



Application Decision

Site visit held on 28 November 2017

by **Sue M Arnott FIPROW**

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

Decision date: 12 December 2017

Application Ref: COM/3179793

Brockeridge Common, Twyning, Tewkesbury, Gloucestershire

Register Unit No.: CL 265

Registration Authority: Gloucestershire County Council

- The application, dated 10 July 2017, is made under Section 16 of the Commons Act 2006 to deregister and exchange land registered as common land.
- The application is made by Tiarks Property Developments Ltd.
- **The release land** comprises 650 m² of land on the eastern side of the common adjoining the Brockeridge Business Park situated at Brockeridge Farm.
- **The replacement land** comprises 720 m² of semi-improved grassland adjoining the north eastern edge of the common and to the north of the proposed phase 2 development of the Brockeridge Business Park.

Summary of Decision: The application is granted.

Preliminary Matters

1. Section 16(1) of the Commons Act 2006 (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.
2. In this case the release land extends to some 650 m² of land registered as part of Brockeridge Common but which is physically separated from it and not used as part of it. This is a situation that has persisted for many years and long before 2005/6 when farm buildings which previously stood on the adjacent site were removed to make way for the present Brockeridge Business Park.
3. In exchange, an area of approximately 720 m² of agricultural grazing land adjacent to parcel CL 265 (the replacement land) is offered for registration as common land.
4. During my inspection of the release land and the replacement land I was accompanied by Mr C Tiark representing the applicant company.

Main Issues

5. 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 (and in particular persons exercising rights of common over it);
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- (b) the interests of the neighbourhood;
- (c) the public interest;¹ and
- (d) any other matter considered to be relevant.

The application

6. Tiarks Property Developments Ltd made this application to facilitate the further development of the Bockeridge Business Park for which planning permission was granted on 4 February 2014 (Ref 13/01120/FUL). A further four office units will be constructed offering employment potentially for up to 100 people.
7. The proposal is to deregister 650 m² of common land parcel CL 265 (which, as registered, extends to some 121.45 ha (or 300 acres) of land in total); it would be replaced with a triangle of agricultural land further to the north.

The release land

8. The registration of 'Bockeridge Common' as CL 265 became final on 7 August 1981. Many years before, it was divided by the construction of the M50 motorway in the early 1960s including the junction 1 interchange with the A38. South of the motorway Bockeridge Common is further divided into three parcels by the roads which meet at the motorway junction and the associated grids and fences. The area that is the subject of this application lies to the north east of Bockeridge Road and to the south of the M50. Bockeridge Farm lies to the south east of this portion of CL 265.
9. Development of the Bockeridge Business Park began in 2006 on land which previously formed part of Bockeridge Farm. The small business units and associated development did not take place on the common but on land adjacent to it. However, widening of the farm access road and the construction of vehicular turning areas required a similar de-registration and exchange of some 1,680 m² of common land. A formal application led to an order of exchange being made on 14 March 2006.
10. The present proposal, similarly, seeks deregistration of a strip of land to facilitate better access to the area where phase 2 of the building work is proposed to take place. At present the release land does not operate as part of the common. Prior to 2006, an aerial photograph shows this to have been used for incidental agricultural storage including old vehicles and other materials and clearly not capable of being grazed as part of the common. Since 2006, once cleared of debris, it formed a storage area whilst the building works associated with phase 1 of the development were taking place and has remained in a similar capacity since then. It lies immediately to the north west of the 2006 release land and is intended to fulfil a similar purpose; it would also be hard-surfaced and (as now) divided from the remainder of the common.
11. The release land is in the ownership of the applicant, having been purchased from the owner(s) of the common in 2016.

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.

12. The Register records rights to graze horses, cows and sheep on the land (although evidence suggests this has not occurred on the release land for many years). No statutory designations have been drawn to my attention and no public rights of way are recorded across the site.

The replacement land

13. In exchange the applicant offers a larger area of land to the north adjoining the present common, this being the eastern boundary of the 2006 replacement land. Until the fence separating the common from the adjoining grazing field was recently moved, the boundary took a line due northwards from the north western corner of the Business Park towards the M50 motorway.
14. The replacement land, consisting of semi-improved grassland formerly used for grazing, forms a triangle adjacent to the boundary of the common extending to some 20.575m along its base and 72.9m in length and thus encompassing an area of 720m². It is intended to insert a 12 foot wide gate into the new eastern boundary fence to give access from Brockridge Farm land onto the common.
15. No formal designations, statutory or otherwise, apply to the replacement land. From my inspection, the land appears to have greater potential value as common land in many respects than the release land.

