Planning Inspectorate logo

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| **Application Decision** |
| Site visit made on 28 March 2023 |
| **by David Wyborn BSc(Hons) MPhil MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 17 April 2023** |

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| **Application Ref: COM/3304359**  **Land at Brockeridge Common, Twyning, Tewkesbury, Gloucestershire.**  Register Unit No: CL265  Commons Registration Authority: Gloucestershire County Council |
| * The application, dated 29 July 2022, is made under section 16 of the Commons Act 2006 to deregister and exchange land registered as a common. |
| * The application is made by Edward Harris Solicitors on behalf of Tiarks Property Development Limited (Area 1 and the exchange land), and Mr John Adrian Vizor and Mrs Nicola Jane Vizor (Areas 2 and 3). |
| * The release land comprises 2,677m2 made up of 2,240m2 adjoining to Brockeridge Business Park (area 1) and two areas (2 and 3) 174m2 and 263m2 respectively adjoining the southern M50 roundabout and slip road. * The exchange land comprises 3,486m2 adjoining the north eastern edge of the common and to the north of Phase 2 of the Brockeridge Business Park. |
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Decision

1. 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. 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 exchange or replacement land).

**Background**

1. The registration of ‘Brockeridge Common’ as CL265 became final on 7 August 1981. Many years before, it was divided by the construction of the M50 motorway including by the nearby junction 1 interchange with the A38. The majority of the common is located on land north of the M50. There are a few, reasonably small parcels of common land south of the motorway. These areas are further divided by other roads and are also separated from the motorway by grids and fences. The whole of the common extends to some 300 acres (121.45ha).
2. Development of the Brockeridge Business Park began in 2006 on land south of the motorway and which previously formed part of Brockeridge Farm. The small business units took place on land outside but adjoining the common land. However, widening of the farm access and the construction of vehicular turning areas required a deregistration and exchange of some 1,680m2 of common land. A formal application led to an order of exchange being made on 14 March 2006.
3. Planning permission was subsequently granted for a second phase of the Business Park. In July 2017, an application was made to deregister a section of land to extend the vehicular access alongside the Phase 2 land. It was understood that this area had been used as an incidental storage area and had not operated as part of the common. The exchange land was proposed to the north of the release land and was a triangular shaped area which extended the boundary of the common to the east. The release land extended to 650m2 and the exchange land 720m2. An order granting the deregistration and exchange was granted on 12 December 2017. The works to form the base course of the drive extension have taken place and the triangular section of land has been incorporated into the common. The buildings in association with Phase 2 have not yet been constructed.

**Main Issues**

1. I am required by section 16(6) of the 2006 Act to have regard to the following in determining this application.
2. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it):
3. the interests of the neighbourhood:
4. the public interest (which includes the 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): and
5. any other matter considered to be relevant.
6. I have had regard to Defra’s Common Land Consents Policy (November 2015) (the 2015 Policy) 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 own merits and a determination can depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from this guidance.
7. Section 3 of the 2015 Policy sets out the overall policy objectives to safeguard and protect commons and greens. Paragraph 3.2 seeks to ensure that our stock of common land and greens is not diminished so that any deregistration of registered land is balanced by registration of other land of at least equal benefit.

The application

1. The application has been jointly made and concerns land at the Business Park and land adjoining the M50 southern roundabout and slip road. Firstly, at the Business Park, the proposal in this application would enable vehicular access improvements to facilitate Phase 3 for which outline planning permission (18/00368/OUT) was granted on 17 January 2019. This extension to the Business Park concerns land to the broadly east of the present Business Park buildings. In addition, detailed planning permission (19/00447/FUL) was granted on 19 December 2019 for the widening of the access road into the Business Park with associated landscaping and planting. On the ground, the access improvements, with the positioning of the hedged boundary to the access road, have already taken place.
2. The second part of the application concerns two narrow sections of the common which adjoin the roundabout and slip road. It is explained that following discussions with the Highway Authority, these areas are considered may be required in terms of road works and visibility requirements arising from a result of the cumulative increase in traffic using Brockeridge Road, not only for the development of Brockeridge Park, but for future developments in the area, some of which already have planning permission. It is explained that this land is not required to accommodate Phase 3, but may be needed in the foreseeable future to ease traffic at the junction of Brockeridge Road and the motorway slip road.

