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## Application Decisions

Site visit made on 19 March 2019

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 15 April 2019**

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### **Application Ref: COM/321 5021 ('Application A')**

Land at Powick Hams Common, Powick, Worcestershire

Register Unit Number: CL 77

Commons Registration Authority: Worcestershire County Council

- The application, dated 5 October 2018, 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 Sarah Hawkins and Henry Murch.
  - The release land comprises 23,950m<sup>2</sup> of CL 77.
  - The replacement land comprises 26,882m<sup>2</sup> of land known as Abbey Meadow.
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### **Application Ref: COM/ 321 7252 ('Application B')**

Land at Powick Hams Common, Powick, Worcestershire

Register Unit Number: CL 77

Commons Registration Authority: Worcestershire County Council

- The application, dated 21 November 2018, 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 Sarah Hawkins and Henry Murch.
  - The release land comprises 7262m<sup>2</sup> of CL 77.
  - The replacement land comprises 7265m<sup>2</sup> of land known as Abbey Meadow.
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### **Decision (Application A and Application B)**

1. The applications are granted.

### **Main Issues**

2. 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 interest<sup>1</sup>;
  - (d) any other matter considered to be relevant.

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<sup>1</sup> 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.

### **Powick Hams Common**

3. Powick Hams Common was registered as common land under the Commons Registration Act 1965 and comprises an extensive area of semi-improved agricultural grazing land within the flood plain of the River Teme and is used for pasture and hay / silage production.
4. Powick Hams Common is not subject to common rights all year round and the landowner has the grazing during those periods when the land is not subject to common rights.
5. In March 2017, Worcestershire County Council submitted a business case to the Department for Transport for funding for Phase 4 of the dualling of the A4440 Worcester Southern Link Road to enable the relief of congestion; to deliver network capacity enhancements at key pinch points; to improve journey time and journey reliability along the A4440; to support economic growth and the development of new housing in the south of the county. The proposed scheme was granted entry to the DfT's programme on 19 October 2017.
6. The proposed highway scheme includes the permanent widening on the south side of the existing embankment of the A4440 Temeside Way onto Powick Hams Common between Powick Roundabout and Carrington Bridge to provide and additional two lanes of carriageway including associated verges, embankments, slip roads, drainage ditches and livestock fencing. The scheme will also provide a permanent viaduct to carry the widened A4440 Temeside Way over Powick Hams Common alongside the existing Powick Common Viaduct and a new bridge to carry a footpath and cycleway over Hams Way.
7. Planning permission for the road improvement scheme was granted on 27 March 2018. The section 16 applications have been made to facilitate the delivery of that scheme. Consent for works associated with the delivery of the scheme on the parcels of release land at issue has been granted under section 39 of the 2006 Act and preliminary works associated with the road scheme under the section 39 consents were in progress at the time of my site visit.

### **The Release Land – Application A**

8. The release land comprises 23,950m<sup>2</sup> of semi-improved agricultural grassland to the south-east of the Powick Roundabout which is located at the point where the A4440 and the A449 intersect. The release land lies to the north and south of the A4440 Temeside Way and to the east of the A449 Malvern Way (shown edged red on Plans 1 and 2 appended to this decision).
9. The release land has no designations for nature conservation however the River Teme is a designated SSSI with the designation extending to the banks of the river by 2m on either side. The river is approximately 100m from the release land.

### **The Release Land – Application B**

10. The release land comprises 7262m<sup>2</sup> of semi-improved agricultural grassland to the south-west of the Powick Roundabout adjacent to the A449 Malvern Way (shown edged red on Plan 3 appended to this decision).

### **The Replacement Land – Application A**

11. The replacement land comprises 26,882m<sup>2</sup> of semi-improved agricultural grassland located to the south-west of the A4440 Hams Way, bounded by the River Teme to the north and parts of CL 77 on all other boundaries and is shown edged light green on Plan 2 appended to this decision. The River Teme is one of the boundaries of the replacement land the banks of which form part of the designated SSSI.

