

TO: PLANNING &amp; REGULATORY COMMITTEE

DATE: 22 February 2023

BY: COUNTRYSIDE ACCESS OFFICER

DISTRICT(S) GUILDFORD BOROUGH COUNCIL

ELECTORAL DIVISION(S):

SHERE

ROBERT HUGHES

PURPOSE: FOR DECISION

GRID REF: 508661 144628

**TITLE: COMMONS ACT 2006 SCHEDULE 2: APPLICATION TO AMEND THE REGISTER OF COMMON LAND AT RANGERS COTTAGE, PEASLAKE**

### SUMMARY

The committee is asked to consider whether to amend the register of common land relating to register unit CL196 by the removal of a strip of land at Rangers Cottage, Ewhurst Road, Peaslake identified on the application plan (Annex A).

Application was made to Surrey County Council, as Registration Authority, by Mr Christos Andreas and Mrs Linda Fleur Andreas under Section 22: Schedule 2(6) of the Commons Act 2006. The application was dated 25 November 2019 and date stamped by the Council on 13 December 2019.

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Paragraph 6, Schedule 2 of the Commons Act 2006 provides that the Council can deregister land covered by a building or within the curtilage of a building if it meets the statutory criteria set out below: -

*(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from the register of common land.*

*(2) This paragraph applies to land where -*

*(a) the land was provisionally registered as common land under section 4 of the 1965 Act;*

*(b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*

*(c) the provisional registration became final; and*

*(d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*

**The recommendation is to REJECT the Application**

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## APPLICATION DETAILS

### ***Applicant***

Mr & Mrs Andreas

### ***Land***

Land adjacent to Rangers Cottage, Peaslake.

### ***Date of Application***

13 December 2019

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## ILLUSTRATIVE MATERIAL

Annex A – Application Land

Annex B – Original Application Land

Annex C – Application and Initial Evidence

Annex D – Objections and Representations

Annex E – Response by Applicant

Annex F – Further Comments from Objectors

Annex G – Further Evidence from Applicant

Annex H – Comments from Objectors on Further Evidence

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## 1. BACKGROUND

- 1.1 The applicants seek to rectify the register of common land relating to register unit CL 196 by the removal of a strip of land at Rangers Cottage, Ewhurst Road, Peaslake identified by blue striped annotation on the application plan (Annex A). Initially the applicants had sought to remove a larger strip of land (shaded blue) as shown in Annex B, however due to reasons outlined below they subsequently removed a portion of the land and that which is shown in Annex A is the area to which this application applies.
- 1.2 The Commons Registration (England) Regulations 2014 set out the procedure to be followed for this type of application. A site notice was erected and notice of the application was given on the Council's website. The application documents were placed on deposit at the Council's Merrow office and at Guildford Library. The period for representations ended on 6 September 2021.
- 1.3 The application was accompanied by a covering letter from the applicants and correspondence between the applicants and Shere Parish Council (Annex C).
- 1.3 The applicants stated that Rangers Cottage was over 300 years old, and they had been the owners for 19 years (the application land was acquired separately by the applicants later). The applicants provided information on the strip of land and its condition during their period of ownership. Photographs were subsequently provided showing a canopy and chimney breast on the northern elevation and a man-made bank between the application land and neighbouring land to the north.
- 1.4 It is claimed that, on the date of provisional registration, the application land was within the curtilage of a building and has been mistakenly registered as common land.
- 1.5 During the consultation period objections were received from Shere Parish Council; Surrey Ramblers Access Officer; the Open Spaces Society and one other (Annex D).

These were sent to the applicants for comment. The applicants provided a written response and some additional photographs as evidence (Annex E).

- 1.6 The applicants' response was sent to the parties for comments. Further comments were received from the Open Spaces Society and one other (Annex F).
- 1.7 There are certain circumstances in which applications must be referred by the Registration Authority to the Planning Inspectorate for determination. These include where a person, having a legal interest in the land the subject of the application, has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application.
- 1.8 Shere Parish Council hold a lease which covered part of the original application site. The original application plan provided by the applicants (based on the registered title plan for the application land) showed that the application site shaded blue overlapped with the pink shaded area subject to the lease. The original plan, title register for the application land (SY849295) and the lease (SY793701) are attached as Annex B.
- 1.9 Given the objection to the application from Shere Parish Council, the applicants were informed that the application would have to be referred to the Planning Inspectorate (PINS) for determination in accordance with the regulations. In response, they submitted an amended plan for the application, excluding the area leased to Shere Parish Council (Annex A).
- 1.10 The applicants were advised that the Council would accept the amended plan for the application which would be sent to the consultees for comments. The applicants were invited to provide any further information to support their application which would be circulated at the same time. The letter and photographs provided in response are attached at Annex G.
- 1.11 Further comments received from Shere Parish Council, the Open Spaces Society and one other following circulation of the amended plan and additional information are included as Annex H. The consultees' responses were sent to the applicants.
- 1.12 Legal advice was sought from the Council's Legal Services regarding the evidence submitted in support of the application and the responses received.
- 1.13 The Council's Legal Services felt that it was not apparent from the information provided with the application that the application land met the statutory criteria for its removal from the commons register. The application was therefore referred to Counsel for advice on the merits of the application and the appropriate method of determination. The appointed Counsel conducted a site visit and obtained additional information from the applicants.
- 1.14 Following receipt of Counsel's advice, the Council's Legal Services issued a report to the Countryside Access Team setting out their recommendation to refuse the application on the basis that it does not meet the criteria under paragraph 6, Schedule 2 of the Commons Act 2006.
- 1.15 Section 6, Analysis and Commentary below sets out the factors to be considered in this case.
- 1.16 The Countryside Access Officer is therefore now placing this matter before members for consideration.

