

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

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THE COMMONS ACT 1990

IN THE MATTER OF LAND AT THE SANDS DURHAM

DURHAM COUNTY COUNCIL

Applicant

and

THE FREEMEN OF THE CITY OF DURHAM

Objector

THE CITY OF DURHAM PARISH COUNCIL

Objector

STATEMENT OF CASE ON
BEHALF OF THE OBJECTORS

REFERENCES are to the Applicants bundle by page number, the Objectors bundle is prefaced "O".

INTRODUCTION

1. This statement of case is submitted on behalf of the Freemen of the City of Durham ("the Freemen") and the City of Durham Parish Council ("the PC"). These two bodies are collectively referred to as the Objectors for convenience. The Objectors case also draws on evidence from other parties.

PRELIMINARIES

2. The Objectors do not at this stage take issue with any procedural matters but reserves the right to make submissions in closing should any arise.
3. The Release Land is included in land which on 1 April 2019 was granted planning permission for "Office headquarters and ancillary uses" [DM/18/02369/FPA] – p.24. The Release Land is shown on the approved drawings as surface car parking and is described in the Council's

evidence as Members car parking and storage tank¹. The approved drawing shows the car park enclosed with a barrier at the entrance².

4. This permission was implemented on site in August 2019 when the Release Land was enclosed by fencing and a site compound was placed on it³.
5. The Replacement Land does not have any planning permission.

CHRONOLOGY

6. Following submission of this Statement of Case the Applicant, the Freeman and the PC will seek to agree a chronology of facts and Statement of Common Ground to assist the Inquiry.

THE LAW

7. The recent Commons Act 2007 enables the application for exchange to be considered under a modern regime which provides for a proper balance between those who are involved in the exchange and those who are affected by it. The application falls to be considered under s.16 and having regard to the following criteria –
 - (a) The interest of the person having rights over the release land;
 - (b) The interests of the neighbourhood
 - (c) The public interest in :
 - (i) nature conservation
 - (ii) conservation of the landscape
 - (iii) protection of public rights of access
 - (iv) protection of archaeological remains and historic features
 - (d) Any other matter considered to be relevant
8. The neighbourhood is not statutorily defined but is referred to in the relevant regulations⁴ as pertaining to “local inhabitants” – para. 7.3.

¹ Timmiss p.1154

² Site plan 3178-00-2001 P12

³ See p.994-997

⁴ The Deregistration and Exchange of Common Land and Greens (Procedure) (England) Regulations 2007

THE LAND

9. The release and replacement land are described in various documents. The Release land is an area of approximately 1,675m² and forms part of the larger CL29 known as The Sands which registration was confirmed on 25 July 1980. Its ownership has been recognised as the local authority (and predecessor bodies) since 1860 and ownership by the City of Durham Council was confirmed by the Commons Commissioner on 14 May 1986. It is in the designated green belt and the Durham City Centre Conservation Area.
10. The Replacement Land is circa 1.84 ha of rough grazing land at Aykley Heads. It is in the statutory green belt and designated as AHLV. It is identified by the Applicant as Accessible Open Green Space⁵. This land is fenced with three strands of wire and has one locked entrance gate to the north east. It is part of the Aykley Wood nature reserve.

THE RIGHTS

11. The rights of the Freemen over The Sands are ancient and existed well before the 1850 agreement. The Inclosure Act 1801 made provision for appointment of the Clerk and Trustees to the Freemen. The rights expressed in that Act may have been repealed but are enshrined in the Durham City Council Act 1985. The Freemen have the following rights over CL29⁶ –
 1. two thirds of the rents and profits in lieu of properties encroaching on the common
 2. rights of herbage for 20 cows, 50 sheep, 10 goats and 10 horses⁷
 3. to hold the Easter Fair⁸
 4. to hold “a show, theatre, menagerie, circus or place of similar entertainment”⁹

The Lease of 1897 from the Freemen to the Council includes herbage rights being leased on a rolling yearly basis for the purposes of recreation. This is reflected in payments to the

⁵ Open Space Needs Assessment p.53

⁶ WS Philip Wills

⁷ See Register

⁸ All recorded in the 1860 Agreement p.141

⁹ Lease 1897

Freemen. By Deed of Variation dated 29th March 1985 this was varied to allow the Release Land to be used as a municipal car park.

12. The rights are recognised in various deeds and documents which are included in the bundles. The effect of these documents will be a matter of evidence.
13. The Sands is also subject to the rights of members of the public for air and exercise and on horseback. These are statutory rights pursuant to s.193 of the Law of Property Act 1925.

CONTRACTUAL RIGHTS

14. The Sands has over the years been the subject of various legal agreements to permit other uses, including use by the Royal Observer Corporation during WWII, construction of a sports centre and a municipal car park. The agreement of 18 January 1995 granted to the City of Durham Council a fixed term lease for the Release Land to be used as a municipal car park in return for compensation¹⁰.
15. The Release Land has been enclosed with the adjacent land and is being developed as the Council's new HQ. The council has entered into a contract with Keir to deliver the development, the terms of which are not disclosed.

THE OBJECTORS CASE

The Freemen's Rights

16. The Freemen are an ancient body of tradesmen which has enjoyed rights on the Release Land from time immemorial. As far back as 1800 (and probably well before) the Freemen were asserting ownership of The Sands as against the local council. In 1850 the rights of common over The Sands were recognised by the apportionment of rents with the majority (two-thirds) going to the Freemen. This illustrates the Freemen's rights were extensive. This apportionment is reflected in the rent reviews today.

¹⁰ p.691

17. The Freeman also have grazing rights (herbage) which have not been exercised for a number of years but the reversion of these rights is an important asset to the Freeman.
18. The right to hold the Easter Fair is still exercised and has been so continuously in living memory. This fair takes place over a period of approximately 10 days. The Freeman also host other fairs for third parties through the year (contrary to the assertion made by the Applicant)¹¹ and will lead evidence of the importance of the Release Land to these events.
19. The Freeman have on occasion agreed to surrender their various rights at the behest of the landowner for fixed periods and in return for payment. This has only ever been done in the public interest and many requests in the past have been resisted by the Freeman.
20. The Freeman will lead evidence on the rights, their value and the value of the reversion which are not diminished by these agreements.

The Interests of the Neighbourhood

21. The neighbourhood is the area occupied by the local inhabitants. The definition in *R v South Gloucestershire DC (ex p Cheltenham Builders)* [2003] EWHC 2803 (Admin) is useful by analogy. It is not a line on a plan but “communities with a sufficient degree of cohesiveness” in relation to the land. In any event we say the area is singular in this case.
22. It is agreed between the main parties that the Replacement Land will not serve the same neighbourhood as the Release Land¹². The Objectors will lead evidence on the value of the Release Land to the local inhabitants of The Sands. It is not accepted that the Replacement Land will be accessible to the local inhabitants by reason of distance (measured by walking and not flying) and topography. Further it is only accessible by permissive footpaths that the Applicant could close. It is further denied that it will be of value to other users (whether coming from the neighbourhood or not) by reason of it being fenced with gates and people being actively discouraged from using it for six months of the year.

¹¹ Applicant SoC para 10

¹² A SoC para 29

THE PUBLIC INTEREST

23. The Secretary of State has a duty to have due regard to the public interest in the four criteria of ss.16(c).

Nature Conservation

24. The nature conservation value of the Release Land is to be measured before August 2019. The physical condition of the land can be seen in various photographs and will be described by those using it at that time. The unlawful enclosure and occupation of the Release Land by the Applicant as a building compound for over 18 months and the impact of this on the nature conservation value should be discounted. The Applicant has led little if any evidence before the Inquiry as to the ecological value of this land at the appropriate stage.
25. The Replacement Land is agreed to be semi-improved neutral grassland which is part of the Aykley Wood nature reserve and managed habitat for ground nesting birds. It forms part of the Aykley Heads Masterplan¹³ which may cause conflict with future common land status and its use by the public may cause significant biodiversity loss.

Landscape

26. The Secretary of State will assume that all land is correctly registered. Further (in relation to wrongly registered land) any fencing, building or other works will be assumed to be unlawful and will not endure¹⁴. The Applicant agrees this guidance is of relevance. Therefore the physical condition in which the Release Land should be assessed is without the surfacing and as a grassed area integral to the remainder of CL29 (the reversionary position).
27. In the alternative the date on which the landscape value of the Release Land should be assessed is before August 2019. The Objectors will rely on the evidence of Michael Hurlow as to the landscape value of the Release Land which is closely tied to its heritage value and its screening value in the wider area. The site is relatively small but makes a significant contribution due to its siting and the value of the trees (now unjustifiably lost).

¹³ Alternative Site Appraisal p.202

¹⁴ Common Land Consents Policy 2015 para 5.5

28. The landscape value of the Replacement Land is moderate as part of the wider Aykley Heads area. There is little evidence on how the Replacement Land will be managed as common land and whether this will be compatible with its appropriation to the Mineral Valleys Project, the existing grazing regime and ground nesting birds. These all have the potential to impact on its landscape value but are unassessed by the Applicant.

Public Access

29. It is agreed between the main parties that the public have rights under s.193 for air and exercise. The Applicant characterises these rights as “technical and having been exercised in a limited way since WWII at the latest¹⁵. The PC and the SNCF will lead evidence on the exercise of these rights on the Release Land and the impact of the Application on these rights.

30. The evidence on behalf of the Objectors is that public access to the Release Land as part of CL29 is of national, regional and local value¹⁶.

31. The Replacement Land is agreed between the parties as being accessible natural green space which is “open to public use and enjoyment”¹⁷. The assertion by the Applicant that there is no “public right of access to it” is not borne out by the evidence of the OSNA and the obvious desire lines crossing the land. The Objectors do not therefore accept there is any public benefit in conferring common land status on the Replacement Land.

Protection of Archaeology and Historic Features

32. The main parties agree there are no known archaeological remains which would be affected by the Application.

33. The Objectors do not accept that the heritage value is limited to public recreation and events. The heritage value of the Release Land is moderate/high based upon its physical context and encompasses the heritage value of the Freemen, their long history and civic role

¹⁵ SoC para 26

¹⁶ see WS Michael Hurworth

¹⁷ CDLP OSNA page 53 & Henry Jones para 3.3 page 1078

in the city and the holding of fairs and events on the land. The heritage value of the Release Land will be led in evidence by the Freeman and PC.

34. The Replacement Land has low heritage value as part of the historic Crook Hall Estate but its more recent administrative function has little relation to the city¹⁸.

Any other relevant matter

35. The Applicant states it case that the Application would regularise the *de facto* position and facilitate implementation of the new HQ building. This is nonsense. In August 2019 the Release Land was unlawfully fenced and cabins placed upon it by the developer Keir, the HQ building is well underway on the adjacent site and will be complete by Autumn.
36. Secondly the claimed benefits of redevelopment of County Hall as a strategic employment site are not relevant to this inquiry as they are not conditional upon the exchange.
37. In both cases the claimed significant socio-economic benefits of the new HQ and the Aykley Heads redevelopment (which are not accepted) will still be realised if the Release Land remains as common land. The Release Land has planning permission for a private members car park and sprinkler tank. The new HQ does not rely on this car park for its success and there is nothing in planning law which requires the scheme to be completed in its entirety.
38. The evidence of the Applicant is that the member car parking can be accommodated in the multi storey car park¹⁹ and the storage tank can be repositioned. It is said this will result in additional costs and/or loss of revenue to the Council. The Objectors case is that the Applicant has always known (or should have known) the status of the Release Land and that this Application would be required if they enclosed and appropriated it for the HQ project. Any losses either financial or social (which are not proven) are entirely of the Council's making and not relevant to this Application.

¹⁸ WS Michael Hurworth

¹⁹ WS Timmiss para 5.4 p.1154

39. The Objectors will lead evidence from the Chair of the Parish Council's Business Committee and from the Managing Director of the Durham Markets Company Limited on the impact of the Application on market traders and the local economy.
40. There is no reason why the Coach Park and the common land rights cannot co-exist on the Release Land. The recent decision of the Supreme Court in T W Logistics v Essex County Council [2021] UKSC 4 supports this legal proposition. The Applicant's continued assertion that de-registration is necessary (as opposed to simply desirable) is not understood or accepted.

OTHER MATTERS

41. The Applicant's assertion that it has acted in accordance with the CL Guidance Sheet is specious. There is no evidence before the Inquiry that the fencing, compound and construction works on the Release Land since August 2019 have the benefit of the exemption in s.38(6) of the Commons Act 2006. In the circumstances it remains the Objectors case that the Applicant is and has been acting unlawfully since in or about August 2019 with wanton disregard for the rights of the commoners, the local inhabitants and the public.

CONCLUSION

42. The Inquiry will hear evidence on the relevant matters under s.16 and it is for the Applicant to substantiate their case with evidence. It is plain even before an inquiry that the application is not made out on the evidence and should be refused.

MISS NICOLA ALLAN
Trinity Chambers
Newcastle upon Tyne

Dated this nineteenth day of March in the year 2021

**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**

**SUMMARY OF PROOF OF EVIDENCE
OF**

PHILIP WILLS


**ON BEHALF OF THE DURHAM CITY
FREEMEN**

15th March 2021

1. In my summary of proof of evidence in paragraph 1 I deal with my status as Clerk to the Freemen and as a Solicitor.
2. In paragraph 2 I deal with the history of the Freemen and the 1801 Inclosure Act which granted some rights to the Freemen and the historic origins of the Freemen and their purpose.
3. I refer in paragraph 3 to the historic documents which are in possession of the Freemen and which have been analysed by me and which reveal a dispute as to the Freehold of the 19th Century with the outcome of the agreement of 1850 which settles the profits split two thirds to the Freemen and one third to the Council.
4. In paragraph 3.7 I comment on the evidence of Susan Robinson and dispute the interpretation of the legal documents and in paragraph 3.10 I refer to evidence of payments demonstrating further rights of the Freemen.
5. I refer to the rights of the Freemen in relation to the Easter Fair and the right to hold circuses and other events which are documented throughout the historical evidence and the fact that these have continued and that the Release Land has in fact been associated for use for these events.
6. In paragraph 4 I deal with the response of the Freemen to the Release Land that it is unnecessary and inappropriate for it to be removed from the Commons Register given the fact that it is already used as a car park and will continue to be used as a car park.
7. I give evidence as to the basis for the use of the coach park following the demise of the Royal Observer Corps site and the surrender of the lease with the Secretary of State and the need for coach parking to assist businesses in the City and I refer to my evidence before Mr Walton acting as an independent expert in 2013 in connection with the rent review.
8. I give evidence as to proposals for development which have been a constant threat for The Sands and the green space over very many years which the

Freemen have resisted. The Freeman's position is that this land is an integral whole and should remain protected as such and if there is no use for the car park outside of the proposals the Release Land should be returned to green space as befits its registration under the Commons Registration Act.

9. So far as the replacement land is concerned, in paragraph 5 I address the fact that it is entirely unsuitable for various reasons including security, lack of access, the fact that events held on the land would be a nuisance to neighbouring properties and the ecology of the land is such that it would conflict with the uses for grazing, fairs, circuses and the like.
10. I refer to the fact that there has been no discussion or approach in relation to the release land as would be expected with such a radical change. It is therefore unclear as to how the Council proposes to compensate the Freeman.
11. My final summary sets out the fact the Freeman object to this proposal and see it as a disproportionate response and completely unnecessary given the fact that the land has been used for car parking for a very long period of time.

Signed 

Philip Wills

Dated 15th March 2021

**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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN**

15th March 2021

- 1 INTRODUCTION AND SCOPE**
- 2 HISTORY OF THE FREEMEN**
- 3 CURRENT RIGHTS OF THE FREEMEN**
- 4 RELEASE OF LAND AND THE FREEMEN'S RESPONSE**
- 5 REPLACEMENT LAND**
- 6. SUMMARY**

1. INTRODUCTION AND SCOPE

1.1. I, Philip Wills state as follows:-

1.2. I am a Solicitor in private practice at the firm of Smith Roddam in Bishop Auckland. I am a Master of Laws and I have been Clerk to Durham City Freeman since 1992 for which I receive an honorarium. My involvement with the Durham City Freeman began in 1981 as an Assistant to the then Clerk. The evidence which I have prepared is given in my capacity as a solicitor and as the clerk and legal adviser to the Durham City Freeman and it is true to the best of my belief and knowledge, and I understand my duty to this Inquiry.

1.3. My evidence concerns the history of the Freeman with the management of the Freeman's affairs, their rights and dealings with the Durham County Council and the former Durham City Council and the legal affairs of the Freeman both from my knowledge and the documents which I hold on behalf of the organisation.

2. HISTORY OF THE FREEMEN

2.1. The origins of the Freeman are to be found in the trade companies which collectively formed the Guild of the Durham City Freeman. The Durham County Record Office (Subject Guide 13) states that the earliest known reference is found in a Charter granted in 1179/1180 by Bishop Hugh of Le Puiset. This created burgesses who were free from paying tolls and became known as free men and that by 1300 there were around 230 Freeman in Durham. The Company of Skinners claims the earliest date of incorporation in 1327.

2.2. According to the research undertaken by the History Group of the Durham City Freeman there were originally 16 companies within the Guild at Durham but there are now eight and there are currently 254 Freeman in the Durham City Guild.

- 2.3. The traditions of the Freemen form an important historical element in the traditions and fabric of Durham. They have been important to the civic and community life of the city for over 700 years. In addition to regulating trade and commerce, they composed the electorate for local and parliamentary elections until the electoral reforms of the 19th century. In the 21st century, the Freemen amongst other things, promote research into the history of the city, promote outreach and engagement with community organisations and play a significant role in civic functions eg. Remembrance celebrations and formal Guild days with the Mayor.
- 2.4. It is clear from the documentary evidence that the Freemen owned property land and rights throughout the city and beyond. The 1801 Inclosure Act specifically established Trustees and settled various parcels of land over which the Freemen had rights. There is also clear evidence in the records of property ownership including Union Hall Farm in Durham well into the 20th century.
- 2.5. These rights have been curtailed over the years by other commercial interests and threats of development. The Sands is now the last known remaining area over which the Freemen have extensive rights. Originally The Sands extended to an area of land exceeding 11 acres. This area has been reduced by development and now comprises substantially less.
- 2.6. The Freemen historically have been involved in the economic and administrative development of the city and were responsible for ensuring quality of standards of workmanship and the management of trades throughout the city and to provide training for apprenticeships. There are currently 8 companies.
- 2.7. The Freemen themselves comprise an unincorporated association with a body of trustees who work with the Wardens of the trade companies in managing the Freemen's affairs. Although they are not themselves a charity, the Freemen have established a registered charitable trust to which the majority of their income is applied to assist in worthy causes associated with training etc throughout the city e.g. they have paid for apprentices at Durham University and Durham Cathedral.

3. CURRENT RIGHTS OF THE FREEMEN

- 3.1. The current rights of the Freeman are those which affect The Sands and those that are contained in the provisions of the Durham City Council Act 1985. The rights of the Freeman relating to other areas of land, originally included in the 1801 Inclosure Act (repealed by the Durham City Council Act 1985), have been diminished over the years. Whilst the Applicant objects to the registration over the Release Land, the Freeman see no distinction between the Release Land and the grassed area of land and they regard it as a contiguous whole protected by registration for that reason. The current use as a car park is seen as transitory. Given that the use for parking has existed for almost 30 years by consent, the proposal to deregister the Release Land is seen as completely unnecessary and a disproportionate threat to the protections afforded by registration.
- 3.2. My analysis of the historical documents relating to the Freeman shows that there are numerous references to grazing rights on The Sands and receipt of profits from houses and other buildings at one time situated on The Sands. It is clear to me that grazing rights were well established before the 18th century and that in 1801 there was a legal dispute concerning the freehold of The Sands between the Freeman and the forerunner of the city council, Mayor Aldermen and Burgesses. The rights of common were clearly more extensive in the past than those currently registered under the Commons registration Act 1965.
- 3.3. The outcome of that dispute was that in 1850 the Mayor, Aldermen and Citizens and the Freeman entered into an agreement dated 18th September referred to by the Applicant in this case and appearing at page 718 of the Applicant's bundle. This Indenture records that the Freeman had rights of common over The Sands which pre-existed the 1850 agreement. It also records that an agreement had been reached following a dispute about the way in which rents and profits should be divided for cottages and buildings erected on The Sands. It is thus clear that the Freeman's rights were extensive and included The Sands and islands extending at that time to 11 acres 2 roods and 31 perches.

- 3.4. Under the terms of this agreement the Freemen were to receive a two-thirds entitlement as to profits and rents for buildings situated on the land in addition to continuing the right of common over the subject land. The true origin of the rights over The Sands are therefore ancient and therefore clearly existed prior to the 1850 Indenture.
- 3.5. This split as to profits for rents etc one third to the Council and two thirds to the Freemen has been the legal basis for negotiations concerning The Sands and subsequent rents paid. It is reflected in the rent review provisions in the deed of agreement concerning the Release Land appearing at page 691 of the Applicant's bundle. This is separate to the grazing rights.
- 3.6. In addition, the 1850 Indenture refers to the holding of fairs on The Sands which is a traditional right exercised by the Freemen for which there is much evidence throughout the historical records.
- 3.7. I have read the statements of the Council officers in relation to this application and note that there is little if any reference to the rights of the Freemen concerning the holding of public events, fairs, circuses and the like. I have read the proof of Susan Robinson relating to ownership and history (pages 1124 to 1132) of the Applicant's bundle which refers to numerous legal documents but it is not a true reflection of the legal rights that concern the Freemen. In particular she states that the 1850 Indenture granted rights to the Freemen which included the right of herbage. It is clear that the herbage rights pre-existed the 1850 Indenture and could not therefore be granted by the City Council as alleged.
- 3.8. She refers to the 1860 acquisition of the freehold and that "*there does not appear to be any additional fresh document of the Freemen to rectify the Freemen's rights.*" This is because the land is subject to the pre-existing rights of common belonging to the Freemen and any purchaser of the Freehold takes that land subject to commoners' rights. It is not necessary for further legal documentation to be provided as to those rights save for a record on the register of commons required by the Commons Registration Act 1965.

