
Application Decision

Site visit made on 2 October 2018

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 25 October 2018

Application Ref: COM/3199985 Whiteparish Common, Wiltshire

Register Unit: CL 7

Registration Authority: Wiltshire Council

- The application, dated 5 April 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 Gerard and Davina Downes and Shane and Sarah Skeates.
- **The release land** comprises 13,185m² of land at Herrington House, Whiteparish, consisting of parkland, a bungalow and its curtilage, a barn, a hard tennis court and various other out-buildings.
- **The replacement land** comprises 13,185m² of open grassland at Barbers farm, Whiteparish.

Decision

1. The application is granted in accordance with the terms of the application [Ref: COM/3199985] dated 5 April 2018, and the plan submitted therewith.

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 200m² 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 2 October 2018 when I was able to view both the release land and the replacement land. I was accompanied at the inspection by Mr and Mrs Downes and Mrs Skeates (applicants), Nicola Harper (Natural England (NE)), Julie Melin-Stubbs (New Forest National Park Authority (NFNPA)), Mr Eynon and Mr Finch (local residents) .

The Application

4. The application is made by Mr and Mrs Downes, owners of the release land and Mr and Mrs Skeates, owners of the replacement land.

The Release Land

5. The release land comprises 13,185m² of land to the south of Herrington House and adjacent to the northern boundary of the common. The land is mainly open grassland unlike the majority of the common which is densely wooded. It is fenced off from the rest of the common and in addition to open grassland it

contains the metalled drive to Herrington House, a hard tennis court with high mesh fencing and a number of buildings. The land lies adjacent to but not within the New Forest National Park and the Whiteparish Common Site of Special Scientific Interest.

The Replacement Land

6. The replacement land is also 13,185m² in area situated to the west of Common Road and linked to a small area of the common on that side of the road. It is an L-shaped part of a larger field of open grassland with a steep slope to the west. It lies within the New Forest National Park.

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;¹
 - (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 16².

Representations

Assessment

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

9. The release land is owned by Mr and Mrs Downes, joint applicants, who believe that the exchange will be beneficial for their property.
10. Two families are registered as having grazing rights over the whole common and one of them also has right of estovers. The applicants have stated that these rights are no longer exercised and no objection to the proposed exchange has been raised by anyone holding rights of common over the land.

The interests of the neighbourhood

11. The 2006 Act does not define the term 'neighbourhood'. However, published guidance³ makes it clear that the term should be taken to refer to the local inhabitants.
12. In this case, it seems most reasonable to regard the village and parish of Whiteparish as the appropriate 'neighbourhood'. Most of the houses in Whiteparish are located almost a mile from both the release land and the

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 Common Land Consents Policy Guidance, November 2015, Defra.

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

replacement land. There is no convenient parking area close to the common which is generally densely wooded with few paths and is difficult to access. Consequently the common is not well used by local inhabitants.

13. Whiteparish Parish Council has supported the application as it is seen as resulting "*...in 3.5 acres of land coming into public benefit – with limited access to this proposed new common land but with potential to be improved over time*".
14. The release land can be approached by way of the drive leading to Herrington House and Herrington Cottage. It would seem to be the only open (unwooded) area of the common and is fenced off from the rest. It has been used for the grazing of sheep and cattle, although no livestock were present when I visited. It has also been used to produce a hay crop. The current landowner says he has rarely seen anyone using the common.
15. The replacement land is a similar distance from the village centre. On my visit it was relatively easy to access by way of an area of common on the west side of Common Road where it appeared some recent clearance work had taken place. The land itself is an L-shaped part of a larger field which slopes steeply to the west and commands open views. The boundary with the remainder of the field is marked only by temporary posts at present. It is rough grassland which is currently used by a neighbouring farmer for producing a crop of hay. No plan is in place for the future management of the land if it becomes part of the common but the owners are said to be willing to cooperate with the NFNPA to agree a suitable plan.

Conclusions regarding the interests of the neighbourhood

16. In their present condition, it is my view that neither the release land nor the replacement land offers any significant benefit to inhabitants of the neighbourhood.
17. It is possible that with appropriate management the potential benefit of both areas could be enhanced to some extent but would still be limited as a result of access difficulties. The owners of the release land have already indicated that they have no wish to encourage public use of their land whereas the owners of the replacement land have expressed willingness to cooperate in the preparation of a suitable plan for the management of their land.
18. The proposed deregistration and exchange will result in very little detrimental effect on the interests of the neighbourhood but would offer the potential for some benefit.

The public interest

Nature Conservation

19. NE has commented that the release land is "*...almost certainly more biodiverse than the replacement land.*" The NFNPA has pointed out that the impact of the proposed exchange in relation to nature conservation has not been demonstrated.
20. Both areas of land are grassland which has been cut for hay. Additionally, the release land includes some buildings, a hard surfaced tennis court and a

surfaced driveway. I have no evidence to suggest that either area is currently of any great value for nature conservation.

