



Application Decision

Site visit held on 17 December 2019

By Martin Elliott BSc FIPROW

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

Decision date: 14 January 2020

Application Ref: COM/3222749

Land at Lammas Grounds, Eton College, Windsor and Maidenhead

Register Unit: CL 164

Registration Authority: Royal Borough of Windsor and Maidenhead

- The application, dated 11 February 2019, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister and exchange common land.
 - The application is made by Eton College.
 - **The release land** comprises 1561 m² of land known as the Lammas Grounds west of Slough Road, Eton.
 - **The replacement land** comprises 1561 m² of land adjacent to land known as The Brocas to the south of Meadow Lane and north of the River Thames, Eton.
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Decision

1. Consent is granted in accordance with the application dated 11 February 2019, to deregister and exchange common land at Eton College, Windsor and Maidenhead (Register Unit CL164). For the purpose of identification only a copy of the application plan is attached to this decision.

Main Issues

2. 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 interest;¹
 - (d) any other matter considered to be relevant.
3. I have had regard to Defra's Common Land Consents Policy Guidance² (the 2015 Guidance) in determining this application 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.

¹ Sections 16(8) and 39(2) 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 Common Land consents policy (Defra November 2015)

The Application

4. The application is to facilitate the construction of a new access road to the proposed Eton Sports and Aquatics Centre (ESAC). The new access road will provide adequate and safe access from Slough Road to the ESAC. The ESAC will be used by local primary aged children and the wider community as well as by students of Eton College.

The Release Land

5. The release land comprises a strip of land of varying width and two spurs leading to the south (an area of 1561 m²). The strip of land, to form an access track, is between Slough Road and the proposed ESAC and is towards the southern edge of this part of the common. The land is currently grassed.

The Replacement Land

6. The replacement land comprises a strip of grassed land 11.66 m wide and 135.65 m long on its western side and 131.99 metres along its eastern side (an area of 1561 m²). The land is to the eastern side of The Brocas, south of Meadow Lane and north of the River Thames.

Representations

7. Following the notice of the application three representation were made (The Open Spaces Society, Natural England (NE) and Berkshire Archaeological Service). None of the representations raise objections to the application.

Assessment

Interests of those occupying or having rights over the land

8. The release land is subject to Lammas rights. Although subject to rights for grazing these rights have not been exercised for the duration of the ownership by Eton College since 1920. There is nothing to indicate that anyone occupying or having rights over the release land will be adversely affected by the exchange.
9. The replacement land is subject to the rights granted by a transfer of Rafts Boathouse made between Eton College and Bewley Homes Plc. These rights relate to access to and egress from The Brocas to the Boathouse but will not be affected by any exchange.

Interests of the neighbourhood

10. 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.
11. As noted above the release land is subject to rights of Lammas which may be exercised by inhabitants or tenants of the Manor of Eton cum Stockdales and Colenorton. Lammas rights do not appear to have been exercised since 1920.
12. NE raise concerns that the deregistration of land will result in a corridor of common land sandwiched between the proposed new access road and the edge of the common. NE acknowledge that whilst the public will no doubt be able to cross the new access road they will have no right to do so and any fencing could lead to a large area of common land becoming isolated.

13. The applicant says that the public will be able to cross the access road freely and that no fence is proposed. If a fence were to be erected this would be on the common land and an application for consent would be required allowing objections to be raised.
14. Whilst the exchange will create a strip of common land to the south of the proposed release land there is nothing before me to suggest that this land will be isolated. The applicant has indicated that the arrangements under the proposal would be similar to the current arrangements where the public use and cross the existing access road freely. Although there is no binding agreement for continued access over the access road some weight should be given to the indications of the applicant that the public will still be able to cross the access road. It is noted that a public footpath over the land will in places cross or run concurrently with the new access road. Access across the common will therefore be possible through the use of the footpath.
15. Bearing in mind the above there is nothing before me to indicate that there will be any significant adverse effect on the interests of the neighbourhood.

The public interest

The protection of public rights of access

16. The release land, as common land, will be subject to a right of access on foot in accordance under part 1 of the Countryside and Rights of Way Act 2000 (the 2000 Act). The replacement land will become subject to these access provisions although this will not come into effect until a review of the maps prepared under part 1 of the 2000 Act has taken place. However, there is nothing to indicate that access to the replacement land will be restricted.
17. NE is aware that the Lammas Lands are subject to rights for fresh air and exercise under section 193 of the Law of Property Act 1925. I have no evidence before me to indicate that this is the case. However, if the exchange were to take place then any existing provisions will apply to the replacement land.
18. It is noted that the replacement land is already subject to public access. However, this is under licence from the College and there are notices to this effect on the land. The exchange, noting my comments at paragraph 16 above, will not result in any loss of public access.
19. NE make the point that the exchange will not improve accessibility to the Thames Path or surrounding built environment. Whilst this will be the case access to these elements will not be diminished.
20. I do not consider that the exchange will have any significant adverse effect on public rights of access.

Nature conservation

21. NE have been consulted on the application and do not raise any concerns in respect of nature conservation. NE indicate that habitat data shows that neither the release or replacement land is species rich grassland. They suggest that if The Brocas land is managed as hay meadow then there could be greater benefit to biodiversity than the exchange land which is a managed sports field. There is no evidence before me to indicate that the exchange will have any adverse effect on nature conservation.

Conservation of landscape

22. No representations have been made which suggest that the exchange will have any adverse effect on the landscape. These matters have been considered in the determination of the planning application for the ESAC which includes the access road. I do not consider that the exchange will have any adverse effect on the landscape.

Archaeological remains and features of historic interest

23. Historic England have been consulted on the application and have made no representations in response. Berkshire Archaeology confirm that through an appropriate methodology and condition on planning permission³ it will be possible to mitigate any archaeological issues. They do not consider that the overall quality of the land will be significantly diminished by the proposals. The applicant confirms that an appropriate planning condition has been agreed with the local planning authority and that consequently any archaeological issues will be mitigated.

24. Bearing in mind the above there is nothing before me to indicate that the exchange, which will facilitate the construction of the access road, will have any significant adverse effect on archaeological remains or features of historic interest.

Other relevant matters

25. The applicant wishes to provide a significant amount of public access to the proposed ESAC and points out that the existing access road does not provide adequate safe access for minibuses and buses. The exchange will improve access for the public to the proposed ESAC and this should be put into the overall balance when considering the application.

Conclusion

26. 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 significant adverse effects on those with rights over the land, the interest of the neighbourhood or the public. The exchange will enable the construction of a safe access to the proposed ESAC. No issues are raised which lead me to conclude that the exchange should not take place. The application is allowed.

Martin Elliott

INSPECTOR

³ Planning permission for the proposed ESAC was granted, with conditions, on 7 December 2018 (ref. 18/02033/FULL)

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** the Royal Borough of Windsor and Maidenhead, 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 CL164 to exclude the release land;
- (b) to register the replacement land common land, by amending register unit CL164 to include the replacement land; and
- (c) to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL164) 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 CL164.

First Schedule – the release land

Colour On Plan	Description	Extent
Edged red	Land forming part of register unit CL164, comprising a strip of land with spurs over the Lammas Grounds leading west from Slough Road.	1561m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged light green	Land abutting part of CL164 known as The Brocas to the south of Meadow Lane and comprising an area of 11.66 m x 135.65 m x 131.99 metres.	1561m ²

Martin Elliott

Inspector

