



Application Decision

Site visit made on 7 July 2020

by **Alan Beckett BA MSc MIPROW**

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

Decision date: 08 October 2020

Application Ref: COM/3240237

Land at Box Moor Common, Hemel Hempstead, Hertfordshire

Register Unit Number: CL24

Commons Registration Authority: Hertfordshire County Council

- The application, dated 28 October 2019, 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 Mr David Kirk, Chairman of the Box Moor Trust. Hertfordshire County Council (as Highway Authority) has joined the application in respect of the public rights of way which cross the land proposed to be deregistered.
 - The release land comprises 56,700m² of CL 24.
 - The replacement land comprises 64,750m² of land known as Dellfield.
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Decision

1. The application is not granted.

Preliminary 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 7 July 2020 in the company of Mr Kirk, the Chairman of the Box Moor Trust; Mr Samson, Estate Manager, Box Moor Trust; Cllr Allen, Boxmoor Ward, Dacorum BC; Mr Cuthbert of Hertfordshire CC and Mr Ebdon, an objector.

Box Moor Common

4. Box Moor Common was registered as common land under the Commons Registration Act 1965. The land which comprises the common is owned by the Box Moor Trust ('the Trust') which traces its origins back to 1574. The Trust was administered under the provisions of the Boxmoor Act 1809 and by various Schemes of the Charity Commissioners until 2000 when the current Scheme of administration was established under The Charities (Boxmoor Estate, Hemel Hempstead) Order 2000 (SI 844, 2000) ('the Scheme').
5. Box Moor Common forms part of the lands of the Trust which comprises approximately 500 acres of grazing and amenity land. The land is managed for the benefit of those resident within the 'Area of Benefit', being those parts of

Hemel Hempstead and Bovington described in the Scheme. Box Moor Common is made up of a number of individual parcels of land alongside the River Bulbourne to the south-west of Hemel Hempstead.

6. In addition to Box Moor Common, the Trust owns other land which is not registered common land and the Trust has the power to buy, hold and sell land as an investment to provide income and funds to support charitable activities within the Area of Benefit.

Main Issues

7. I am required by Section 16 (6) of the 2006 Act to have regard to the following in determining these applications:
 - (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;
 - (d) any other matter considered to be relevant.
8. There are additional requirements in section 40 of the Natural Environment and Rural Communities Act 2006, under which I must have regard to the Secretary of State's duty to conserve biodiversity.
9. Defra's Common Land Consents Policy, published in November 2015, sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process in section 16 of the 2006 Act.
10. The outcome relevant to deregistration is that: *"our stock of common land and greens is not diminished – that, on balance, any deregistration of registered land is balanced by the registration of other land of at least equal benefit"*. Additionally, in relation to replacement land *"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"*.
11. The published policy also assumes that the release land will cease to be available for recreation and access unless a legally binding provision is intended to be made to assure continued use.

The Application

12. The Trust seeks the de-registration of three small and one larger parcel of Box Moor Common. The three small parcels are at the eastern end of the Trust's landholding which the Trust says have been fragmented and isolated from the greater part of the common as a result of development and road improvement schemes; these parcels are blighted and difficult to maintain as a result. The parcel known as Two Waters East has been included as the site of a new waterside residential neighbourhood in the Dacorum Borough Masterplan. The Trust submits that this represents an opportunity for it to secure a sustainable

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.

income from the development of the land. The Trust would retain ownership of the land as Two Waters East forms part of the permanent endowment ('appropriated') land identified under the Scheme and would seek to develop the land to provide affordable housing.

13. The current lease on the Trust's land at Boxmoor Wharfe expires in 2020, and although negotiations continue with the current tenant, the Trust considers it unlikely that a further 35-year lease on the land will be taken. A further lease on reduced terms and of reduced duration brings a degree of uncertainty over the Trust's future income, as the current lease provides around 60% of the Trust's current income; the development of Two Waters East is seen as a means by which long term and sustainable income can be secured to ensure the continuation of all the Trust's activities.
14. The Trust also seeks the de-registration of land at Box Hill to enable it to expand its educational activities at this site. The Trust provides lambing demonstrations at Box Hill which are very popular with those members of the public seeking to understand farming practices. The Trust would like to develop the Box Hill site as a farming demonstration area and considers that the subdivision of the land into smaller paddocks and the provision of additional storage to serve this aim would be extremely difficult if the current status was retained.