- 3.9. I have noted that the Applicant's case makes no reference whatsoever to the Lease of 1897 by which the Freeman leased to the Council the herbage rights on The Sands on a rolling yearly basis for the purposes of public recreation.
- 3.10. This document specifically refers to the rights of the Freeman to hold the Easter fair and the reservation to occupy and let a sufficient portion of The Sands for the purpose of erecting "a show, theatre, menagerie, circus or place of similar entertainment". A copy of the 1897 lease appears at **DCF1**. A letter dated 13th September 1965 from the Clerk to the Freeman to the Town Clerk recorded that the arrangement was still in place and referred to the payment of £5 [**See document DCF2**].
- 3.11. It is not clear why this important document has been omitted from the Applicant's bundle but it clearly records, in addition to the 1850 Indenture, the legal right of the Freeman concerning letting The Sands. No plan is included but it is clear that in 1897 The Sands was more extensive and includes the Release Land. The decision of the Commons Commissioner dated 14th May 1986 specifically refers to this arrangement and confirms the position.
- 3.12. It is the case that The Sands including the Release Land has continued to be used by the general public for recreation in accordance with this arrangement. The fee of £5.00 has been paid by the Council as evidenced by the payments shown in document [**DCF3**].
- 3.13. The Release Land has been used in the past by the Freeman in connection with circuses and the shows that are held on The Sands consistent with the rights reflected in the 1897 deed. Evidence of this is provided by the provision of car parking adjoining the Royal Observer Corps headquarters on The Sands (see letter 29th January 1965 at document [**DCF4**]). There is also correspondence from October 1994 to January 1995 between myself and the Town Clerk and Durham City Council concerning the use of The Sands for visiting showmen and the preferred suggestion of the Freeman that some of the land be returned to grass. I recall that the Trustees and Wardens of the Freeman had numerous meetings to discuss this issue and it is my clear

recollection that I was instructed to pursue the return of the area to grassland with the city council solicitor.

4. RELEASE LAND AND THE FREEMEN'S RESPONSE

- 4.1. I acknowledge the Freeman have not exercised grazing rights for very many years over the Release Land. Under the terms of the 1897 lease between the Freeman and the council, the rights are temporarily suspended. There is reference in the historic Freeman documentation to the exercise of grazing rights over The Sands generally and there is frequent reference in the 1780s and into the 19th century amongst the holdings held at Durham County Record Office. In particular the paper No. 81 (see attached notes of Mr Roger Norris who made an inspection of these in January 2010). See document **[DCF5]**.
- 4.2. The fact that the grazing rights have not been exercised due to other more appropriate uses to benefit the city (recreation and amenity value to the City) should not, as I understand it, lead to a claim that they are extinguished. They have not been abandoned as they have formed the focus for commercial negotiations with the City and County Councils as well as the Secretary of State for the Environment in respect of the former Royal Observer Corps Headquarters. They are therefore a valuable and important asset to the Freeman. The fact that the grazing rights are subject to a contractual arrangement to which the Applicant is a party means that they cannot be exercised until the contractual terms cease. That is an entirely different scenario to rights having been abandoned.
- 4.3. I would also argue that in terms of ensuring protection of the land for the benefit of those resident and visiting in the city, the Freeman have acted and continue to act as custodians. It must be acknowledged that the fact that the area of land in and around The Sands looks as it is, is in the main, due to the protections afforded by the Freeman.
- 4.4. The Freeman maintain the position that the former use of the Release Land as a Royal Observer Corps site with some car parking was consistent with

supporting the defence needs of the country arising from the war. However, at the surrender of the Lease by the Secretary of State of the Environment, it was anticipated by the Freeman that the land would be returned to grassland. I recall discussions with the City Council officers in or around 1995 but the City Council approached the Freeman with a wish to extend the car park to facilitate a coach park. It was made apparent at that time that there was a distinct lack of parking facilities for coaches bringing tourists into the City following the redevelopment of the Walkergate area. There was no provision for large coaches to access the peninsula and I recall that the Freeman were informed about the potential loss of tourism to the City which was thought to be very significant unless there was adequate coach parking facilities provided on The Sands to enable visitors to access the city centre. My clear recollection of the discussions at the time is that this was not the preferred option of the Freeman and I refer here to my witness statement dated 9th May 2013 **[DCF6]** given in respect of rent negotiations concerning The Sands before Mr A. M. Walton acting as an independent expert.

- 4.5. Contrary to what has already been stated by the County Council, that the Freeman have been silent in calling for a return to grassland, it is clear that the Freeman have repeatedly made their views known to the City Council that The Sands should be returned to grassland. As further evidence I attach a copy of the Minutes of 28th April 1995 suitably redacted, 27th January 1995 and the letter of 17th December 1993 **[DCF7]** from which the Freeman asserted they were not willing to agree to further extension of the car park as a further incursion into the land over which the Freeman have rights. This letter was in response to a letter of the 28th June 1993 from the City Council's Solicitor which is also attached to document **[DCF7]**. The position of the Freeman is that the Freeman could exercise their grazing rights as and when the appropriate time arises and should this particular application fail, the Freeman would expect that the land should be returned to grassland as an extension of green area of The Sands which, as a unique riverside site, constitutes a long-established amenity for the benefit of the citizens, residents and visitors of Durham. Now that the inexorable threat of development is extending ever closer along the riverside towards the green space, it is all the more necessary to ensure that as much amenity and

greenspace is protected and that it remains together when The Sands is viewed as a whole.

- 4.6. At paragraph 18 of the Applicant's Statement of Case the County Council states that members of the public have a "technical right of access" in respect of exercise. The word "technical" is not qualified but it seems to be used in this connection to undermine a legal right which is enshrined in law. Other objectors will no doubt be able to give further evidence on usage to this Inquiry but there are no technicalities, there is only the law.
- 4.7. The Applicant's Statement of Case at paragraph 10 states that no circus or fair has taken place on the leased land since March 1968. This is contrary to the evidence that I have given above, and I recall that the land in question has in fact been used in connection with the Lumiere. I have myself negotiated with staff from Artichoke on site about locations for siting equipment and how the Sands is to be used for the Lumiere events in addition to the references to visiting showmen and the like as mentioned above. See paragraphs [3.10 and 3.13].
- 4.8. In addition to the Easter Fair there are, in any given year, a number of events that take place on The Sands. Most pay for the use but some that are charitable do not but it represents a significant income stream. These events provide an important facility for the community long recognised by the Freeman. These have included Durham Mystery Plays, Durham University Students Union events such as fashion shows and boxing tournaments, various circuses, Durham Pride, Treasure Hunt, and many more. These events often require welfare facilities and hard standing to avoid damage to the grassed area. Without hard standing the Freeman would not be able to accommodate these events. Some events such as the Easter fair can be on site for an extended period of 3-4 weeks.
- 4.9. The reference to the rights of the Freeman being "illusory" at paragraph 25 of the Statement of Case is disputed by the Freeman and takes no account of the Freeman's rights as evidenced in the 1897 agreement concerning the right to

fairs, circuses, menagerie theatre etc in addition to grazing. In practical terms, if the Freeman so desired and the legal agreements were terminated, they could readily enclose the land and graze it as is done in Newcastle for example. At page 927 of the Applicant's bundle, paragraph 2.8 (Applicant's response to objections), it is asserted that the Freeman have adopted a position that is contradictory in respect of the coach park. For the sake of clarity, the Freeman's position is that the coach park was agreed to on the basis that it was necessary to serve the interests of local businesses and tradesmen. This is understandable given the origins of the Freeman and their purpose. In facilitating visitors to the City, those businesses thrive. Likewise, those visitors are able to enjoy recreation and picnics along the riverside over which the Freeman have exercised their rights. Recent caselaw has clarified that commercial considerations can happily live alongside rights registered under The Commons Registration Act and the two are not mutually exclusive.¹ Despite what is stated by the Applicant it is clearly the intention of the County Council to reduce public access to this site and predominantly turn it into a private car park with minimal controlled access to the public.

- 4.10. At paragraph 2.11 of the Response to Objections at page 928 of the Applicant's bundle, it is stated that the Council has no desire to erode The Sands common but that is precisely what this application does. It reduces the area of land when viewed as an integral whole under one single commons registration. It is clear to me from the evidence in the records that the Freeman have constantly fought a battle against successive proposals for development and threats to their rights in connection with The Sands. The Freeman have endured such threats persistently and as evidence of this I refer to correspondence from 1968 and 1969 between the City Council and the Clerk to the Freeman concerning further proposals for development which were resisted by the Freeman and a letter of the 6th March 1969 from the Chairman of the Wardens, on behalf of the Freeman, to the Commons Open Spaces and Footpaths Preservation Society.

¹ *TW Logistics Limited (Appellant) The Essex County Council and Another (Respondents) [2021] UKSC 4*

- 4.11. Again, I refer to correspondence from 1970 in which development was proposed in the form of a Youth Centre on The Sands attached as document **[DCF8]**.
- 4.12. In 2002 a claim to prescriptive rights of access was claimed by the owners of the former ice rink which is referred to in the minutes dated 25th July 2002 exhibited at **[DCF9]**. The Freeman have therefore had to endure constant threats and erosion of their rights which have been persistent.
- 4.13. In 2009 an adverse possession claim arose from the owners of the ice rink (Strandbay) over a portion of the land affected by the 1981 and 1985 Agreements (car park) which had to be resisted by the Freeman with the help of Richard Langdon, solicitor acting for Durham County Council. Strandbay subsequently withdrew the claim.
- 4.14. In or around 2010 when the former ice rink was sold to One North East the development of the Passport Office took place which encroached onto a portion of the land over which the Freeman's interests extend by virtue of the 1981 and 1985 Agreements. The Freeman were presented with a fait accompli and they have not been compensated despite this loss. Negotiations took place with Council officers, most notably Sarah Robson and representatives from the Homes and Community Agency, but the matter remains unresolved when they withdrew.
- 4.15. In March 2020 the Freeman were approached by a well-established institution in the city with a view to identifying a site suitable for a substantial development on The Sands. I can only assume that the approach was made to the Freeman after initial consultation with the County Council and they were actively encouraged to contact the Freeman. In the circumstances the Freeman regard any contrary assurance given by the Applicant as no more than a convenience for the present Inquiry. The Sands is vulnerable to commercial development interests because it has been protected from development. As I have demonstrated, it is often seen as a soft viable development opportunity and

protection under the Commons Registration legislation is more necessary now than ever before.

5. REPLACEMENT LAND

- 5.1. The Freeman have discussed at length the question of suitability of the Replacement Land but it is unanimously agreed that this land is so far distant on foot as to be entirely unsuitable. Furthermore, it is not sufficiently accessible to the neighbourhood and members of the public generally. There is no suitable access to transport grazing animals to use the land and its proximity to the Police Headquarters creates a security risk. There are significant security issues due to its proximity to the police headquarters. On a site visit last year members of the Freeman were told to move their cars as it presented a security risk to the Police Headquarters.
- 5.2. It is impossible to envisage any of the events that take place on The Sands such as circuses and fairs on the Replacement Land. The proximity to the police headquarters alone would constitute a significant security risk and the ecology is likely to be adversely affected by such events. There is the issue of noise for residents close to the site to be considered too.
- 5.3. The removal of the Release Land from the existing registered common diminishes The Sands as a whole and erodes the integrity of the land in terms of the amenity value. Significantly the Applicant has omitted any reference to the Release Land being used by visiting showmen, Lumiere and other events pursuant to the 1897 Lease which is a fundamental omission as the land remains subject to those terms.

6. SUMMARY

- 6.1. The Freeman object to the Applicant's proposal to deregister the Release Land. It remains the last vestige of medieval rights exercised over a part of the City which has special amenity value when taken together as a whole next to the river. The continued protection afforded by Commons registration is necessary

not only to prevent further development but to preserve the unique character for residents and visitors to the city. The reduction or division of that land is a matter of great concern to the Freeman who have had to resist persistent threats to their rights.

- 6.2. The Freeman question why deregistration needs to take place at all. The car park (albeit with some limited access to the public) could still take place legally without the land being taken out of commons status. The caselaw is clear that the two positions are not now inconsistent. At the end of the period for which carparking is required under the terms of the current 1995 agreement, or sooner if agreed by the parties, the Freeman would wish to see this land restored to green space to enhance the amenity value to the City generally and to visitors who very much enjoy use of this land. The Freeman could decide to exercise their rights and graze the land in those circumstances.
- 6.3. Although the release Land appears to be a small piece of land it is part of a much bigger piece of land with specific rights that would transfer to the Replacement Land but the Freeman could not use the Replacement Land because of the issues raised.

Signed



Philip Wills

Clerk and Receiver to the City of Durham Freeman

Dated 15th March 2021

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF1

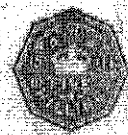
7. Articles of Agreement
15. 11. 97

Articles of Agreement

made the Third

day of November One thousand eight hundred and ninety seven Between Christopher Rowlandson, Matthew Pauler, John Kaldicourt, Charles Chapman, and George Nathaniel Blagden all of the City of Durham Esquires the Trustees for the Freeman of the City of Durham and Thomas Papper, Henry Herbert, Robert Brown Dixon, Thomas Palmer, William Nicholson, Edward Macknight, Edward Hopper, William Smith, William Wicklands, Thomas Cornforth, Robert Dadds and Robert James all of the said City of Durham the Wardens of the several trades of the said Freeman and who are together hereinafter called the said Trustees and Wardens of the one part and The Mayor Aldermen and Citizens of the City of Durham and Bramwellgate acting as and being the Urban District Council for the City of Durham hereinafter called the said Council of the other part Witnesseth that for the considerations hereinafter expressed the said Trustees and Wardens agree to let and the Council agree to take £100 that the herbage growing upon the plot of ground known as the lands in the Parish of Saint Nicholas in the City of Durham so that the said plot of ground may be used as a public recreation ground Except and always reserved out of the letting and tenancy hereby created unto the said Trustees and Wardens for the use of the Freeman of the said City the power for the Freeman to use and occupy the said plot of ground for one full week prior to, and one full week after Easter Sunday in each year for the purpose of carrying on sports and pastimes as the same have been carried on for several years past And also reserving and reserving unto the said Trustees and Wardens on behalf of the said Freeman the power to occupy and let sufficient space from off the said plot of ground for the purpose of erecting a show, theatre, managers, circus or place of similar entertainment

The term to be for one year from the twenty third day of



November. Once thousand eight hundred and ninety eight
 and so on from year to year until the same shall be determined
 by six calendar months notice in writing given by either party
 here to the other of them such notice to expire on the twenty-
 third day of November in any year.

The rent to be Five pounds per annum payable to the said Justices
 and Wardens half yearly on the thirtieth day of May
 and the twenty third day of November in each year free
 from deduction except the landlords property tax. The Council to
 pay all rates and taxes in respect of the said herbage. The said rent
 of Five pounds to be in addition to the sum of two pounds per
 annum paid by the said Council to the said Spiremen in respect
 of the farm now held upon the said plot of ground.

The Council agree not to undertake or to use for any purpose other
 than a recreation ground and to pay rent and other outgoings

In witness whereof the said Justices and Wardens have hereunto
 set and affixed their hands and seals the day and year first herebefore
 written and the said Council have hereunto set their common
 corporate seal at a Meeting duly convened and held the third
 day of November one thousand eight hundred and

ninety seven.

Signed sealed and delivered by the said
 Christopher Northwood, Mathew Fowler, John
 Caldwell, Charles Chapman, George Jackson,
 Clayton Thomas, Messrs Harry Herbert,
 Robert Brown, Dixon, Thomas Palmer,
 William Nicholson, Edward Macknight,
 Edward Hopper, William Smith, William
 Woodlands, Thomas Worsfold, Robert Dodd
 and Robert James in the presence of

J Marshall
 Town Clerk

C. Richardson

W. Fowler

John Caldwell

Chas Chapman

G. P. Hopper

Thomas Hopper

Harry Herbert

Robert Dixon

J Palmes
W. Mitchell

E. Macknight

E. Mappes

W. Smith

W. W. Edwards

his

Thos. X. Cornforth

mark

Robert Dodds

R. James

RECORDS

W. J. M. M. M.
Mayor
||

The common corporate seal of the City of
Durham was herewith affixed in the presence
of

J. M. M. M.
Town Clerk

October 3rd November 1897

The Sweden and Norway
the Swedes of England

— and —

The Swedish Ruler Districts

Articles

Agreement

in the Heritage of the Swedes

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF2

C.A.8

Acz. & stencil G.P. - 15 SEP 1965

H. CECIL FERENS, M.A., LL.B.
SOLICITOR,
COMMISSIONER FOR DATHS,
CLERK TO LORD CREWE'S DURHAM
APPRENTICESHIP CHARITY.

DTC/JR/FGP.12/1.

THE COLLEGE,
DURHAM.

13th September, 1965.

to the City of Durham
Freemen.



Dear Mr. Town Clerk,

The Sands, Durham.

In further reference to your letter of the 12th August, I was able to arrange that your Council's request for an annual contribution towards the cost of the restoration of the herbage at The Sands should be considered by a Special Meeting of the Trustees and Wardens of the Freemen held last week. At that Meeting I was instructed to inform you that an annual contribution could not be offered. It was pointed out by the Wardens that the herbage on The Sands is leased to your Council, so that it may be used for recreational purposes, (reserving the right of the Freemen to hold their Easter Fairs as well as periodical circuses and functions of that kind) at the comparatively nominal rental of £5 per annum, free of all outgoings. It is felt that the improvements, which your Council has recently effected to the herbage, will mostly be enjoyed by the citizens at large, for whose benefit it was leased, and it will be realised that the Freemen could not be expected to make much of a voluntary contribution out of so small a rent. The Freemen did, however, authorise me to offer in lieu of such annual contribution that they would be prepared to share with your Council the amounts, which they may in future receive from circuses and the like, in the proportions of 75% to the Freemen and 25% to your Council. If this offer is accepted, they would be ready for such an arrangement to operate in respect of the unsatisfactory circus held earlier in the year and in respect of a more reputable circus, which they hope to accommodate on The Sands at the end of this month.

In regard to the unavoidable damage to the herbage resulting from the necessity for the Freemen to hold their Easter Fair this year at a time when the recently sown grass was somewhat immature, I am authorised to offer as a special ad hoc payment, for this one year only, a sum of £40, though it would need to be clearly understood that no such payment could be made in respect of the Easter Fairs held in future years, unless in any particular year owing to inclement weather it could be established that special expenditure is imposed upon your Council, when the Freemen might be prepared to consider a request for a contribution on being satisfied as to the details of the work involved, but an inspection by representatives of the Council and the Freemen before and after the holding of each Easter Fair would be essential if any contribution is to be requested.

If your Council is ready to accept these offers, I rely upon you to let me know, so that I may obtain from my Trustees a cheque for the sum of £40 in respect of the Easter Fair this year and may subsequently send you a proportion of the amounts received from the

p.t.o.

circus already held and the circus which is anticipated at the end of the month.

Yours faithfully,

Mae Fern

The Town Clerk of Durham,
Town Clerk's Office,
32, Claypath,
Durham.

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF3

CITY OF DURHAM FREEMEN -TRUSTEES
FINANCIAL POSITION AT 30.12.92.

INCOME

Balance at bank 5.4.92.

