



**APPLICATION COM/232618 FOR  
DEREGISTRATION OF PART OF COMMON  
LAND AT THE SANDS, DURHAM**

**THE DEREGISTRATION AND EXCHANGE  
OF COMMON LAND AND GREENS  
(PROCEDURE) (ENGLAND) REGULATIONS  
2007**

**PROOF OF EVIDENCE OF  
SUSAN ROBINSON ON BEHALF OF  
DURHAM COUNTY COUNCIL**

(Ownership/history of land)

27 November 2020

<b>1</b>	<b>INTRODUCTION AND SCOPE OF EVIDENCE</b>
<b>2</b>	<b>RELEASE LAND</b>
<b>3</b>	<b>REPLACEMENT LAND</b>
<b>4</b>	<b>ALTERNATIVE SITES CONSIDERED AND CONSULTATION</b>
<b>5</b>	<b>PROCEDURAL HISTORY OF S16 SUBMISSION</b>
<b>6</b>	<b>SUMMARY AND CONCLUSIONS</b>

# 1 INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1 My name is Susan Robinson. I am the Council's Head of Corporate Property and Land, a position which I have held since 3<sup>rd</sup> June 2019. My service deals with the management of the Council's property and land portfolio and my duties are primarily to lead the policy making processes of the Council in relation to the strategic and operational management and direction of the Authority's property and land portfolio. I therefore have overall responsibility for the Council's land holdings.
- 1.2 I qualified as a Chartered Surveyor in 2007 (*DipSurv MRICS*) and have 33 years' experience working in the public sector.
- 1.3 I understand my duty as an expert witness to the Inquiry and I have complied with and continue to comply with that duty. The evidence which I have prepared and provide for this Inquiry is true. I confirm that the opinions expressed are my true professional opinions.
- 1.4 My evidence concerns the release land at the Sands and the replacement land at Aykley Heads.
- 1.5 My evidence will address the acquisition and title review of the release land and the replacement land.
- 1.6 The documents I refer to are listed below along with the appendix reference as they appear in the overall bundle of documents submitted to the Public Inquiry:
- Release Land Official copy of title DU312002 (3<sup>rd</sup> July 2020) [Document 6i]
  - 12th December 1848 the Diocese leased the land to the City of Durham [Document 6ii]
  - 18th September 1850, Durham City Council granted, by deed of rights to the Freemen [Document 12xi]
  - Conveyance dated the 20th December 1860 between The Ecclesiastical Commissioners for England and the Mayor Alderman and Citizens of the City of Durham [Document 6iii]
  - Appropriated from the Town and Country Planning Act 1990 to the Local Government Act 1972.[Document 6iv]
  - 29th February 1968 the Freemen successfully registered a Right of Common based on the 1850 Agreement [Document 12vi]
  - Common Registration Plan CL29 [Document 12iii]
  - Agreement with the Freemen for car and coach park lands and variations to these deeds - 7<sup>th</sup> September 1981 [Document 6v]
  - Agreement dated 12<sup>th</sup> January 1995 [Document 12v]
  - OS Historic Maps 1860 – 1994 [Document 6 vi]
  - Aerial photograph – 2001. [Document 6vii]
  - Original conveyance and completion statement for Carr House Farm – 12<sup>th</sup> July 1951.[Document 16ii]

- Replacement Land Official copy of title DU285400 (3<sup>rd</sup> September 2020) [Document 6viii]
- Schedule of easements relating to the title for the Replacement Land [Document 6ix]
- Potential replacement sites assessment – October 2018 [Document 6x]
- Delegated Authority report for site selection and submission of S16 application.[Document 6xi]
- Delegated Authority report for the undertaking of informal consultations on the proposed S16 submission [Document 12xiv]
- List of consultees for informal consultation exercise [Document 6xii]

