

|  |
| --- |
| **Application Decision** |
| Site visit made on 22 August 2022 |
| **by Helen O'Connor LLB MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 August 2022** |

**Application Ref: COM/3292511**

**Land on the east side of Plaistow Road, Kirdford, Billinghurst, West Sussex**

Register Unit: CL132

Registration Authority: West Sussex County Council

* The application is made under Section 16 of the Commons Act 2006 (“the 2006 Act”) to deregister and exchange land registered as a common.
* The application is made by Martin Grant Homes Limited (owner of both the release and replacement land).
* **The release land** comprises of 248.5m2 of land within Great Common.
* **The replacement land** comprises of 248.5m2 of land lying adjacent to Great Common approximately 100m north of the release land.

Decision

1. The application is granted.

Procedural Matters

1. The original application referred to the release land as forming part of a different registered unit (CL133). The release land is close to the boundary with unit CL133, but it has subsequently been clarified that it forms part of CL132 Great Common, Kirdford, West Sussex. Further publicity has taken place outlining the correction. Based on the information before me, I am satisfied that the necessary publicity requirements have been adequately addressed.

Main Issues

1. I am required by Section 16 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);

(b) the interests of the neighbourhood;

(c) the public interest (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);

(d) any other matter considered to be relevant.

The Application

1. The deregistration of the land to the east of Plaistow Road is sought primarily to release the land to enable the placing of electricity cables underground and to provide two overhead stay poles. This derives from requirements associated with the implementation of approved residential development of nearby land (planning references 19/00086/FUL and 21/01355/FUL).

The Release Land

1. The release land is a rectangular area of 248.5m2 and is located in a linear strip of mature trees and dense shrubs between Plaistow Road and the recently approved housing development site. It comprises a small part of registered unit CL132. For the purposes of identification, a copy of the application plan is attached to this decision at Appendix A. The release land is edged in red.

**The Replacement Land**

1. The replacement land comprises a rectangular parcel of land of 248.5m2. It lies approximately 100m to the north of the release land and is contiguous with registered unit CL132. The replacement land is edged in light green on the attached application plan.

**Representations**

1. Four representations were made in response to the notice of the application. The Archaeology Officer of Chichester District Council raises no objection on archaeological grounds. Likewise, Historic England confirms that it does not wish to offer any comments save that the application should be determined in accordance with the relevant guidance. Natural England also raise no objections to the proposed exchange subject to the replacement land being accessible on foot.
2. The Open Spaces Society (OSS) raised a number of procedural concerns including the need to clarify the registered unit of common land affected and the adequacy of the information accompanying the application. Confirmation is also sought that a fence to the north of the proposed replacement land adjacent to Great Common will be removed.

Assessment

1. In determining the application, I have had regard to the Department for Environment, Food and Rural Affairs Common Land consents policy, November 2015 (the 2015 Guidance) published for the guidance of both the Planning Inspectorate and applicants. Paragraph 3.2 sets out overall policy objectives to protect commons and greens which includes the outcome that the stock of such land is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit.

***The interests of those occupying or having rights over the land***

1. The information before me indicates there are no registered rights of common over the release land, and there is nothing to suggest anyone presently occupies it. Whilst some rights of way are noted for Great Common CL132, I have no reason to consider that the proposal would interfere with any of those listed. On that basis, it follows that the proposal would not have an adverse impact on any person with an interest in the land.

***The interests of the neighbourhood***

1. The 2015 guidance indicates that the issues to be considered in this context include 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 land as a whole.
2. The release land lies within a linear section of common land adjacent to Plaistow Road that contains mature trees and shrubs but concerns only a small area relative to the wider registered unit of Great Common CL132. Overhead electricity cables and associated timber support poles are presently in evidence on the land. Combined with the uneven surface and understorey vegetation, the release land does not easily lend itself to recreation activities and people from the neighbourhood are more likely to derive visual benefit from it as part of a woodland belt that can be seen when travelling along Plaistow Road or using land nearby. This is a matter I shall return to when considering the impact on the landscape.
3. The proposed replacement land is situated close by and is of a similar scale. I observed it to be relatively flat, with longer grass and other vegetation and overhanging branches from the nearby woodland belt to the north. It would be located adjacent to public open space associated with the recent residential development. The combination of these factors is likely to mean the replacement land would possess a marginally increased functional use for local people.
4. Accordingly, I am satisfied that the proposed exchange would neither prevent local people from using the common in the way they are used to, nor would it interfere with the future use and enjoyment of Great Common as a whole.

