

**TO:** PLANNING & REGULATORY COMMITTEE      **DATE:** 29 June 2020

**BY:** HEAD OF LEGAL & DEMOCRATIC SERVICES

**DISTRICT (S):** WAVERLEY      **ELECTORAL DIVISION:**  
WAVERLEY EASTERN  
VILLAGES  
Victoria Young

**PURPOSE:** FOR DECISION

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**TITLE: APPLICATION TO RECTIFY THE REGISTER OF COMMON LAND.  
LAND AT THE HALLAMS, LITTLEFORD LANE, BLACKHEATH, GUILDFORD**

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### SUMMARY REPORT

The committee is asked to consider whether or not to remove the land the subject of this application from the commons register.

Application to rectify the register of common land by CA Collins and RPH Turner (the Applicants) dated 11 May 2016 relating to land at The Hallams, Littleford Lane, Blackheath, Guildford (CL 435).

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. Under Section 22: Schedule 2(6) of the 2006 Act the County Council is able to deregister a building wrongly registered as common land on application.

**The recommendation is:**

- a) that the Applicants be permitted to amend the application; and
- b) the application to deregister the land shown hatched blue on the amended application plan (Annexe B) be accepted

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### APPLICATION DETAILS

***Applicants***

Carol Collins and Richard Turner

***Land***

Land at The Hallams, Littleford Lane, Blackheath, Guildford

***Date of Application***

№ 1876: 11 May 2016.

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### ILLUSTRATIVE MATERIAL

Annexe A: Plan of Land submitted with application (Appendix 1 of the Inspector's report)

Annexe B: Amended application plan (Appendix 2 of the Inspector's report)  
Annexe C: Inspector's report dated 20 January 2020 and Appendices

### Site photographs

Figure 1: Front Aspect

Figure 2: Rear Aspect

## BACKGROUND

1. On 17 May 2016 Surrey County Council received an application to rectify the register of common land relating to CL 435 by the removal of the land at The Hallams, Littleford Lane, Blackheath. The application was made on the basis that *on the date of the provisional registration the land was covered by a building or was within the curtilage of a building*. The application was accompanied by various documents in support of the application.
2. The Commons Registration (England) Regulations 2014 sets out the process to be followed by any applicant seeking to deregister a building wrongly registered as common land and the process to be followed by the Commons Registration Authority. Under Regulation 21(1) (b), the Registration Authority must serve notice of an application on anyone who has previously asked to be informed of all applications.
3. A public notice was placed on the application land and on the County Council's website on 2 August 2016 with an objection period running from 2 August 2016 until 13 September 2016. The application was placed on public deposit at Bramley Community Library.
4. An objection to the application was received from the Open Spaces Society and one other (the Objectors). It was not clear from the evidence provided with the application whether the Land met the criteria for removal from the register. Legal opinion was sought and a view was taken that an independent investigation be conducted. This was to enable the County Council, as Commons Registration Authority, to discharge its statutory duty.
5. The legal opinion was circulated to the Applicants and Objectors. The Applicants submitted an amended application plan on 31 May 2019.
6. A barrister specialising in the law relating to commons registration was instructed to act as an independent inspector. The investigation took the form of a site visit and written representations. The site visit took place on 16 October 2019. The Inspector submitted his report to the Commons Registration Officer on 20 January 2020. (Annexe C).
7. The Commons Registration Officer is therefore now placing this matter before members for consideration.

## CONSULTATIONS AND PUBLICITY

### ***Borough/District Council***

Waverley Borough Council

No views received

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

The Open Spaces Society:	Objection received
Local Residents – adjoining properties:	No views received
Rights of Way	No objection
Land & Assets – Countryside Management	Comments received
County Highways Authority – Highways Information Team	No views received
Regulation 21(1) (b) consultees	Objection received

***Summary of publicity undertaken***

8. Documents placed on public deposit at local library. No representations have been received in response to this publicity other than those listed above.

**FINANCIAL IMPLICATIONS**

9. The process of determining the application is met from existing budgets.

The management of the land will continue to be the responsibility of the owners.

**ENVIRONMENTAL IMPLICATIONS**

10. In determining an application, a registration authority must have regard to its general statutory duties under the following provisions:
- i. 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);
  - ii. its duty (in relation to any land designated as a site of special scientific interest) 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);
  - iii. 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
  - iv. its duty (in relation to an Area of Outstanding Natural Beauty) 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).

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.