### **The Replacement Land – Application B**

12. The replacement land comprises 7265m<sup>2</sup> of semi-improved agricultural grassland located to the south-west of the A4440 Hams Way, bounded by the River Teme to the north and parts of CL 77 on all other boundaries and is shown edged light green on Plan 3 appended to this decision. The River Teme is one of the boundaries of the replacement land the banks of which form part of the designated SSSI.

### **Representations**

13. The Open Spaces Society ('OSS') do not object to the proposed de-registration and exchange. OSS queried the nature of the applicant given that the reason for the proposed exchange is to facilitate a highway authority road scheme. OSS also queried the internal subdivision of the replacement land and sought an assurance that any order under section 16 would specify that the gates within the existing and proposed boundary fence were to be kept unlocked.
14. At the date of the application, both the release land and the replacement land were in the ownership of Sarah Hawkins and Henry Murch. Worcestershire County Council (as the Highway Authority) has confirmed that it acquired ownership of the release lands on 21 January 2019 and has also confirmed that it wishes the applications to proceed in their normal course.
15. Regarding the apparent sub-division of the replacement land, the applicants submitted that it had been necessary to divide Abbey Meadow into two parcels for the purposes of the applications<sup>2</sup>. However, the whole of Abbey Meadow was to become registered common land and there would be no physical internal subdivision. It is not possible for an order under section 17 to contain a condition of the type suggested by the OSS, however the applicants have confirmed that no locks will be installed on any gate which provides access to and from Abbey Meadow from adjacent parts of CL 77.
16. Although Historic England responded to the consultation on the applications, it made no objection or representation in regard of them.

### **Assessment**

#### ***The interests of persons occupying or having rights over the land***

17. There are rights of pasture extant over CL 77; the applicants submit that there are 9 active commoners who exercise their rights over the common. No representation was received which suggested that the commoners would be disadvantaged or adversely affected by the proposed exchange.

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<sup>2</sup> The commons register had required updating to take account of the de-registration and exchange of common land undertaken as part of the original construction of the A4440 Temeside Way in the 1980s. It had not been possible to make application B until the commons register had been amended. Plan 3 shows the extent of the Common following these amendments.

18. The applications were made in order to facilitate the development and construction of Phase 4 of the A4440 Worcester Southern Link Road; subsequent to the applications being made, ownership of the release land has been transferred to the Highway Authority. The proposed deregistration and exchange are in the interests of the owner and occupier of the release land.

***The interests of the neighbourhood***

19. 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.
20. 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.
21. I saw from the works which had taken place around the replacement land that that there were three gates which provided access between the existing common and the replacement land. It is the intention of the applicants that public access to the replacement land will be available via the gates which will not be locked but will be latched.
22. I consider that the replacement land will be equally advantageous in terms of access as the release land and 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 prior to a review of the Part 1 access maps being concluded, access between the existing common and the replacement land for local people will not be hindered by the presence of latched gates on the boundary of the replacement 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*

23. In respect of the effect of the proposed exchange on public rights of access I refer to my observations in paragraphs 19 to 22 above in relation to the interests of the neighbourhood which are equally applicable to the interests of the public.

*Nature conservation*

24. Natural England has been consulted on the application and has made no response. The replacement land is bounded to the north by the River Teme which is a SSSI designated for its invertebrate assemblage, population of Freshwater Pearl Mussel, Twaite Shad, White-clawed Crayfish and Otter. The replacement land has been assessed as Grade 3 semi-improved grassland and is currently used for pasture and hay / silage production. The existing use of the replacement and does not appear to have had any detrimental effect upon the features for which the SSSI has been designated.

25. As the current use of the replacement land will be unaffected by the exchange, I consider it to be unlikely that exchange would have any adverse impact upon biodiversity or nature conservation.

*Conservation of the landscape*

26. The exchange is sought to facilitate the construction of a second carriageway for the section of the A4440 between Powick and Ketch Roundabouts. This will involve the construction of a second bridge crossing of the River Severn and a second viaduct adjacent to the existing Powick Common Viaduct. Additionally, there would be a foot and cycleway bridge constructed over Hams Way.
27. Although the proposed exchange would not have, of itself, any adverse impact upon the character of the landscape. The construction of a second carriageway for the A4440 will have such an impact but this is not something I can take into account in determining this application. However, the effect upon the landscape of the road scheme will have been considered as part of the planning application as will any mitigation measures considered necessary.