*The release land*

1. Area 1 is an approximately ‘L’ shaped strip of land that adjoins the side of the previously permitted access drive to the Business Units. As explained, the works to widen the access have already taken place. Adjoining the access road is a grassed verge used as a swale to help with drainage and a hedgerow.
2. Areas 2 and 3 are steeply sloping banks that adjoin the roundabout and slip road. They are both scattered with a mix of trees and shrubs, and fenced at the bottom of the slope. Because of the steep nature of the slope, the established vegetation and the lack of any practical access, both parcels of land do not provide any meaningful public access or the ability for grazing.

*The replacement land*

1. The replacement land comprises an area of land to the north of the proposed Phase 2 of the Business Park. There is a post and rail fence along the northern boundary with the M50 and a post and wire fence with hedgerow along the eastern boundary. This area already merges, without any barrier, with the previous exchange land to the broadly west and in turn with the wider common land in this area.
2. A substantial part of the proposed replacement land is covered by a drainage area which consists of banked surroundings, with internal sloped sides leading down to, at the time of my visit, a pond area. This appears to operate as an attenuation pond for drainage from the Business Park and that, at times, the level of the pond could potentially be higher and, at other times, lower because the water would have soaked into the ground. The sides of the pond are generally grassed with reasonably shallow slopes and there are mown grassed walkways around this part of the site.

**Representations**

1. Representations have been received from Natural England, Twyning Parish Council, the Open Spaces Society and a local resident.
2. Natural England raise no objection to the application. It comments that, following the deregistration, it is not expected that there would be any significant level of change in the public’s ability to access the site, although the area being made available for access would appear to be more conducive to walking in for informal recreation and potentially nature study. Natural England acknowledge that new access gates are proposed to better facilitate access although whilst these can be used by the general public it is envisaged that the area would mainly be used by people associated with the operation of the Business Park.
3. Natural England note that a landscaping scheme has been compiled in association with the road widening which would affect the common land and it has no reason to believe that following deregistration and the appropriate implementation of this plan there would be any significantly harmful impacts on local landscape.
4. Twyning Parish Council has objected to the deregistration and replacement of the common land proposed under this application. This includes, because the proposed replacement land is now a large attenuation basin, that this land has negligible amenity value for recreation and access, and the area would be dangerous for residents, even when dry. The case is made that the land is not viable grazing land because it is so boggy, and it would be completely inaccessible for those residents and other common users with disabilities. It is argued that the man-made drainage basin, as constructed, would inhibit the ecology and biodiversity of the land and the ecosystem of adjacent areas.
5. The Parish Council comment that in terms of the inclusion of the small parcels of the land by the roundabout, local residents at the public meeting concluded that this was to facilitate highway improvements for large scale development which would then significantly diminish the recreation and access across the whole common.
6. The Parish Council also object because these proposals would have a material effect on accessibility, recreation and amenity use of Brockeridge Common and the sequential deregistration, exchange and subsequent planning applications continually dilute and devalue the common land. The Parish Council explain that it would be receptive to an alternative parcel of land that protects the public interest and that would be sympathetic to the value of Brockeridge Common rather than with the present proposal which would facilitate its demise.
7. The Open Spaces Society, while commenting that the replacement land is adequate for its purposes, raises concerns with the extensive release of land and believes that the road into the Business Park is capable of accommodating two passing heavy goods vehicles. However, these comments were made before it was explained that the works had already been completed. The Open Spaces Society subsequently raised concerns with this situation and that it was not clearly explained that the scheme was retrospective in the application.
8. The Open Spaces Society also object to the proposed replanting of the hedgerow along the side of the access road because it is argued that it is characteristic of common land that it is unfenced and unenclosed. They request that the access road should be open so that it gives the impression that the access road crosses common land rather than the appearance of a suburban business park.
9. In response to the further information from the applicant, including that the hedge planting is justified on the basis that the details are pursuant to the planning permission and its requirements, The Open Spaces Society comment that this illustrates precisely why a separate regime is needed for common land. The Open Spaces Society make the point that planners often impose a standard condition for planting which is completely at odds with the context of an open and unenclosed common. The Open Spaces Society state that it is important to note that the common land and planning regimes are conceptually and legally separate, being independent of each other. In this case, The Open Spaces Society argue that because planning permission has been given it does not exempt an applicant from the need for consideration and determination under the 2006 Act.
10. The local resident raises a series of concerns and objections in association with the proposal to widen the access road to Brockeridge Business Park. The case is made that these matters highlight the future potential larger phase of development at the Business Park and includes concerns with the impact on the adjoining road network, the level of traffic, highway safety and that the village of Twyning has already seen an excess of development.
11. However, in terms of considering these representations from this member of the public, the access road into the site already has the benefit of planning permission. Future phases of development and/or any upgrades to the junction next to the roundabout/slip road, and whether they are acceptable in highway terms in isolation or in conjunction with other developments, are matters for consideration through the planning application process. This application has been made under s16 of the 2006 Act and the main issues under this legislation, concerning the effects on common land, are set out above in paragraph 6.

