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| **Application Decision** |
| Site visit made on 28 October 2024 |
| **by Helen O'Connor LLB MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 November 2024** |

**Application Ref: COM/3345142**

**Poor Allotments, Tilford, Surrey**

Register Unit: CL458

Registration Authority: Surrey 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 Mr Andrew Webb of Ashgrove Homes Limited (owner of both the release and replacement land).
* **The release land** comprises of 1620m2 of land within CL458 on land to the north of Farnham Road.
* **The replacement land** comprises of 1620m2 of land lying adjacent to the east and west of CL458.

Decision

1. The application is granted.

Procedural Matters

1. In the interests of consistency, in my heading above I have taken the description of the site from that used in the land section of the Register of Common Land for CL458 rather than the one provided by the applicant.

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 is sought primarily to enable residential development to take place on the release land as it forms part of the fenced curtilage of a proposed new dwelling (plot 5) under planning permission WA/2013/1311.

The Release Land

1. The release land is a tapering area of 1620m2 comprising of woodland with bracken and shrubs. It forms the northern edge of registered unit CL458. 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 parcels of land of woodland, bracken and shrubs that flank CL458 to the east and west and are contiguous with it. The eastern block is larger than the western, but both would match the depth of the remaining registered unit and front onto Farnham Road. The replacement land measures 1620m2 in total and is edged in light green on the attached application plan.
2. Although not identified on the submitted plan, mention is made by the applicant of a narrow strip of land amounting to 47.5m2 along the frontage of CL458 and the highway. Based on a comparison of MAGIC (Multi-Agency Geographic Information for the Countryside) produced for the purposes of the Countryside and Rights of Way Act 2000 (CROW Act), mapping from the Highway Authority and the register of Common Land map, the applicant contends that this is a linear gap that does not form part of CL458. The applicant indicates they would be willing to include it as additional replacement land over and above the 1620m2 denoted. I shall consider this matter later in my determination.

**Representations**

1. Three representations were made in response to the notice of the application. Natural England (NE) raise no objection to the exchange. They describe the release land as a mixture of secondary deciduous woodland with an understorey of bracken and low growing shrubs. The replacement land is contiguous with a similar composition of vegetation. As such, they are alike in terms of biodiversity interest and landscape value. They find that the exchange would be unlikely to have any impact on the recreational use of the common. With reference to an existing cleft chestnut rail fence and row of wooden bollards aligning with Farnham Road, NE would prefer to see the removal of the fence and repair of the bollards. They explain how MAGIC maps were produced for the purposes of the CROW Act and confirm that they do not legally define the extent of common land. Instead, the register of common land and associated map should be used.
2. The Open Spaces Society (OSS) state that they are not opposed in principle. However, they consider that the strip of land along the frontage to Farnham Road already forms part of registered unit CL458. They contend that the allotment was made fronting onto the road and there is nothing in the register map to suggest otherwise. They also consider that the extent of the registered unit cannot be derived from MAGIC or a highway extent plan, only the register map. They also consider the existing fencing along the roadside of CL458 should be removed but that the bollards should be retained to prevent vehicular access.
3. Tilford Parish Council state they might be minded to support the exchange provided the land swap is fair and equitable, and that this should be checked prior to any consent being granted. They question the applicant’s interpretation of mapping whereby it is suggested there is a gap between the edge of the highway and the common land.

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. 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 the northern section of a relatively small and broadly rectangular area of common land adjacent to Farnham Road. My observations were that there are no obvious established paths across the common land unit. The proposed replacement land parcels adjoin CL458 and in total would amount to a similar area to the release land. They also have a comparable vegetated and wooded character. The combination of these factors is likely to mean that the replacement land would perform an equivalent functional use for local people.
3. 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 CL458 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. I observed both to be areas of predominantly naturally generated woodland with understorey growth, comprising mostly of young birch trees, pine, conifers, bracken, azalea and rhododendron. Hence, they provide broadly similar species and habitat. Consequently, there is no appreciable difference in habitat type or quality between the land proposed for deregistration and exchange. My findings are reinforced by those of NE in this respect.
2. Therefore, I am satisfied that the proposed exchange would not have an adverse impact upon biodiversity or nature conservation.