*Archaeological remains and features of historic interest*

28. Historic England has been consulted on the applications and has made no representation in response. There are no listed buildings, scheduled ancient monuments or non-designated nationally important archaeological sites on the release land. Although the release land is adjacent to the site of the Battle of Powick Bridge (1642), the proposed exchange would have no impact upon that site. 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**

29. Collectively, the replacement land to be provided is 34,147m<sup>2</sup> in area whereas the release land is 31,212m<sup>2</sup>. There will 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.

**Conclusions**

30. Having regard to these and all other matters raised in the applications and in the written representations I conclude that the exchange will not have any adverse effect upon those with rights over the release land. There will also be no adverse effect upon the interests of the neighbourhood or the public.
31. I conclude that the applications should be granted, and an Order of Exchange should be given in respect of each of the applications.

*Alan Beckett*

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** the Worcestershire County Council, as Commons Registration Authority for the area in which the release lands and the replacement lands are situated:

- (a) to remove the release lands from its register of common land, by amending register unit CL 77 to exclude the release land;
- (b) to register the replacement lands as common land, by amending the register unit CL 77 to include the replacement lands;
- (c) to register as exercisable over the replacement lands (in addition to remaining exercisable over the remainder of the land comprised in register unit CL77) any rights of common which, immediately before the date on which the release lands are removed from the register, are registered as exercisable over the release lands and the remainder of the land comprised in register unit CL77.

### First Schedule – the release land

Colour on Plan	Description	Extent
Edged Red on Plan 1 & Plan 2	Land to the south of the existing A4440 (Temeside Way) between the River Severn and the A449 (Malvern Road); land to the north of the existing A4440 (Temeside Way) at Powick Viaduct; land to the east of the current A449 (Malvern Road) to the south of Powick Roundabout.	23,950m <sup>2</sup>
Edged Red on plan 3	Land to the west of the existing A449 (Malvern Road) to the south of Powick Roundabout.	7,262m <sup>2</sup>

**Second Schedule** – the replacement land

<b>Colour on Plan</b>	<b>Description</b>	<b>Extent</b>
Edged light green on Plan 2	Land to the south of the River Teme known as Abbey Meadow.	26,882m <sup>2</sup>
Edged light green on Plan 3	Land to the south of the River Teme known as Abbey Meadow.	7,265m <sup>2</sup>





REV	DATE	DESCRIPTION	DWG	CHK	APP
2	14/09/18	HATCHING STYLE CHANGE	DP	MG	MG
1	27/09/16	ORIGINAL ISSUE	DP	MG	MG

GENERAL NOTES:  
A. THIS DRAWING SHOULD BE READ IN CONJUNCTION WITH ALL OTHER PROJECT DRAWINGS.  
B. DO NOT SCALE FROM THIS DRAWING.  
C. ALL DIMENSIONS ARE IN METRES.  
D. ALL LEVELS ARE IN METRES.

LEGEND:

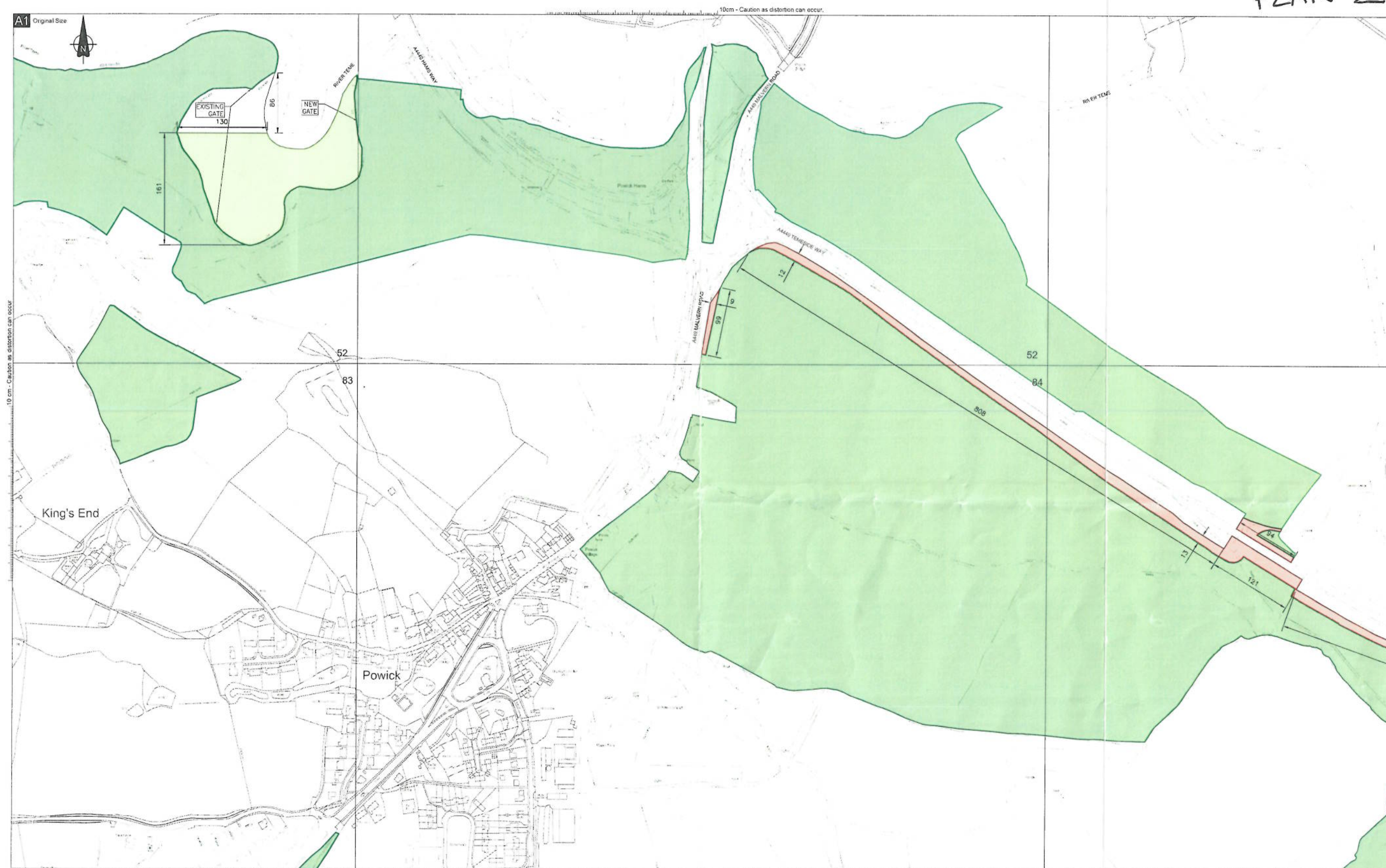
- EDGED DARK GREEN - COMMONLAND BOUNDARY
- EDGED LIGHT GREEN - REPLACEMENT LAND
- EDGED RED - RELEASE LAND

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Designed D. PROBERT	Date 7 SEPTEMBER 2016	Project <b>WORCESTER SOUTHERN LINK ROAD - PHASE 4</b>  Drawing Title SECTION 16 PLAN - SHEET 2 OF 3  Drawing Number SLR4 - BUR - ALL - ALL - DR - ZL - 100001 - 2
Drawn M. GORRY	Date 7 SEPTEMBER 2016	
Checked M. GORRY	Date 7 SEPTEMBER 2016	
Approved W. MORGAN	Date 14 SEPTEMBER 2016	
Scale 1:2500	Drawn BUR	
Drawing Status		Information