	£	£
Current Account	70.59	
Premium Account	4558.08	
		4628.67
<u>Dividends</u>		
6.4.92. Consols	2.99	
1.6.92 War Bonds	69.58	
6.7.92. Consols	2.99	
1.9.92. Treasury	13.55	
		89.11
<u>Interest</u>		
22.6.92 Premium Account	80.03	
21.9.92. Premium Account	76.65	
		156.68
<u>Rent</u>		
28.4.92 Land at Sands	325.00	
15.7.92 Land at Sands inc arrears	2985.00	
15.7.92 Herbage	2.50	
25.9.92 Hungarian Circus	300.00	
25.9.92 Durham Folk Party	35.00	
25.9.92 Motor Cycle Meeting	5.00	
17.11.92 Emmanuel Church	5.00	
		3657.50
		<u>8531.95</u>

EXPENDITURE

14.7.92 Contr' to Insurance of Plate	7.64	
25.9.92 Grassman-2 years	20.00	
25.9.92 T.Heron (Refund of Insurance of Jewel)	27.00	
4/92-8/92 Bank Charges	32.43	
		<u>87.07</u>
<u>BALANCE</u> as at 30.11.92.		<u>8444.43</u>

PLEASE ADDRESS ANY QUERY RELATING TO THIS PAYMENT TO:-

DIRECTOR OF FINANCE
CITY OF DURHAM
FINANCE DIRECTORATE
JOHN STREET SOUTH
MEADOWFIELD
DURHAM DH7 8RG

TELEPHONE: DURHAM (0191) 386 8111 EXT. 406
QUOTING THE NUMBER OF THE ENCLOSED CHEQUE

CITY OF DURHAM PAGE 1 OF 1
RESISTANCE ADVICE

YOUR INVOICE No. OR REFERENCE	NET AMOUNT £	OUR REF.
PAYMENT FOR RENT OF FAIRS AT THE SANDS PERIOD ENDIN NOVEMBER 1995	1.00	0183734
PAYMENT OF RENT THE HERBAGE THE SANDS DURHAM 1/2 YEAR TO NOV 95	2.50	0183747
RENT FOR LAND AT THE SANDS FORME ROC SITE 1/2 YEAR 7/9/95-6/3/96	361.70	0183751

FREEMEN OF THE CITY OF DURHAM
W K WILLIS, DIOCESAN REGISTRY
DIOCESAN OFFICE
AUCKLAND CASTLE
BISHOP AUCKLAND
DL14 7QJ

REF.	DATE	CHEQUE No.
CR001600	17/11/95	494924

PLEASE ADDRESS ANY QUERY RELATING TO THIS PAYMENT TO:-

DIRECTOR OF FINANCE
CITY OF DURHAM
FINANCE DIRECTORATE
JOHN STREET SOUTH
MEADOWFIELD
DURHAM DH7 8RG

TELEPHONE: DURHAM (0191) 386 8111 EXT. 406
QUOTING THE NUMBER OF THE ENCLOSED CHEQUE

CITY OF DURHAM PAGE 1 OF 1
RESISTANCE ADVICE

YOUR INVOICE No. OR REFERENCE	NET AMOUNT £	OUR REF.
RENT FOR LAND AT SANDS 7/3/96-6/9/96	2021.28	0212896
RENT FOR LAND AT SANDS FORMER ROC SITE 7/3/96-6/9/96	361.70	0212897
RENT FOR THE HERBAGE SANDS TO MAY 96	2.50	0212900

sent to John Cole on 10/4/96

FREEMEN OF THE CITY OF DURHAM
W K WILLIS, DIOCESAN REGISTRY
DIOCESAN OFFICE
AUCKLAND CASTLE
BISHOP AUCKLAND
DL14 7QJ

REF.	DATE	CHEQUE No.
CR001600	15/04/96	511010

REMOVE DOCUMENT AT THIS PERFORATION

City of Durham Unit 1, Damsion Way, Dragonville Industrial Estate, Durham, DH1 2YN
All Enquiries Telephone 0191 3018228.

DATE	INVOICE NUMBER	OUR REFERENCE	AMOUNT GBP
07/03/2005	SANDS CAR PAR	1099578	5,002.50
TOTALS			5,002.50

Cheque No	799758
Supplier ID	100509

RECEIVED

5 - 100509

... Clerk and Receiver, 56 North Bondgate, Bishop Auckland,
 Co Durham, DL14 7PG
 ☎ 01388 603073

18th April 2007

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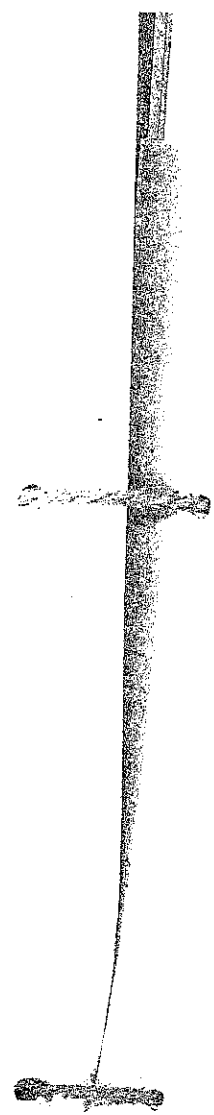
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23rd September.

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he City Council which



REMOVE DOCUMENT AT THIS PERFORATION

Claypath, Durham, DH1 1RH,
 Enquiries Telephone: 0191 3018228

DATE	INVOICE NUMBER	OUR REFERENCE	AMOUNT GBP
03/2007	RENT-SANDS	1183346	11,252.50
TOTALS			11,252.50

Cheque No	851585
Supplier ID	100509

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representative of housing etc.
and correspondence.

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(2)

CITY OF DURHAM FREEMEN

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 5TH APRIL 1991

INCOME

£ £

Balances at Bank 6.4.90

Current Account	326.80	
Premium Account	3,058.50	3,385.30

Dividends

3½% War Stock	139.16	
2½% Consols	11.96	
8 3/4 Treasury Stock	27.10	178.22

Interest

Premium Account (Gross)		430.29
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Rent Income

Land on the Sands	650.00	
R.O.C. Headquarters	268.50	
Herbage	15.00	
Fairs	6.00	
Rally	18.00	
Other	11.00	968.50

TOTAL		4,962.31
-------	--	----------

Expenditure

Stationery and Printing	68.83	
Contributions to Insurance -		
Plate and Chairmans Chain of Office	28.61	
Distribution to Freemen	420.00	
Subscription - Freemen of England	25.00	
Grassman	20.00	
Corporation Tax	448.46	
Bank Charges	1.81	1,012.71

Balances at Bank 5.4.91

Current Account	47.31	
Premium Account	3,902.29	3,949.60

TOTAL		4,962.31
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Kirby's Charity Account

Balance at 6.4.90	37.68	
Income	4.10	41.78

TOTAL		41.78
-------	--	-------

Balance at 5.4.91

TOTAL		41.78
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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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF4

7/4/12/1

29th January, 1965

Dear Sir,

Land at The Sands

I reported the contents of paragraph 2 and 3 of your letter of the 4th instant to the General Purposes Committee of the Council and I now set out hereunder the resolutions in this regard which I anticipate will be approved by the Council.

I should perhaps point out that the Council feels that the establishment of the car park opposite the Corporation Yard is of great benefit to the Freemen as it obviates indiscriminate parking of vehicles on The Sands.

With regard to the car park adjoining the R.O.C. Headquarters the Council is prepared, if the Freemen so wish, to make the posts in question moveable but it is not prepared to pay for parking rights. You will recall that the reason for the establishment of this car park was again to keep vehicles off the main area of The Sands.

"The Town Clerk submitted a letter dated 4th January, 1965, from the Clerk to the Trustees of the Freemen regarding compensation for loss of herbage rights in respect of land at The Sands.

RESOLVED: (i) That, bearing in mind the Council's ownership of the freehold of the land, the Freemen be offered the sum of £10 compensation for loss of herbage rights in respect of the area of land opposite the existing Corporation Yard, not used as a car park.

(ii) That the City Engineer be authorised to make moveable the posts dividing the car park adjoining the R.O.C. Headquarters from the Sands." X

Yours faithfully,



Town Clerk.

H. C. Ferens, Esq., D.C.L., M.A., LL.B., J.P.,
Clerk to the Trustees of the Freemen of Durham,
The College,
Durham

01 113456-103
Mr. Lane

SIGNED SEALED and DELIVERED by
THE TOWN CLERK



CITY OF DURHAM

Town Clerk and Chief Executive
Carl G. Firmin, D.M.A., F.C.I.S., M.I.Mgt.

Solicitor and Deputy Town Clerk
P.A. Broome, LL.B., D.M.S., F.I.Mgt.

Byland Lodge,
Hawthorn Terrace,
Durham,
DH1 4TD.

Telephone: Durham (091) 386 6111
Fax: (091) 386 0625

My Ref: BS/KB/60067

18th October, 1994.

Dear Mr. Wills,

Former ROC Site, The Sands, Durham

I refer to your letter of 11th October, 1994, regarding the above.

I am proceeding to engross the Agreement which will be forwarded to you ready for execution at your next meeting of the Trustees and Wardens.

On the question regarding the estimate for works to the "void area", the estimate as set out in my letter dated 24th June, 1994, only is for the items then mentioned, namely provision for fencing, gate and posts. The estimate, therefore, does not include any provision for surface treatment to the void area and as mentioned in my letter of 4th March, within the terms of the 1850 Agreement the City Council would be recommended to retain the void area for use by visiting showmen. You may recall that the fencing was considered desirable to prevent otherwise illicit parking on this area.

I trust this clarifies the position and shall send on the engrossed documents to you in the near future.

Yours sincerely,

Solicitor and Deputy Town Clerk

P. Wills Esq.,
Clerk and Receiver,
City of Durham Freeman,
The Diocesan Registry,
Diocesan Office,
Auckland Castle,
Bishop Auckland,
Co. Durham,
DL14 7QJ.

This matter is being dealt with by Mr. B. Splevins.



CITY OF DURHAM

Town Clerk and Chief Executive
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HOSTS TO THE

23rd IAAF/SNICKERS® WORLD CROSS COUNTRY CHAMPIONSHIPS

SATURDAY 25th MARCH, 1995

THE CITY OF DURHAM FREEMEN

P. Wills
CLERK AND RECEIVER

your ref. BS/KB/60067

The Diocesan Registry,
Diocesan Office,
Auckland Castle,
Bishop Auckland,
Co. Durham, DL14 7QJ.
Telephone 0388-450576

16.1.95

Dear Mr. Broome,

Former R.O.C. site

Thank you for your letter of the 11th January.

With regard to your clarification concerning the matter of the use of the void area for the use of visiting showmen. Would it be possible for the City Council to consider the possibility of returning the area to grassland so as to improve the environment of The Sands generally as has been suggested by the Freemen whilst including the provision of the fencing and gate to prevent otherwise illicit parking? The land could still then be used for the showmen should that option ever need to be used in the future.

I will be glad to make an approach to the Trustees and Wardens as regards discussing the possibility of making a contribution if this could be agreed.

I look forward to hearing from you on this aspect.

Yours sincerely,



P. Wills.

7 of 12/11

29th January, 1965

Dear Sir,

Land at The Sands

I reported the contents of paragraph 2 and 3 of your letter of the 4th instant to the General Purposes Committee of the Council and I now set out hereunder the resolutions in this regard which I anticipate will be approved by the Council.

I should perhaps point out that the Council feels that the establishment of the car park opposite the Corporation Yard is of great benefit to the Freemen as it obviates indiscriminate parking of vehicles on The Sands.

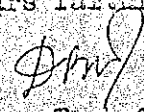
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Clerk to the Trustees of the Freemen of Durham,
The College,
Durham

01 1754514 401
Mr. Lane

STOWED SEALED and DELIVERED by
WILLIAM GIBBY



CITY OF DURHAM

Town Clerk and Chief Executive
Carl G. Firmin, D.M.A., F.C.I.S., M.I.Mgt.

Solicitor and Deputy Town Clerk
P.A. Broome, LL.B., D.M.S., F.I.Mgt.

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Diocesan Office,
Auckland Castle,
Bishop Auckland,
Co. Durham,
DL14 7QJ.

*Telephone Mr. Splevins re Mr. Wills & ...
not to be ...
a record*

②

This matter is being dealt with by Mr. B. Splevins.

HOSTS TO THE

23rd IAAF/SNICKERS® WORLD CROSS COUNTRY CHAMPIONSHIPS

SATURDAY 25th MARCH, 1995



CITY OF DURHAM

Town Clerk and Chief Executive
Carl G. Firmin, D.M.A., F.C.I.S., M.I.Mgt.

Solicitor and Deputy Town Clerk
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HOSTS TO THE

23rd IAAF/SNICKERS® WORLD CROSS COUNTRY CHAMPIONSHIPS

SATURDAY 25th MARCH, 1995

THE CITY OF DURHAM FREEMEN

P. Wills
CLERK AND RECEIVER

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P. Wills.

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF5

17805
Page 4 etc.

Consulted at Durham Record Office Tuesday 19th January 2010

All documents prefixed Du1/50

The purpose of this search was to fill gaps in Freeman's documentation and to strengthen evidence for rights relating to The Sands Durham

67

This refers to "a certain piece of waste ground .. called the Sands." There is an opinion of [Sir] John Mitford of Lincoln's Inn of 24th December 1800 to the effect that the Bishop of Durham, from whom a lease is held by the Mayor and Corporation of Durham, cannot, without being guilty of trespass, attempt a colliery as the Mayor and Corporation have had enjoyment of the Sands as a grant together with "The Borough etc" for a century and a half past. The opinion is endorsed by R[obert] Hopper Williamson of Newcastle-upon-Tyne 11th December 1800. Yearly rent of £20 – for three lives. An application has been made [not by the Mayor and Corporation] to the Bishop "for a grant or lease of the coalmines within and underneath a certain piece of waste ground (within and parcel of the Borough or City of Durham) called the Sands adjoining Keeper [sic] Grounds." [The Bishop is willing to do this – the object being to test his rights despite the lease] The original lease is dated 1st May 1782 (John Lord Bishop of Durham and Ralph Bowes (Mayor) and William Kirton, John Starforth and Christopher Hopper Aldermen. This lease enables the Mayor and Corporation to administer all properties and to receive all dues within the City including the Saturday Market and Customary Fairs. All dues and profits to lessees – i.e. the Mayor and Corporation. The endorsement reads : Decr 1800 Case as to the Royalties of the Sands with Sir John Scotts and Mr Hopper Williamson opinion. *[My transcript says Williams for both occasions in this document but I think I have got it wrong and that it is Williamson]*

68

This is substantially the same as 67 without the historical preamble. Neither 67 nor 68 has the opinion of Sir John Scott [the endorsement on 68 in any case refers to Sir John Mitford whose signature is appended on both 67 and 68]

69

This new indenture has the endorsement "For the opinion of William Hoar Esq whether the Sands pass by the lease to the Corporation" – subscribed "Wilkinson". Date of this indenture [resultant on the death of one life – cf. §67] referred to in the preamble is 21st September 1810 between Bishop

Shute Barrington and the Mayor Martin Dunn and three Aldermen. Assignment of all privileges etc referred to in 1782 indenture. On page 2 of document : "The parcel of ground called the Sands is understood to be within the limits of or a parcel of the Borough or City of Durham, and the lessees under the Bishop of Durham or their officers or agents have occasionally exercised Acts of Ownership by taking Waifs or Strays on the Sands, which have also on the perambulation of the Boundaries of the City and Borough been taken into those boundaries" Hoar says that the Sands would pass by the lease from the Bishop of Durham to the lessees by the Grant of the Borough. Hoar's opinion is dated Durham 19th May 1813 and it is clear that the lessees have exercised acts of ownership and that the Sands passes to the lessees as part of the Borough etc of Durham.

70

This is an extract from the Court Leet Book, of a Court dated 29th April 1687 before Sir Robert Delavale [sic] – being regulations for surveyors and overseers.

- 1) Item : They do lay a paine that the present Surveyors of the High Ways in St Nicholas Parish, viz. George Anderson and John Teesdale do repaire the Highway betwixt the Brew-House and the Ash-Gate betwixt & midsummer next upon paine of 6s. 8d [left marginal note "This is at the extremity of the Sands"]
- 2) Item : They do lay a paine, that they aks the said overseers do repaire the common highway in Wanless Lane, and the front at the head of the same, betwixt & midsummer next upon paine of 6s. 8d.
- 3) Item : They do lay a paine that no person or persons whatsoever, shall from henceforth lay or cause to be layed, upon the common called the Sands within the Parish of St. Nicholas any manure or other rubbish whatsoever, without the leave or appointment of the surveyors of the Highways for the time being upon paine of £1 19s 11d.

71

This is the same as 70

72

Relates to the perambulation of the Boundaries
Requisition to the Mayor and Aldermen at a Meeting in the Guildhall on Friday 21st May 1813 from the Wardens [12 signatures] "request you to appoint Grassman and fix the usual day (25th May) for the purpose of perambulating the boundaries of the Sands according to ancient custom for

and on the behalf of the Freemen of the City [first signature is Robert Vasey].

Then, on 11th day of June 1813 the Mayor and Aldermen : "It is ordered that an action of ejectment be brought against Thomas Nicholson for inclosing the waster ground called the Sands and to [illegible] him of the possession thereof."

Then, 25th June 1813 : Memorandum that at this meeting the Mayor had before him certain propositions from the Committee of Wardens respecting the Sands – [Not Agreed] – continued "It is ordered that the Manufactory in the Back Lane be advertised to let [next partly illegible through dirt] 2nd June 1813 : Memorandum that the paper laid before the Meeting [...] further [...] position respecting the Sands [Not agreed] *[The "not agreed" not indicates that the Mayor and Corporation did not recognise the4 validity of the Wardens' petition. The Nicholson ejectment goes on for a while, and it looks that the Freemen had allowed an encroachment,. Maybe regretted it, and then that the Mayor and Corporation had disputed their authority to allow the encroachment anyway]*

73

Letter of 18th June 1813 to Mayor etc from Wardens asking for Thomas Nicholson to continue for three years and the rent to be used for Charitable Purposes.

74

Letter of 29th June 1819

Thomas Nicholson still occupying and Wardens are asking for an extension of a further three years.

80

Dated 22nd December 1836 & signed by Thomas Graham, Millright, Crossgate, Durham

Graham is alerted to abuse of encroachments and to potential of land value with advent of railroads. He says that the Sands are not included in the 1801 division of Moors Act (41 George III). After the Freemen enclosed the land in 1801, he says. The Mayor and Aldermen, as lessees from the Bishop of Durham brought an action, tried by Baron Wood, who said that though the Freemen may have done wrong in enclosing the land, "they might have other rights such as that of common quite consistently with the rights of the Corporation to the soil. The Freemen won their case and continued to

exercise acts of ownership after the Mayor had made 21-year leases of different parts of the Sands – presumably as a provocative gesture, conciliation ensued, and the Mayor acknowledged the right of the Freemen to the herbage growing on the waste and stated that the Freemen might pull down the erections. In 1813, consequent on disagreement between the Mayor & Aldermen and the Freemen re from whom the rents paid into charities should be attributed, the Mayor and Corporation imposed 4 per-annum Cattle Fairs (presumably held in Claypath) onto the Sands and allegedly damaged the herbage. Restitution of the rights of the dispute were sought by Thomas Graham.

81

Papers of evidence : Minutes of 7th April 1837 :

- 1) John Hall of Framwellgate tells of the perambulations of the boundaries of 50 years before
- 2) Rowland Wilson aged 65 remembers 55 years ago – perambulation along the Sands to the Ashgate (Ashgate was put up and kept in repair by Kepier tenants). The Sands House paid an acknowledgement but what it was [he] cannot tell – thinks it was paid to the Grassman. Remembers impounding of cattle on the Sands “one Mallen” who rented Sands House – a non-Freeman – “Michael Willis (he did the impounding) was a dangerous queer fellow – an absurd man – verry [sic]”.
- 3) The revd Edward Davison remembered boundaries including the Sands, and also an interdict from the Mayor about cutting willows.
- 4) Henry Sharp [Weavers Company] aged 83 remembers the Boundary Ridings – when they came to Low Brasside they had a race for a spice loaf ... “and again to the Sands at the foot of the Mill Race and ... to the bottom of the Sands.” Much evidence throughout these papers of grazing of sheep and cattle by Freemen.

82

82/1 is same 81 part 1

82/2 is same as 81 part 2

i.e. they are fair copies of 81

83

Fair copies of letters of 2nd June 1849 and of 23rd August 1849 from Henry Stapylton to (1) John Tiplady and (2) William Henderson – leases of portions of the Sands had been made by Mayor and Aldermen – disputed by

the Freeman, who threatened to demolish or "abate" the erection. Stapylton was of the opinion that the Freeman had rights of common and nothing else.

84

Letter of 23rd August 1849 from Henry Stapylton to William Henderson (same as 83 part 2 though easier to read). Stapylton refers to a judgement of Baron Rolfe (Solicitor General) in 1832 where "it appears quite clear and free from doubt that the Freeman are not entitled to soil and freehold of the waste, but merely to the herbage or right of common thereon". "I would advise the Corporation to offer to grant leases at a nominal rent for 21 years determinable in case the land is wanted for railway purposes, to those parties who have built on the waste, and in case they decline to accede to the proposal that then the Corporation shall forthwith commence one or more actions against the person or persons who refuse. I would not advise the Corporation to dispute the Freeman's right of common if they will consent to an amicable adjustment of the present disputed by a complete recognition of the Corporation's right to the soil and freehold. The Freeman might by their Wardens consent to the suggested leases; they should recite that the Corporation were entitled to the soil and freehold and the Freeman to the right of common thereon.

85

Further copy of 84

86

Indenture of 18th September 1850 : Mayor and Corporation and Wardens of Freeman – an agreement – cf. pages 3 and 4 of document – that one third rent to Mayor and two thirds to Wardens [N.B. for the use and benefit of the Freeman. Page 4 allows the Mayor and Corporation to drain forwise [probably my mis-reading] improve the Sands for the better and more convenient holding of such fairs as aforesaid. And No Dumping of Rubbish.] Refers top an agreement of the Bishop [Edward Maltby] and Mayor and Corporation of 12th December 1848 for the demise of the Bishop's rights. This document is a [draft] with numerous amendments by J Longstaffe 26th April 1850 and John Tiplady Town Clerk 14th May 1850 and also signed on pafe 5 by William Clayton Clayton [sic] Mantle 9th April 1850.

87

Illegal erections either be subject to leases or eviction : Meeting of 7th November 1851.