The Release Land

15. The release land comprises 56,700m² of Box Moor Common. The Trust proposes the deregistration of four parcels of land within CL24, three of which are at the eastern end of the Trust's holding (known as Two Waters East, Apsley Triangle² and Two Waters Halt), with the fourth parcel being adjacent to the Estate Manager's house at Box Hill (these parcels are shown edged red on the plans at Appendix A).
16. The release land is not subject to any statutory designations for nature conservation. CL24 is part of the Boxmoor and Dew Green Commons Local Wildlife Site. Roughdown Common Site of Special Scientific Interest (SSSI) is located approximately 1km from Two Waters East and is owned and managed by the Trust under direction from Natural England.

The Replacement Land

17. The replacement land, known as Dellfield, comprises 64,750m² of conservation grassland located to the south of London Road and forms part of the Trust's land at Westbrook Hay. The land had previously been used for agricultural set-aside, but was ploughed in 1997 and re-seeded as a wild flower meadow and is managed in accordance with the Dellfield Management Plan (the proposed replacement land is shown edged black and green on the plan at Appendix B).
18. Dellfield is enclosed by fences and hedges with farm gates in the north-east corner of the field and at the boundary with Hay Wood. A kissing gate is located on the northern boundary of the field which permits pedestrian access from the informal car park located on Westbrook Hay Drive.

² Apsley triangle consists of two parcels, the second of which adjacent to the bus stop on the A4521

Representations and objections

19. Thirty-five representations were made in response to the Trust's notice of the application. Of these representations, 29 supported the application, 4 raised points of clarification regarding process and future notifications, 2 were objections. The objections were from the Open Spaces Society (OSS) and Mr Ebdon, a local resident.
20. The OSS argues that the replacement land is already owned by the Trust and is open to the public; registration of Dellfield as common land would not secure new or additional public access and is therefore contrary to the published guidance. In addition, the OSS submits that the common land at Two Waters Road is worthwhile open space in an increasingly built up environment. The proposed exchange land was very attractive, but it is under no threat of development and is not very convenient for neighbourhood recreation. Overall, the OSS considered that the case for deregistration and exchange was not strong.
21. Mr Ebdon argues that the purpose of the proposed de-registration and exchange is to widen the income base of the Trust through the re-development of Two Waters East. It is contended that this is being sought so that the Trust can sustain its current discretionary activities which are provided for out of any surplus income not required to manage its land for recreation and other leisure time occupation of those resident in the area of benefit.
22. In Mr Ebdon's view, the threat to existing services perceived by the Trust is in reality a threat to its discretionary expenditure comprising grants, educational services and future land purchases; if the lease on Boxmoor Wharfe is not renewed, or renewed on lower terms, the Trust should trim its expenditure accordingly. Mr Ebdon submits that the Trust appears to acknowledge that declining income from the Boxmoor Wharfe site would not affect its ability to maintain and manage its existing landholding and that retention of common land status at Two Waters East is unlikely to adversely impact on that primary function of the Trust. As regards the potential development of Two Waters East, although Dacorum Borough Council has identified the land as a potential development site, Mr Ebdon view is that the Trust is not obliged to undertake that development; if such development was essential to the future prosperity of the town, the land could be compulsorily acquired by Dacorum Borough Council who would then be obliged to find replacement common land.
23. The 29 representations in support of the application were made by individuals or organisations which have had experience of the work undertaken by the Trust, either from the use of the Trust's lands, or from being involved in educational and social activities provided by the Trust or through being the recipients of grants made by the Trust towards environmental or educational projects. Representations of support were also made by Borough ward Councillors and by Bovingdon Parish Council. The respondents draw attention to the management of Trust lands and the educational, environmental and other charitable work undertaken by the Trust, with many commenting on the possible loss of income from the Boxmoor Wharfe site and the implications that such loss might have on the Trust's overall activities.