REV	DATE	DESCRIPTION	BY	CHKD	APPD
1	14/09/2018	ISSUED FOR CONSTRUCTION	W.MORGAN	M.DORRIS	D.PROBERT
2	14/09/2018	ISSUED FOR CONSTRUCTION	W.MORGAN	M.DORRIS	D.PROBERT

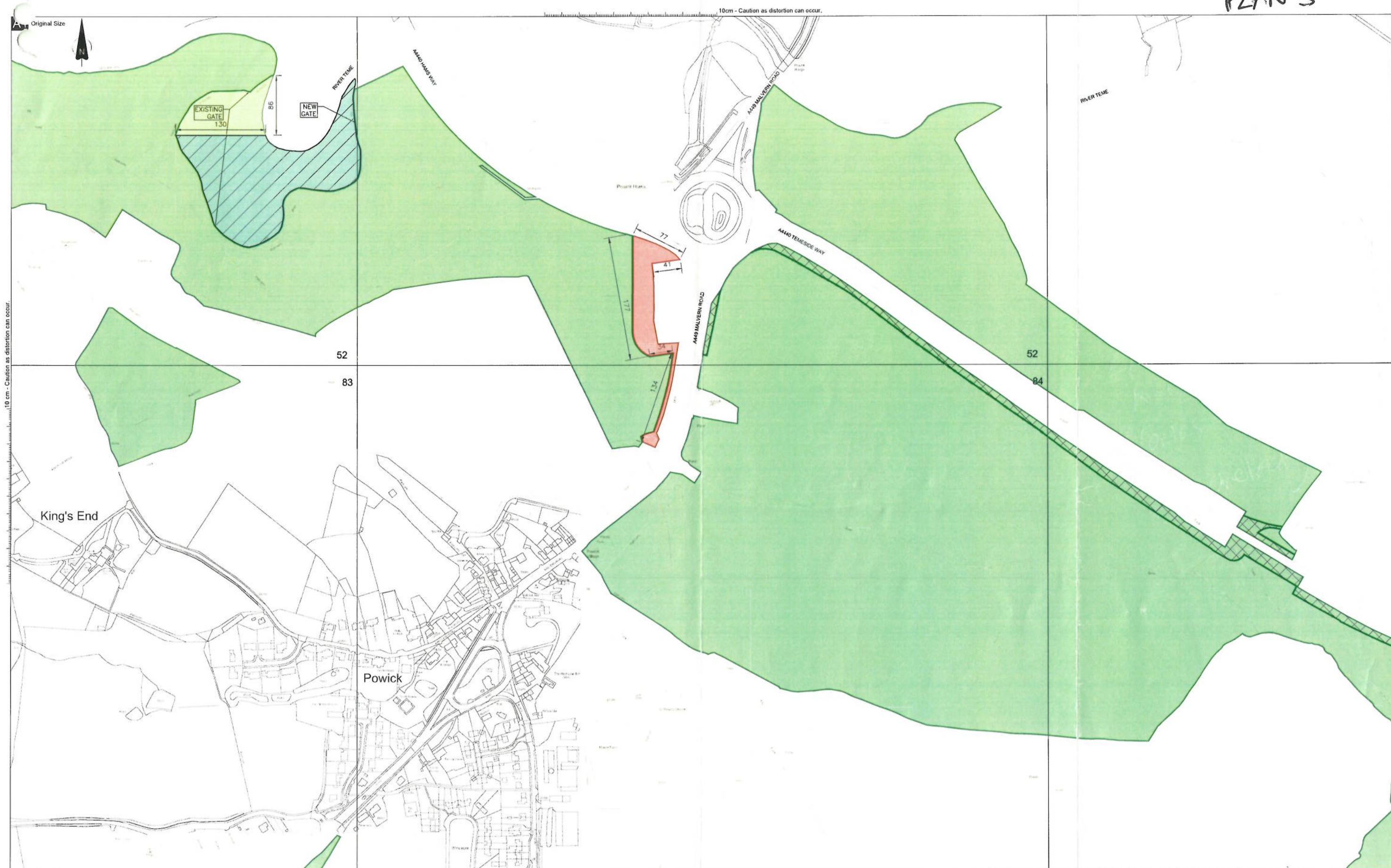
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**LEGEND:**  
 EDGED DARK GREEN - COMMON LAND BOUNDARY  
 EDGED LIGHT GREEN - REPLACEMENT LAND  
 EDGED RED - RELEASE LAND