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## 2. CONSULTATIONS AND PUBLICITY

### *Borough/District Council*

2.1 Guildford Borough Council No views received

### *Consultees (Statutory and Non Statutory)*

2.2 Shere Parish Council Objections received

2.3 The Open Spaces Society Objections received

2.4 DOCC – Bob Milton Objection received

2.5 Friends of the Hurtwood No views received

2.6 Surrey Ramblers Representation received

2.7 Borough Councillors – Cllr Billington  
& Cllr Mrs Jones No views received

2.8 County Councillor – Mr Hughes No views received

### *Summary of publicity undertaken*

2.8 Documents placed on public deposit at local council offices and local library.

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## 3. HUMAN RIGHTS IMPLICATIONS

3.1 Public Authorities are required to act, as far as possible, compatibly with the European Convention on Human Rights, now enforceable in English Courts by way of the Human Rights Act 1998. The officer's view is that this proposal will have no adverse impact on public amenity and has no human rights implications.

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## 4. FINANCIAL IMPLICATIONS

4.1 The process of determining the application is met from existing budgets. The costs of advertising and of seeking Counsel's opinion have already been incurred.

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## 5. ENVIRONMENTAL IMPLICATIONS

- 5.1 In determining an application, a registration authority must have regard to its general statutory duties as set out below:
- a. in exercising its functions, to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity (section 40 of the Natural Environment and Rural Communities Act 2006);
  - b. its duty (in relation to any land designated as a site of special scientific interest (SSSI)) to take reasonable steps, consistent with the proper exercise of its

functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest (section 28G of the Wildlife and Countryside Act 1981);

- c. its duty to have regard to the requirements of the Habitats Directives so far as they may be affected by the exercise of those functions; and
  - d. its duty (in relation to an Area of Outstanding Natural Beauty (AONB)) to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (section 85 of the Countryside and Rights of Way Act 2000).
- 5.2 Defra guidance suggests that there will seldom be circumstances in which the registration authority's decision to grant or refuse an application is subject to discretion which may be influenced by the duties referred to above.
- 5.3 The application land falls within the Surrey Hills AONB but is not designated as a SSSI or SNCI (Site of Nature Conservation Interest).
- 5.4 Given the nature of the application land, the officer's view is that the duties outlined above would not, in this instance, be overriding factors if the criteria for deregistration in the legislation were met.

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## 6. ANALYSIS AND COMMENTARY

- 6.1 The representations received on the application (and the applicants' comments in response) are attached to this report (Annex D - H) but the main points made in the representations centred on:
- The status of the land as registered common land and the rights which exist over it.
  - The lack of evidence submitted with the application relating to the criteria in paragraph 6(2) (b) and (d) of Schedule 2.
  - The fact that the application land had been purchased by the applicants separately from Rangers Cottage later.
  - The irrelevance of the age of Rangers Cottage, the significant question being the extent of its curtilage.
  - Under the criteria, the extent of the curtilage must be established at the date of provisional registration and the period since that date.
  - Comments on the photographs provided by the applicants showing the canopy over the door and the man-made bank dismissing these as evidence of curtilage.
- 6.2 Commons Act 2006 Paragraph 6, Schedule 2 provides that: -
- (1) *If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from the register of common land.*
- (2) *This paragraph applies to land where -*

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- (a) *the land was provisionally registered as common land under section 4 of the 1965 Act;*
  - (b) *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;*
  - (c) *the provisional registration became final; and*
  - (d) *since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.*

6.3 The application land was provisionally registered as common land on 8 May 1968 and the registration became final on 13 September 1972. The main issues are whether paragraphs 2(b) and (d), as set out above, are satisfied namely:

- (i) was the application land within the curtilage of a building on 8 May 1968? and
- (ii) was the application land at all times since 8 May 1968 within the curtilage of a building?

6.4 The issue of whether the application land is now within the curtilage of a building is not relevant if the answers to (i) or (ii) above are negative.

