



**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 MIKE OGDEN
ON BEHALF OF DURHAM COUNTY
COUNCIL**

(Public rights of way and recreation)

27 NOVEMBER 2020

1	INTRODUCTION AND SCOPE OF EVIDENCE
2	RELEASE LAND
3	REPLACEMENT LAND
4	SUMMARY AND CONCLUSIONS

1 INTRODUCTION AND SCOPE OF EVIDENCE

- 1.1 My name is Mike Ogden and I am employed by the Council as the Access and Rights of Way Team Leader. I have been a member of this team for 31 years and have held this particular post since 2012. My Team is responsible for the management of public rights of way and access land within County Durham, and accordingly my duties are primarily to ensure the effective management of the public rights of way network and access land by means of maintenance, enforcement and legal recording.
- 1.2 I have a BA (Hons) in Recreation and Environment and am a Fellow and former President of the Institute of Public Rights of Way and Access Management (IPROW).
- 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 access and rights of way matters at both the Release and Replacement Land.
- 1.5 My evidence will address past and present use at both sites, access to the sites, and the alternatives sites that were considered.
- 1.6 I make reference to the following documents, photographs and plans:
- Definitive Map – Release Land [Document 4i]
 - Email dated 16 August 2018 [Document 12 xviii]
 - Definitive Map – Replacement Land [Document 4ii]

2 RELEASE LAND

- 2.1 There are no recorded public rights of way on or adjacent to the Release Land. A copy extract from the Definitive Map of Public Rights of Way is at [Document 4i]. The nearest recorded public right of way is Public Footpath No. 77 which crosses an area of The Sands to the east of the Release Land.
- 2.2 There are no pending applications to add paths to the Definitive Map for this location, nor has any evidence been submitted alleging the existence of a public right of way.

- 2.3 Section 193 of the Law of Property Act 1925 is engaged with respect to the Release Land and it is therefore considered to have both pedestrian and equestrian rights of public access for air and exercise. It is of note that it is shown as 'open access land' on Ordnance Survey maps. Given the previous occupation by the Royal Observer Corps, section 193(6) may apply to that period of occupation but this is a matter for legal submission and not a matter I can assist with.
- 2.4 I am aware that the rest of The Sands is used both for informal recreation, and also for specific events such as fairs. I have no knowledge or evidence as to whether the Release Land itself is or was ever used for public recreation.
- 2.5 The Release Land is situated adjacent to the River Wear, close to the centre of Durham City. There are residential areas to the east of the site, but in other directions it is mainly commercial, retail or public buildings in the immediate vicinity. It is accessible by road from all directions, and via Pennyferry Bridge for pedestrians from the opposite side of the river. 2019 estimates are that 1,830 people live within 500m of The Sands, and 30,659 within 2km.⁽¹⁾
- 2.6 The Release Land is 1,675m² in area, the balance of the common land at The Sands, unaffected by the application, is 27,399m², and the Replacement Land is 18,371m². The vast majority of the common land at The Sands is therefore unaffected by this release, and will remain available for the public to use in accordance with Section 193 of the Law of Property Act 1925. The Replacement Land will provide a net gain in the area of common land within Durham City of 16,696m².
- 2.7 Use of Pennyferry Bridge, then Framwellgate Waterside, Sidegate and Framwellgate Peth is the most direct pedestrian access from the Release Land to the Aykley Heads site and the Replacement Land, a journey of approximately 1.8km, with an overall gain in altitude of approximately 55 metres. However, users of the Replacement Land will not originate exclusively from the Release Land. I discuss this in more detail at paragraphs 3.6 – 3.8

3 REPLACEMENT LAND

- 3.1 A total of six potential sites for replacement land were considered. My team was consulted as part of the assessment of these sites and my specific

comments were made in an email dated 16 August 2018 which is at [Document 12xviii], and reflected both existing and potential access within and to each site, size, terrain and vegetation. It was my view that Site 5, the site subsequently chosen as Replacement Land, was the most suitable.

- 3.2 There are no recorded public rights of way on or adjacent to the Replacement Land. A copy extract from the Definitive Map of Public Rights of Way is at [Document 4ii]. The nearest recorded public right of way is Public Footpath No 2 which crosses the railway line north-east of the site.
- 3.3 There are no pending applications to add paths to the Definitive Map for this location, nor has any evidence been submitted alleging the existence of a public right of way.
- 3.4 The Replacement Land and much of the surrounding area is owned by the Council, and there is a network of constructed and informal walking and cycling routes in the wider area, used by the public but without any formal status. The Replacement Land itself is fenced and does not have any defined routes within it, nor any physical evidence of public recreational use.
- 3.5 The Replacement Land has no current status in terms of its use by the public, and is not mapped or recorded as being accessible for the public.
- 3.6 Walking and cycling routes connect the Replacement Land to the large residential areas of Framwellgate Moor and Newton Hall to the north and west, as well as more recent residential developments on the site of the former Police headquarters immediately adjacent. A public vehicular highway provides access close to the site
- 3.7 There is no existing registered common land within the Framwellgate Moor/Newton Hall area. 2019 estimates are that 3,310 people live within 500m of the Replacement Land, and 35,148 within 2km.¹
- 3.8 The Replacement Land will therefore be more convenient than the Release Land for more people, for the purposes of access and recreation. Clearly for some people who live near to the Release Land the journey to the

¹ Data on populations is Based on 2019 mid-year populations estimates at LSOA level. Methodology based on LSOAs with their centroid within the buffer area. LSOAs are lower layer super output areas, a government measure of population.

Replacement Land would make it less convenient, but of course the remainder of The Sands common land will still be available for public use.

3.9 If the application is granted there is the potential for increased use of some of the paths in the vicinity of the Replacement Land, and consideration as to the future status of such routes will be a matter for the Council as landowner in the future. Section 193 of the 1925 Act would apply to the Replacement Land, so the public would have access to it as a result, both on foot and on horseback.

3.10 As stated in paragraph 3.1, a total of six potential sites for replacement land were considered. It was considered that site 5 offered the best opportunities for increasing and enhancing the provision of recreation and public access, being larger, mainly flat, free of tree cover, easily accessible from significant residential areas and in an area of the City without any land formally designated as common land or access land.

4 SUMMARY AND CONCLUSIONS

4.1 It is considered that the Release Land does not have unique qualities or attractions that cannot be met by the rest of The Sands, and that the overall effect of the exchange is to both increase the total area of common land within Durham City and to bring such land within easy reach of more people.