88

Same as 87 plus copy letter [as in 83-85] from Henry Stapylton to William Henderson Durham 23rd August 1849

89-91

[31 December 1851 consent for changing site of Ropery - site of Ropery referred to as towards the south side of west end of the Sands. Signed by the Wardens, and 90 signed by Richard Thompson, Mayor. 91 is rough draft of 89 approved on behalf of the Wardens by J. Longstaff [sic] 24th December 1851

92

Letter from William Palmer on behalf of the Freeman. Mr Punshon had erected buildings and fencing on the Islands and the Council had served notice. This area has also been used from Providence Row to the Islands by the Board of Health.

93-97

Identical letters from John Tiplady Town Clerk, to Richard Dixon publican of Silver Street, to Ann Turnbull publican of Claypath, to Robert Swainson publican of New Elvet, to John Smith publican of Silver Street and to John Allan publican of Gilesgate, all letters delivered by Richard Clarkson, sergeant and dated 26th August 1861, requesting removal of booths on the Sands.

98

27 August 1861 claim of all rights and authority over the freehold of the Sands in question by William Bulmer, Steward of the Freeman, indicating that he has the leave of the Freeman to make this claim.

99

4th November 1863 : confirmation of the Herbage or Rights of Common on the Sands and unenclosed waste lands. City Council had Freehold for lives from Bishops of Durham, and in 1860 had purchased the reversion. City Council willing to issue 21 year leases. Document signed by George Robson, Mayor.

Docs 67-74 in one file

Docs 75-77 in one file

Docs 76-99 in one file

I think this deposit is a City Council rather than a Freemen one.

This appraisal needs revision – i.e. looking at the documents again, and should be read in conjunction with Philip's list of relevant papers.

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF6

IN THE MATTER OF A RENT REVIEW OF THE PROPERTY KNOWN AS
THE SANDS CARPARK, DURHAM DH1 1SQ

WITNESS STATEMENT

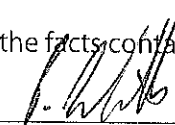
I Philip Wills, Master of Laws, Kepier House, Belmont Business Park, Belmont, Durham DH1 1TW will state as follows:

1. My full name is Philip Wills and I am a Solicitor with the firm of Quality Solicitors BHP Law of Kepier House, Belmont Business Park, Belmont, Durham DH1 1TW.
2. I confirm that I am familiar with the land at The Sands (the land) which is the subject of the current rent review to be determined by Mr A M Walton, FRICS, MCI Arb, MEWI.
3. I have been involved in the administrative affairs of the Freeman for many years and prior to my appointment as Clerk to the Freeman I assisted with administration.
4. I was appointed Clerk and Receiver to The City of Durham Freeman in 1992 by the Trustees and Wardens.
5. During the course of my acting as Clerk I have had full conduct of all legal matters in connection with the interests of the Freeman concerning land at The Sands on behalf of the Trustees.
6. I was party to the negotiations with the Durham City Council when the 1995 Agreement was entered into between the then Durham City Council and the Trustees and Wardens of The City of Durham Freeman.
7. During the course of those negotiations I attended to the correspondence with the City Council Legal Department and attended meetings with Officers from the Department, in particular Mr Brian Splevins and the then City Solicitor, Mr Peter Broome.

8. I clearly recall the negotiations and correspondence concerning the land on which the former Royal Observer Corps Headquarters stood. This land was leased to the Secretary of State for many years following the war. When the lease came to an end there were numerous discussions and there was considerable correspondence concerning the future of this land. The outcome was that the City Council in its aim to develop tourism for the City approached the Freeman to agree the inclusion of the former ROC site as an extension of the existing carpark on The Sands.
9. It was intended that this land be incorporated as a coach park but that it would form an extension to the existing carpark which is governed by the 1981 Agreement and the Deed of Variation for 1985.
10. After considerable discussion amongst the Trustees and Wardens the Trustees and Wardens agreed to enter into the 1995 Agreement on the basis that there would be appropriate consideration in the terms as set out in that Agreement. I recall that it was always intended as part of the those negotiations that the 1981 and 1985 Agreement should be considered as a whole for the purposes of rent review and indeed I can confirm that having had responsibility of the legal affairs of the Freeman this has always been the basis on which previous rent reviews have taken place and it reflects the intention of the parties in the course of those negotiations. I refer to exhibit "A" attached being a Memorandum of Rent Review for 2008 (dated 5 June 2009) which is signed by myself and the County Council as evidence of the intention of the parties.

Statement of Truth

I confirm that the facts contained in this statement are true.

Signed 
Philip Wills

Date 9/5/2013

APPLICATION COM/232618 FOR
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REGULATIONS 2007

PROOF OF EVIDENCE OF
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF7

MINUTES OF THE FREEMEN MEETING HELD IN THE GUILD HALL, DURHAM ON
FRIDAY, 27TH JANUARY, 1995 AT 2.30 p.m.

Present; Trustees; Mr. P.G. Woodward, Chairman, Professor B.Smythe, Dr. G.A.L. Johnson, Messrs. M.B. Venning, J.A. Cole and F.J. Brooke.
Wardens; Mr. T.M. Heron (Chairman of the Wardens), Messrs. H.A. Atkinson, C.F. Vest, D. Young, J.R. Brown, T.W. Redden, and E.H. Coldicott.

-Apologies The Clerk announced apologies from Messrs. K.L. Allan and R.C. Norris.

-Minutes The Minutes of the last meeting were read confirmed and signed.

Former R.O.C. site The Clerk reported that he had written to the City Solicitor returning the completed Agreement. It was expected that an account would have to be raised after the deed had been dated for the outstanding rent for the year up to the 6th September, 1995.

Void area of land The Clerk stated that he had written to the City Solicitor over the return of the void area of land adjacent to the former R.O.C. headquarters. He had received a reply which indicated that the Council had not included any provision for the return of the area to grassland so the Clerk had again written asking for the matter to be considered by the City Council. Thereafter the Freeman would be in a position to decide whether or not any financial contribution would be made towards the cost of this work.

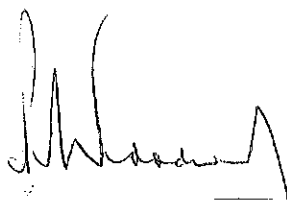
Accounts Mr. Cole set out the financial position of the Freeman to the effect that in the [REDACTED]. These amounts took into account the Corporation Tax outstanding.

Mr. Heron informed the meeting that the Wardens had decided to give a £50 donation to the Mayor's Charity.

Revision of List of Freeman It was reported that the Wardens had revised the List of Freeman to bring the list into line with area specified in the boundary map representing the Durham City area. As a result certain Freeman who lived outside the area would be removed from the list and transferred to the list of Freeman resident outside the area of the city. Mr. Heron handed the amended list to the Clerk for printing. There were now 67 Freeman on the list entitled to derive in the income. Concern was expressed by the Trustees that there were now only three resident members of the Cordwainers Company.

Date of next meeting Friday, 28th April, 1995 was agreed as the date of the next meeting. The meeting would be held at 2.30 p.m.

any other business The Clerk reported that he had written to the City Solicitor concerning certain rents which did not appear to have been paid in recent years to the Freeman. He had heard from the City Solicitor after a lengthy wait. The City Solicitor had contacted the Finance Directorate who had confirmed that the miscellaneous rents had not been paid since 1992. The Clerk indicated that he would be requesting payment of the outstanding rents comprising £1, £5 and £10 for each year. The Clerk indicated that the £10 related to the car park on the Sands Flats and he was requested to write to the City Solicitor to place the use of this car park on a proper legal footing since it was understood that there was no formal agreement.





CITY OF DURHAM

Town Clerk and Chief Executive
Carl G. Firmin, D.M.A., F.C.I.S., M.I.Mgt.

Solicitor and Deputy Town Clerk
P.A. Broome, LL.B., D.M.S., F.I.Mgt.

Byland Lodge,
Hawthorn Terrace,
Durham,
DH1 4TD.

Telephone: Durham (091) 386 6111
Fax: (091) 386 0625

My Ref: BS/KB/60067

28th June, 1993.

This matter is being dealt with by Mr. B. Splevins.

Dear Mr. Wills,

ROC Headquarters, The Sands, Durham

With further reference to the above and to bring you up-to-date with the position, the City Council recently has confirmed that the ROC site should be cleared on surrender of the Lease by the Secretary of State for the Environment, the land to be used for car parking purposes.

Accordingly, I have asked the District Valuer to make contact with you to discuss appropriate terms along the lines of the Agreement for the Ice Rink Car Park. The intention also would be to incorporate the area of land on the north east side of the ROC site which over the years has been used for occasional and indiscriminate car parking. The scheme presently envisaged will make another 52 car parking spaces available for public use.

If you have any queries at all in the matter, please do not hesitate to contact my Office.

Yours sincerely,

Solicitor and Deputy Town Clerk

Mr. P. Wills,
Clerk and Receiver,
City of Durham Freeman,
The Diocesan Registry,
Diocesan Office,
Bishop Auckland,
Co. Durham,
DL14 7QJ.

COPY

THE CITY OF DURHAM FREEMEN

P. Wills
CLERK AND RECEIVER

The Diocesan Registry,
Diocesan Office,
Auckland Castle,
Bishop Auckland,
Co. Durham, DL14 7QJ.
Telephone 0388-450576

Dear

17th December, 1993

Re. The former R.O.C. Headquarters site of The Sands, Durham

With further reference to our correspondence on this matter and our telephone conversation earlier this week I am now able to report formally on the decision taken by the Trustees and Wardens of the City of Durham Freeman at the meeting held on Friday 3rd December.

The meeting resolved that having considered the proposal made by the District Valuer in the letters of 25th October, 1993 and the 25th November, 1993 the Freeman Trustees and Wardens give their consent to the surrender of the Lease with the Secretary of State for Defence in respect of the site of the R.O.C. headquarters. They further resolved that consent is given for the use of the existing R.O.C. site to be cleared and to be used for further car parking facilities as proposed by the City Council. However the unanimous view of the meeting was that the Trustees and Wardens would not agree to the additional piece of land to the north-east of the existing R.O.C. site being included for car parking purposes. This area is marked "X" on the enclosed plan (totalling approximately 880 m²). The Trustees and Wardens indicated that they would be prepared to cooperate with the City Council in bringing this area back into grassland as an extension of The Sands open area which, they believe, will prevent illegal parking of cars and improve the local environment. If necessary a narrow and controlled access from Providence Row to the river could be incorporated.

In relation to the Surrender I am taking steps to have the document circulated and executed by the Trustees and will return it to you as soon as I am able to do so.

I look forward to hearing further from you on the City Council's decision.

Yours sincerely,

To: 1. The District Valuer,
2. The City Solicitor/Deputy Clerk

P. Wills

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF8

CITY OF DURHAM



32, CLAYPATH
DURHAM

A. B. MARTIN-JONES, B.A., LL.B. DTC/PMB/HTP.1/82
SOLICITOR
TOWN CLERK

10th November, 1969.

TELEPHONES : DURHAM 3206 (2 LINES)

Dear Sir,

THE SANDS - HOUSING

The Council proposes to erect certain units of housing accommodation on the site of the former Corporation Depot at The Sands and, in order to provide the requisite garage accommodation, is desirous of using certain additional land over which the Freemen appear to have rights of herbage.

I therefore enclose copy of a plan showing, hatched in blue, the area of land in question and shall be most grateful if you will kindly let me know if the Freemen are prepared to negotiate with the Council for the relinquishment of their rights over this land.

Yours faithfully,

Town Clerk.

H. C. FERRENS, ESQ., D.C.L., M.A., LL.B., D.L., J.P.,
Clerk to the Trustees of the Freemen of Durham,
The College,
DURHAM.

DURHAM COUNTY COUNCIL

J. T. BROCKBANK
CLERK OF THE PEACE
AND
OF THE COUNTY COUNCIL
TELEPHONE: 4411



COUNTY HALL
DURHAM

MY REF: *PD/JH

YOUR REF:

12th May, 1970

Dear Sir,

Durham City Youth Centre - The Sands

As you may be aware I have been in correspondence with the Town Clerk of the City of Durham in connection with the above matter with a view to obtaining the City Council's approval to an exchange of land between the two authorities. The purpose of this suggestion was to enable the rights in the Sands site which are vested in the freemen to continue by being transferred to an alternative area of land. You will doubtless be aware that this alternative site is situate at the rear of Ferens Park and comprises approximately 0.96 of an acre.

I understand that the City Council is awaiting the reaction of the freemen to this suggestion and I am anxious to ensure that the freemen are fully acquainted with the importance of the project which the County Council has proposed and are cognisant of the benefits which flow to the youth of the City if such a project can be undertaken.

If therefore there are any aspects of the County Council's proposals on which the freemen would like clarification or further information please do not hesitate to contact me so that I may fully inform the freemen on such matters. In this connection I would be happy to arrange a meeting with the freemen if it is felt that this would assist in bringing about a favourable decision.

Perhaps you will bring this letter to the notice of the freemen when they next consider this matter.

Yours faithfully,

H.C. Ferens, Esq., D.C.L., M.A.,
LL.B., D.L., J.P.,
Clerk to the Trustees of the Freemen of
Durham,
The College,
DURHAM.

J T Brockbank

k to Durham City Freeman.

7th October, 1970.

Dear Mr. Anderson,

The Sands.
Proposed Durham City Youth Centre.

You will no doubt recollect that in their efforts to persuade the Freeman to allow a Youth Centre to be erected on The Sands, the Durham County Council Education Committee offered the Freeman herbage rights over a piece of land above the Football Field at Ferens Park, and that you wrote to me on the 8th June stating that after careful investigation the Wardens had come to the conclusion that herbage rights over a site so far separated from The Sands would be of no use to them. Your letter did go on to indicate that as the Freeman were anxious not to give the impression that their attitude was so unyielding in order to accommodate the Youth Centre they would be prepared to give careful consideration to the relinquishment of their herbage rights over an area of land lying between the Royal Observer Corps building and a straight line drawn between Freemans Place and the river immediately to the North of the Incinerator, provided that herbage rights were offered to them over a suitable alternative site which would require to be approved by the Freeman and would need to be much nearer to The Sands than the site suggested to the South of Ferens Park. I have now heard again from the Town Clerk enclosing a copy of a letter from the County Land Agent and Valuer stating that the County Planning Officer has made an exhaustive search for an alternative site, and, although he could not propose an area adjacent to the land over which the Freeman do exercise herbage rights at The Sands, he had suggested that an appropriate site could be offered within the area verged red on the enclosed plan. I have promised to arrange for the Wardens to consider this alternative, although I myself see that at first sight, the land now offered as an alternative site appears to be even less suitable than the site previously suggested to the South of Ferens Park. It appears to be no nearer to The Sands and to be so widely separated from them that it could be of no possible value to the Freeman for the exercise of herbage rights. I should, however, be grateful if you would discuss this alternative with the Wardens and then return the enclosed plan to me with your instructions as to how I should reply to the Town Clerk.

Yours sincerely,

L. E. Anderson, Esq.,
"Loreth",
1, Surtees Drive,
Durham.

'Loreth',
1 Surtees Drive,
Crossgate Moor,
DURHAM.

2nd December 1970.

Dear Mr. Ferens,

The Sands.
Proposed Durham City Youth Centre.

Further to your letter of the 7th October 1970 in respect of alternative herbage rights offered upon a site at the rear of 'the Chains' and as shown upon the plan which you had forwarded, I would inform you that the Wardens have now inspected this land and it was unanimously agreed that this herbage offered in exchange for herbage upon 'the Heelands' would be of no use whatsoever to the Freemen and therefore the Wardens regret that they must reject this proposition.

This suggested alternative herbage is so far divorced from the Sands that it could be of no possible use or value to the Freemen now or at any time in the future.

The Wardens are quite prepared to relinquish the area suggested on 'the Heelands' as stated previously but only upon alternative herbage rights offered nearer to the Sands and which would be of some use for the Freemen to exercise their rights and conserve their dwindling herbage.

I have returned the plan as requested and I would be grateful if you would kindly inform the Town Clerk accordingly.

Yours faithfully,

J. G. Dransh
Chairman of the Wardens
of the Freemen of Durham.

Mr. H. Cecil Ferens,
Clerk to Durham City Freemen,
The College,
DURHAM.

*I will be very glad to have the £20 repaid
but am in no immediate hurry for the
cheque*

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
PHILIP WILLS
ON BEHALF OF THE DURHAM CITY
FREEMEN

DCF9

**MINUTES OF A MEETING HELD IN THE GUILD HALL, DURHAM ON THE
25TH JULY 2002 at 2.00pm**

PRESENT:

Trustees - Mr Roger Norris (Chairman), Dr G A L Johnson, Mr J A Cole, Colonel R Hirst, Messrs N T Hart and M Proud

Wardens – Messrs H A Atkinson, J J Atkinson, E H Coldicott, J R Stout and J R Brown

1.0 Apologies;

1.1 The Clerk tendered apologies from Messrs Tom Heron, Mike McMinn, David Vest and J Heslop.

2.0 The Chairman gave the background of the requirement for the meeting as a result of the proposal of The Freeman and the City Council to enter into a Deed of Grant with Strandbay Ltd owners of Kascada Bowling Rink on The Sands. He then welcomed and introduced Brian Splevins from the City Council. Mr Splevins outlined the history of the ice rink site from its ownership by the Smith family and a lease of a proportion of The Sands car park site by the owners of the ice rink up until the time of 1978. In 1996, Strandbay, the present owners of the former ice rink site, approached the City Council with a view to using the strip of land concerned for vehicular access. This was resisted in 1996 and subsequently by the City Council when the re-modelling of the existing car park took place Strandbay had issued legal proceedings against the City Council claiming prescriptive rights across the whole of the car park. This action was based on five statutory declarations, made by persons, at least some of whom were members of the Smith family. This had again been resisted by the City Council and it was now suggested that if a Deed of Grant for an Easement were to be given over the strip of land concerned, then this would be sufficient for Strandbay to withdraw from the present legal proceedings by way of a settlement. However, such an arrangement would mean the loss of the Freeman's interest in the strip of land concerned forever.

Mr Splevins presented a case for the City Council, with The Freeman's consent, granting an easement, indicating that it was in the interests of both bodies to reach a settlement because, if Strandbay were successful in claiming prescriptive rights across the whole of the car park, then there would have to be re-modelling of the remaining car park resulting in a loss of further spaces. Mr Splevins indicated that the number of car parking spaces bears a direct correlation to the compensation which is granted to The Freeman for the loss of herbage rights, and that ultimately, if there was to be a downsizing of car parking spaces, there would be a depreciation in available revenue and compensation to The Freeman.

The Chairman then invited questions from the Wardens and the Trustees and numerous concerns were raised about possible future development of the particular strip of land concerned were The Freeman to relinquish rights over the land. Mr Splevins gave two assurances that there could be no development of the site for building purposes, due to the covenant within the Deed of Dedication from the Millennium Commission preventing any sale of land which is subject to grant aided status and that there could be no direct route from the strip of land into the remainder of the car park in the future should Strandbay be minded to try and achieve this.

The Wardens expressed particular concern at the loss of the land which had now become a staff car park for Strandbay Ltd. Mr Atkinson had shown, via reference to a Land Registry plan, that this land was currently unregistered and it was felt very strongly that there would have to be clear demarcation between this piece of land and that which is proposed to be subject to the Deed of Grant so as to retain individual identities of the two separate pieces of land.

The Chairman thanked Mr Splevins for his attendance and explanation at which point he left the room and the Trustees and Wardens discussed the matter in full detail. The Chairman canvassed individual views from the Trustees and Wardens and the concerns remained. There was dissatisfaction with the way this matter had been dealt with and the fact that The Freeman had only recently been informed of this difficulty. Concern was also expressed at the fact that, if The Freeman were to give up their rights over the land, there was no particular mention of financial consideration to be paid by Strandbay Ltd. It was felt that Strandbay would gain significantly from this vehicular access whilst The Freeman would lose their rights over the land forever.

Given the above facts, it became clear during the discussion that, confining Strandbay to a narrow strip of land to the western end of the site would be far less damaging to the long-term interests of The Freeman than if Strandbay were to be successful and achieve prescriptive rights over the whole of the car park. None of the Trustees and Wardens were happy with the arrangement, but after a vote of the Wardens, of four in favour and one against and the Trustees, all of whom reluctantly agreed with the proposal to enter into a Deed of Grant of Easement subject to various conditions being attached, it was resolved that The Clerk should communicate The Freeman's intent to enter into a revised Deed of Grant.

.....3

The conditions which were to be mentioned were as follows:-

1. a letter be sent to express the dissatisfaction at the lateness of the involvement of The Freemen in these negotiations and the fact that the Trustees and Wardens had been presented, almost with a fait accompli.
2. the assurance that Brian Splevins' point that the rent is assessed on car parking revenue, be used as a basis for the compensation at the loss of herbage rights in perpetuity.
3. there should be physical demarcation between the land currently used as a car park by Strandbay Ltd and the land which is proposed to be subject to the Deed of Grant. It was suggested that granite setts or a low pin kerb should be used if a fence is out of the question.
4. The Trustees and Wardens must be involved at the earliest possible stage in any future proposals affecting the rights of the Freemen.