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<b>Burroughs</b> WMS <b>COWI</b> TACP	<b>worcestershire</b> county council <b>GRIFFITHS</b> civil engineering and construction	<table border="1"> <tr> <td>Designed</td> <td>D.PROBERT</td> <td>Date</td> <td>7 SEPTEMBER 2018</td> </tr> <tr> <td>Drawn</td> <td>M.DORRIS</td> <td>Date</td> <td>7 SEPTEMBER 2018</td> </tr> <tr> <td>Checked</td> <td>M.DORRIS</td> <td>Date</td> <td>7 SEPTEMBER 2018</td> </tr> <tr> <td>Approved</td> <td>W.MORGAN</td> <td>Date</td> <td>14 SEPTEMBER 2018</td> </tr> <tr> <td>Scale</td> <td>1:2500</td> <td>Owner</td> <td>BUR</td> </tr> <tr> <td>Ref No.</td> <td>4156900</td> <td></td> <td></td> </tr> </table>	Designed	D.PROBERT	Date	7 SEPTEMBER 2018	Drawn	M.DORRIS	Date	7 SEPTEMBER 2018	Checked	M.DORRIS	Date	7 SEPTEMBER 2018	Approved	W.MORGAN	Date	14 SEPTEMBER 2018	Scale	1:2500	Owner	BUR	Ref No.	4156900		
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<b>INFORMATION</b>		<table border="1"> <tr> <td colspan="2">Project</td> <td colspan="2">WORCESTER SOUTHERN LINK ROAD - PHASE 4</td> </tr> <tr> <td colspan="2">Drawing Title</td> <td colspan="2">SECTION 16 PLAN - SHEET 3 OF 3</td> </tr> <tr> <td colspan="2">Drawing Number</td> <td colspan="2">SLR4-BUR-PRB-ALL-DR-ZL-100000-2</td> </tr> </table>	Project		WORCESTER SOUTHERN LINK ROAD - PHASE 4		Drawing Title		SECTION 16 PLAN - SHEET 3 OF 3		Drawing Number		SLR4-BUR-PRB-ALL-DR-ZL-100000-2													
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REV	DATE	BY	CHKD	APPD
1	09/11/20	WJ.MORGAN		
2	09/11/20	M.GORRY		
3	09/11/20	M.GORRY		
4	09/11/20	M.GORRY		
5	09/11/20	M.GORRY		
6	09/11/20	M.GORRY		
7	09/11/20	M.GORRY		
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**LEGEND:**

- EDGED DARK GREEN - COMMONLAND BOUNDARY
- EDGED LIGHT GREEN - REPLACEMENT LAND
- EDGED RED - RELEASE LAND
- EDGED DARK GREEN WITH CROSS HATCH - COMMONLAND CURRENTLY IN SEPARATE APPLICATION TO BE RELEASED (COM/3215021)
- EDGED LIGHT BLUE WITH DIAGONAL HATCH - LAND CURRENTLY IN SEPARATE APPLICATION TO BE REGISTERED AS COMMONLAND (COM/3215021)

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Designed <b>D. PROBERT</b>	Date 09 NOVEMBER	<b>INFORMATION</b> SLR4-BUR-PRB-ALL-DR-ZL-100004-1
Drawn <b>M. GORRY</b>	Date 09 NOVEMBER	
Checked <b>M. GORRY</b>	Date 09 NOVEMBER	
Approved <b>WJ. MORGAN</b>	Date 09 NOVEMBER	
Scale 1:2500	Owner BUR	

Project: **WORCESTER SOUTHERN LINK ROAD - PHASE 4**

Drawing Title: **SECTION 16 WEST PLAN - SHEET 2 OF 2**

Drawing Number: **SLR4-BUR-PRB-ALL-DR-ZL-100004-1**