**Assessment**

***The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)***

1. Common rights registered on the whole of Brockeridge Common CL265 are the rights to graze 323½ cattle, 2,300 sheep and 131 horses over the whole of the land comprised in the register unit. However, there is no natural animal movement between the north and south sections of Brockeridge Common because of the separation provided by the M50 and the associated safety fencing and cattle grids. The portions of the common south of the motorway are essentially detached from the larger part of the common and operate independently.
2. Of the many graziers with registered rights on CL265, only Mr and Mrs Halling (and their sons) of Brockeridge Farm now exercise their rights over the parcels south of the motorway. These commoners have explained that only on occasions do they turn out their cattle onto this part of the common and because they cannot be contained, they have to be present to avoid them getting onto the road or temporarily enclose the cattle with an electric fence.
3. The parcel of the common to the east of Brockeridge Road is explained to be grazed intermittently, and the commoners rarely allow the cattle to cross Brockeridge Road and graze the middle section of the common. The western parcel of the common is explained to be never grazed because it has no fence preventing access onto the A38.
4. These commoners explain that they have no objection to the widening of the road into Brockeridge Business Park, and that they are content with the access points across the access road, from one part of the common to the other, and vice versa, for animals, agricultural access, and people. They are also satisfied with the replacement land.
5. It seems to me that the replacement land is just as convenient and suitable for the active graziers as the land adjoining the access into the Business Park which would be removed from the common. The replacement land would directly adjoin and link with this part of the common and would provide a meaningful and satisfactory area compared with the ‘L’ shaped land that would be lost adjoining the access road.
6. Furthermore, these active commoners also have no objection to the loss of the two slivers of land on the motorway side of the cattle grid so that the access splays onto Brockeridge Road could be improved. It is explained that this land comprises short but steep banks which are fenced at the top to prevent animals (if the land was being grazed) from moving from the relatively flat lands of the common down the short steep banks to the fences at the roundabout and slip road.
7. These commoners explain that the topography means that the short banks are not grazed and are virtually impossible for the public to access as the junctions with the motorway were constructed at a lower level than the common. For these reasons, I consider that the replacement land would be much preferable in terms of its grazing ability than areas 2 and 3.
8. There have been no objections submitted from any graziers. No adverse effect of the proposed replacement land has been highlighted by those who could exercise grazing rights. Even if the pond area was taken into account, I consider that the size of the replacement area would be acceptable, having regard to the overall larger area of the replacement land compared with the release land and that areas 2 and 3 are not reasonably available for grazing. Overall, I consider that there would likely to be a positive benefit in terms of the availability of common land capable of being grazed.

