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# Application Decision

Site visit made on 9 January 2019

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 31 January 2019**

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**Application Ref: COM/3205089**

**St Christopher's Green and the Fairground, Haslemere**

Register Unit: CL 340

Registration Authority: Surrey County Council

- The application, dated 14 June 2018, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister and exchange common land.
- The application is made by Waverley Borough Council.
- **The release land** comprises 4926m<sup>2</sup> of hard surfaced land currently used as a car park.
- **The replacement land** comprises 5087m<sup>2</sup> of mixed woodland located on a north facing slope. This land is not contiguous with the rest of the common and is situated on the opposite side of railway lines.

## Decision

1. The application is granted in accordance with the terms of the application [Ref: COM/3205089] dated 14 June 2018, and the plan submitted therewith subject to provision for the public right of access for air and exercise being transferred to the replacement land.

## Preliminary Matters

2. 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 ("the release 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 ("the replacement land").
3. I made an inspection of the site on 9 January 2019 when I was able to view both the release land and the replacement land. I was accompanied at the inspection by representatives of Waverley Borough Council, the applicant, and Haslemere Town Council, Haslemere Society, Haslemere Vision, Haslemere Community Land Trust and Ainé Hall, objectors.

## The Application

4. The application is made by Waverley Borough Council, owner of the release land and the replacement land for the purpose of enabling resurfacing and other works to be carried out on the release land.

### ***The Release Land***

5. The release land comprises 4926m<sup>2</sup> of roughly surfaced land currently used as a car park and associated recycling facility at Weyhill Fairground, Haslemere. It has apparently been in use for car parking for several decades.

### ***The Replacement Land***

6. The replacement land comprises 5087m<sup>2</sup> of mixed deciduous woodland located on a north facing slope at Sun Brow Wood, Haslemere. This land is not contiguous with the remainder of the common and is situated on the opposite side of a railway.

### **The Statutory Requirements**

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;
  - (b) the interests of the neighbourhood;
  - (c) the public interest;<sup>1</sup>
  - (d) any other matter considered to be relevant.
8. I will also have regard to published guidance in relation to the determination of applications under Section 16<sup>2</sup>.

### **Representations**

#### **Assessment**

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

9. The release land is owned by Waverley Borough Council, the applicant. There are no rights of common registered over it.
10. Members of the public have a right of access to the land on foot for '*air and exercise*' pursuant to the Law of Property Act 1925. Current use of the land for car parking does not physically prevent public access to the land but reduces its value in my view. In fact, it seems most unlikely that members of the public would choose to use the land for the purpose of air and exercise while it is in use as a car park.

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

11. The 2006 Act does not define the term 'neighbourhood'. However, published guidance<sup>3</sup> makes it clear that the term should be taken to refer to the local inhabitants.

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<sup>1</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>2</sup> Common Land consents policy, November 2015, Defra.

<sup>3</sup> The Explanatory Memorandum to the Deregistration and Exchange of Common Land and Greens (Procedure)(England) Regulations 2007, SI2007 No.2589.

12. In this case, the release land is situated close to the centre of the town of Haslemere and it seems appropriate to regard the entire town as the 'neighbourhood' for the purpose of assessing this application.
13. The area of the replacement land is slightly greater than that of the release land, so approval of the application would not lead to any net loss of common land.
14. As already mentioned, the release land is currently of little benefit to the inhabitants of the town for air and exercise but, as it lies close to the town centre shops and other facilities, the availability of car parking spaces on the land is considered by some objectors to be beneficial to the neighbourhood.
15. At present much of the car parking space is occupied by commuters from outside the town each day. If the application is approved, the borough council intend to improve the car park and introduce a charging system which could ensure that more space is available for shorter term parking more beneficial to the town centre. In the longer term it is intended that the land should be developed with a mixed-use development including around 50 dwellings designed to enhance the viability and vitality of the area. It is also proposed that at least 100 car parking spaces should be retained or provided within walking distance unless it can be demonstrated that there is already sufficient parking in the area.
16. The release land was the site of an annual fair but, although the land is still known as the Fairground, no fair has been held for many years and there is no evidence to suggest that this use might be revived in the future.
17. The replacement land is further from the town centre but is adjoined by residential development. It is an area of overgrown mixed woodland on a north facing slope which is steep in parts but has a relatively flat central section. It is currently partially accessible to the public and on my visit I saw some evidence of this. However, parts of the area are difficult to access as a result of overgrowth and/or steepness of slope and few people would be able to use the area as part of a circular walk. The borough council has stated that, if the application is approved, some limited clearance and earthworks will be undertaken to establish more convenient paths through the area. Nevertheless, it is still unlikely that much of the area will be usable by less able members of the public.
18. Accordingly, deregistration of the release land will have little adverse effect on the interests of the neighbourhood as the land will be improved but remain in its present use as a car park in the short term and, in the longer term may be redeveloped in a manner which would be potentially beneficial to the town. Although there is currently no right of public access to the replacement land, it is in fact open to such access. Nevertheless, as a result of its steep and overgrown condition it is unlikely to be much used by the public. However, the proposed creation of more convenient paths through the area would make it more attractive at least to able bodied members of the public.
19. Overall, it is my view that the proposed deregistration and exchange will have little adverse effect on the interests of the neighbourhood and some, albeit limited, beneficial effects.

