



Application Decision

Site visit on 2 July 2019

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

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

Decision date: 5 September 2019

Application Ref: COM/3213356

Royal Common, Surrey

Register Unit: CL 225

Registration Authority: Surrey County Council

- The application 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 Latimer Developments Limited (“the applicant”).
 - **The release land** comprises of approximately 1,375m² of land to the west of Shackleford Road, Elstead at grid reference SU92048 43660.
 - **The replacement land** comprises of approximately 1,540m² of land to the west of Shackleford Road, Elstead at grid reference SU92099 43873.
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Decision

1. The application is refused.

Preliminary Matters

2. The notice of the application was re-advertised to specify a more convenient place for people to inspect the relevant documents. From the details provided it is apparent that the requirements for the placing of notices on site and in a local newspaper were undertaken on both occasions.
3. Seven representations objecting to the proposed exchange were submitted in response to the advertisement of the application.
4. I did not consider the late submissions from two of the objectors to cover any additional matters relevant to my decision. Therefore, these were circulated to the other parties for information only.

Main Issues

5. Section 16(1) of the 2006 Act provides 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 200m² a proposal must be made to replace it with other land to be registered as common land.
 6. I am required by Section 16(6) of the 2006 Act to have regard to the following in determining this application:
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- (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 interest¹;
- (d) any other matter considered to be relevant.

Reasons

The application

- 7. The response to question 21 in the application form gives the reason for the exchange as the access road serving the development that is underway on land to the west of Shackleford Road. This development comprises of 69 dwellings and a care home. In contrast, the notice of the application states that the application is to enable the redevelopment of this site. It is apparent that the exchange is not required for the access road as consent was granted for works to construct the road under Section 38 of the 2006 Act².
- 8. The further submissions on behalf of the applicant assert that the deregistration of the release land would provide clarity of ownership and prevent any future claims of rights over the land. It is felt that the release land's status as common may deter prospective purchasers as it will form part of the communal areas. Reference is also made to the potential for works to be carried out by statutory undertakers at some stage.
- 9. The making of such an application suggests that there will be some benefit should it be granted. However, the various reasons given in support are in my view tenuous. The release land presently comprises of an area of fairly dense vegetation and the applicant confirms that it is not proposed to alter the nature of the land. It is apparent that the reason behind the application is the potential that particular circumstances could arise in the future.

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

- 10. There are no rights of common registered. The two claimed vehicular rights of access over the common for farming purposes do not appear to relate to the release land. Overall, 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

- 11. 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 I reach my decision on the application.

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.

² Planning Inspectorate Decision Ref: COM707

The public interest

12. The release land and replacement land are stated to fall within the same designated areas, namely the Surrey Hills Area of Outstanding Natural Beauty, Surrey Hills Area of Great Landscape Value, Walden Heaths 1 Special Protection Area and Special Area of Conservation. They are also located near to other designated sites. One of the objectors (Mrs Davisden) additionally draws attention to species of bats present in the area and the recording of dormice nearby.
13. Despite the reference by the applicant to the release land forming part of the communal areas of the development it is apparent that there is no intention to alter the nature of the land. There is no proposal to remove vegetation, which forms a barrier between the development and Shackleford Road. On the basis of the information provided there is nothing to suggest that the exchange would lead to any adverse impact on the release land in terms of either its landscape value or nature conservation.
14. Another objector (the Open Spaces Society) asserts that the release land is subject to rights of access on foot and horseback in accordance with Section 193 of the Law of Property Act 1925. This point is not disputed by the applicant. Further, the land will be subject to rights of access on foot by virtue of the Countryside and Rights of Way Act 2000.
15. The nature of the vegetation that covers most of the release land suggests any use by the public occurs mainly to the edge of the land. In this sense the more open nature of the replacement land should be an improvement. I find this to be the case irrespective of there being occasions when the replacement land is stated to be boggy or flooded. The replacement land is also larger in area than the release land.
16. The replacement land has the disadvantage of not connecting with the remainder of the common, but it would be situated within the larger area of suitable alternative natural green space (SANG). I note from the Inspector's decision approving planning permission for the development that the SANG was secured by an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 and the applicant confirms that the land has been designated as a SANG. Access to the replacement land is intended to be via paths or the small public car park to be provided. It was possible to access part of the SANG and the replacement land via an existing public footpath during the site visit.
17. The objectors draw attention to the replacement land being available to the public as it will form part of the SANG. It is submitted that the public will gain nothing from the exchange and in fact will lose because common land is being taken away. In response, the applicant says the way the SANG will be maintained and managed in the future will lead to the land having greater amenity value.
18. The first bullet point of paragraph 4.5 of Defra's Common Land Consents Policy of November 2015 states "*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*".

19. The map with the commons register does not show any part of the replacement land to be registered common land. Nor do I consider it has been shown to incorporate to any significant extent other land to which there has previously been some form of public access. However, the replacement land would be located within land designated as a SANG. I agree with the objectors that this would ultimately lead to there being a loss of land available to the public. This issue will weigh in favour of the refusal of the application.
20. A further point highlighted by the applicant is the potential for conflict between vehicles exiting the development in the locality of the release land and members of the public riding or walking on the land. Given the nature of the release land I see little merit in this point. Further, people travelling between the replacement land and the remainder of the common would have to pass the access road in any event.
21. There is nothing to suggest the exchange will impact upon any archaeological remains or features of historic interest.

Conclusions

22. Having regard to the matters addressed above, the main factors I consider should be put into the balance are the impact of the exchange on public access and the benefits arising from it. On the latter point, the case in support of the application is not strong. In respect of the first matter, I find it significant that the replacement land would form part of the SANG, which will be subject to public access. This would lead to there being a loss of land available for local residents and the wider public. In my view the justification for the exchange does not outweigh the disadvantages that would arise from the loss of land available for people to use in the future.
23. For these reasons I do not find on balance that consent for an exchange of common land should be granted.

Mark Yates

Inspector