
Application Decision

Site visit held on 7 August 2018

By Martin Elliott BSc FIPROW

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

Decision date: 7 December 2018

Application Ref: COM/3192980

Land at Alvaston forming part of Beam Heath Common (near to Middlewich Road and Nantwich Bypass), Nantwich, Cheshire

Register Unit: CL24

Registration Authority: Cheshire East Council

- The application, dated 5 January 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 Beam Heath Estate.
 - **The release land** comprises 23800 m² of land in the proximity of Alvaston Business Park off Middlewich Road, Nantwich Bypass, Nantwich.
 - **The replacement land** comprises 26600 m² of land north east of Birchin Lane, Nantwich.
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Decision

1. Consent is granted in accordance with the application dated 5 January 2018, to deregister and exchange common land at Alvaston, forming part of Beam Heath Common (near to Middlewich Road and Nantwich Bypass, Nantwich, Cheshire (Register Unit CL24).

Preliminary Matters

2. I carried out an unaccompanied site visit of the release and replacement land on 7 August 2018. I viewed the release land from the adjacent road but walked the perimeter of the replacement land. I am satisfied that, on the basis of my site visits and the written representations, I am able to determine the application.
3. Following my site visit I sought further comments from the applicant in respect of the Beam Heath Act of 1823 and the provisions contained within section 193 of the Law of Property Act 1925 (the 1925 Act). I have had regard to all subsequent submissions in reaching my decision.
4. Natural England make the point that there has not been wider consultation on the application in an inclusive manner as set out in guidance¹. Whilst this may be the case the applicant has carried out the consultation as required by statute.
5. The replacement land is crossed by a public footpath. Where the replacement land is crossed by a public right of way maintainable at public expense then the

¹ A Common Purpose: A guide to Community Engagement and Common Land Guidance Sheet 1a (published by the Planning Inspectorate)

Highway Authority² must join in with the application. Whilst the Highway Authority did not initially join in with the application subsequent correspondence from the Highway Authority confirms that they have done so.

Main Issues

6. 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;³
 - (d) any other matter considered to be relevant.
7. I have had regard to Defra's Common Land Consents Policy Guidance⁴ (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.

The Application

8. The application is to remove common rights from the release land to enable the land to be sold or let free of common rights.

The Release Land

9. The release land comprises three parcels of land. Parcel 1 (10700 m²) opposite the Sacred Orchard Public House is pasture land which is grazed by a tenant farmer and is fenced along the roadside and bounded by a hedge and fence on the boundary to adjacent fields. Parcel 2 (2000 m²) adjacent to the Alvaston Business Park was uncultivated land at the time of my site visit and is fenced on one side and bounded by a road and crops on the remaining boundaries. Parcel 3 (11100 m²) close to the property known as Windy Arbour is arable farmland and is bounded by a hedge adjacent to an access track and a steel fence on the north side forming the boundary to a sewage works. The parcel forms part of a larger field and at the time of my site visit had a crop of maize.

The Replacement Land

10. The replacement land comprises pasture land used for the grazing of livestock. The land is bounded by a hedge on the south east and north west sides, adjacent common land and a brook to the north side and houses to the south west. The land is crossed by a public footpath which leads from Birchin Lane.

² In this case Cheshire East Council

³ 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.

⁴ Common Land consents policy (Defra November 2015)

Representations

11. Following the notice of the application representations were received from the Open Spaces Society (OSS) and Natural England (NE).

Assessment

Interests of those occupying or having rights over the land

12. There are no rights of common recorded in the commons register and there is nothing to indicate that anyone occupying or having rights over the release land will be adversely affected by the application. The owner of the release and replacement land, Beam Heath Estate, being the applicant clearly supports the exchange. The tenant occupying the replacement land agrees to the registration of the replacement land as common land.

Interests of the neighbourhood

13. 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.
14. Representations have been made in respect of whether the release land is subject to rights of access under section 193 of the 1925 act. Having regard to all of the submissions I conclude that the release land is not subject to a right of access under the 1925 Act; the OSS also reached a conclusion that such rights of access do not exist.
15. Although the release land is not subject to access rights under the 1925 Act the release land is subject to rights of access under part 1 of the Countryside and Rights of Way Act 2000 (the 2000 Act). Although such access is available under the 2000 Act this is subject to certain exceptions as set out in Schedule 1 to the Act. The first exception excludes land on which the soil is being, or has at any time within the previous twelve months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees. As noted above parcel 3 is currently under cultivation and although parcel 2 was uncultivated at the time of my site visit the land forms part of a larger arable field and has, given its appearance, more likely than not been subject to cultivation in the recent past. As such access to this land is, or is likely to have been, excepted. Only parcel 1 will be subject to the access provisions and there was nothing to indicate that the land was being used for access on foot. It is noted that this land is relatively isolated from any residential areas and that there is no provision in the boundaries of this plot to facilitate public access.
16. The applicant states that the public already has access to the replacement land for recreational purposes via the public footpath which leads from Birchin Lane. The applicant understands that people tend to veer off the public footpath onto the replacement land for dog walking. However, apart from the public footpath passing along the southern boundary of the land there is no evidence of any other rights of access to the land. It may be that walkers veer off the public footpath onto the replacement land but there is nothing before me to indicate that the replacement land already enjoys wider use for recreation and access; I did not observe any wider use of the land during my site visit although it is appreciated that my time on site was limited.