*Conservation of the landscape*

1. Given the tree cover and natural character and appearance of the release and replacement land, both make a positive contribution to the pleasant verdant and rural qualities of the area. Owing to its set back, the release land has a less prominent position relative to Farnham Road, whereas the replacement parcels would be more obvious. However, in landscape terms, the difference is marginal. Overall, I consider that they are broadly equal in terms of their landscape value. Hence, the impact on the landscape character of the area resulting from the proposed exchange would be a neutral one.

*The protection of public rights of access*

1. Public access to the release land is possible via the main body of CL458 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. The replacement land parcels would sit either side of CL458. There is no physical barrier along the eastern or western boundaries of CL458 to inhibit public access. Moreover, both sections extend to the public highway along Farnham Road, from which direct public access would be possible.
3. As outlined above, the appellant contends there is a strip of land between CL458 and the public highway that is in their ownership. They indicate a willingness to include it as replacement land, which they say would obviate the need for those accessing the common to cross third party land. On that basis, it is asserted that the proposal would improve public access.
4. It is not the purpose of my determination to pronounce on the extent of CL458. However, insofar as is relevant to my remit, in the absence of firmer evidence I find it doubtful that the configuration described by the applicant is accurate for the following reasons.
5. Firstly, it has been deduced from discrepancies between various mapping sources, which gives too much credence to maps other than the register of common land. Secondly, in practical terms, the existence of such a gap would appear to render the common land unit effectively land locked. I do not find it plausible that no mention of that was made or considered during the process of registering the unit under the Commons Registration Act 1965 by the Commons Commissioner when he considered the ownership of CL458. Hence, it would be more probable that the registered unit CL458 is contiguous with the public highway, and I have not seen convincing evidence to show otherwise.
6. In any event, the applicant has confirmed in writing that the strip of land in question does not form part of the 1620m2 replacement land that is shown on the application plan. Therefore, although I do not accept the applicant’s argument that there would be an improvement to public accessibility in this respect, it does not detract from the merits of the replacement land that is proposed, nor weigh against the proposal.
7. There is currently a gate, a timber post and rail fence and a series of wooden bollards running parallel to Farnham Road along the southern section of CL458. Although not in the best condition, the bollards prevent vehicles parking or encroaching onto the common. However, despite some gaps, I found that the fencing represents a physical barrier to accessing the common from Farnham Road. There is also a public right of way route that emerges on the opposite side of Farnham Road. Hence, the fencing may physically and psychologically deter the public from walking onto the common.
8. The applicant has confirmed that in conjunction with the exchange, the fencing will be removed, and the bollards repaired. Furthermore, the replacement land would provide a wider frontage along Farnham Road, which with the removal of fencing, would be more obviously accessible to pedestrians, including those using the footpath to the south.
9. 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 exchange would enable an approved residential development nearby to proceed, thereby conferring wider public benefits from a boost to local housing supply. This attracts a minor degree of weight in favour of allowing the proposal.

**Conclusion**

1. Having had regard to the statutory criteria and 2015 guidance, the proposal would maintain the stock of common land in terms of quantum area. 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** Surrey 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 CL458 to exclude the release land;
2. to register the replacement land as common land, by amending register unit CL458 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 CL458) 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 CL458.

**First Schedule** – the release land

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| **Colour On Plan** **(Appendix A)** | **Description** | **Extent** |
| Edged in red | Land at the northern edge of CL458. | 1620m2 |

**Second Schedule** – the replacement land

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| **Colour On Plan****(Appendix A)** | **Description** | **Extent** |
| Edged in light green | Land lying adjacent to the east and west of CL458. | 1620m2 |

Helen O’Connor

Inspector

**Appendix A**

Not to scale