Chairman
27th September 2002

**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**

**SUMMARY OF PROOF OF EVIDENCE OF MICHAEL HURLLOW, ON BEHALF OF THE
CITY OF DURHAM TRUST**

Heritage, Landscape and Access

Short Summary

1. I am providing evidence on behalf of the Trust objecting to the proposed common land exchange based on community interest, heritage, and landscape. I am a landscape and heritage specialist.

Release Land

2. Heritage

- The land is a remnant of a once much greater historic extent of Common.
- The Freeman have an extensive involvement with the evolution of Durham as a city and with this land – a strong intangible asset attribute
- Grazing rights are not an archaic survival but provide a living example of continuing tradition – helping the Freeman’s charitable activities
- The land is part of the wider setting of Crook Hall and routes along the riverside from the World Heritage Site to Finchale and Kepier.
- It is part of the WHS foreground

3. Landscape

- The land separates the city core and newer buildings from its green setting.
- It is part of the green ‘wedge’ along the River Wear and terminates the Sands Common
- The site is small but the trees screen against new development including the new County Council Headquarters. The trees are in good condition requiring little work.

4. Access and Use

- The site is used and valued by local people for access to the Common and the riverside.
- The Coach park was valuable, and the land also supported events, a contribution to the City's visitor economy and an extension of the 'fairs' tradition.

5. Deregistration

- The proposed use is mostly private, preventing public access.
- It is a further erosion of the extent of the Common adding to former losses.
- Car park use is not essential for the new adjacent development or related to the success of the Aykley Heads development.
- It will result in removal of the trees and a long time before any new trees act as reduced screening

Replacement Land

6. Heritage

- It has no heritage values related to Sands Common or the Freeman.

7. Landscape

- It has value as open land, part of the Green Belt and Aykley Heads open space but different to the role played by the Release Land.

8. Access and Use

- It belongs to a different neighbourhood and will not serve people living around the Sands.
- Access is restricted and will need control to protect nesting birds.

9. Registration as Common

- This will pose management difficulties for access and reduce biodiversity. It cannot easily be adapted for grazing use.
- There are no reasons for registration

Conclusion

10. Deregistration

- Deregistration of the Release Land will have a negative impact on the heritage value of the Sands Common and the link with the Freeman
- It will harm local access.
- It will result in a weakened landscape setting to the Sands Common and other heritage assets.

11. Replacement Registration

- There is nothing to be gained from registration as a Common.
- It will not serve the people the Release Land currently serves.
- There will be negative impacts from management changes.

Signed,

A handwritten signature in black ink, appearing to read "Michael Hurlow". The signature is written in a cursive style with a long, sweeping underline.

**Mr Michael Hurlow
City of Durham Trust**

**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 MICHAEL
HURLLOW ON BEHALF OF THE CITY OF
DURHAM TRUST**

Heritage, Landscape and Access

1. INTRODUCTION

- 1.** I am Michael Hurlow, a Trustee of the City of Durham Trust.
- 2.** I hold a Postgraduate Diploma in Landscape Architecture and I am a Chartered Landscape Architect. In addition, I am a full member of the Institute of Historic Building Conservation and have been a Design Council Built Environment Expert since 2015, now continuing as a Specialist Expert.
- 3.** I have more than 40 years experience in landscape design and management, heritage, social and physical regeneration. This has included five local authorities, a development corporation, and the private and voluntary sectors. It also involved working in the Exeter City Council Planning Department for 6 years and advising on heritage and design matters for 4 years as Manager of the Heritage and Design Section, City of Durham Council. I provide advice to the City of Durham Trust and as a

volunteer with the World Heritage Centre (Durham World Heritage Site - WHS)

4. I am familiar with the site and its surrounds having dealt with the area through the City of Durham Council. I also handled the design aspects of the competitive tendering for the nearby Freeman's Reach office development and its subsequent planning application. My role as Trustee and as an adviser to the WHS Coordinator involves analysing and commenting on the major developments along the riverside and in the surrounds to the Sands Common.

5. I understand my duty as an expert witness to the Inquiry and I have complied with and continue to comply with that duty. I consider that the evidence I have prepared and provide for the Inquiry is true and that opinions expressed are my own professional opinions.

2. SCOPE OF EVIDENCE

6. One of the purposes of the City of Durham Trust from its current memorandum of association is '*To preserve for the benefit of the public the amenities of the City of Durham and Framwelgate and its surroundings*'. I provide evidence on behalf of the Trust in support of the continuation of the designation of this land as a Common with attached historic rights.

7. This evidence deals with the public interest in the Common Land deregistration and exchange. It includes neighbourhood interest and the Trust's support for the Durham City Freeman

8. Evidence is provided on an assessment of the significance and value of the Release Land in terms of heritage, landscape, historic and access rights

3. Release Land

Heritage

9. Although small in extent, the land shares in the attributes of the surrounding area in terms of heritage, landscape, and access. It is positioned at the junction between the built area of the City core and the green 'wedge' of the River Wear Valley. This also places it significantly in respect of the historic growth of Durham. Heritage and landscape value is built upon context and cumulative relationships between assets. Heritage significance also must be seen in terms of the intangible heritage resulting from Durham's long and rich history.

10. Site Significance. The Release Land and Sands Common lie on the flood plain to the Wear. This initially restricted the built area to the higher ground of the Peninsula and key routes into the City. The Common area was once more extensive and important to the functioning of the medieval Borough and the City. It is now part of the setting and containment of the historic City, helping to conserve its small scale and separation from later development. The nearby Bishops Mill served the Bishop's Borough, and from at least the 18thC, its mill race passed through the Release Land. It sits on the route out from the City to the Kepier Hospital Site, a formerly important establishment on its own right. It gains in significance because of these connections.

11. Contextual Significance. The Land is within the extended setting to Crook Hall, a 14thC manor house. As noted, it lies on the route to Kepier and back to the Durham Castle and Cathedral World Heritage Site (WHS). This route and its landscape setting are significant, as is the route on the other side of the river from the WHS to Finchale Abbey. The WHS was the religious, administrative, and economic centre and had overall control of this area and was intimately connected with it. The trees on the Release Land and their position, that protrudes into the now developed area, help to form part of the foreground to views on approach to the WHS. They maintain the historic City edge definition and separation from later buildings. Cumulatively, this significance underpins the landscape value of the site. The importance of the Sands generally is

identified by the County Council in its Conservation Area Appraisal in its Framwellgate introduction and further confirmed throughout it.¹

12. Intangible Heritage. This is increasingly seen as important to World Heritage (and more generally) and the current WHS Management Plan include a section on identifying related attributes². This encompasses tradition and customs particularly where they contribute to a community's sense of identity and continuity. It is not only important for the WHS, but it also gives meaning to the Durham's physical (tangible) heritage assets.

13. The Freemen with their Guild roots once played a significant part in Durham's administration and their history stretches back to the 11thC. This gives them links to the WHS and its administrative control and the City's evolution away from that to civic status. The Freemen also had control over wider areas of land and rights to use it. Their role and land control has been steadily eroded but they continue as living organisation with ceremonial links and as a charity. They are a potent example of intangible heritage and should be recognised as such and appropriately supported in their continuing and evolving existence. Their relationship to the Sands as a Common and its grazing rights is not a redundant archaic survival but a continuing living example that adds substantial heritage significance to the Release Land. The tie between intangible heritage and its historic associations with the Release Land is of significance.

14. Cumulative Significance. ICOMOS (the body advising UNESCO on WHS matters) counsels against failing to fully assess impacts on heritage significance by undue concentration on individual assets and selected views.³ This is in relation to WHSs but can be seen to apply to other

¹ *Durham City Conservation Area (Appraisal), July 2016, Character Area 2 – Framwellgate Introduction and Overview, Page 7*

² *Durham Castle and Cathedral World Heritage Site Management Plan, Section 3.16. Intangible Heritage, Page 33*

³ *Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, A publication of the International Council on Monuments and Sites, January 2011, Section 5 A defendable system for assessing/evaluating impact, Para. 5.2*

heritage assessments. The WHS connection and different heritage attributes relating to the site mean that a broader approach is needed here. In addition, to miss intangible heritage attributes is to undervalue the site and downplay its full significance. Views relating to the historic routes to and from the WHS require a more dynamic understanding to reveal significance. This applies to both sides of the River, across the Sands and supports the value of the setting of Crook Hall.

15. Significance Rating. The Release Land has a relatively small footprint but its position at the edge of key heritage area relating to the setting of the historic City increases its value. Cumulatively it has some intrinsic significance from its historical use that adds to strong intangible heritage attributes and clear contextual significance. It has a role relating to the WHS and provides its setting as part of the foreground screening of more recent buildings that otherwise would intrude into WHS views

16. In tackling assessment of significance and impact for WHSs the ICOMOS advice referred to in footnote 3 also recommends scales to be used. I prefer to use these when looking at the importance of resources that may attach to the WHS. The scale runs from negligible, with relatively little value, up to very high – WH properties themselves. Using the ICOMOS grading it would be **medium** for its 'historic' landscape value, Conservation Area, and intangible heritage contribution. However, it could be considered **high** in relation to the WHS for its cumulative relationship as part of the WHS setting and of at least national importance.

Landscape

17. The value of the Release Land as landscape is closely tied to its heritage value and its contribution lies in how it relates to the historic city and its townscape, new development, Crook Hall, and the riverside routes to Finchale Abbey and Kieper Hospital.

18. Townscape. The use as a coach park is dealt with under access, its associated surfacing is not a factor in assessing its value that stems from its position and tree screening. Viewed closely it is functional in appearance. It is in a pivotal position defining the end of the grass area of the Sands Common and acts as a visual and use buffer against the developments along Freemans Place. It is effectively part of the termination of the Wear Valley landscape areas running from Frankland and Kepier towards the City. Again, it is small in footprint but high in contribution due to siting.

19. Echoing the Racecourse on the far side of the City, together these areas help retain the historic core's scale and separation from the larger expansion areas beyond the WHS inner setting and its boundary. Conserving the small scale of the City should be a key townscape objective to support the WHS dominance over the City core.

20. Tree Screening. The trees on the Release Land screen from the east (Sands and Route to Kepier) and add to the screening from the north (Crook Hall and route to Frankland). Immediately from Freemans Place the southern boundary trees continue to screen the coach park area. The trees that similarly separated the parking areas and screened the coach park from views along Freemans Place on the west boundary of the Release Land have been removed already. The value of the trees on the east boundary in originally screening the coach park and now the County Council building is weaker in winter but aided by the evergreen trees in the centre of the group. These are identified by the Applicant's arboricultural adviser as Lawson Cypress and the group noted as in good condition, needing no action and useful for screening (*DM 18 02369 FPA TREE REPORT-23069530*).

21. The tree block to the north appears to be secure under the County Council proposals although there has been some tree removal that has weakened the extent of the group. The key riverside trees along Frankland Lane on the far side of the river are valuable. However, they

are subject, because of their riverbank position, to potential management and flood damage that renders them less reliable.

22. The trees of the Release Land have value in screening development from the Sands. They also protect views along Freemans Place, the route onwards to Kepier, the Frankland Lane route to Finchale and the setting of Crook Hall from its buildings and higher parts of the gardens. The view linking Crook Hall to the WHS benefits from screening of riverside new development leaving the WHS to dominate the view, noting that this has been harmed by the intrusion of the new County Council building. The Release Land trees also help provide separation of the main Headquarters building and the new multi storey car park from the other side of the river.

23. Changes to the Release Land Trees. There are differences between the approved landscaping of the County Council Headquarters and that described in the Applicant's Landscape Proof of 27th November 2020. This may simply be due to the evolution of landscape detailed design and some are explained as deferral awaiting further information. The justifications for tree removal do not appear to tally with the Headquarters planning application tree report that, for instance, recommended little work to the group on the southern boundary next to the road. Instead, they relate more to the proposal to construct a car park if the land is released from its Commons designation. Whatever the changes, the outcome looks much the same. If deregistered, the former coach park/ Members new car park will be opened to view by loss of trees along the east and south boundaries adding to the loss already of the trees along its west boundary.

24. In layout the car park is basic, designed to maximise car spaces leaving only the minimum space for new planting that seems likely require full removal of the site's existing trees. Replacement is proposed but this will take time. If it is to fully succeed with larger trees it will need specialist planting construction techniques and aftercare due to the minimal space left after accommodating car spaces. Even with this,

growth of semi mature trees is slow. Additional tree planting to the east boundary funded by the Parish Council is beneficial but will take a substantial time to become effective. The cumulative effectiveness for the planting will not be seen for at least 15 years and, because of the scale of the new building, probably much more than that.

25. Impact of Tree Changes. The result of the proposed tree removal will be to completely open the view of the new car park and new Headquarters building to view from the Sands and approaching along Freemans Place. Open view of the cars will be exacerbated by the increased extent of car parking and buildings opposite. This is because of the change of the nearby Sixth Form College tennis courts to parking and the construction of the multi-storey car park. The tree loss from this car park area through construction clearance will exacerbate any further loss from the Release Land. This also weakens the reinforcement of the tree blocks from the riverside, Crook Hall and across the river and therefore the WHS approach and foreground. The cumulative negative impact will be the loss of separation of the Sands Common area from the developed section of Freemans Place and weakening of its 'rural' character. This reduces the quality of the route from the City (and WHS) out to Kepier.

26. Proposed new planting on the Release Land is relatively minimal and will take a substantial period before becoming effective. The impact of the proposed tree loss is substantiated by the County Council's own consultant's submission of visual impact photomontages for the Headquarters building – see below. I consider that the Year 1 tree size depiction may be optimistic, at least for the larger two trees depicted although the corner tree noted for retention is not clearly shown. I have not included the applicant's illustration of tree growth at Year 15 because I think that the planting is unlikely to achieve the sizes and spreads shown by that time.

Planning Application Reference DM18 02369FPA- ES VOL 1B CHAPTER 7
LVIA FIGS 7.24-7.53-2306779
Pdf. Pages 27-28. Viewpoint 39b

2018 View along Freemans Place towards the Sands car park from the East



The same view with an illustration of the new development at Year 1.



Similar current view – March 2021



27. Significance Rating – Landscape value is most often described by characteristics rather than by a scale. In complex Environmental Impact Assessments, a scale is used for receptor sensitivity, impact, and impact significance. This is generally the approach adopted in Ged Lawson’s Landscape and Visual Effects Proof dated 27/11/20. To establish an appreciation of the value of the Release Land I have adapted the ICOMOS scale used for heritage significance. It is very broadly capable of forming a simple description of landscape value. Again, the scale runs from negligible, with relatively little value, up to very high – WHS properties themselves. If considered just as tree planting/surfaced area the value would be **low** based on local interest and general landscape role in relation to the City. Small as the site is, I raise this to **medium** because of its location on approaches to the WHS, the Conservation Area and WHS inner setting. Due to its Durham WHS setting relationship and the

crucial role the existing tree planting has in screening the new County Council building, it could be raised to **high**.

Access and Use

28. In hierarchy, the site functions in relation to public interest, nationally, regionally and in relation to the City and Neighbourhood. The coach park use is not to be continued under the County Council's proposals, but it is valid to consider its previous contribution. Its potential role and wider role are also of merit for consideration.

29. National and Regional Interest. The coach park was valued by the former City Council for its key role in attracting day tours to the City and the associated benefits that came with them. From the Trust's perspective this seems a contemporary extension of the role of the Common for fairs and in supporting sightseeing (a confirmed public interest use for a common). It is to the credit of the Freemen that they allowed this, and it should not be considered as weakening their interest in the land. The value of this use and in enabling visitors to easily access the City and WHS offset the negative impact of the surfacing. The site was a gateway into the City. Coach parking was reasonably obscured by the tree/hedge planting. In addition, the surfaced area functioned in support of major events of regional and national interest (Lumiere) and fairs. This use being entirely consistent with a Common's role in hosting 'fairs'.

30. The City's Interest As noted, this was by assisting visits to the City, fairs, and events. It is also in the wider role of helping access along the riverside and the encouragement of visits to Kepier and Finchale. It was, and remains, an ambition to encourage greater use of the riverside for local people and visitors. People from other parts of the City and suburbs also use the area for access. The Release Land assists in the value of the Sands Common for access and recreation by softening the view back to Freemans Place and its new developments. It retains its more rural appearance although this is weakened by current tree removal. The Durham City Neighbourhood Plan (awaiting referendum

for confirmation) identities the important role of the adjacent Sands Common and the riverside of the County Council site for its green corridor value. This area forms part of the proposed Emerald Network and the Plan seeks to protect access to it ⁴.

31. Neighbourhood Interest. The use for walking and recreation is already clear and the extent of local objections noting this reinforces that. The impact of the current pandemic in placing much greater emphasis on the availability (and quality) of local open space has yet to be fully understood as a future trend. It certainly reinforces the site's current local value. The Release Land plays a role in this as access and a tree backdrop. Loss of Common land also has resonance locally in terms of heritage and continuation of historic rights. It is reasonable that local affection for these should be considered

32. Potential Role. Sustainability needs and response to the climate emergency are starting to change ways of thinking about the role of neighbourhoods and the clustering of services to emphasise local self reliance and minimise CO₂ use. The Sands Common area is ideally placed to continue and enhance its neighbourhood role. If it remains as surfacing it retains its potential for events and fairs support. If returned to grassland it offers enhanced access back to the open Common land and the riverside. Response to the climate emergency and the increase in frequency and severity of weather events may mean revisiting the role of river flood plains. The river is currently more constrained than its natural form by the extensive raising of land levels across the Common area and Freemans Place. There may be a role in local or full river catchment natural flood defence reinforcement.

33. Proposed Use if Deregistered. The Trust views the proposed use as effectively private, with restrictions on access to allow County Councillors car parking. Out of hours use for the public is indicated by the applicant. The Planning Statement (DM 18 – 02369 FPA – Doc

⁴ *City of Durham Parish Council Durham City Neighbourhood Plan 2020 to 2035, Policy G1: Protecting and Enhancing Green and Blue Infrastructure, Protecting and enhancing the banks of the River Wear & Policy G3: Creation of the Emerald Network 6 & Policies Map*

2306949) for the County Council headquarters planning application notes that the building will provide '*Social and public events space and facilities (new destination venue)*' (and café). The Design and Access Statement (DM 20 – 00702 VOC- Doc. 2668154) for the roof terrace states that '*It is proposed for a range of uses, from informal access for staff day to day, to formal events with guests*'. To the Trust this seems likely to involve evening and weekend events for which the car park will probably be reserved for private use. The applicant's suggested provision for the Market traders' larger vehicles on Market days seems an afterthought. How this is compatible with Councillor's use is unclear given that there are weekday outdoor markets on Thursdays once a month and evening street food markets. There is also the weekly Saturday market.

34. Creating a Members only car park seems to be contrary to sustainability needs and the County Council's own recognition of the climate emergency. It is interesting to note that the adjacent Freemans Reach development, housing two major employers – the Passport Office and NSI, is completely car free.

35. Much evidence is submitted by the applicant in relation to the County Council headquarters and Aykley Heads development. I have been unable to find in it a convincing statement of why the small Release Land area and its car parking provision is relevant to the wider economic function. The implication is that the Land is worth nothing in economic contribution. Under more recent methodology this type of assessment can also take in the value of 'services' meaning, for example, ecological contribution. This approach has yet to include costing for heritage value. However, under this approach the trees would have value as would the site if returned to grass. Its former coach park use would have had economic value significantly greater than private or limited car park use.

36. There are some financial implications for reallocation of spaces through creating free spaces in the opposite new multi storey car park with loss of revenue. The sprinkler water tank also proposed on the Release land would need resiting that the applicant estimates would cost

approximately £60K (Applicants Bundle Pages 1154/55 Stuart Timmis - Proof 27/11/20). These losses/costs are very minor in comparison to the very substantial scale of the Headquarters and Aykley Heads projects.

37. Sustainability needs for reducing car parking and alternatives for displaced staff parking are not explained. Other alternatives for Market traders' vehicles are not explored and if the Release Land remains as Common, they could easily be accommodated on its surfaced area (if remaining). The Trust's view remains that the deregistration is effectively for the private convenience of the County Council Elected Members and is not in any conceivable way 'essential' to the Headquarters building or of any relevance to the Aykley Heads Business Park proposals. The Headquarters building is substantially under way and is accepted by the Trust as a reality, constructing the Members car park is not essential to this and remains separately disputable in the context of loss of Common Land at the Sands.

4. Replacement Land

Heritage

38. The Replacement Land is considered in relation to its former history as part of the Aykley Heads estate and its subsequent use by the County Council as it has evolved.

39. Site Significance. As the Land appears to historically been agricultural land there are no specific key points of significance. It does attach to historic estate evolution and has contextual value. The medieval city extents stop at Sidegate and this area is hinterland rather than having an attachment to the City core. It forms part of the valley side and the inner setting for the WHS. The paths on the boundaries of the land have good views of the WHS. It is useful in splitting the more recent Newton Hall housing areas from the city core and its green setting. The land is part of the more expansive Aykley Heads green space.

40. Contextual Significance. As it was part of the Crook Hall estate it has interest as an historic agricultural holding. It seems not to relate to the nearby leper and St Leonards medieval hospitals. Subsequent subdivision established the Aykley Heads estate centred on Aykley Heads Hall (circa 1700). It remains in agricultural use through the subsequent purchase by the County Council in the 1950s and the building of County Hall. There is therefore some recent heritage significance in this, noting that the Basil Spence designed County Hall building is to be demolished. In relation to the historic core this area remains separate, and it relates more to further development beyond the inner setting of the WHS. The County Council's extended administrative functions as a new organisation including the City since 2009 are not of heritage relevance.