Assessment

The interests of persons occupying or having rights over the land

24. The release land is owned and occupied by the Trust acting as a beneficial owner on behalf of those residents in the Area of Benefit. The population of the Area of Benefit is presently approximately 100,000 and is projected to rise in future. The right to graze 1 cow over CL24 is registered to one property in Hemel Hempstead and one property in Bovingdon. The Trust submits that the registered rights have not been exercised for many years and that grazing of the Trust's land is undertaken by those who utilise grazing tickets purchased from those properties within the Area of Benefit which have retained the grazing plaques issued in the nineteenth century.
25. De-registration of Two Waters East would permit the Trust to develop the land for social housing, using the income from that development to fund the management of the remaining Trust land with any surplus income being used in accordance with the terms of the governing Scheme. Consent to an order releasing Two Waters East from the permanent endowment land has been granted by the Charities Commission. Although Two Waters East is cut annually, it has not been grazed since around 1990 when it was cut off from the remainder of the common by the A414 road scheme. Contrary to the claim made by Mr Ebdon that the Trust has chosen not to have the land grazed, the Trust says that the site has not been grazed as its existing graziers find the site too small and too difficult to access.
26. Two Waters Halt and the Aspley Triangle are unfenced and have not been grazed since being cut off from the remaining common by twentieth century development. The Trust intends to enhance these sites by the creation of paths to link Two Waters West with Durrant's Lakes. Although these parcels would cease to be part of the registered common, they form part of the 'permanent endowment' lands and public access to them would be retained.
27. The Trust acquired Box Hill as part of a compulsory exchange arising from the A41 road scheme. The site forms the focus of the Trust's public 'lambing day' demonstration events. The Trust wishes to expand these activities at Box Hill and use the site as a centre for all agricultural activities carried out on Trust land. Deregistration would remove restrictions on the land which would restrict or prevent the erection of fences or buildings required for educational and agricultural activities.
28. As a result of various external factors, the Trust is conscious that its current income stream from its Boxmoor Wharfe site may be reduced or eliminated in future years, which would impact upon its ability to continue with its current range of activities. Given the uncertainty about its current income stream, the development of Two Waters East is seen as a means of providing the Trust with a long-term income to augment, supplement or replace that currently generated from the Boxmoor Wharfe site.
29. I conclude that the proposed deregistration and exchange would be in the interests of the owner of the release land and of the beneficiaries of the Trust.

The interests of the neighbourhood

30. Defra's Common Land Consents Policy 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.
31. The release land is 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 those access provisions under the 2000 Act although those access rights will not come into effect until a review of the access map prepared under part 1 of the 2000 Act has taken place. The release land is also subject to the provisions of s193 of the Law of Property 1925 and the right of the public to take air and exercise over the release land would transfer to the replacement land. The byelaws in place which govern the use of Trust land prohibit the riding or exercising of horses such that the s193 rights for air and exercise would be limited to use by pedestrians.
 32. I saw from my site visit that a means of access between Two Waters Halt and Bulbourne Moor had been created utilising a walkway underneath the A414 at the side of the River Bulbourne. This provides a means of access to Bulbourne Moor and other Trust land to the west of the A414 which avoids having to cross the road at the A414/A4251 crossroads. Although the Two Waters Halt site appeared unmanaged and unkempt, it is unlikely that de-registration would have any detrimental impact upon current or future use of the land by local people as ownership would remain with the Trust as appropriated land held for the benefit of residents in the Area of Benefit.
 33. The Trust also proposes to enhance the Apsley Triangle lands and to provide a means of access to Durrant's Lakes by the provision of new footbridges. As appropriated land, de-registration would not have any adverse impact upon the ability of local people to access and use the Apsley Triangle as they currently do.
 34. The Trust proposes to expand the use of Box Hill for educational activities and to provide a central storage depot for all its agricultural equipment. Access to Box Hill is via a stile on the boundary with the A4251 which would remain. Although not part of the Trust's appropriated lands identified in the Scheme, Box Hill is subject to the same provisions for access. Deregistration is unlikely to prevent local people from using the land as they currently do. The Trust submits that the ability to provide increased educational activity at Box Hill would provide positive benefits to an increasingly urbanised population who would be able to engage with and gain an understanding of agricultural practices.
 35. Of the four parcels of land proposed for de-registration, it is only over Two Waters East that current use of the land by local people would be curtailed. As noted above the Charity Commissioners have agreed to the making of an order to release the site from its status as appropriated land if the Trust is able to enter into a lease for the land prior to September 2022.
 36. I saw that there were double kissing gates in the existing boundary fence of Dellfield and that it was served by a small informal car park just off Westbrook Hay Drive. Access to Dellfield was also possible via a hard-surfaced track leading from the Trust's London Road centre. It is the intention of the Trust to enter into public path creation agreement with the Highway Authority to create a public right of way to Dellfield if the exchange is granted.