6.5 Counsel visited the application land on 21 June 2022, met the applicants and obtained from them answers to a range of questions. The applicants subsequently provided him with additional information.

6.6 Counsel considered the meaning of curtilage in his advice, which cannot be given a single comprehensive definition. The determination of curtilage is a matter of fact and degree in each case drawing on the relevant considerations.

6.7 In relation to issue (i) - Was the application land within the curtilage of a building on 8 May 1968? Counsel concluded:

*“There is a real dearth of evidence as to the position on 8 May 1968.*

*I am able to make few findings as to the facts on that date. The building existed on 8 May 1968. It was sub-divided into a range of separate dwellings. The northernmost dwelling incorporated the porch and chimney breast on the northern façade, as well as a door. There is no evidence that the door was in use on the date in question. The application land existed on that date. It afforded access to or from the woodland to the west. There is no evidence that it was ancillary to the building on 8 May 1968. The size of the application land relative to the building does not preclude a finding that the application land was within the curtilage of the building on the date in question. The man-made bank existed on that date, albeit that it was wider than it is today such that the gap between the wall and the bank was narrower than it is today. There was a tree growing where there is now a line of beech trees. There was no gate. Bray Estate (or a member of the Bray family) owned the application land, but it did not own the land now known as Rangers Cottage. The [.....] owned this.*

*All relevant matters considered, I am unable on the evidence to conclude that the application land was so intimately associated with the building on 8 May 1968 as to lead to the conclusion that it formed part and parcel of the building. In short, on the evidence, the application land was not within the curtilage of a building on that date.*

*The answer to the issue (i) question is: No.*

*That answer is fatal to the application.”*

- 6.8 In relation to issue (ii) - Was the application land at all times since 8 May 1968 within the curtilage of a building? Counsel concluded:

*“There is more evidence as to this period, or parts of it, than there is as to 8 May 1968. [....].*

*Plainly, the application land and Rangers Cottage land were in different ownership for most of the period since 8 May 1968.*

*No-one disputed the 1968 application between 8 May 1968 and 13 September 1972.*

*The building existed throughout the period 8 May 1968 to date. For most of the period, it was sub-divided into more than two dwellings. The porch and chimney breast on the northern façade were in situ throughout, as well as the door on the northern façade. As of December 2001, much of the building was in very poor condition. Hawthorn Cottage<sup>1</sup> was at the time very unsafe, uninhabitable. The door on the northern façade was seized up, and disused.*

*The application land existed throughout the relevant period. It afforded access to or from the woodland to the west, subject to vegetation. There was some, limited, public user of the application land during the period. [.....] There was a tree growing where there is now a line of beech trees. There was formerly no gate by this tree. During this period, the applicants erected the gate to the west of the application land.*

*Given the applicants’ own correspondence and their answer to me on my visit, I infer, on the balance of probabilities, that as of December 2001 the application land had not been used for years, that it was effectively buried under saplings, brambles and other vegetation which had grown up during the period of disuse and that it was virtually impassable.*

*Between ..[around 2018]...and the end of the Covid lockdowns, at the earliest, the northern façade door was locked and unused. I do not need to resolve the conflict in the evidence as to the use of this door post-Covid lockdowns, as my overall conclusion would remain the same even on the applicants’ latest case. As of Autumn 2019, the northern façade of the building was unsafe and scaffolded. The applicants blocked the application land with some loose wire and erected a notice, on safety grounds.*

*All relevant matters considered, I am unable on the evidence to conclude that the application land was so intimately associated with the building at all times since 8 May 1968 as to lead to the conclusion that it formed part and parcel of the building. In short, on the evidence, the application land was not within the curtilage of a building throughout the period.*

*The answer to the issue (ii) question is: No.*

*That answer is likewise fatal to the application.”*

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<sup>1</sup> Adjacent to the application land

## 7. CONCLUSIONS AND RECOMMENDATION

7.1 On review of the application and evidence submitted, Counsel has advised that the Commons Registration Authority should refuse the application. This is on the basis that the application land was not within the curtilage of a building at the time of provisional registration and has not been within the curtilage of a building at all times since registration. It therefore does not meet the criteria under paragraph 6, schedule 2 of the Commons Act 2006.

7.2 Regulation 27(7) of the Commons Registration (England) Regulations 2014/3038 provides that:

“The determining authority-

may not refuse an application without first offering the applicant an opportunity to make oral representations; and

may not grant or refuse an application or proposal without first offering any person (other than the applicant) for whom the grant or refusal (as the case may be) would represent a determination of that person’s civil rights an opportunity to make oral representations.”

7.3 As there has been no hearing or inquiry in this case, the applicant has been offered the opportunity to make oral representations to Planning & Regulatory Committee before determination by Councillors at that committee.

7.4 Officers recommend that the application is **REJECTED**.

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### CONTACT

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### BACKGROUND PAPERS

All documents quoted in the report.