41. The significance has little relation to development of Durham as a City. The administrative functions of the County Council were very separate, countywide and function based rather than having intimate associations historically with Durham City.

42. Cumulative Significance. Using the ICOMOS scale I rate this as **low** for its own qualities but that is not to discount its early and later estate associations. It gains in significance as part of the greeter green area forming the green inner setting to the WHS – this could be raised to medium.

Landscape

43. Site Value. Its relative position is noted under heritage above and it is part of the Aykley Heads landscape area surrounding the existing and proposed development. It is also part of the Green Belt separating Durham from Chester le Street and the historic core of Durham from the Newton Hall suburban expansion. Based on the applicant's information, it is former agricultural land laid out in 2006 as an open grazing meadow. The grazing use has not been implemented and the submitted evidence is that it was managed by a once a year hay cut⁵. Given the current appearance of the grassland this may be in doubt.

44. The area is secured by locked gates and fencing. It was also appropriated to the 2008 Heritage Lottery Funded Mineral Valleys Project and potentially has a role in that project.

45. It has a **low/medium** landscape value (using the ICOMOS scale) largely based on its part as a mosaic of habitats in the Akeley Heads landscape area forming part of the Green Belt and the WHS inner setting.

46. Access. As noted, public access is discouraged and currently access, including the permissive cycle path, skirt round it. The applicant notes possible use in the past as part of a running circuit (*Applicants Bundle Page 804 Mike Ogden E Mail*). There are desire lines across the upper part of the site where people can gain access through the basic wire strand fence. There were simple notices that stated '*no access ground nesting birds*' that were possibly privately installed.

47. Repurposing as a Common. The applicant's ecological advice is that change to Common status if increasing access and involving a loss of management control could lead to loss of biodiversity value (*Applicants Bundle Pages 795 & 6 Stuart Priestly E Mails*). The complexity and impacts of grazing on habitat are also dealt with. Wild deer use the land for grazing as part of the movement corridor that traverses the County.

⁵ *Applicants Bundle Page 202*

48. While grazing and grassland nature conservation value can be compatible, they need consistent and reliable use by stock. The type of stock and frequency requirements are quite specific and given that the Freeman do not choose to graze stock, this cannot be implemented. Sward type and height are key factors in attracting different bird species. Skylarks, for instance, favour vegetation at 20-50cm high – unlikely in heavily grazed areas and better created by a late cut hay meadow.

49. Management for ground nesting birds is not fully compatible with open public access and control would be needed. However, managing open public access together with grazing and retaining conservation value becomes overly complex and is not achievable on this site. No information is provided on how this might be practically managed should the Freeman choose to occasionally exercise their grazing option. Also unclear is whether this is compatible with its role in the Mineral Valleys Project.

50. Neighbourhood. The site is in a different part of the city, separated behind the slopes of the Wear Valley, it relates more to North End, Dryburn, and Newton Hall. As part of that neighbourhood, it has value as part of its local open space provision with additional use by people travelling from other parts of Durham. The Sands is not in easy walking distance and it is not part of its immediate locality and neighbourhood.

5. Comparison of the Release and Replacement Land

51. The table shows whether the Replacement Land can fulfil the various functions that attach to the Release Land

Function	Release Land	Replacement land	Comment
Heritage	√	x	Release land has a moderate/high heritage value, especially for intangible heritage. The Replacement Land is

			different in its values and does not relate to either the Common or the Freeman
Landscape	√	x	The Release Land is especially useful for its relationship to the open grass area of the Common and its screening value. The Replacement Land has its value but is quite different in its qualities
Grazing	x	x	The Release Land can only be grazed if reinstated as grassland with adequate boundaries and in association with the rest of the Common. The Replacement Land can be grazed but not reliably by the Freeman. This, together with public access, would impact upon nature conservation value. More effective enclosure would adversely affect grazing by wild deer.
Public Access	√ (With some limitations)	X (With substantial limitations)	The Release Land was accessible with occasional closure for events. Previously valuable as public entry point into the City. The Replacement Land cannot offer full public access and maintain nature conservation value.

Neighbourhood Value	√	x	The Replacement Land is in a different Neighbourhood.
Public Interest	√	x	The Replacement Land has public interest but it is less and quite different to the Release Land.

6. Summary and Conclusion

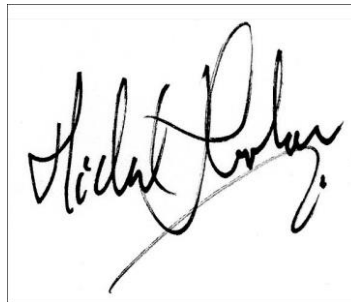
52. Release Land. It is a valuable site as part of the historic common and for its relationship to the Freeman and their rights. By mutual agreement with the County Council's forerunner as owner the Freeman accepted use as a Coach park. This was a valuable function for the City as part of its tourism management. The County Council as successor to the City Council that made the agreement now considers it redundant and seeks to use it as a reason for denying the Freeman their rights and deregistering it as a Common. As sites adjacent have become developed this has increased the value of its landscape function for tree screening. It is used in conjunction with events and fairs. The Freeman have been open to alternative uses and the grazing rights have allowed them to continue their historic interest and generate income for their charitable work. It is valued locally as part of the Sands Common and offers access to riverside and the rest of the Common. If reinstated to grassland this function would be enhanced. The area has considerable local support for continuing it as part of the historic common. Failing to deregister it will have only limited impact by the omission of a limited area of private Members parking from which the public will be mostly excluded. This is not central to the economic functions of the adjacent headquarters building and its release of development land at Aykley Heads. Car park development fails against new sustainability objectives.

53. Replacement Land. This land has no relevance to the functions of the Release Land and Sands Common. It appears from the search through alternatives that this site is only the least unacceptable. It is already under management as part of the Aykley Heads landscape area and forms part of the Mineral Valleys Project. Heritage interest is present but entirely unrelated to the Sands values, the Freeman, and their historic roots. If designated as Common, there will be changes to management that would potentially result in impact on wildlife including deer and ground nesting birds. There is neighbourhood interest but not for the Sands and surrounding area. There is public interest relating to its own qualities, but this is unrelated to the Release Land. In other

circumstances there would be no pressure or recognition that it should be Common Land. Nothing is to be gained from that designation. It will be irrelevant for the Freeman and have no practical value, existing on paper only.

54. Summary. The Release Land is valued by local people and supports the Freeman. It has a useful landscape function and has been used in support of events and fairs. Loss of Common designation would help undermine part of Durham's history with no public benefit. The loss will have significant impact. The Replacement Land offers no substitution that is useable and not designating it as a Common will not have any negative impact whereas dedicating it as a Common would have a negative effect.

Michael Hurlow

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "Michael Hurlow".

"The Companies Act, 1929"

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

Memorandum of Association

OR

The City of Durham Trust Limited

1. The name of the Company (hereinafter called "the Society") is "THE CITY OF DURHAM TRUST LIMITED".
2. The registered office of the Society will be situate in England.
3. The objects for which the Society is established are—
 - (A) To preserve for the benefit of the public the amenities of the City of Durham and Framwellgate and its surroundings,² and for that purpose (subject to the provisions of Section 14 of the Companies Act, 1929) to acquire land and buildings in and in the vicinity of Durham, and to conserve the natural features and to promote the development of such land and buildings consonant with the objects of the Society.
 - (B) Subject to the provisions of the said Section, to purchase, take on lease, or otherwise acquire any lands and buildings, and any rights, easements, and privileges deemed necessary or convenient, and to manage, improve, add to, sell, develop, lease, exchange, dedicate to the public, lend, or otherwise dispose of all or any part of the property of the Society in such manner and on such terms as may be deemed conducive to the attainment of the objects of the Society.
 - (C) To co-operate and enter into agreements with the National Trust for Places of Historic Interest or Natural Beauty, the Society for the Protection of Ancient Buildings, the Council for the Preservation of Rural England, the Durham and Northumberland Archaeological Association, the Surtees Society, and any other body of a non-commercial character having interests similar to the objects of the Society.
 - (D) To aid in preserving and maintaining public rights of way in the neighbourhood of Durham, and to encourage public co-operation in the protection of objects of natural beauty and interest, and buildings of architectural and historic value, to assist the development of urban or rural community life, to organise exhibitions, to publish pamphlets and other like literary works, and to initiate or take part in meetings and lectures or social events having these objects in view.
 - (E) To undertake and exercise any trusts which seem to the Society conducive to the attainment of any of its objects, and to act as custodians.
 - (F) To provide and collect from the Members and others and to raise funds for the purpose of carrying on or furthering the objects of the Society, and (subject to the

Page 1 of 3

¹The Trust, formed in 1942, is a non-profit-distributing company limited by guarantee registered in England and Wales, No. 377108. Registered as a charity, No. 504132. Registered with the Civic Trust.

²Registered Office: Haskett Hart & Peat Solicitors, Kipper House, Rainton Business Park, Haskett, Durham DH1 1TW.

provisions of the Section of the Act before referred to) to accept testamentary or other gifts of land or other property, whether subject to existing charges, obligations, conditions, or otherwise.

- (G) To raise or borrow any moneys required for the purposes of the Society upon any such terms and such securities as may be determined, and to create mortgages of or to issue Debentures or Debenture Stock, perpetual or otherwise, charged upon all or any of the property, both present and future, of the Society, to secure any moneys so borrowed or raised, or to secure any obligation to which the Society is subject.
 - (H) To invest the moneys of the Society not immediately required upon such securities or otherwise in such manner as may from time to time be determined, or by placing the same on deposit at the bank.
 - (I) To do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them.
- Provided that the Society shall not support with its funds or endeavour to impose on or to procure to be observed by its Members or others any regulation, restriction, or condition which if an object of the Society would make it a trade union.
4. The income and property of the Society, whencesoever derived, shall be applied solely towards the promotion of the objects of the Society as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred, directly or indirectly, by way of Dividend, Bonus or otherwise howsoever by way of profit, to the Members of the Society:

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Society, or to any Member of the Society, in return for any services actually rendered to the Society, nor prevent the payment of interest at a rate not exceeding five per centum per annum on money lent or reasonable and proper rent for premises demised or let by any Member to the Society, or the demise or letting at a reasonable and proper rent of any premises of the Society to any Member of the Society; but so that no Member of the Governing Body of the Society shall be appointed to any salaried office of the Society or any office of the Society paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Society to any Member of such Governing Body, except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Society; provided that the provision last aforesaid shall not apply to any payment to any railway, gas, electric lighting, water, cable, or public utility company of which a Member of the Governing Body may be a Member, or any other company in which such Member shall not hold more than one hundredth part of the capital, and such Member shall not be bound to account for any share of profits he may receive in respect of any such payment.
 5. The Liability of the Members is Limited.
 6. Every Member of the Society undertakes to contribute to the assets of the Society, in the event of the same being wound up while he is a Member, or within one year after he ceases to be a Member, for payment of the debts and liabilities of the Society contracted before he ceases to be a Member, and of the costs, charges, and expenses of winding up,

Page 2 of 3

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Character Area 2 Framwellgate

CHARACTER AREA 2 – FRAMWELLGATE

1 Introduction and Overview

The Durham Framwellgate character area occupies the north western sector of the Durham (city centre) Conservation Area. It is a mixed use area of historic significance forming part of the Medieval infrastructure of the City. It contains a rich and diverse historic building stock including many listed buildings and other non-designated heritage assets.

There have been significant changes in the area which have influenced its form and shaped its present character. Most notably the construction of North Road in 1830, followed by the introduction of the North East Railway Company main line with the associated Victorian terraces and development; the later 20th century developments such as Millburngate House, The Gates Shopping Centre and in the 21st century the Walkergate Development.

The other major components of the character area are the River Wear, the river banks and The Sands, St Nicholas cemetery and the parkland setting of Wharton Park and Aykley Heads providing a high quality landscape setting to this area. These areas contribute significantly to the setting of Durham Cathedral and Castle World Heritage Site and the wider City.

Appendix MH 3 - Extract of World Heritage Site Management Plan 2017-2023

Extract from Durham Castle and Cathedral World Heritage Site Management Plan 2017 - 2023

3.16. Intangible heritage

In a time of global concern about cultural distinctiveness, the conservation of intangible heritage is increasingly important. To conserve intangible heritage is to conserve the vulnerable indicators of culture; the cultural stories through which our global diversity is transferred from generation to generation. Durham WHS is rich in intangible historical values, which have not only moulded the physical form of the Site but are globally significant in their own right. The intangible qualities of Durham WHS are as significant as the tangible in making it what it has been in the past and is today and include:

- The importance of the Northern Saints, the presence of the two shrines, and the tradition of pilgrimage to Durham;
- The Site's origins and continued use as a place of Christian spirituality and sacredness;
- The tradition of community outreach, and the notion that Durham Cathedral has always been a place of welcome as expressed in the Rule of St Benedict;
- The site's historic associations with sanctuary, and the contemporary role of the Cathedral as a place of spiritual refuge, reconciliation, and remembrance;
- The English Christian musical tradition of the site;
- The long tradition of education on the site, marked in 2016 by the Chorister School's 600th anniversary, and in 2007 by the University's 175th anniversary;
- The social traditions associated with the University;
- The civic functions of the Castle, and its role as a symbol of political power;
- The site's collections and their importance as records of the site's history, and its values across the ages;
- Skills and trades related to the history of the site, kept alive by the continued maintenance of its buildings, furnishings, and collections and the continued provision of apprenticeships;
- The creative opportunities the site has always offered in terms of the commissioning and creation of new works of art, crafts, literature and music;
- The value of the site as a cornerstone of community identity;
- The site's tradition of innovation and the drive to excel;
- The meanings the site carries for people as a place of memory-making, for students, visitors, miners, the DLI, and others.

This intangible heritage is to continue to be valued and held in trust by all who inhabit and have responsibility for the WHS, and will be actively conserved, enhanced and passed on to future generations.

Appendix MH 4 - Extract from Guidance on Heritage Impact Assessments for Cultural World Heritage Properties - Section 5A

Guidance on Heritage Impact Assessments for Cultural World Heritage properties

- 4-10 One option for assessing value is set out in Appendix 3A. In this system the value of heritage attributes is assessed in relation to statutory designations, international or national, and priorities or recommendations set out in national research agendas, and ascribed values. Professional judgement is then used to determine the importance of the resource. Whilst this method should be used as objectively as possible, qualitative assessment using professional judgement is inevitably involved. The value of the asset may be defined using the following grading scale:
- Very High
 - High
 - Medium
 - Low
 - Negligible
 - Unknown
- 4-11 In the HIA Report there should be a clear and comprehensive text description of individual and/or groups of heritage attributes, which sets out their individual and/or collective condition, importance, inter-relationships and sensitivity, and possibly also an indication of capacity for change. This should be accompanied by appropriate mapping to aid the reader. All heritage elements should be included, but the components contributing to the WH property's OUV will be particularly relevant and may merit a further detailed section. A detailed inventory should be included in supporting appendices or reports so that the reader may check the assessment of each element. An example is included in Appendix 3C.








5 A defensible system for assessing/evaluating impact

- 5-1 Effects on cultural heritage attributes from development or other changes may be adverse or beneficial. It is necessary to identify all changes on all attributes, especially those attributes which give the property its OUV, on which this guidance concentrates. It is also important to identify the scale or severity of a specific change or impact on a specific attribute – as this combination is what defines the significance of the impact, otherwise called “significance of effect”.
- 5-2 There is sometimes a tendency to see impacts as primarily visual. While visual impacts are often very sensitive, a broad approach is needed as outlined in the ICOMOS Xi'an Declaration. Impacts take many forms – they may be direct and indirect; cumulative, temporary and permanent, reversible or irreversible, visual, physical, social and cultural, even economic. Impacts may arise as a consequence of construction or operation of the proposed development. Each needs to be considered for its relevance to the HIA.
- 5-3 Direct impacts are those that arise as a primary consequence of the proposed development or change of use. Direct impacts can result in the physical loss of part or all of an attribute, and/or changes to its setting - the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape. In the process of identifying direct impacts care must be taken of the development technique of gaining approvals by just avoiding direct impact - impacts which just “miss” physical resources can be just as negative to a single resource, a pattern, ensemble, setting, spirit of place etc.
- 5-4 Direct impacts resulting in physical loss are usually permanent and irreversible; they normally occur as a consequence of construction and are usually confined within the development footprint. The scale or magnitude of these impacts will depend on the proportion of the attribute affected, and whether its key characteristics or relation to OUV would be affected.
- 5-5 Direct impacts that affect the setting of an attribute may occur as a consequence of construction or operation of the development scheme and may have an effect

Appendix MH 5 - Extract (page 11) from tree report for application DM/18/02369/FPA

36	Sycamore	Acer pseudoplatanus	Mature	15	EA 350 x 2	0.6	3.3	4	4	1.1	6	Fair	Fair	Twin stemmed at 0.5m with a unbalanced canopy. Covered in dense ivy. Epicormic growth at base.	Remove ivy and re-inspect	Mod	20+	C1
37	Sycamore	Acer pseudoplatanus	Mature	17	EA 500 & 400	1	4	2	3	3	7	Poor	Poor	Twin stemmed at ground level with a balanced canopy. Covered in ivy. Smaller leaves than normal. Detached of canopy noted. Decaying stub noted in union. Wide union.	Remove	Low	-	U
38	Sycamore	Acer pseudoplatanus	Mature	17	EA 450 & 600	5	5	5	3	3	3	Good	Fair	Twin stemmed at ground level with a balanced canopy. Covered in dense ivy. Deadwood and stubs evident with canopy.	Remove ivy and re-inspect. Crown clean.	Mod	20+	B1
39	Sycamore	Acer pseudoplatanus	Mature	17	EA 450 & 600	1.5	3	1	1	1	4	Good	Fair	Single stemmed and vertical with an unbalanced canopy. Covered in ivy. Deadwood and stubs evident with canopy.	Remove ivy and re-inspect. Crown clean.	Mod	20+	B1
40	Sycamore	Acer pseudoplatanus	Early mature	17	330	2.8	3.1	2.8	2	2	4	Fair	Fair	Once twin stemmed now single stemmed. Single stemmed and vertical with an unbalanced canopy. Bark wounds noted throughout due to previous pruning.	Monitor bark wound to east.	Mod	20+	C1
41	Sycamore	Acer pseudoplatanus	Early mature	16	280	3	3	3	3	3	12	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. Bark wound to south. Bark wounds noted throughout due to previous pruning. High crown.	No action required	Mod	20+	C1
42	Sycamore	Acer pseudoplatanus	Mature	17	330 & 340	4.3	4	2	5.1	5	5	Good	Fair	Twin stemmed at ground level with an unbalanced canopy. Included bark noted at union. Minor bark wounds noted due to previous pruning. Birds nest noted.	Monitor included bark	Mod	20+	B1
43	Sycamore	Acer pseudoplatanus	Semi mature	16	200	3	0.5	1.5	3	3	2	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. Bark wounds noted throughout.	Monitor	Low	10 to 20	C1
44	Sycamore	Acer pseudoplatanus	Semi mature	16	190	0.6	0	2	2.5	3.5	3.5	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. In grassed area. No major defects visible.	No action required	Low	10 to 20	C1
45	Sycamore	Acer pseudoplatanus	Semi mature	16	210	1	1	1	1	2	2	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. Bark wounds noted. No major defects visible. Birds nest noted.	No action required	Low	10 to 20	C1
46	Willow	Salix sp	Semi mature	To 10	To 250	See plan	See plan	See plan	See plan	See plan	0+	Fair	Fair	Pocked at willow. Typical of species. Acts as a good barrier. No major defects visible.	No action required	Low	10 to 20	C1
47	Mixed	Mixed	Young to mature	To 17	30 to 680	See plan	See plan	See plan	See plan	See plan	0+	Good	Fair	Mixed group containing horse chestnut and sycamore with an understory of Hawthorn. Overhanging the footpath. Some minor bark wounds noted. Some poorer specimens.	No action required	Mod	20+	B2
48	Mixed	Mixed	Young to mature	To 17	30 to 500	See plan	See plan	See plan	See plan	See plan	0+	Good	Fair	Group along the banking of the river. Overhanging footpath. Contains sycamore, alder, ash and hawthorn.	No action required	Mod	20+	B2
49	Mixed	Mixed	Young to Early mature	To 170	To 380	See plan	See plan	See plan	See plan	See plan	0+	Good	Fair	Group along boundary. Contains Hawthorn, Swedish whitebeam, sycamore, Norway maple, beech and Lawson. Good screening. No major defects visible.	No action required	Mod	20+	B2
50	Beech	Fagus sylvatica	Early mature	17	To 280 x 6	6	3	6	5	2	2	Good	Fair	Multiple stemmed at ground level with a balanced canopy. Pruned and rubbing branches. No major defects visible.	No action required	Mod	20+	B2
51	Beech	Fagus sylvatica	Mature	16	380	4	4	4	4	3	3	Good	Fair	Single stemmed and vertical with a balanced canopy. In planting strip. Overhanging road and footpath. Birds Overhanging road and footpath. Birds nest.	No action required	Mod	20+	B1
52	Beech	Fagus sylvatica	Mature	17	470 at base	4	4	4	4	3	3	Good	Fair	Single stemmed and vertical with a balanced canopy. In planting strip. Overhanging road and footpath. Birds nest.	No action required	Mod	20+	B1
53	Sycamore	Acer pseudoplatanus	Mature	17	560	2	6	6	6	3	3	Fair	Fair	Multi stemmed at 2m with a balanced canopy. Smaller leaves than normal. Overhanging road and footpath.	Monitor condition.	Mod	20+	C1
54	Beech	Fagus sylvatica	Mature	17	380	6	6	2	6	3	3	Good	Fair	Single stemmed and vertical with a balanced canopy. No major defects visible.	No action required	Mod	20+	B1
55	Beech	Fagus sylvatica	Early mature	16	280	See plan	See plan	See plan	See plan	See plan	2	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. Some bark loss at base. Dark patches on stem.	Monitor condition.	Low	10 to 20	C1
56	Beech	Fagus sylvatica	Mature	16	450	4	4	4	4	2	2	Good	Fair	Single stemmed and vertical with an unbalanced canopy. No major defects visible.	No action required	Mod	20+	B1
57	Beech	Fagus sylvatica	Young to mature	To 17	To 350	See plan	See plan	See plan	See plan	See plan	2+	Fair	Fair	Single stemmed and vertical with an unbalanced canopy. Some deadwood.	Crown clean.	Low	20+	C1