37. I consider that the exchange would not prevent local people from using the common as they do now. Although the public would not enjoy a right of access to the replacement land under the 2000 Act prior to a review of the Part 1 access maps being concluded, access for local people would be protected under the Scheme governing the Trust and under s193 of the Law of Property Act 1925 which would transfer from the release land. There is no evidence before me from which I could conclude that the proposed exchange would interfere with the future use and enjoyment of the common by local people.

The public interest

The protection of public rights of access

38. The Trust acknowledges the points raised in objection by the OSS in relation to the impact of the proposal on public rights of access to common land and that its application does not meet the criteria in its entirety. The Trust submits that suitable alternative land which would meet the access criteria is simply not available in the area, but that the negative impact would be mitigated by the proposed enhancements to Two Waters Halt, Apsley Triangle and the opportunity to link the facilities at Durrant's Lakes with Trust land to the west of the A414 via a new footpath.
39. Whilst the proposed enhancement scheme is likely to create a new means of access between Durrant's Lakes and the Trust's land west of the A414, this would not enhance public access to common land as although three of the four parcels of land at issue would cease to be registered common, they would remain open for use by the public.
40. As the OSS point out, the de-registration of Two Waters East, and the proposed development, which is intended to be facilitated by de-registration, would lead to a reduction in public rights of access to registered common. Although the extent of registered common would increase as the area of Dellfield proposed for registration is greater than the combined area of land proposed for deregistration, the public already has access to Dellfield by virtue of it being Trust land held for recreational purposes for the benefit of residents in the Area of Benefit. In accordance with clause 26 of the Scheme, such land "*shall be available for access for recreation by the public at large*".
41. In relation to Dellfield, there is a question as to whether a public right of way subsists over Westbrook Hay Drive and the Trust seeks to enter into a public path creation order with the Highway Authority to ensure permanent access to Dellfield on foot. Whilst the dedication of a public right of way would ensure public access to the field, the addition of a public right of way would not enhance public access as the public already benefits from rights of access over Dellfield as Trust land without it being registered as common land.
42. I consider that the proposal would result in a reduction in the stock of land to which the public have access as the area of land proposed as replacement land is already subject to public rights of access.

Nature conservation and biodiversity

43. Natural England has been consulted on the application and comments that of the parcels of land under consideration, the replacement land is the most biodiversity rich; the release land being either semi-improved grassland, scrub, secondary woodland or unmanaged grasslands. As noted above, Dellfield was

ploughed and re-seeded with a conservation wildflower mix and has been managed as a traditional hay meadow since that date. The site is currently cut or grazed each year to maintain diversity and to keep coarse grasses and scrub in check. In comparison, the release land comprises unmanaged land and semi-improved grassland which does not have the species diversity which has been recorded at Dellfield.

44. As the current use of the replacement land will be unaffected by the exchange and is managed according to the Dellfield Management Plan, I consider it to be unlikely that exchange would have any adverse impact upon biodiversity or nature conservation.

Conservation of the landscape

45. The proposed exchange land comprises land which gently rises in altitude from the A414 and provides extensive views of the surrounding countryside. The rural character of Dellfield is in marked contrast to the proposed release land at Two Waters which is located on the fringe of Apsley and is bounded to the north, south and east by urban development. Although the landscape surrounding part of the release land is predominantly urban, the availability of open green space in such a setting is of value.
46. The proposed exchange would not have, of itself, any adverse impact upon the character of the landscape surrounding the replacement land, although development of Two Waters East would further urbanise the landscape in the vicinity of Apsley.

Archaeological remains and features of historic interest

47. Historic England has been consulted on the application and notes that there is one scheduled monument – Boxmoor House Roman villa – which lies to the east of Box Lane. Historic England does not consider that the proposed exchange would have any adverse impact upon the setting of the monument. There are no listed buildings, scheduled ancient monuments or non-designated nationally important archaeological sites on the release land. Although the release land at Two Waters East is adjacent to Grade II Bell Inn, and Box Hill is in the proximity of Grade II Old Pastures House, Moor End Cottage, Moor End Farmhouse and Hay Lodge, it is unlikely that the proposed exchange would have any impact upon those sites. There is no evidence before me that the exchange will have any adverse effect upon archaeological remains or features of historic interest.