***The public interest***

*Nature conservation*

1. Neither the release or replacement land are subject to national or local designations for wildlife interest. The Ecology Note prepared by CSA Environmental describes both the release and replacement land as located within woodland belts. Although these were not included in the baseline ecology surveys carried out in relation to the residential development nearby, the associated ecological mitigation and monitoring works that have subsequently taken place indicate that the woodland boundaries of the development site are similar in species composition and structure. It is concluded that there is no appreciable difference in habitat type or quality between the land proposed for deregistration and exchange. This is broadly consistent with my observations of the respective areas.
2. The works proposed to underground cables and provide overhead stay poles would interfere with existing vegetation on the release land to a certain extent. Nevertheless, given the small parcel of land concerned, it is unlikely to result in a noticeable ecological impact to the common overall. My findings are reinforced by the comments made by Natural England.
3. Therefore, I am satisfied that the proposed exchange would not have an adverse impact upon biodiversity or nature conservation at Great Common.

*Conservation of the landscape*

1. Notwithstanding the existing overhead cabling and poles, my observations of the release land were that the presence of the undergrowth takes precedence. Due to the presence of the overhead cables, the trees on the release land are generally lower than the mature trees flanking it. Nevertheless, the release land forms part of the hedgerow adjacent to Plaistow Road. This natural linear feature makes a positive contribution to the pleasant verdant rural qualities of the area.
2. The replacement land has a less prominent position relative to Plaistow Road as it is set further back. Nevertheless, it can be glimpsed from the road as well as seen from the adjoining areas of common land. In due course it will be apparent from public open space serving the new residential development (ground works for which had commenced at the time of my visit). It is proposed to remove a dilapidated post and wire fence from the northern boundary and grass seed the land. Given its proximity to a woodland belt, approved public open space and other common land, the replacement land would reinforce the spacious and verdant qualities of the area. On that basis it would make a broadly equal positive contribution to the landscape.
3. Therefore, I am satisfied that the impact on the landscape character of the area resulting from the proposed exchange would be generally neutral.

*The protection of public rights of access*

1. Public access to the release land is possible from Plaistow Road and there is no fencing or physical boundary to prevent it. However, in practical terms the presence of fairly dense understorey woodland species and uneven ground make that somewhat challenging.
2. There is currently a post and wire fence, albeit in poor repair, along the northern boundary of the proposed replacement land. The applicant has confirmed that this will be removed. During the construction of the residential development on nearby land, public access will be restricted on health and safety grounds. This is likely to be of a limited duration, and the applicant indicates that the land will be accessible before the residential development is complete.
3. On that basis, the replacement land would be accessible from the north and west where it joins existing common land. Following the implementation of the residential development approved, the land is also likely to be conveniently accessible from the east and south via public open space.
4. Therefore, I am satisfied that the public would be no worse off in consequence of the exchange than without it, and in some respects physical access and use of the replacement land would be easier. Accordingly, the proposal would protect public rights of access.

*Archaeological remains and features of historic interest*

1. No archaeological remains or features of historic interest have been brought to my attention and no objections have been made with respect to those matters. Consequently, I have no reason to find that any adverse effects would arise on this basis.

***Other relevant matters***

1. The proposed undergrounding of electricity cables under the release land stems from requirements of the planning permissions for the residential development nearby. The proposed exchange would enable the approved development to proceed, which would confer wider public benefits including boosting local housing supply. This attracts additional limited weight in favour of allowing the proposal.

**Conclusions**

1. Having had regard to the statutory criteria and 2015 guidance, the proposal would maintain the stock of common land. Furthermore, for the reasons outlined above, I am satisfied that the replacement land would be of at least equal benefit to the release land. I do not find that there are any relevant matters which indicate that the application should be refused.
2. Therefore, having regard to all matters raised in the application and written representations, I find that consent for an exchange of land should be granted, and an Order of Exchange given in respect of the application.

Helen O’Connor

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** West Sussex County Council, as commons registration authority for the area in which the release land and the replacement land are situated:

1. to remove the release land from its register of common land, by amending register unit CL132 to exclude the release land;
2. to register the replacement land as common land, by amending register unit CL132 to include the replacement land.
3. to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL132) 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 CL132.

**First Schedule** – the release land

|  |  |  |
| --- | --- | --- |
| **Colour On Plan** **(Appendix A)** | **Description** | **Extent** |
| Edged in red | Land within Great Common on the east side of Plaistow Road, Kirdford, Billinghurst, West Sussex | 248.5m2 |

**Second Schedule** – the replacement land

|  |  |  |
| --- | --- | --- |
| **Colour On Plan****(Appendix A)** | **Description** | **Extent** |
| Edged in light green | Land lying adjacent to Great Common, approximately 100m north of the release land. | 248.5m2 |

Helen O’Connor

Inspector

**Appendix A**

Not to scale