The Council's Countryside Team were consulted on the application and commented that: *"Whilst it is clear that the house and its residential curtilage may have been registered in error, the western part of the application site is open land forming part of the Blackheath Site of Special Scientific Interest [SSSI]..."*

However, the amended application plan excludes the western part of the land included in the original application plan and there is now only a very slight overlap with the SSSI on the western boundary of the application site.

Given the nature of the land in the amended application plan, which includes a substantial house and garden land, but excludes the unmanaged woodland, the officer's view is that the duties outlined above should not, in this instance, be overriding factors where the criteria for deregistration in the legislation is met.

## **EQUALITIES AND DIVERSITY IMPLICATIONS**

11. It is not considered that an Equalities Impact Assessment is required or that there are any equalities and diversity implications.

### **HUMAN RIGHTS ACT 1998**

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.

## **ANALYSIS AND COMMENTARY**

12. Surrey 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. Before the Commons Registration Authority is an application (№ 1876) made by Ms Collins and Mr Turner, under the Commons Act 2006, to have land at The Hallams, Littleford Lane, Blackheath, removed from the register of common land. The original application Land is identified on the plan appended to the application (Annexe A).
13. The Open Spaces Society and one other opposed the application.
14. For an application to succeed, the criteria set out in Paragraph 6 of Schedule 2 must be met:-
- 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.
15. The land was provisionally registered as common land on 24 September 1968 under Unit CL 435 and the registration became final on 1 August 1972.
  16. From the date of provisional registration, the land must have been covered by a building or within the curtilage of a building.
  17. The evidence submitted by the Applicants included a report by a heritage consultant who investigated the building curtilage. Following the objections the Applicants submitted a new plan showing a smaller area to be removed from the register. The boundaries of the new application land are shown on the plan at Annexe B.
  18. The Inspector recommended that the Commons Registration Authority (CRA) agree to an alteration of the extent of the application land from that relied on when the application was first made.
  19. The Inspector's reasoning is given in paragraphs 26 and 27 of his report. He concluded that:

*"...In the circumstances, whilst it would admittedly be useful to clarify, once and for all, the status of the woodland I am disinclined to recommend to the CRA that it should do so on the basis of the evidence presented to the CRA. The sensible course is, I think, to allow the amendment and to deal with the application in its amended form and to leave it to the As [Applicants] to pursue a further application in relation to the woodland if they are minded to do so..."*

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## CONCLUSIONS AND RECOMMENDATION

20. The Inspector's report contained the following conclusions: -
  1. I am satisfied that the AL<sup>1</sup> is the proper building curtilage of The Hallams. It represents the historic garden curtilage and even today this is the area which can sensibly be said to be ancillary to the main house.
  2. The land to the west of the AL is, as Mr Craddock rightly says, more of a wilderness and a buffer between Littleford Lane and the publicly accessible heath to the north, and the main house and gardens. For one thing, the nature of its use is quite different and, for another, the area up to the Littleford Lane is, as it seems to me, physically remote from the AL. It is not as if such land is even necessary or useful to the main house and surrounding garden curtilage. For instance, it is not as if we are dealing with stabling and associated buildings within a courtyard or other outbuildings near the main house where, in terms of function, there would be an obvious association with the main house.
  3. Accordingly, it is my recommendation to the CRA that the application to de-register the land shown hatched blue on the plan at Appendix 2 is justified on the

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<sup>1</sup> AL is defined in the Inspector's report as the Application Land shown on the plan at Appendix 2 of his report (paragraph 3.2) being the amended application plan.

evidence presented by As and on the basis of my own inspection of the site. It follows that the commons registration within reference CL 435 should be adjusted by the removal of such land from the registration.

The Inspector's recommendation to the Registration Authority is that the land shown hatched blue on the amended application plan at Annexe B should be removed from the register of common land because, on the evidence, it meets the criteria required in Section 22: Schedule 2(6) of the Commons Act 2006 for the reasons explained in detail in the Inspector's report dated 20 January 2020.

21. Therefore, Officers recommend that:

- a) the Applicants be permitted to amend the application; and
- b) the application to deregister the land shown hatched blue on the amended application plan (Annexe B) be accepted.

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**CONTACT**

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**BACKGROUND PAPERS**

The application documents and plans including the amended application documents and plan, responses to consultation, representations, Counsel's advice and the Inspector's Report have been published in a supplementary agenda which can be viewed on the Council's website [here](#).

**GOVERNMENT GUIDANCE**

[Correcting the Commons Registers](#)  
[Guidance for Commons Registration Authorities](#)