



Application Decision

Site visit made on 11 August 2015

by **Susan Doran** BA Hons MIPROW

appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 16 October 2015

Application Ref: COM693

Village Green, Barmby Moor, East Riding of Yorkshire

Register Unit No. VG 13

Registration Authority: East Riding of Yorkshire Council

- The application, dated 1 April 2015, is made under Section 16 of the Commons Act 2006 to deregister and exchange part of the Village Green.
- The application is made by Barmby Moor Parish Council.
- **The release land** comprises 56m² of land forming part of the Village Green and situated on the north side of Main Street.
- **The replacement land** comprises approximately 500m² of land diagonally opposite the release land and situated on the south side of Main Street

Summary of Decision: The application is refused.

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 a town or village green 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 a town or village green ('the replacement land'). In this case, the release land is less than 200m², however, a larger area of land is offered in exchange.
2. I carried out an inspection of the release land and the replacement land accompanied by Robert Hill, Chairman of Barmby Moor Parish Council, and Councillor Caroline Haynes, both representing the applicant, and Zoe Plummer of Quicksilver Homes.

Main Issues

3. I am required by Section 16(6) of the 2006 Act to have regard to the following in determining this application:
 - (1) The interests of persons having rights in relation to, or occupying, the release land;
 - (2) The interests of the neighbourhood;
 - (3) The interests of the public¹; and
 - (4) Any other matter considered to be relevant.

¹ 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.

4. I will also have regard to published guidance² in relation to the determination of applications under Section 16.

The application

5. The application is made by Barmby Moor Parish Council. The land proposed to be deregistered forms part of Barmby Moor Village Green which was registered under the Commons Registration Act 1965. The Village Green comprises several parcels of land within the village alongside roads to the north and north-west and south and south-west of St Catherine's Church.
6. The application is sought to construct a private vehicular access from Main Street to a proposed residential development on land to the north of part of the Village Green. If the application is successful, the applicant, as landowner, will grant an easement to allow such access. I understand that planning permission has been granted for the development but was due to expire at the end of July 2015.

The release land

7. The release land is an open managed grassed area together with a tree, and is used for general recreation such as dog walking. Historic England comments that it lies within the Barmby Moor Conservation Area.

The replacement land

8. The replacement land is used as a playground and I understand has been so used since 1983. It is open to the public at all times, and is owned by Barmby Moor Parish Council, with signs to this effect in place on the land. The applicant says access arrangements will remain unchanged, should the application be successful. However, the designation as Village Green will act as security against any future development (other than repairs to/or replacement of play equipment and safety surfacing installed in the playground). The land is fenced off from adjoining properties with public access afforded via a pedestrian kissing gate. In addition there is a field gate accessible with the authority of the landowner. The replacement land is separate, but a short distance away by foot across the road, from the release land.

Representations

9. An objection was made by the Open Spaces Society. They commented that whilst the replacement land is larger than the release land, it already has 'full rights of access and enjoyment' and is currently being used as a playground. Therefore it is not suitable as exchange land since there is no gain to the public beyond the protection from development offered by village green designation.
10. Four representations were received. Natural England commented that it does not consider the application poses any likely or significant risk and makes no specific comment on the details of the consultation. Historic England comments that neither parcel of land includes any designated listed building or scheduled monument. Humber Archaeology Partnership comments the application does not appear to affect any known archaeological features; and East Riding of Yorkshire Council has no objection to the proposal.

² Common Land Consents Policy Guidance, July 2009, Defra

Reasons

Interests of persons having rights in relation to, or occupying, the release land

11. The land is owned by the applicant. There are no registered rights over it. There is no evidence before me that the proposal to deregister will have any adverse effect in this regard.

Interests of the neighbourhood

12. Although not required to (paragraph 1), the applicant states they are offering the replacement land for the benefit of the local community. It is argued that if the land is not designated as village green, then the applicant will have the discretion to develop it in the future.
13. Designation of the replacement land as village green would protect the amenity space for the local community of Barmby Moor, and others, into the future. This would secure permanent access to it. However, the replacement land is already available for public use³. Therefore, I consider that overall there would be little or no benefit to the neighbourhood in adding the replacement land to the village green register. There is no evidence before me to suggest that the replacement land is, or is likely, to be developed in the future such that it will cease to be available and accessible to the public.
14. De-registration of the release land will mean that it is no longer part of the registered Village Green. However, there is nothing to suggest that the loss of the release land would prevent local people from using the remainder of the Village Green in the way they have done, or that future use and enjoyment of the land as a whole by the neighbourhood would be interfered with in any significant or detrimental way.
15. At the site visit, Zoe Plummer pointed out existing driveways in connection with the proposed development that would 'revert' to village green⁴. However, the map attached to the Village Green register already shows these as part of the registered land. Accordingly, they would provide no additional land for the benefit of the neighbourhood.
16. I consider overall there would be little or no positive benefit to the neighbourhood as a result of the proposal.

Public interest

17. There is no evidence that deregistration of the release land would have an adverse effect on the conservation of the landscape; and there are no known archaeological and historical features that would be affected. An existing tree is proposed to be removed, but the plans for the proposed development show a replacement tree.
18. As regards the replacement land, there are no known issues concerning nature or landscape conservation or archaeological and historical features. Public access is afforded from Main Street and the replacement land is in close proximity to the remainder of the Village Green in this part of the village.

³ Although dogs are not allowed

⁴ A plan of the proposed development attached to the application annotates such areas as "Make good village green"

19. However, as mentioned above, the replacement land, which is held by the Parish Council, is already in use as a playground and is accessible to the public at all times. The 2006 Act enables commons, town and village greens to be safeguarded for current and future generations to use and enjoy. The stock of common land and greens, which enjoy a public right of access, should not therefore be diminished unless land deregistered is balanced by the registration of other land of at least equal benefit⁵. Whilst the proposal may not reduce the stock of common, town and village green land, it would result in a reduction in public access to village green land since, although larger, the replacement land already enjoys public access. Accordingly, there is no benefit to the public in terms of access.

Other relevant matters

20. I understand from the written submissions that an application relating to the same area of release and replacement land was made and considered in or around 2009⁶, and that the present application is almost identical. The Agent for the applicants states the earlier application was on the verge of being approved by the Secretary of State, but says the Developer's solicitor was unable to give final approval for the Order to be granted. I am unclear as regards this statement as approval is (or is not) granted by the Secretary of State. Nevertheless, whilst I note that there has been a previous application to deregister the same part of the Village Green, each application is determined on its own merits.

21. No other relevant matters have been raised that require my consideration.

Conclusions

22. Having regard to these and all other matters raised in the written representations, and to the criteria in Section 16(1) of the 2006 Act, I conclude that granting the application would not be against the interests of those having rights in relation to the release land, or the public interest with regard to nature or landscape conservation, or the protection of archaeological remains or features of historic interest. However, I share the views of the objector, and conclude that overall there would be no benefit to the neighbourhood and the public interest with regard to access. I conclude, therefore, that the application should not be granted and no Order of Exchange should be made.

Formal Decision

23. The application to deregister and exchange village green land at Barmby Moor Village Green, Register Unit No. VG 13, is refused.

S Doran

Inspector

⁵ Common Land Consents Policy Guidance, July 2009, Defra

⁶ Planning Inspectorate reference COM68