***The interests of the neighbourhood***

1. 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 which is represented by Twyning Parish Council.
2. I consider that the loss of the two sections of land by the roundabout and slip road would have a negligible effect on the interests of the neighbourhood as they are not practically useable to access and not especially pleasant areas to use because of the effects of the traffic using the adjoining roundabout and slip road which links with the M50.
3. Area 1 is a strip of land that runs adjacent to the original access road into the Business Park. This area did make a contribution to the common, but its loss has not materially diminished the open feel for users within this space. The hedgerow that has been planted, which I will also consider later, provides a verdant boundary with the access road and wider Business Park, and I consider it helps users feel separated from the commercial activities within this part of the common.
4. Adjoining the access drive there is a five-bar gate into the common, and to the side of the gate is an open gap to the end of the adjoining hedgerow. This present arrangement provides easy access to this part of the common and would meet the reasonable needs of all those wishing to access this area.
5. The replacement land can be accessed via the gate/gap by the access road and by then walking through the common or via a gate further into the Business Park. The replacement land connects with the previous exchange land and at my site visit I was able to walk through the existing common and into the replacement land with reasonable ease.
6. I appreciate the objections of the Parish Council and the concerns with the proposed replacement land. However, I found the walk through to and around the replacement land with the pond area accessible in terms of location and ground conditions, and the replacement land would extend the common land beyond its present limits in an acceptable way. The pond area would not be accessible in itself, but the route around it is reasonably level, and the presence of the water is a feature that adds to the interest of the common, particularly from a nature conservation point of view. I acknowledge that the pond is foremost a water attenuation feature, but the way that it has been designed, with reasonably gentle slopes to the sides which have greened up, helps to ensure that it is not an overly engineered or incongruous feature. The pond is clearly apparent, and the presently mown paths make the access to and around this area achievable for the majority of people and, in my opinion, with no greater safety issues than for many other areas of the common.
7. Given that the replacement land is 809m2 larger than the release land, and having regard to the largely inaccessible nature of areas 2 and 3, this would likely offset any part of the area covered by water and, in any case, not every part of a common is always accessible.
8. The replacement land would also be convenient and accessible for workers at the Business Park. I consider that when working on the site these individuals would also form part of the neighbourhood. A gate from the Business Park links directly with this proposed area and this part of the proposed common would be of amenity and access value for these workers.
9. In conclusion, and whilst I have given great weight to the views of the Parish Council, I am satisfied that the replacement land would be of at least equivalent value, and likely to be of greater value, to the local community within this neighbourhood than the release land.

***The public interest***

*Nature conservation*

1. The application is accompanied by a biodiversity report from Focus Environmental Consultants (17 November 2022) following a visit and field survey of the site by a suitably qualified botanical surveyor. This report explains that the hedgerow planted on the release land adjoining the vehicular access to the Business Park is a nature species-rich hedgerow, which has been planted as a double-staggered line. The report explains that while the hedgerow is young, it is well-established and beginning to provide useful connectivity and wildlife habitats.
2. In relation to the replacement land, the report references that it has a range of habitats including rough semi-improved grassland, standing water pond with emergent and marginal vegetation, native species-rich hedgerow and areas of species-rich scrub planting.
3. In particular, the report comments on the now well-established water feature, and that it provides an excellent habitat for aquatic invertebrates and amphibians. In addition, the areas flanking the grassy embankment are said to provide areas of established native planting which provide excellent foraging opportunities for birds and small mammals, in particular owing to the diverse array of foods available during the course of the season.
4. I have taken into account the comments of the Parish Council and its concerns that the proposed use of the replacement land with its drainage pond would inhibit ecology and biodiversity of the land and adjacent areas. However, the report overall concludes that the replacement land is sympathetic to the value of Brockeridge Common in that it enlarges the area of common land and provides a contiguous area of habitat which is already of genuine value for wildlife. Following my site visit, I have found no reason to disagree with the findings of the report. I conclude that there would be worthwhile nature conservation benefits with the application scheme and that it would add to the ecological value of Brockeridge Common which is designated as a Key Wildlife Site.