## 2 RELEASE LAND

- 2.1 The Release Land forms part of the registered title DU312002 which includes land on the northern bank of the River Wear directly to the north. The County Council of Durham are the registered proprietors of this freehold title and a register and plan extract have been included as **Document 6i**.
- 2.2 Mines and minerals together with ancillary powers of working are excepted with provision for compensation.
- 2.3 On the 12<sup>th</sup> December 1848 the Diocese leased (included as **Document 6ii**) the release land to Durham City Council and on the 18<sup>th</sup> September 1850, Durham City Council granted, by deed, rights to the Freemen which were for the holding of fairs and a right of herbage (included as **Document 12xi**). In the acquisition in 1860 which I refer to below, there does not appear to be any additional or fresh document with the Freemen to rectify this.
- 2.4 The release land was acquired pursuant to a conveyance dated the 20<sup>th</sup> December 1860 between the The Ecclesiastical Commissioners for England and the Mayor Alderman and Citizens of the City of Durham (a statutory predecessor to the Council) and included as **Document 6iii**. The land is currently held by the Council's Regeneration Economy and Growth service as an asset under construction and was appropriated from the Town and Country Planning Act 1990 to the Local Government Act 1972 on the 9<sup>th</sup> May 2019 (included as **Document 6iv**).
- 2.5 On the 29<sup>th</sup> February 1968 the Freemen successfully registered a Right of Common based on the 1850 Agreement (included as **Document 12xi**). The registration was disputed and an entry on the Commons Register establishes that the dispute was settled and part of the land was excluded from the Commons Registration.
- 2.6 The effect of this final registration is that the Release Land (Coach Park land) continued to be common land under Commons Registration (CL29) and the Car Park land was excluded from The Commons Register. A plan of the extent of the Common Land registration is included as **Document 12iii**.
- 2.7 On the 7<sup>th</sup> September 1981 the City Council entered into two agreements with the Freemen (**Document 6v**) for:

- i) The Car Park land (excluded from the 1981 Commons Registration); and,
  - ii) The Release Land (Coach Park Land).
  
- 2.8 The Wardens of the City of Durham Freeman and the City Council entered into an agreement for a term of 99 years which acknowledges that the Release Land is in the ownership of the City Council (see plan as **Document 6v8**) and is expressed to be subject to the rights of the Freeman to use and exercise rights of common thereon as set out in the 1850 Agreement.
  
- 2.9 The 1981 agreement states the 1850 agreement entitles the Freeman to receive a portion of rents and profits from the Release Land and in return for a rent the Freeman agreed to the construction of a Sports Centre or other Municipal Buildings on the land outside of the Release Land and the agreement sets out the arrangements by which the Council will pay rent.
  
- 2.10 Further the Wardens of the City of Durham Freeman agreed to waive the rights of common in the 1850 agreement in return for rent in relation to the land (not including Release Land) hatched on the plan as **Document 12iii**. Subsequently by deed of variation, dated the 29<sup>th</sup> March 1985, (included as part of **Document 6v**) this wording was varied to allow for the land to be used as a municipal car park.
  
- 2.11 The City Council also entered into an agreement with The Wardens for a term of 14 years which was varied by an agreement of the 29<sup>th</sup> March 1985. A further agreement dated the 18<sup>th</sup> January 1995 (**Document 12v**) was entered into by the parties with an end date of the 7<sup>th</sup> September 2080. The Wardens entered the 1995 agreement to surrender their rights under the 1850 deed, (including waiving the right to graze the Release Land), in so far as they related to all the land at the Sands including the Release Land then to be used and in so far as the 1850 agreement remained effective (which was in doubt). In return, the Freeman received rents and profits to facilitate the development of a car park on the Release Land.
  
- 2.12 An annual fee is payable to the Freeman as provided for in the agreement made 18<sup>th</sup> January 1995. This fee is stated in the agreement as being £850 exclusive of VAT. The fee is reviewable on a three yearly basis, and assumes that a hypothetical lease for the land is in place on appropriate conditions with a user assumed to be a municipal car park. The fee is to be calculated at 2/3rds the rent that the land could be let at assuming the above, less the value of any buildings on the land. The current annual fee payable to the Freeman (reviewed September 2017) in relation to the Release Land is £5,920.
  
- 2.13 The Common Land Registration includes for the grazing of stock, that is defined as 50 Sheep, 20 cattle, 10 horses and 10 goats across the whole designation. A review of the historic maps in relation to the Release Land establishes that prior to the application by the Freeman for registration of Common Land status in 1968, the Release Land was split by a former mill race. The mill race was in active use from the earliest OS plan of 1860 until 1960 and covers most of the release land.