Appendix MH 6 - Extract (page 17) from tree report for application DM/18/02369/FPA

 Email: info@brooks-ecological.co.uk Tel No: 01949 894 451 www.brooks-ecological.co.uk	
APPENDIX 4 - TREE CONSTRAINTS PLAN	
Site: DCC	
Paper Size: A1	Scale: 1:500
BS 5837: 2012 Retention Categories	
	CATEGORY A
	CATEGORY B
	CATEGORY C
	CATEGORY U
	ROOT PROTECTION AREA
	TREE STEM

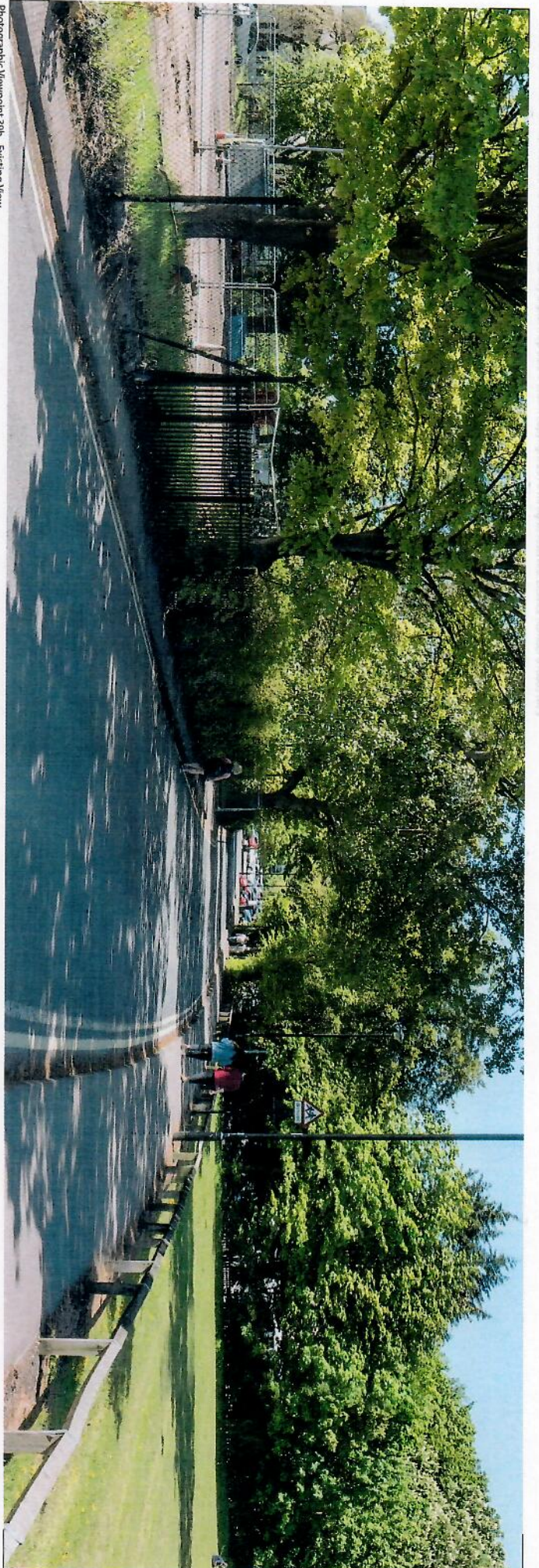


Please note:
 The plan is for guidance only
 and should not be scaled from.
 The original of this drawing was produced
 in colour - a monochrome copy should not be
 relied upon.

Indicative
 O-105



Appendix MH 7 - Extract from ES Vol 1B LVIA - FIGS 7.24-7.53 from application DM/18/02369/FPA



Photographic Viewpoint 39b - Existing View



Wireframe/photomontage visualisations.

General

An AVR (Accurate Visual Representation) visualisation is a computer generated representation of a proposal, accurately camera matched using survey information. The AVR images are presented in various ways to communicate different elements of the proposal to the viewer. AVR level 01 wireframe, AVR level 02 solid white opaque materials and AVR level 03 full materials.

AVR level 01 views are shown at Year 1 only. In these views the Proposed Development is normally screened by building/landscape elements in the foreground. The mitigating effects of proposed planting will not be perceived and are not illustrated in the view. The Year 1 views indicate building mass, scale, height and location. AVR level 2 and level 3 views show the proposed buildings and proposed planting at Year 1 and Year 15.

The accuracy of the views is achieved by using GPS survey points to fix the camera location and pre-determined reference points. The coordinates are overlaid onto the photograph in a 3D computer model of the Proposed Development matched to digital OS survey mapping.

Due to technical limitations across the data collection and execution process, a margin of inaccuracy is to be expected when setting up AVR images. Images are set up to best fit the position of the survey points against the photograph.

The tree/shrub locations are based on the Site Plan and photographic mark-ups. Where the view requires removal of existing vegetation, the change in extent of tree canopy has been estimated by comparing photographic views with observations made during field work. In some instances, the removal of existing tree canopy may potentially reveal development not presently visible in the view. Where this occurs, an attempt has been made to reconstruct new elements which become visible in the view. Where this is not practical, the existing vegetation has been highlighted to indicate that a change in view would occur following removal.

Technical data

- All views located on OS map and camera positions accurately surveyed
- Preliminary photographs taken to record survey points
- Survey points cross referenced with written descriptions to enable accurate survey of viewpoint locations.
- Photographs taken using a levelled camera and tripod.
- OS map and survey data imported into 3d software.
- 3d cameras snapped to surveyed positions and target points aligned.
- Photograph overlaid into 3d software and 3d camera adjusted to match photograph
- Checks made using the digital land survey information cross referenced with photographs to ensure alignment.
- 3d camera matched to photograph and survey points; architectural 3d building model and rendered.
- Rendered blocks matched to photographic foreground - to remove unwanted visual elements due to the Development Proposals.
- Photographs taken on 14 May 2018. Weather - sunny and bright. Visibility good
- Height of camera on tripod - 1650mm
- Camera type - Nikon D800. 50mm lens (on a 35mm camera, or equivalently or 35mm - 75mm lens Original photograph size - 7360 pixels x 4912 pixels

Viewpoint Information

Viewpoint Number:	39b
OS Grid reference:	427595 055, 542992 288
Ground Height:	31.595 mAOD
Viewer Height:	1.65m
Angle of View:	56.4°
Camera Model:	Nikon D810
Camera Lens:	Canon [adjustable]
Focal Length:	16mm
Date & Time:	14/05/2018 11:06
Distance to Site (centre):	0.20km



project title	Durham County Council HQ
figure title	Fig 7.50: Viewpoint 39b, Freemans Place - approach from The Sands
figure reference	N628-ONE-ID-DR-0007-50
scale	1:10,000 @ A3
date	July 2018

Planning Statement

New Durham County Council Headquarters, Freemans Place, Durham



- 5.90. As set out within the Framework the Government is committed to securing economic growth in order to create jobs and prosperity. The proposed development accords with the principles of the Framework, and looks to deliver 10,949m² of high quality floor space for both civic and employment purposes, which will retain and support approximately 1,000 existing jobs when complete, whilst supporting new jobs during the construction phase and also in-directly within local services and facilities once the building is occupied. The proposed development will create a significant boost within the area and help to drive forward the development of the Aykley Heads Strategic Employment Site and promote further investment and growth in the City.
- 5.91. The Framework looks to promote and support innovative and sustainable development and places great importance on the design of the built environment. The proposed development accords with these principles and will see a high quality, sustainable and modern office building developed within a well-designed and accessible landscape and public realm.
- 5.92. Set out below are a number of mutually inclusive economic, social and environmental benefits associated with the proposed development:

Economic Benefits:

- Improvements to four other service centres across the County to increase capacity and support local economies (Crook, Seaham, Spennymoor and Meadowfield)
- Up to 1,000 staff working within the City Centre helping to support the local economy
- New HQ 1/3 the size of the current County Hall at Aykley Heads allowing for improved efficiencies and reduced management and maintenance costs
- Stimulate further economic regeneration and investment in the City Centre and at Aykley Heads through the redevelopment of the former County Hall freeing up land for the creation of 6,000 new private sector jobs as part of the strategic employment site
- Modern, state of the art, sustainable facilities
- Social and public events space and facilities (new destination venue)
- Enhanced tourism and financial benefits
- Improved public parking facilities allowing more people to park and use the services within the City Centre at evenings and weekends

Social Benefits:

- The development of the new headquarters on land in an accessible location to support the creation of a strong, vibrant and healthy community and civic pride
- Supporting the health and social well-being of communities through the provision of new areas of public realm (civic square) and enhanced footpaths (River Wear Walkway) which, as Natural England recognises, has social benefits in providing opportunities for outdoor play, exercise and relaxation
- Public use of events spaces and café.

Appendix MH 9 - Extract from design and access statement - application DM/20/00702/VOC Variation of condition 2 of DM/18/02369/FPA

Context

The proposed PV panels and roof terrace are additions to approved planning application 18/02369/FPA for the new headquarters building for Durham County Council. The headquarters building sits on the former Sands car park on the edge of the River Wear to the west.

The building sits within the Framwellgate Character Area of the Durham City Conservation Area (which lies mostly to the west of the river) and within the influence of the World Heritage site of the peninsula dominated by the cathedral and castle. To its northern boundary it meets the green belt of The Sands. To the east is Freeman's Place, Durham Sixth Form Centre and Freeman's Quay leisure centre. To the south the new government buildings sit. In the foreground of key views back to the peninsula, the spire of St Nicholas church in Market Place, and the cathedral beyond.

The PV panels and roof terrace are located on the roof of the three storey section of the building where shown opposite.

Views of the proposed area for the PV panels and roof terrace at screened from the east by the taller section of the headquarters building. Further analysis of the impact of the PV panels and roof terrace is included in the Environment Statement Addendum.

Use

The PV panels will generate energy to reduce the amount of energy drawn from the grid to serve the new headquarters. The proposed array will generate approximately 40,000 kWh per year, reducing the buildings operation emissions by nearly 25,000kg of CO2 a year.

The proposed roof terrace is for use by Durham County Council staff and guests. It is proposed for a range of uses, from informal access for staff day to day, to formal events with guests.



**APPLICATION COM/232618
FOR DEREGISTRATION OF PART OF COMMON LAND
AT THE SANDS DURHAM CITY
THE DEREGISTRATION AND EXCHANGE OF COMMON LAND AND GREENS
(PROCEDURE) (ENGLAND) REGULATIONS 2007**

**PROOF OF EVIDENCE OF
Mr COLIN WILKES MBE
MANAGING DIRECTOR of DURHAM MARKETS COMPANY LIMITED**

1. My name is Colin Wilkes and I was born on 15th August 1961.
2. I was educated at Durham Chorister School, Durham School and studied Law at Grey College Durham University.
3. Since 1985 I have either lived and/or worked in Durham, as a Director of Durham Markets Company Limited (DMC) from 1990 and from 1996 as its Managing Director.
4. DMC owns and operates the Indoor Market Hall in the Market Place (home to 40 local independent businesses) and runs regular outdoor markets in Durham City and Bishop Auckland.
5. I am also a co-founder of the Durham Pointers, created to act as a mobile signposting service to visitors to the City, and instigated a coach meet-and-greet service by the Pointers for visiting coaches to further personalise the welcome we could offer to coach borne visitors to our City.
6. The land in question has been used as a coach park in Durham for as long as I have been working in Durham and, as such, was an extremely valuable facility in bringing many day visitors into the City each day throughout the year. These visitors contributed greatly to the City's economy, especially when they visited the Market Hall. From a business perspective, this was a very important use of that land, especially with its proximity to the City centre, and as such supported the City's economy.
7. The loss of this coach park was of great concern to both my traders and the coach companies with whom I was a point of contact for their booking of the Durham Pointers' Meet-and-Greet service. My traders, both inside and out, have keenly felt the reduction in numbers of coaches visiting the City, as well as the loss of the public parking spaces in the Sands car park. The coach operators I have spoken to are very sceptical as to whether or not any new coach facilities at Belmont Park and Ride will be as well used, and of course, despite the current Covid restrictions, Belmont P & R does not operate on a Sunday as the old coach park did.

8. Despite the building of a multi-storey car park near the new DCC HQ to compensate for some of this loss of parking, nevertheless many of my traders operate with high-sided vans and it is still not clear if the height clearance in the new facility will accommodate these vehicles whereas the previous open site facility did.
9. Any suggestion that the proposed new Business Park at Aykley Heads will have a positive day-to-day economic effect on the City centre from its workforce is, in my opinion, a 'red herring'. Staff from County Hall greatly reduced their trips into the City Centre when the parking facilities were withdrawn on the Sands as it was just too far to walk there and back, and shop, within an hour and I see no evidence to suggest that a workforce located further away geographically would seek to visit the City centre in their lunch break.
10. To then seek to replace this area with a Members' car park is somewhat disingenuous. My recollection is that when the Passport Office was built it was conditional on their staff finding alternative means of transport to the car to access their work place and it would not seem unreasonable that Council staff and members should also follow this direction.
11. In the unfortunate event that the Inspectorate should not refuse this application, then I would hope that such is conditional on the Members' car park being made available for access by the general public on a Saturday and Sunday as it would be adding salt to an open wound for such space in the City Centre to remain closed to City Centre visitors on a weekend.
12. In conclusion, as a business manager representing some 40 local independent traders in the Market Hall, the same number at our outdoor markets, as a co-founder of Durham Pointers and their 'Meet-and-Greet' coach service and as the operator of a local tourist attraction, I would urge the Inspectorate to refuse this application.

Signed,

A handwritten signature in black ink, appearing to be 'C.R. Wilkes', written in a cursive style.

C.R. WILKES MBE
Managing Director
Durham Markets Company Limited

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 COUNCILLOR ELIZABETH SCOTT, ON BEHALF
OF THE CITY OF DURHAM PARISH COUNCIL

1. My name is Elizabeth Scott and I was born on 23rd September 1970.
2. I have lived in the City of Durham since 1973, save for a 3 year period of University study in Leicester.
3. I have an MBA from Durham University Business School and spent 13 years working in Economic Development for Newcastle City Council where I led on a wide range of local, sub-regional and regional economic projects.
4. I am the inaugural Chair of the City of Durham Parish Council (2018 – date) and Chair of the City of Durham Parish Council’s Business Committee. I ran my own small business from 2008 to 2020 and was an active member of the Durham Business Club and the Chamber of Commerce. I have many friends and associates who are active contributors to the economy of Durham City. I am also County Councillor for Neville’s Cross Division in the City of Durham Parish.
5. Throughout my adult life I have taken a keen interest in the fortunes of Durham City’s economy. I have worked, shopped and spent significant amounts of recreation time in the City and have talked at length with friends and family about the changing economic picture over the years.
6. In all that time, I have not seen anything to compare to the negative economic impact caused by the potential loss of the relatively small piece of common land that is the subject of this enquiry.
7. On 18 January 1995 a lease was made between the then City Council and the Freemen so that the Release Land could be used as an extension to the municipal car park. The City Council argued at that stage that Durham desperately needed a car park and coach drop off in this location to support the city centre and this was reflected in the City of Durham Local Plan. The Freemen agreed this use was in the public interest. The coach park has primarily been used for short stay visitors, visits in some cases as short as 1.5 hours as a stop off for bus tours travelling from York to Edinburgh with tourists keen to visit the World Heritage Site. I have met many such visitors in my time and seen them walk up to Palace Green, purchase light

refreshments from local establishments, pick up memorabilia and generally soak up the ambience of the City.

8. Since Durham County Council took the unilateral decision to fence off the common land and deny residents and visitors access to the land, the opportunity for Durham City to benefit economically from the land has been removed. This is despite the fact that the CPT, the voice of the bus and coach sector across the UK, cited 'major concerns' about the loss of central coach parking space and say using Belmont would make visits to Durham less attractive.
9. The option for coaches is now to drop visitors off in a small layby (two coaches maximum), allow all passengers to alight and then depart to an "out of town" location with the inevitable traffic hindrances and then to have to return at an appointed time for a swift reboarding of the coach. The two-coach layby is also used by a significant number of school buses bringing children to swimming lessons at the adjacent Freemans Quay. Prior to Lockdown I witnessed first-hand several coach conflicts in action, where 3 or more coaches arrived simultaneously and one or more was forced to back up, causing a road blockage for any other vehicle wanting to pass.
10. While the common land was being used for visitors, I have seen first-hand the manner in which day visitors have used the common land. I have seen groups and individuals use their time in Durham to get off the coach, walk up to the peninsular, visit the Cathedral, call into a couple of local shops or the market, buy some refreshments and return to their coach to eat and drink and use the toilet. The common land was used very much as a recreational facility by these visitors as they could take in the views and the flora and fauna of the riverbank at their leisure.
11. Inevitably this will cause coach operators to avoid Durham City at all costs. Durham City Coaches, a local family-owned operator and family friend, has publicly expressed concerns. "We will be driving in and out of the city in an ever-increasing traffic flow and congestion. It's going to put groups off going. It's ridiculous."
12. In 2020, Visit County Durham estimated the value of day tourists to be £115m annually, with 89% of the 4.4million annual visitors being day visitors (Volume and Value of Tourism report 2020)¹. In the proof of evidence submitted by the County Council, it is argued that the refusal of this Section 16 application would have a detrimental socio-economic impact on Durham City. I'm afraid that not being able to provide controlled parking spaces in this specific location for 42 elected Members and this supposedly having a detrimental socio-economic impact on Durham if refused is simply untrue. Notwithstanding the logic of this argument, the removal of a coach park facility in the centre of Durham City, which facilitated people being

¹ [Visit County Durham Volume and Value of Tourism](#)

able to visit, shop and socialise in the City is the true socio-economic loss to the City. I cannot accurately forecast the economic loss that will result from the loss of the common land amenity, but I feel safe in saying that it will be significant for the City.

13. Following the granting of planning permission for the County Headquarters I was surprised to be invited to a meeting with the Head of Transformation at Durham County Council. I was astounded to discover that the purpose of the meeting was to brief me on the subject of the decommissioning of common land adjacent to the Headquarters site. The reason I had been invited was because the replacement land offered was in my Division, that being Neville's Cross. I was incredulous at the fact that this had never been referred to in the planning application nor in any of the narrative surrounding it. I could only assume that it had either been an oversight, or that Durham County Council had assumed that it was a matter of irrelevance.
14. The siting of Durham City Council's Headquarters in the adjacent location is not relevant in the case because the loss of this common land is entirely unrelated. The siting of the Headquarters cannot possibly rely on the decommissioning of the common land, because if it were, it surely would have been addressed in advance of the planning application.
15. Furthermore, the evidence provided in relation to the redevelopment of the Aykley Heads site as a new business park and the forecasted economic benefits this will bring to the City is irrelevant in the context of this Section 16 application in front of us today.
16. This application should be refused without delay.

Signed,

A handwritten signature in black ink that reads "E. Scott". The signature is written in a cursive style with a large initial "E" and a stylized "Scott".

Councillor Elizabeth Scott
Chair of the City of Durham Parish Council

Volume and Value of Tourism

City of Durham



Economic value
£238m

4.4m
Visitors

Employment
2,861
jobs

Total visitor days = **4.9m**

Total staying visitor nights = **1.1m**

Visitors

Day visitors

89%

(3.9m visitors)

...

48%

(£115m expenditure)

...

£22.07 per visitor

Staying visitors

11%

(0.5m visitors)

...

52%

(£123m expenditure)

...

£190.01 per trip

22% county total

Visitor expenditure

25% county total

Employment

23% county total

Average length of stay – 1.14 days

Average length of staying visitor – 2.24 days

Vale of Durham



Economic value
£399m

9.8m
Visitors

Employment
5,032
jobs

Total visitor days = **10.6m**

Total staying visitor nights = **1.5m**

Visitors

Day visitors

94%

(9.2m visitors)

...

68%

(£273m expenditure)

...

£22.07 per visitor

Staying visitors

6%

(0.6m visitors)

...

32%

(£126m expenditure)

...