*The conservation of the landscape*

1. The replacement land merges with the adjoining section of the common and, with the hedging and planting that has taken place, is sympathetic to the character and appearance of the wider landscape and the common.
2. The Open Spaces Society raise objection to the hedgerow that is positioned adjoining the access drive to the Business Park. This has provided a boundary to this part of the common, when previously the common was open to the access road and linked with the common land to the broadly south. The hedgerow has changed the character of the land immediately to the sides of the vehicular access to the Business Park.
3. I understand the concerns raised by the Open Spaces Society regarding this character and appearance change and also the general concerns raised with the operation of the differing requirements and legal basis of the planning and commons legislation. This is a matter I consider below.

*The protection of public rights of access to any area of land*

1. There are no designated public rights of way that cross the land. The issues regarding the protection of rights of access in this case are similar to the matters discussed in the section above concerning the interests of the neighbourhood. Overall, I consider that there would be no harm, and likely benefits, to rights of access to the common with the release and replacement of the lands as proposed.

*The protection of archaeological remains and features of historic interest*

1. Historic England has reported that there are no designated heritage assets within the site boundary or within its immediate setting. There is no clear evidence that deregistration of the release land or the registration of the replacement land would affect any archaeological remains or that there are any features of historic interest which are located in the area that would be adversely affected.

*Conclusions on the public interest*

1. There are worthwhile benefits to nature conservation from the replacement land. It would add to the area adjoining this Key Wildlife Site and provide a complementary and valuable habitat, particularly with the pond and associated marginal areas. The hedgerow alongside the access road into the site is now established and provides a native feature that the ecological report explains is beginning to provide useful connectivity and wildlife habitats.
2. There would be no harm, and likely benefits, to public rights of access with the provision of the replacement land for the reasons explained. Access to the existing common, from the access road to the Business Park, would be acceptable under the present proposal. There would be no harm to any archaeological remains or historic features.
3. In terms of the conservation of the landscape, the replacement land would provide a worthwhile addition to the common and would have a positive and complementary landscape impact.
4. However, the hedgerow alongside the road access changes the character of that part of the site and results in a loss of openness to the common. On the other hand, the hedgerow also provides a valuable ecological feature, does not hinder access to the land because of the openings and provides for those using that part of the common to have some degree of separation from the traffic using the access road and the Business Park in general. These are worthwhile benefits of the hedgerow.
5. It is necessary to consider this matter under the 2006 Act without reference to any planning requirements and, in this respect, I understand the concerns regarding the process that have been raised by The Open Spaces Society. Nevertheless, I consider that the identified benefits provided by the hedgerow outweigh the concerns with the effect that the hedgerow has on the landscape character of this part of the common and the resulting loss of the openness that previously existed.
6. Taking all these matters into account, I conclude that the balance of the public interest should fall in favour of the proposal.

**Other matters considered to be relevant**

1. I have considered above the main issues which have been raised with this application. Concerns have also been raised with the effects of this proposal in combination with the past applications to deregister and exchange parts of the common. However, while I am conscious of the cumulative impacts, each proposal needs to be considered on its merits at that time and that is the approach that I have taken in this case.

**Conclusion**

1. Having regard to the statutory criteria and the 2015 Policy, 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 and convincing matters which indicate the application should be refused.
2. Therefore, having regard to all the matters raised in the application and the 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.

**Formal Decision**

1. The application to deregister and exchange land is granted in accordance with the terms of the application (Ref: COM/3304359) dated 29 July 2022 and the accompanying plan and that an Order of Exchange should be made.

David Wyborn 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 Gloucestershire 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 CL265 to exclude the release land;
2. to register the replacement land as common land, by amending the register unit CL265 to include the replacement land;

**First Schedule** – the release land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged Red | Land adjoining Brockeridge Business Park, and two parcels of land adjoining the southern M50 roundabout and slip road. | 2,677m2 |

**Second Schedule** – the replacement land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged Light Green | Land to the north eastern edge of the common and to the north of phase 2 of the Brockeridge Business Park. | 3,486m2 |

