Commons Act 2006, **I HEREBY ORDER** the Hampshire 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 CL 24 to exclude the release land;
- (b) to register the replacement land as common land, by amending the register unit CL 24 to include the replacement land;
- (c) to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL24) 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 CL24;
- (d) Section 193 of the Law of Property Act 1925 (public right of access for air and exercise) shall apply irrevocably to the replacement land, and the Commons Registration Authority shall enter a note of the irrevocable application of the right to the replacement land in the land section of the register.

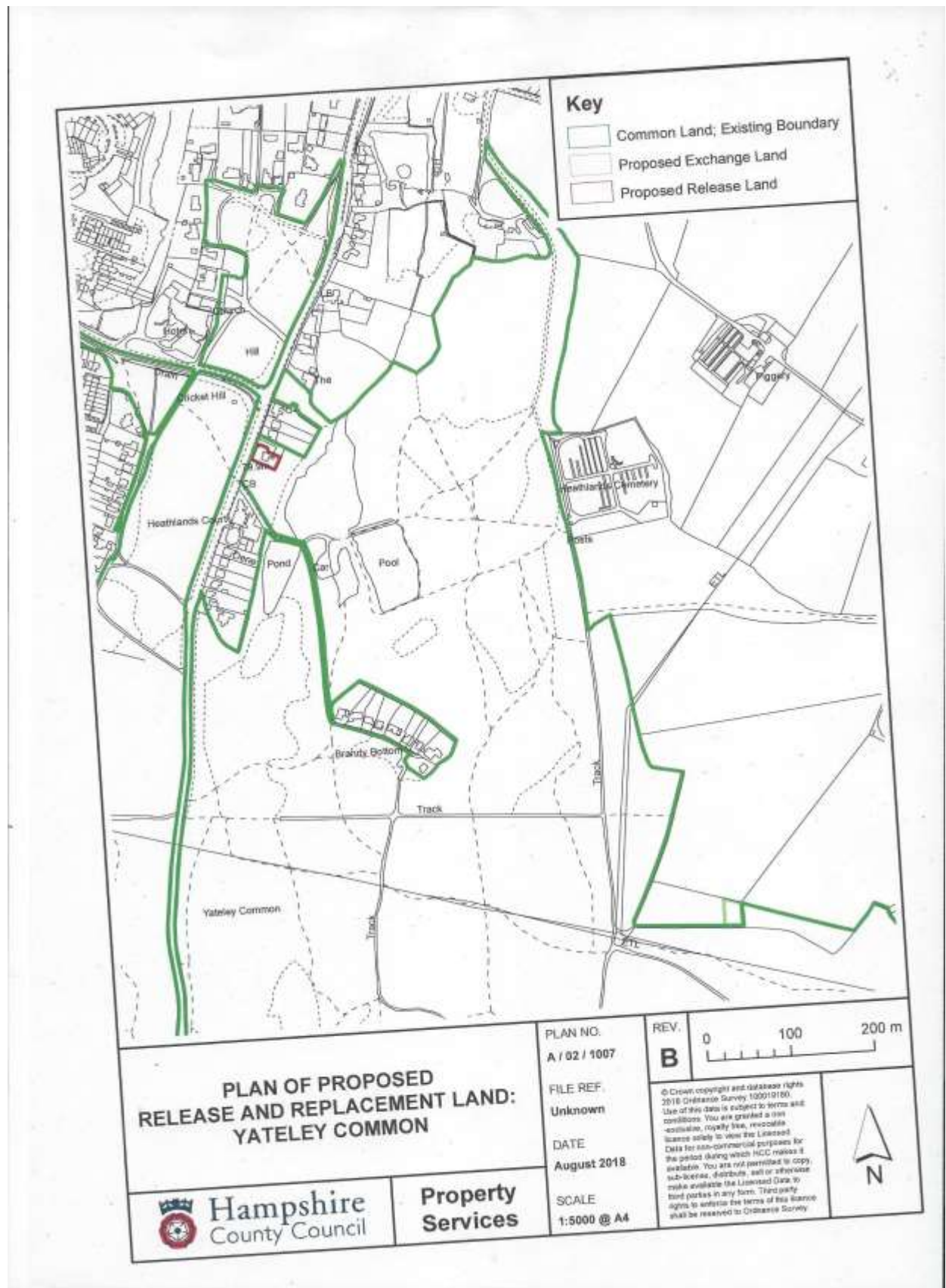
First Schedule – the release land

Colour On Plan	Description	Extent
Edged Red	Land comprising the dwelling house and garden known as The Rangers House, Cricket Hill Lane, Yateley, Hampshire.	607m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged light green	Land to the south-east of Heathlands Cemetery and Cottage Farm, Yateley, Hampshire.	714m ²

Plan 1 Proposed release and replacement land



Plan 3 – Replacement land showing SPA boundary