17. Bearing in mind the above as the release land is not subject to access under the 1925 Act such rights would not be applicable to the replacement land on exchange. Further, whilst the replacement land will become subject to the access provisions under the 2000 Act this, as pointed out by the OSS, will not come into effect until a review of the maps prepared under part 1 of the 2000 Act has taken place.
18. The expectation of the Secretary of State is that the interests (notably the landowner, commoners, and the wider public) will be no worse off in consequence of the exchange than without it. That expectation is more likely to be realised where the replacement land is at least equal in area to the release land, and equally advantageous to the interests.
19. If an Order of exchange is made then, in the absence of any pending review, there will be a no statutory access to the replacement land for the foreseeable future. However, noting my observations in respect of access to the land I do not consider that any adverse impact will be significant. In the longer term the replacement land will be more beneficial to the local and wider community as the land is adjacent to a sizeable residential area.
20. The OSS make the point that section 193 provisions under the 1925 Act could be applied to the replacement land by express provision under section 17(7)(b)(ii) of the 2006 Act. Although the applicant has some reservations in this respect they have no objection to the application of such rights. An express provision under the relevant section would facilitate access for air and exercise. However, any provision will be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority. Any access will therefore be subject to any provisions within the Beam Heath Act of 1823. There is nothing before me to suggest that there will be any conflict with the 1823 Act and I do not consider that the application of section 193 to the land will be procedurally incorrect. The 2006 Act provides for an express provision in respect of section 193.
21. If an express provision is included in the exchange order then in my view there would be a benefit to the neighbourhood in terms of access to the land.

The public interest

The protection of public rights of access

22. In respect of the effect on public rights of access I refer to my observations at paragraphs 13 and 21 above which are equally applicable to public access. Bearing in mind my previous observations I do not consider that the exchange will have any significant adverse effect on public rights of access.

Nature conservation

23. Natural England have been consulted on the application and whilst they are unclear as to any benefits to nature conservation they do not suggest that there would be any adverse effect. The land does not have any nature conservation designations. The release land is agricultural land and the replacement land is also agricultural land used for grazing. I do not consider that the exchange will have any impact on nature conservation.

Conservation of landscape

24. There is no evidence before me to suggest that the exchange will have any adverse effect on the landscape.

Archaeological remains and features of historic interest

25. Historic England have been consulted on the application and have made no representations in response. There is no evidence that the exchange will have any adverse effect on archaeological remains or features of historic interest.

Other relevant matters

26. The replacement land to be provided is 26600 m² in area whereas the release land in total is 23800 m². There is therefore a net increase in common land. This conforms with Government objectives that the stock of common land should not be diminished.

27. NE suggest that consideration should be given to access to the replacement land by equestrians and the less able. Access to the replacement land is currently available along a public footpath via a metal gate which was well maintained and easy to use. The applicant welcomes advice from Natural England on appropriate gates.

28. The applicant makes the point that the OSS have not raised any arguments concerning section 193 of the 1925 Act in relation to previous applications for exchange. Whilst this may be the case, such issues have been raised by the OSS in connection with the current application and I am required to consider the application on its merits.

Conclusion

29. 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 adverse effects on those with rights of common over the land. There will also be no significant adverse effect on the interest of the neighbourhood or the public. The exchange will enable the applicant to sell the land. On balance the application should be allowed.

Martin Elliott

INSPECTOR

Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17(1), (2), (7) and (8) of the Commons Act 2006, **I HEREBY ORDER** the Cheshire East 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 CL24 to exclude the release land;
- (b) to register the replacement land as common land, by amending register unit CL24 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 CL24) 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 CL24.
- (d) to register as exercisable over the replacement land rights of access under section 193 of the Law of Property Act 1925.

First Schedule – the release land

Colour On Plan	Description	Extent
Edged red	Land in the proximity of Alvaston Business Park off Middlewich Road, Nantwich Bypass, Nantwich forming part of register unit CL 24 comprising three areas of land 10700 m ² , 2000 m ² and 11100 m ² .	23800 m ²

Second Schedule – the replacement land

Colour On Plan	Description	Extent
Edged green	Land to the north east of Birchin Lane crossed by public footpath number 3 Willaston	26600 m ²