- 2.14 On the OS plan of 1960 – 1969 there is a building on the southern part of the site and by 1979 had been extended to cover most of the site. By 1997 the building had reduced in scale and occupied only the north-eastern corner of the site. Included as **Document 6vi** are the historic maps with Release Land edged red.
- 2.15 An aerial photograph taken in 2001 (included as **Document 6vii**) with the Release Land edged red) indicates that the building had been demolished and laid out as a car park. The use as a car park or coach park has continued since the aerial photograph of 2001 save that more recently the Release Land has become part of the construction site for the new County Council headquarters.
- 2.16 It is evident that there was only a very small area available for grazing from 1860 to the closure of the mill race in about 1960. The subsequent development of a building on the site at the latest in 1979 establishes that it would have been difficult, if not impossible, for there to have been any grazing of stock on the Release Land over the last 41 years.
- 2.17 In the event that the adjacent land had not been developed for municipal offices, the Release Land would have been retained for use as a coach park. The Council is unaware of any resolution by the Freemen to the effect that they intend to graze the Release Land or The Sands or Replacement Land and indeed the history set out above suggests that they have no intention to do so.

### **3 REPLACEMENT LAND**

- 3.1 The replacement land formed part of the High Carr House Farm and was purchased by the County Council of Durham from the owner on the 12<sup>th</sup> July 1951. The original conveyance and completion statement have been included as **Document 16ii**. An office copy of the replacement land from Land Registry (title number DU285400), shows that the Council own the freehold with the most recent update to the 3<sup>rd</sup> July 2020, has been included as **Document 16 viii**.
- 3.2 The land holding, extending to 72ha (172.92 acres) was purchased by the Finance department of the County Council and was initially held under the Finance Act 1950. The land continued to be held in this Act until the Replacement Land, and surrounding land, was appropriated to the Countryside Act 1968 on the 3<sup>rd</sup> March 2008. This appropriation was to facilitate a Tree Planting Scheme as part of the Mineral Valleys Project in 2008. No trees have been planted on the Replacement Land as part of this scheme. A copy of this appropriation is at Document 16 iv.
- 3.3 The Replacement Land has not been used for any form of grazing and there is no intention by the Council to allow grazing on the replacement land subject to the outcome of the application.
- 3.4 Since title number DU285400 was acquired there have been various developments on this land including County Hall (the present headquarters building for the County Council of Durham); office blocks by Rivergreen and by Sunderland Marine Mutual Insurance Company, residential development (Persimmon) and for the Durham Police Authority Headquarters building.

However, no built or other development has taken place on the Replacement Land.

- 3.5 There have been numerous grants of easements relating to title number DU285400 in which the Replacement Land is comprised. A full schedule of all easements has been included as **Document 6ix**.

## **4 ALTERNATIVE SITES CONSIDERED & CONSULTATION**

- 4.1 The proposed new HQ building for the County Council will involve the development of the Release Land, extending to 1,752 m<sup>2</sup> (0.17ha), which is part of the Sands Common Land. On this basis a search for replacement land was undertaken in October 2018. As the Commons Register identifies the Release Land for the grazing of livestock, the replacement land would need to be in open meadow/grazing use to ensure that the replacement is on a like for like basis.
- 4.2 The criteria used to consider potential land to replace the Common Land required for part of the development associated with the New HQ were:
1. The land should be adjacent to an existing area of Release Land;
  2. The potential land must be in the ownership of Durham County Council;
  3. If not adjacent then as close as practical to the land to be replaced; and,
  4. A size suitable to replace the Common Land to be de-registered
- 4.3 The site assessment reviewed six sites in the ownership of the County Council and the assessment process included consultation with other Council Service Areas . The conclusion of the site assessment identified an area of land to the East of the Rivergreen offices at Aykley Heads (site 5) as the most appropriate for the replacement land. Plans of all the alternative sites assessed are included as **Document 6x**.
- 4.4 Following the assessment of the alternative sites, a Delegated Authority report was prepared to confirm the selection of Replacement Land and to submit a S16 application. The Delegated Authority report was approved on the 24<sup>th</sup> October 2018 which identified Site 5 – East of Rivergreen and authorised the submission of the S16 application. A copy of the report has been included as **Document 6xi**
- 4.5 Prior to submitting the S16 application an informal public consultation exercise was to be undertaken. The proposed informal consultation process had not been included in the Delegated Authority to submit the S16 application and therefore a separate Delegated Authority was obtained on the 24<sup>th</sup> April 2019. The delegated Authority Report for the informal consultations has been included as **Document 12xiv**.
- 4.6 The informal consultation exercise was undertaken between April and June 2019. This included consultation with the relevant County Council Portfolio Holders and Local Ward Members for the release and replacement land. Consultation with the Council Members was completed prior to the other