Representations

16. A public notice was published in the Gloucestershire Echo on 13 July 2017 and on the site. The application was publicly displayed at the offices of Tewkesbury Borough Council for the statutory 28 day period. Consultation letters were sent to interested parties as required, including Gloucestershire County Council, Tewkesbury Borough Council, Twynning Parish Council, Natural England, Historic England and the Open Spaces Society.
17. No adverse representations were received to this proposal. Natural England advised on the likely effects of the proposals on the use of the common for recreation and access, on potential effects and benefits to nature conservation interests and on the likely impact on the landscape. The Open Spaces Society commented that it has no objection to the proposed exchange, noting simply that "*The replacement land is larger in area.*"

Assessment

The interests of those occupying, or having rights in relation to, the release land

18. In total rights to graze 323½ cattle, 2,300 sheep and 131 horses are registered on CL 265 together with 6 other registered parcels. However, there is now no natural animal movement between the separate segments of Brockridge Common, essentially because of roadside safety fencing and cattle grids.
19. Of the many graziers with registered rights on CL 265, only Mr and Mrs Halling of Brockridge Farm now exercise their rights over the portion south of the motorway and east of Brockridge Road of which the release land forms part.
20. Whilst it seems clear that the release land has not been grazed for many years, even if it were restored to grassland, the replacement land proposed would be equally as convenient for the main graziers. The new fence separating the

Halling's pasture from the common would include a gate giving direct access to the new area and into the presently registered area of the common.

21. There have been no objections submitted from any of the graziers. No adverse effects of the proposed exchange have been highlighted and I conclude that the proposal would most probably offer a positive benefit in terms of the overall availability of common land capable of being grazed.

The interests of the neighbourhood

22. There is no definition within the 2006 Act of the term 'neighbourhood'. In a rural situation such as this, the parish of Twyning might be the most appropriate area to take with Twyning Parish Council being best placed to represent people living in this particular neighbourhood. The Council has been consulted but no adverse comments have been submitted in response. Indeed no evidence has been presented from any party that might suggest the proposed deregistration and exchange could have any negative effect upon the way those in the neighbourhood make use of the common.
23. Taking into account also the reasonable needs of people with disabilities who may use the common, I am satisfied that the effect of deregistration of the release land on the interests of the inhabitants of the neighbourhood would be negligible and that the replacement land would be of greater potential value to the local community than the release land.

The public interest

24. The applicant has submitted a report from consultants Ecology Solutions Ltd, commissioned to undertake an ecological assessment of land at Brockeridge Park. This describes the release land as an area of recolonising, bare ground used for storage of materials and machinery and separated from the main area of the common by a hedge (which would remain).
25. It highlights the absence of any statutory designations relating to nature conservation anywhere near the release or replacement land. However it notes that Brockeridge Common is designated a Key Wildlife Site (KWS) on the basis of its semi-natural grassland although, as reported above, the release site has not fit that description for some time. This non-statutory designation does not apply to the replacement land although in fact this currently comprises semi-natural grassland which is considered to be of greater value than the release land.
26. The area of CL 265 south of the motorway and east of Brockeridge Road appears not to have been managed through grazing for many years, being overgrown with scrub and occasional trees. The intrinsic ecological value of the release land is considered to be very low and the majority of the adjoining common would be unaffected by its deregistration. There would be no significant adverse effects on any protected or notable species and whilst potential benefits are identified, the conclusion of the consultants' report is that, at worst, the existing ecological value of Brockeridge Common would be maintained.
27. Natural England has commented on the broad-leaved woodland at the north end of this segment of CL 265, noting that this is a priority habitat. It also notes that, being contiguous with the common, the replacement land should serve the same community. Further, there is the potential for biodiversity improvements

- through less improvement of the grassland or allowing the natural spread of the woodland from the west of the site.
28. In view of the fact that the release land is mainly a brown field site, Natural England comments that the replacement land will be of better landscape value.
 29. There are no submissions which suggest that any nature conservation aspects of the site will be compromised by the proposed exchange; indeed it is acknowledged that there are potential benefits that may arise as a result and the landscape around Bockeridge Park will be improved in the process.
 30. None of the evidence suggests that deregistration of the release land or registration of its replacement would affect any archaeological remains or that features of historic interest lie anywhere near the site.
 31. In practice it seems that few people access this part of CL 265, possibly due to the now disjointed nature of Bockeridge Common. Whilst the right of access is acknowledged by the applicant, it is clear that the release land has not been accessible from the common for some considerable time although no reports of any complaints have been forthcoming.
 32. The public's right of access on foot to the registered common under the Countryside and Rights of Way Act 2000 would eventually transfer from the release land to the replacement land, but until that occurs formally, any member of the public seeking recreation on this part of the common would easily be able to access the replacement land since this will be contiguous with the 2006 replacement land that is now fully integrated with the originally registered land parcel.
 33. On the basis of the submissions, and from my observations on site, I consider the proposal to be just and reasonable, and I conclude that no adverse effect upon the public's interest will arise as a result of the proposed deregistration and exchange.

Other relevant considerations

34. There would be no reduction in the overall area of common land as a result of the exchange; in fact there would be an increase. In addition, the replacement land would offer better opportunities for nature conservation and landscape improvement whilst maintaining the capacity of CL 265 for grazing and for public enjoyment.

Conclusions

35. I conclude that the proposed deregistration of the release land and substitution with the replacement land would have a minimal effect on the interests of both the registered graziers and the inhabitants of the neighbourhood. Further I find that the public interest would not be adversely affected to any noticeable extent. Overall, having regard to the criteria in Section 16(6) of the 2006 Act, I conclude that the application should be granted.