## ***The public interest***

### *Nature Conservation*

20. Natural England (NE) has commented that the release land does not currently have biodiversity or landscape value. The replacement land is a priority deadwood habitat which should be preserved but, with appropriate management could be enhanced both in terms of public enjoyment and the encouragement of a greater range of insects and birds.
21. In response to comments, the council has prepared Management Proposals which include the preparation of a comprehensive Management Plan aimed at improving public access and enhancing the nature conservation value of the replacement land.

### *Landscape*

22. The replacement land has greater landscape value than the release land; it also affords extensive views over the town from some points.

### *Public Access*

23. As already mentioned, the public has a right of access to the release land in accordance with the Law of Property Act 1925 although this is currently of little benefit as a result of the use of the land as a car park. The inclusion of a suitable clause in the Order for the exchange of land would ensure that this right of access is transferred to the replacement land where it would be of greater benefit to the public.

### *Archaeological remains and features of historic interest*

24. Neither the release land nor the replacement land contains any scheduled ancient monuments. Historic England was consulted regarding the application and has raised no objection.
25. I have no reason to believe that the proposed exchange will have any adverse effect on archaeological remains or features of historic interest.

### *Conclusions on the public interest*

26. Overall, the proposed deregistration and exchange will have little adverse effect on the public interest and potentially will bring some benefit.

## ***Other Matters***

27. A large number of objections have been lodged regarding this application. Many of the objectors appear to favour the development of the release land for a mixture of uses that would require the land to first be deregistered as common. However, these objectors argue that the current application is premature and deregistration should not take place unless and until an agreed form of development has been agreed. There also appears to be a fear that deregistration now will in some way lead to the borough council being likely either to retain the land as a car park providing income or allow it to be redeveloped in a manner not beneficial to the local community.
28. I understand these concerns but I have seen no evidence to suggest they are well founded. In any event, the current application must be determined in accordance with the criteria set out in the 2006 Act on the basis of what is the

likely effect the exchange will have on the interests specified. It would be inappropriate to give significant weight to the possible effects of hypothetical developments which might or might not take place in the future.

29. Some objections were also made on the grounds that the introduction of parking charges would have an adverse effect on the town centre. However, the application before me only seeks consent for the deregistration and exchange of common land and so concern about the possible introduction of parking charges is not a matter I can take into account.

### **Conclusion**

30. This proposal will have very little adverse effect on the interests of persons having rights in relation to, or occupying, the release land, the interests of the neighbourhood or the wider public and could be of benefit to them. The application should therefore be granted.

## 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 CL 340 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL 340 to include the replacement land;
- (c) Section 193 of the Law of Property Act 1925 (public right of access for air and exercise) shall apply to the replacement land, and the commons registration authority shall enter a note of the 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 at Wey Hill (Fairground) car park, Haslemere.	4926m <sup>2</sup>

### Second Schedule – the replacement land

Colour on plan	Description	Extent
Edged light green	Land at Sun Brow Wood to the rear of residential properties in Kings Road, Haslemere.	5087m <sup>2</sup>

*Barney Grimshaw*

**INSPECTOR**