21. I note that the owners of the replacement land have indicated a willingness to cooperate with the NFNPA in the preparation of a management plan for the replacement land which could include measures to enhance the nature conservation value of the land. However, such a plan is not yet in place.
22. Overall, it would appear that the proposed exchange is likely to have a limited impact on nature conservation but the replacement land offers the potential for some improvement in the future.

Landscape

23. The release land is currently the only open area within the common, the remainder of which is densely wooded. As such it has little impact on the wider landscape but does offer some variety within the common which might be regarded as valuable. However, this value is to some extent diminished by the land's proximity to dwellings and its management in association with them.
24. The replacement land is also open but on the edge of the common and offering extensive views to the west.
25. Overall, the proposed exchange is likely to have no adverse effect on the landscape but could result in increased opportunity for the public enjoyment of pleasant views over adjoining countryside.

Public Access

26. The public has the right of access to Whiteparish Common as a result of the coming into operation of Part 1 of the Countryside and Rights of Way Act 2000 (the CROW Act). It is argued by the landowner that some or all of the release land is excepted from the provisions of the CROW Act and therefore not subject to public access. However, it is not clear whether this is the case.
27. The common has existed for a long time before being formally registered under the Commons Registration Act 1965. It was, for example, recorded on the Tithe Map of 1842. I have seen no evidence relating to whether it is subject to any historic rights of access or whether any such rights might extend to any added areas of the common.
28. It appears that Whiteparish Common is currently little used by the public. It is some distance from most dwellings in the village and there is no convenient public parking area that would facilitate access.
29. Apart from the release land it is densely wooded and difficult to access. The release land, although mainly open, is fenced off from the rest of the common and has been since before it was registered as common land. Apart from the buildings and their immediate curtilage it has been used by the present owner for grazing of sheep and cattle. He claims to have rarely seen members of the public on any part of the common.
30. There is currently no public right of access to the replacement land and, even if it is registered as common land, there may still be no statutory public right of access until a review of open country and common land is conducted under section 10 of the CROW Act. A review has already been postponed and it is not known when one will take place. The current owners of this land have indicated

that they are happy to allow public access but it cannot be guaranteed that this will remain the case, especially if ownership of the land should change. However, the public generally enjoy de facto rights of access over common land, subject to certain limitations, and a landowner might find it difficult to withdraw such rights.

31. At present the replacement land can be accessed by the public by way of a relatively narrow wooded area of the common to the west of Common Road. It can also be accessed by way of a wooded area known as Banke's Copse which is not part of the common but is currently available for public access by permission of the landowner. No public rights of way cross or link to the replacement land so the access from Common Road would be the only way into or out of the land.
32. The replacement land slopes steeply to the west and this might limit its accessibility for some people. Also, it is currently used to grow a hay crop and, if it continues to be used for hay (or another crop), it is likely that access may become difficult at some times of the year. A similar consideration regarding crops might also apply to the release land which has also been used to produce a hay crop.
33. The replacement land is an L-shaped section of a larger field and the boundary with the rest of the field is currently undefined except for some temporary posts. If the exchange is approved, it is likely that members of the public accessing the land may stray from the area registered as common on to adjoining land unless the boundary is clearly defined by some suitable means. This will be a matter for the consideration of the landowner and does not in my view affect the determination of the current application.
34. Overall, the proposed deregistration and exchange may not have a significant effect on public access to common land. An area of land which, although fenced, may be available for public access by right but is not currently used by the public is proposed to be exchanged for a similar sized area which might only be available for public access by permission of the landowners which could in theory be withdrawn at any time but, in practice is unlikely to be.

Archaeological remains and features of historic interest

35. Historic England was consulted regarding the application and raised no objection to the proposal.
36. I have no reason to believe that approval of the application will lead to any detrimental effect on archaeological remains or features of historic interest.

Conclusions on the public interest

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

Conclusion

38. This proposal will have very little adverse effect on the interests of persons occupying or having rights over the release land, the neighbourhood or the wider public and could potentially result in some benefits. The application should therefore be granted and an Order of Exchange should be made.

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** Wiltshire 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 7 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL 7 to include the replacement land;
- (c) to register as exercisable over the replacement land any rights of common which, immediately before the relevant date, were registered over the release land.

First Schedule – the release land

Colour on plan	Description	Extent
Edged red	Land to the south of Herrington House, Whiteparish.	13,185m ²

Second Schedule – the replacement land

Colour on plan	Description	Extent
Edged green	Land at Barters Farm, Whiteparish.	13,185m ²

Barney Grimshaw

INSPECTOR