Formal Decision

36. The application to deregister and exchange land is granted in accordance with the terms of the application (Ref: COM/3179793) dated 10 July 2017 and an Order of Exchange should be made.

Sue Arnott

INSPECTOR

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** Gloucestershire 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 forming part of Brockeridge Common in the Parish of Twyning (Register Unit No. CL 265) from its register of common land and village green, and
- (b) to register the replacement land as common land (also as part of Register Unit No. CL 265).

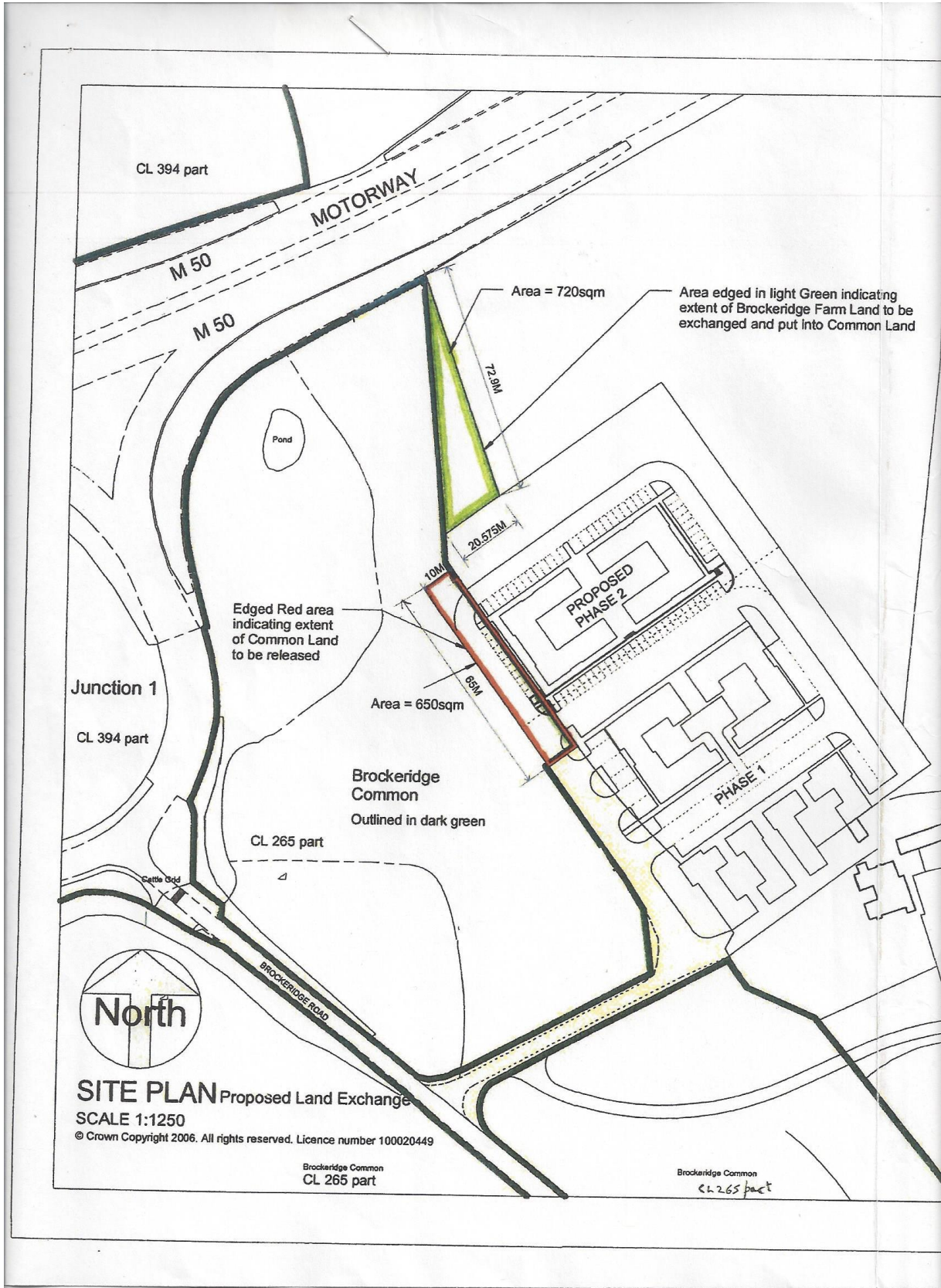
First Schedule – the release land

Colour On Plan	Description	Extent
Edged red on the plan at Appendix A	Land situated on the south side of the M50 motorway, on the north eastern side of Brockeridge Road and on the west side of Brockeridge Business Park near Twyning, forming part of Brockeridge Common (Register Unit CL 265) at Twyning, Tewkesbury, Gloucestershire.	650 m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged light green on the plan at Appendix A	Land situated on the south side of the M50 motorway, on the north eastern side of Brockeridge Road and on the north side of Brockeridge Business Park near Twyning, forming part of Brockeridge Common (Register Unit CL 265) at Twyning, Tewkesbury, Gloucestershire.	720 m ²

APPENDIX A



NOT TO ORIGINAL SCALE