Other relevant matters

48. I acknowledge that the income stream that could be generated from the development of Two Waters East is likely to enable the Trust to continue with its existing programme of management of the land and its other charitable activities within the Area of Benefit and would assist with the medium term objective of providing access between the Two Waters area and Durrant's Lakes. However, the possible creation of a means by which the public could access Durrant's Lakes from the Apsley Triangle (two areas of land to which the public already has access) does not, in my view, outweigh the overall diminution of the area of land which would be available for public access as a result of the proposed exchange.

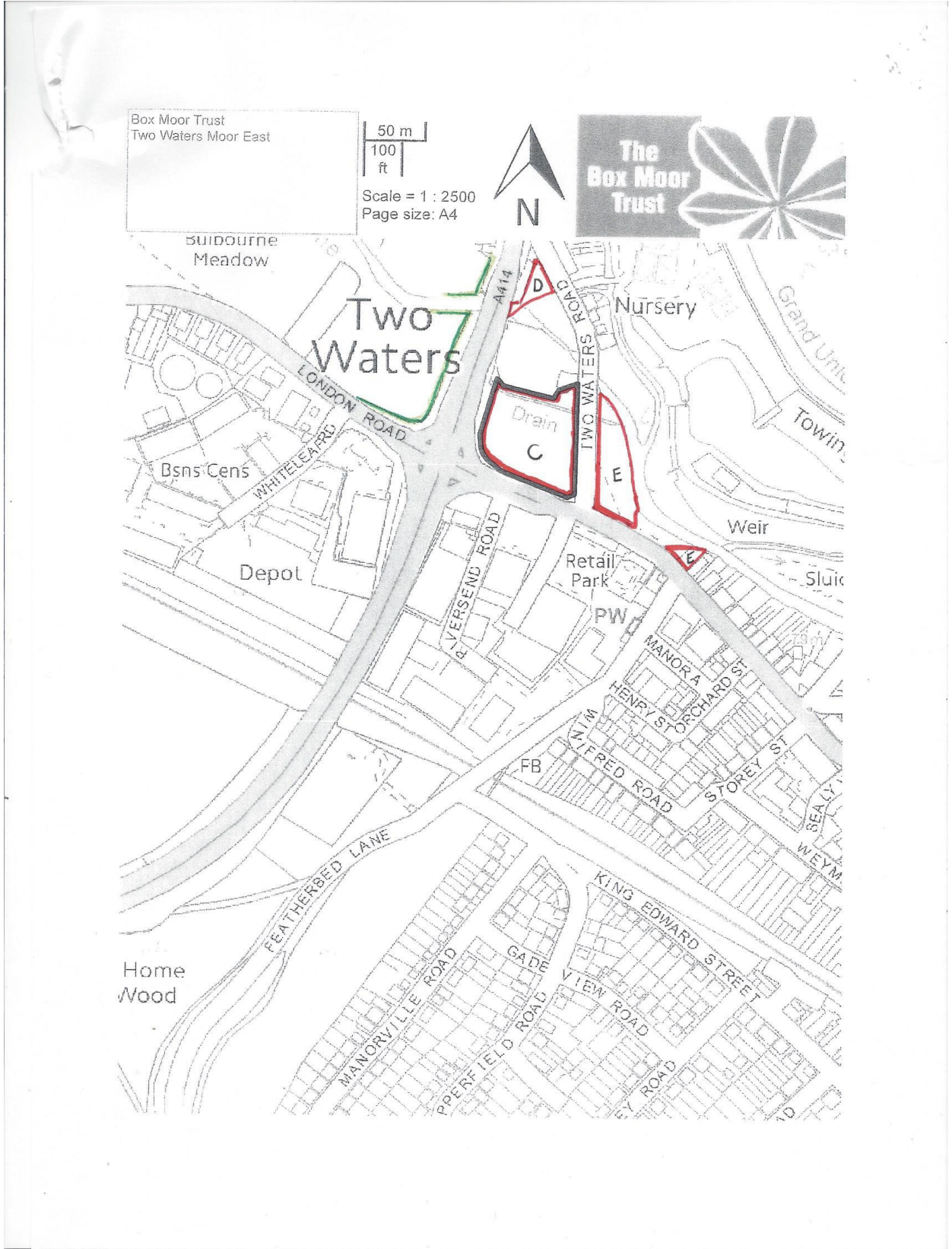
Conclusions

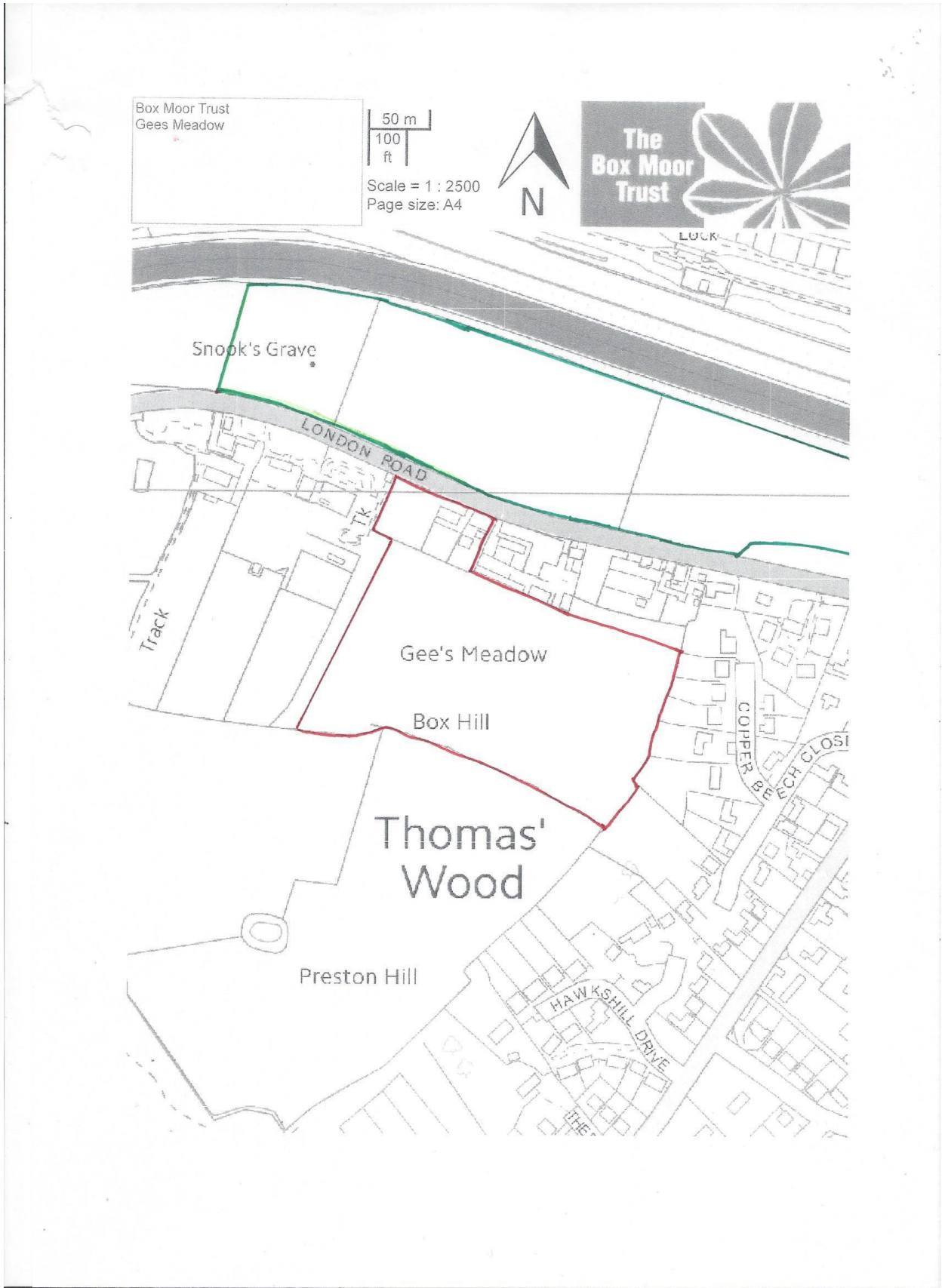
49. Collectively, the replacement land offered is 64,750m² in area whereas the land sought to be released is 56,700m². There would therefore be a net increase in common land as a result of the exchange which accords with Government objectives that the stock of common land should not be diminished as a result of deregistration and exchange. However, the replacement land being offered is already subject to public rights of access, and the exchange would remove public access from Two Waters East without offering any new access land. The proposal would not therefore accord with Government objectives as it would diminish the total stock of access land available to the public.
50. Having regard to these and all other matters raised in the application and in the written representations I conclude that the application should be not granted, and an Order of Exchange should not be given in respect of the application.

Alan Beckett

Inspector

APPENDIX A





APPENDIX B