consultees which had been identified. The list of informal consultees is included as **Document 6xii**.

## **PROCEDURAL HISTORY OF S16 APPLICATION**

- 4.7 The S16 application to de-register 1,752 sq m of Common Land at The Sands and replace this with 18,371 sq m at Aykley Heads was submitted on the 20<sup>th</sup> August 2019.
- 4.8 The statutory advertisement for the submission commenced on the 22<sup>nd</sup> August 2019. This included putting up notices on the Release and Replacement Land, at various locations, from the 22<sup>nd</sup> August 2019 for a six-week period ending on the 3<sup>rd</sup> October 2019.
- 4.9 The Council received a first round of objections from PINS on the 7<sup>th</sup> October 2019 and responses to these objections were issued on the 28<sup>th</sup> October.
- 4.10 A second round of objections from PINS was received by the Council on the 29<sup>th</sup> November and responses to these objections were issued on the 20<sup>th</sup> December 2019.
- 4.11 A further round of objections was received by the Council from PINS on the 2<sup>nd</sup> January 2020 and responses to these latest objections were sent out on the 31<sup>st</sup> January 2020.
- 4.12 On the 13<sup>th</sup> March 2020 the Council were advised by PINS that the procedure for determining the S16 application had been changed for Written Representations to a Public Inquiry.
- 4.13 The convening of the Public Inquiry has been delayed by the on-going national health crisis and the Inspector's requirements relating to the submission of evidence were received by the Council on the 21<sup>st</sup> October 2020.

## **5 SUMMARY AND CONCLUSIONS**

- 5.1 The County Council of Durham, and its statutory predecessors in title, since entering into a lease in 1848 have had a legal interest in the Release Land, subsequently acquiring the freehold in 1860. The freehold of the Replacement Land was acquired through a conveyance on the 12<sup>th</sup> July 1951 and the County Council are the registered proprietors of the freehold title.
- 5.2 The Release Land is currently held by Regeneration Economy and Growth as an asset under construction and has been appropriated to the Local Government Act 1972.
- 5.3 The Freeman were originally granted rights to hold fairs and for herbage in a deed of rights in 1850. There have been further agreements between the Freeman and Durham City Council with the most recent agreement entered into by both parties on the 18<sup>th</sup> January 1995. This surrendered the rights of grazing on the Release land.



- 5.4 Under the terms of the 1995 Agreement the Country Council pay an annual fee to the Freeman, which is reviewable every three years, and in respect of the Release Land the annual fee is currently £5.920.
- 5.5 The release land was included in the Common Land (CL29) which includes for the grazing of stock. It is evident for the historical maps and aerial photographs (as **Documents 6vi** and **6vii**) that only a small area would have been available and it would have been difficult if not impossible for any grazing on the Release Land.
- 5.6 In the event that the adjoining land had not been developed for Municipal offices, the Release Land would have continued in use as a coach park.
- 5.7 The replacement Land was acquired, as part of a large farm holding, through a conveyance in 1951 and the title for the land (number DU285400) shows that the Council own the freehold Title.
- 5.8 The Replacement Land, (and surrounding land) was appropriated from the Finance Act 1950 to the Countryside Act 1968 to facilitate tree planting scheme as part of the Mineral Valleys Project. There have not been any trees planted on the Replacement Land.
- 5.9 A site search was undertaken in October 2018 in order to identify the most suitable site for replacement of the Release Land and that resulted in the Replacement Land being selected.