49% county total

Visitor expenditure

42% county total

Employment

42% county total

Average length of stay – 1.09 days

Average length of staying visitor – 2.37 days



Durham Dales



Total visitor days = **3.51m**

Total staying visitor nights = **1.12m**

Visitors

Day visitors

89%
(2.4m visitors)

40%
(£71m expenditure)

£22.07 per visitor

Staying visitors

11%
(0.3m visitors)

60%
(£110m expenditure)

£208.75 per trip

13% county total

Visitor expenditure

19% county total

Employment

21% county total

Average length of stay – 1.30 days
Average length of staying visitor – 3.86 days

Durham Coast



Total visitor days = **3.66m**

Total staying visitor nights = **0.57m**

Visitors

Day visitors

94%
(3.1m visitors)

67%
(£92m expenditure)

£22.07 per visitor

Overnight visitors

6%
(0.2m visitors)

33%
(£46m expenditure)

£173.77 per trip

16% county total

Visitor expenditure

14% county total

Employment

14% county total

Average length of stay – 1.1 days
Average length of staying visitor – 2.84 days

**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**

**SUMMARY OF PROOF OF EVIDENCE OF JANET
GEORGE, ON BEHALF OF LOCAL RESIDENTS'
GROUP ST. NICHOLAS COMMUNITY FORUM**

1. I am Janet Caroline George, 12 Mayorswell Close, Durham DH1 1JU, a retired Registered General Nurse and Secretary of St Nicholas Community Forum (SNCF) since August 2017.

2. This statement is the work of SNCF with regard to the Application to De-Register the Common Land at The Sands (known as the Coach Park) and my own personal observations and experiences.

3. Local people walked across and alongside the Common Land, using it as part of their recreation on a daily basis, and their children habitually used the hard stand as a safe, car free place for activities such as bike riding, scooters, skateboarding and netball practice. It was a pleasant enclosed place for children to play leading seamlessly into wooded surrounds, a rich area for learning about wildlife.

4. Durham County Council were not within sight of this land so unable to make evidenced comment regarding daily usage of it.

APPENDICES 1, 2, 3, 4.

5. Coaches and visitors came daily. It was a pleasant place for tourists to begin and end their journey.

6. During regular festivals such as Lumiere and Gay Pride, the area was used to park equipment. The coach park was used by the military coaches when Durham Cathedral held significant services.

7. I have witnessed all these above and walked the Common Land countless times, and strongly disagree with the assertion that there was limited use of the land.

8. To change use of this Common Land to a car park is unnecessary. Very close by is:

(i) Walkergate car park, 500 spaces, 150 metres from the front door of the new HQ.

(ii) The new multistorey park, 120 metres from the door, both a very brief flat walking distance.

Directly across the river footbridge is

(iii) Riverwalk car park, 470 spaces.

(iv) Sidegate car park plus roadside parking.

(v) Prince Bishops car park, a ten minute walk away.

(vi) Roadside parking is throughout the City.

(vii) Durham City has Park & Ride facilities at Belmont, Sniperley Park and South Road.

(viii) The Mainline Railway Station and Bus Station are a ten to fifteen minute walk away.

9. The adjacent Passport Office and NSI building (approximately 2,000 staff) function smoothly demonstrating that a large workforce with public visitors don't require dedicated car parking.

10. The Government and Regional Green agenda call for discouragement of car use.

11. The current pandemic has led to changes in working practices including increased working from home.

12. The land taken was known to be Common Land by Durham County Council well in advance (at least August 2018) of approval documents being written, submitted and permission granted.

13. SNCF members met Durham County Council Officers 15th August 2018 and discussed this.

APPENDICES 5, 6

14. Local people from the Neighbourhood requested dialogue with Durham County Council, this was declined.

APPENDICES 7, 8

15. 22nd February 2019, a letter was sent to the Planning Officer from SNCF reminding that it was Registered Common Land.

APPENDIX 9

16. The Common Land was taken on the first day the site was occupied (12th August 2019) and before any services were laid.

17. On the first day the land was taken, Victoria Ashfield and I stood on the Common Land and stated to the workmen that the land was Registered Common Land.

18. The workmen, with the man in charge of them watching, drove their truck towards us in a threatening way right up to where we stood. The man in charge of them then told his men to carry the fencing into the Common Land and they proceeded to fence the whole area off from all members of the public. He stated that his manager had told him this must be done immediately that day. They then began to park cars and a truck there.

APPENDICES 10, 11, 12

19. All verbal comments we made to them regarding the status of the land being Common land were ignored and by the end of 12th August 2019 they fenced the entire area off from any public access. No member of the public has been able to walk on the Common Land from that day on.

20. Since then it has been used to park vehicles, store building materials and then portacabins for Kier staff. There has been no public access to the Common Land or riverside path since that day. The entirety of the Common Land was made inaccessible to us.

APPENDICES 13, 14, 15

21. The land is registered as Common Land and as such is for use and recreation by Commoners and local people. DCC states it cannot be Common Land as there has been no grazing there in living memory. Common Land is not defined by whether cattle or sheep are on it. It remains classified as Common Land until it has been de-registered.

22. Removal of long-established wildlife habitat is damaging and detrimental. Effectively, the removal of the land has removed a well-wooded and secluded place with a rich wildlife habitat taking much joy and use away from local residents.

23. The existing wildlife of the land surrounding the Common Land does not conveniently move to new places. Habitats are long standing established places for their wildlife. It was home to roosting birds, a recognised bat corridor, a healthy and important insect population and hedgehogs. Otters and herons used to be seen there on a regular basis.

APPENDICES 16, 17

24. The fact that this damage has been done does not mean that this situation should continue. Residents of the area are ready to replace the lost trees, re-green the area and look after it until wildlife returns.

25. The replacement site is totally inappropriate. Evidence from people of the neighbourhood and nearby suggests that none of the many people who used the existing land will easily get to or use the replacement land. All people that we have talked to have said they will not go there or believe it to be easily accessible to them.

26. For the able bodied like me, the walk is at least 45 minutes at normal walking pace. The gradient of Sidegate is 33% in parts, measured using a Garmin, then steep steps which are impossible for those with limited mobility or child buggies,

and then requiring further uphill walking alongside a busy road A691 (dangerous with children and animals) well before reaching the destination.

APPENDICES 18, 19, 20, 21, 22, 23

27. Using other routes requires a longer walking time. DCC indicates that it is 790m 'as the crow flies'. Residents are not crows, they are people. SNCF hopes that the Inspector walked this route on his independent visit.

28. The alternative strategy, which would be to take a car through the City to go for a walk is intuitively ridiculous. Enclosing the Common Land has effectively removed it from those who habitually used it as a place to walk or play.

29. The replacement land does not have the convenience for local people of the neighbourhood, who in the past would have walked their children down to play in a matter of minutes.

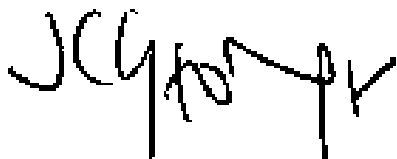
30. The time required for travel both ways negates the use by any residents of the neighbourhood or their children who require regular toilet facilities.

31. Durham County Council's argument that the replacement land adds to the local amenity is untrue. It is not, nor will ever be, easily accessible to people of The Sands area.

32. The Applicant claims that the benefits of the new HQ outweigh the loss of the land to others. The Applicant has already stated the HQ is irrelevant to this case and so such statements made are an unnecessary attempt to justify the taking of the Common Land for a car park. The benefits are unproven.

33. The HQ was the subject of unprecedented and extraordinary opposition (1005 objections and only 8 of support) from the people of Durham City and Durham County, all of which were dismissed at the time of the HQ decision. We hope that now, on this matter, our voice may be heard.

Signed,

A handwritten signature in black ink, appearing to read 'JCG' followed by a stylized surname.

Ms Janet George
Secretary of St. Nicholas Community Forum
(Local Residents' Group)

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

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

**PROOF OF EVIDENCE OF JANET GEORGE,
ON BEHALF OF LOCAL RESIDENTS' GROUP ST. NICHOLAS
COMMUNITY FORUM (SNCF)**

1. I am Janet Caroline George, 12 Mayorswell Close, Durham DH1 1JU.
2. I have been Secretary of St Nicholas Community Forum (SNCF) since August 2017.
3. The St Nicholas Community Forum (SNCF) is a voluntary grouping of residents of the St Nicholas Ward of Durham City covering The Peninsula, much of the town centre including the Market Place, Millenium Place and Walkergate, Claypath, Lower Gilesgate and the streets off; and the housing estates on The Sands. The aims and objects of SNCF are essentially to promote community awareness and quality of life in our area. The Forum has a formal constitution and elects its officers at an Annual General Meeting.
4. This statement is the collection of testimonies from local residents of this neighbourhood, the work of SNCF with regard to the Application to De-Register the Common Land at The Sands (known as the Coach Park) and my own personal observations and experiences.
5. I have lived in County Durham for the great majority of my life and in my present residence since 2012 (a walk of five minutes from The Sands Common Land).
6. Prior to the application to build on The Sands car park and de-register the Common Land, The Sands was a very green, peaceful and well-loved part of our neighbourhood. The wooded open car park (now the site of the HQ) was parked on and walked through every day of the year by local people and visitors, and the Coach Park Common Land area was in daily use by coach visitors and by local people walking through and around it. The land was habitually "roamed upon" on a daily basis.
7. Durham County Council are currently not within sight of this land so are unable to make evidenced comment regards the daily usage of it.
8. Local people have walked across and alongside the Common Land, using it as part of their recreation on a daily basis, and their children have habitually used the Common Land for bike riding, scooters, skateboarding and netball practice to name a few, for as long as it has not been fenced off from them. The coach park hard stand was a pleasant enclosed place for children to play. This led seamlessly

into the wooded surrounds, a rich area for learning about wildlife. Cars were not allowed to park on the Common Land making it extremely safe for children to play on.

APPENDIX 1 RESIDENTS PERSONAL TESTIMONIES OF USE.

APPENDIX 2 PHOTOGRAPH COACH PARK AREA, PLEASANT SECLUDED AREA, AERIAL VIEW.

APPENDIX 3 PHOTOGRAPH COACH PARK AREA, A SAFE & PLEASANT PLACE, NORMAL VIEW.

9. Local people walked across and around the Common Land as part of their daily walks and travels to and from the City. The Common Land was a safer place to walk than on the outside narrow footpath which was alongside a busy road.

APPENDIX 4 RESIDENT INFORMATION REGARDING USE OF COACH PARK AREA.

10. This directly contradicts the assertion made by Durham County Council that there is limited evidence that the public have invoked the right of use for air and exercise. The Common land was in constant daily use by locals and other members of the public. SNCF completely disagrees with Durham County Council's statement that there is limited evidence of right of use.

11. Durham City visitors and their coaches parked on the coach park on a daily basis. Visitors were dropped off safely on the hard stand and after visiting waited there away from the road, for their coach to depart. It was a pleasant enclosed place, surrounded by a wooded area for tourists to begin and end their journey in peaceful surroundings.

12. During times of regular festivals such as Lumiere and Gay Pride, the coach park area was used to park equipment. It was used in this way until the land was fenced off in 2019. The last time Lumiere equipment was parked on the Common Land was November 2018. The coach park was used by the military coaches when Durham Cathedral held significant services such as Remembrance Sunday.

13. As well as the examples of local testimonies I can confirm that I have witnessed all these above and walked across the coach park countless times in my lifetime.

14. To use this Common Land as a car park is unnecessary. There is no need for extra car parking, which is the specific reason supplied by Durham County Council for the taking of it. There are other car parks very close by:

Walkergate car park, 500 spaces, is approximately 150 metres from the front door of the new HQ. The new multistorey car park to be constructed is approximately 120 metres from the front door of the HQ.

Both are easy, on the flat and a very brief walking distance.

Riverwalk car park, directly across the river via the footbridge has 470 car spaces including disabled access, free public toilets and a disabled toilet. There is a further

car park by Sidegate (over the footbridge), and roadside parking from Sidegate and past Crook Hall. The Prince Bishops car park is a ten minute walk away as is road parking along Elvet.

15. The Government and Regional Green agenda and the Parish Council all call for discouragement of car use.

The current pandemic and the on-going environmental crisis have led to changes in working practices which will certainly last beyond the pandemic, including much increased working from home, reducing the need for people to drive to and park at the new HQ and therefore reduce the pollution which another car park will encourage. Durham City is currently served by Park & Ride facilities at Belmont, Sniperley Park and South Road. The Mainline Railway Station and Bus Station are within a ten to fifteen minute walk from the HQ site.

16. The adjacent Passport Office and NSI building (with a capacity for approximately 2,000 staff and opened in September 2016) did not request any approval for car parking when built. They both function smoothly thus demonstrating the ability of a large workforce and public visitors to those buildings while not requiring dedicated car parking.

17. DCC has acted totally disingenuously: The land taken was known to be Common Land by Durham County Council well in advance (at least August 2018) of approval documents being written, submitted and permission granted.

18. A meeting between SNCF members: Janet George, Victoria Ashfield, William Ault, and Durham County Council Officers Lorraine O'Donnell and Ian Thompson 15th August 2018 discussed this.

APPENDIX 5 EVIDENCE OF MEETING WITH DURHAM COUNTY COUNCIL OFFICERS.

APPENDIX 6 EVIDENCE OF DISCUSSION WITH DURHAM COUNTY COUNCIL OFFICERS.

19. Despite local people from the Neighbourhood requesting dialogue with Durham County Council, an invitation to DCC Officers and to Kier Managers to attend a Public Meeting 5th September 2018, was declined. This meeting was well attended by local people.

APPENDIX 7 INVITATION TO DISCUSS WITH LOCALS DECLINED BY DURHAM COUNTY COUNCIL.

APPENDIX 8 INVITATION TO DISCUSS WITH LOCALS DECLINED BY KIER.

20. 22nd February 2019, a letter was sent to the Planning Officer from SNCF noting there was no change in the approval documentation which still suggested the use of the Common Land and reminding him that it was legally Registered Common Land.

APPENDIX 9 LETTER TO THE PLANNING OFFICER.

21. Appropriation and occupation of the Common Land occurred before Durham County Council sought De-Registration of it. The Common Land was taken on the

first day the site was occupied (12th August 2019) and before any services were laid.

22. On the first day the land was taken, 12th August 2019, Victoria Ashfield and I stood at the entrance to the coach park (on the Common Land) and stated to the workmen that the land was Registered Common Land.

23. The workmen, with the man in charge of them watching, first drove their truck towards us in an attempt to make us move from the Common Land. The truck drove right up to in front of where we stood. The man in charge of them then told his men to carry the fencing into the Common Land around us and they proceeded to fence the whole area off from all members of the public. He stated that his manager had told him this must be done immediately that day. They then began to park cars and a truck on the Common Land.

APPENDIX 10 PHOTOGRAPH OF COACH PARK 12TH AUGUST 2019, KIER CAR & TRUCK.

APPENDIX 11 PHOTOGRAPH OF RESIDENTS BEING SHUT OFF FROM RIVERSIDE PATH.

APPENDIX 12 PHOTOGRAPH OF FENCING OUTSIDE THE COACH PARK 12TH AUGUST 2019.

24. All verbal comments we made to them regarding the status of the land being Common land were ignored and by the end of 12th August 2019 they fenced the entire area off from any public access. No member of the public has been able to walk on the Common Land from that day on.

25. Since the 12th August 2019 the Common Land was used as a place for parking vehicles, the storage of building materials and then later portacabins for Kier staff were erected. There has been no public access to the Common Land or riverside path since that day. The entirety of the Common Land was made inaccessible to us. It appears to us that it became a place of use for Kier's requirements, such as staff and storage.

APPENDIX 13 PHOTOGRAPH OF THE COACH PARK 6TH OCTOBER 2019.

APPENDIX 14 AERIAL PHOTOGRAPH OF THE COMMON LAND 23RD FEBRUARY 2020.

APPENDIX 15 PHOTOGRAPH OF THE COMMON LAND 23RD FEBRUARY 2020.

26. Subsequently extra fencing/hoarding with a concrete base was later added taking more of the Common Land. The concrete base will contaminate the ground of the Sands green area and will need to be removed.

27. Durham County Council's dismissal of the lawful status of Common Land and knowingly using it for purposes without permission being granted is legally and morally wrong. The land is registered as Common Land and as such is for use and recreation by Commoners and local people. DCC states it cannot be Common Land as there has been no grazing there in living memory. This is not only disingenuous but also mocking. Common Land is not defined by whether cattle or sheep are on

it. It is land in which people have the right to roam upon it. It remains classified as Common Land until it has been de-registered.

28. Removal of long-established wildlife habitat is damaging and detrimental. Effectively, the removal of the land has removed a well-wooded and secluded place with a rich wildlife habitat taking much joy and use away from local residents.

29. The existing wildlife of that land surrounding the Common Land does not conveniently move to new places. Habitats are long standing established places for their wildlife and this action has destroyed a much loved and respected ecosystem on our doorstep. It was home to roosting birds, a recognised bat corridor, a healthy and important insect population and hedgehogs. Otters and herons used to be seen there on a regular basis and now the swans and the wild geese have been driven away from the riverbanks they used to use. This amenity has now gone. It will take a generation to replace, and the previous wildlife will no longer be there to return.

APPENDIX 16 EVIDENCE OF WILDLIFE IN THE COACH PARK AREA.

APPENDIX 17 HEDGEHOG DISTRESSED LEAVING THE FENCED OFF COACH PARK RESCUED IN THE MIDDLE OF THE DAY 17th AUGUST 2019 (NEIGHBOURHOOD GATHERING EVENT).

30. The fact that this damage has been done does not mean that this situation should continue. Residents of the area are ready to replace the lost trees, re-green the area and look after it until wildlife returns.

31. The replacement site is totally inappropriate. I am a regular walker, fit and active. For me, it is a 45 minute walk away, at normal walking pace and uphill, most of it steep and parts stepped.

32. SNCF's and other residents' evidence would suggest that none of the many people in the neighbourhood who used the existing land will easily get to or use the replacement land. All people from this neighbourhood we have talked to have said they will not go there or believe it to be easily accessible to them.

33. For the able bodied the walk is at least 45 minutes, and the gradient of Sidegate is 33%, measured using a Garmin, with steep steps which are totally impossible for those with limited mobility or child buggies and requiring further uphill walking alongside a busy road (dangerous with children and animals) well before reaching the destination.

APPENDIX 18 PHOTOGRAPH SHORTEST WALK ROUTE FROM OUR NEIGHBOURHOOD TO REPLACEMENT LAND. THE START OF SIDEGATE IS AFTER LEAVING THE SANDS, CROSSING THE PENNYFERRY BRIDGE AND WALKING PAST THE RADISSION BLU HOTEL.

APPENDIX 19 PHOTOGRAPH BOTTOM OF SIDEGATE, COBBLED TERRAIN.

APPENDIX 20 PHOTOGRAPH SIDEGATE, COBBLED, STEEP, UNEVEN AND NARROWED WALKING, UNSUITABLE FOR BUGGIES OR LIMITED MOBILITY.

APPENDIX 21 PHOTGRAPH TOP OF SIDEGATE, STEPS VISIBLE TOP OF PICTURE LEFT OF THE WALL.

APPENDIX 22 PHOTGRAPH OF STEPS TOP OF SIDEGATE.

APPENDIX 23 PHOTGRAPH OF THE BUSY A691 FRAMWELLGATE PETH, WHICH THE SIDEGATE STEPS OPEN ON TO.

34. Using other routes requires a longer walking time. DCC indicates that it is 790m 'as the crow flies'. SNCF have submitted photographs of the steep incline of Sidegate and the strenuous and lengthy walk to the proposed replacement land. Residents are not crows, they are people. SNCF hopes that the Inspector walked this route on his independent visit.

35. The alternative strategy, which would be to take a car through the City to go for a walk is intuitively ridiculous. Enclosing the Common Land has effectively removed it from those who always used it as a place to walk or play.

36. The replacement land does not have the convenience for local people of the neighbourhood, who in the past would have walked their children down to play in a matter of minutes.

37. The time required for travel both ways negates the use by any residents of the neighbourhood or their children who require regular toilet facilities.

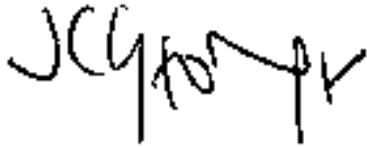
38. Durham County Council's argument that the replacement land adds to the local amenity is untrue. This land is already available to people in the Aykley Heads area except during the bird nesting season, which will not change (Newton Hall and Framwellgate Moor): it is just not, nor will ever be, easily accessible to people of The Sands area.

39. The Applicant claims that the benefits of the new HQ outweigh the loss of the land to others. The Applicant has already stated the HQ is irrelevant to this case and so such statements made are an unnecessary attempt to justify the taking of the Common Land for a car park. The benefits are unproven and the model of crowded office space and practice of employees hotdesking may prove to be unworkable in future.

40. Whatever the way forward it is clear that Durham County Council has a clear policy of carbon reduction which includes the reduction of car use and the promotion of greener forms of transport and dramatically increasing tree planting across the County.

41. The HQ was the subject of unprecedented and extraordinary opposition (1005 objections and only 8 of support) from the people of Durham City and Durham County, all of which were dismissed at the time of the HQ decision. We hope that now, on this matter, our voice may be heard.

Signed,

A handwritten signature in black ink, appearing to read 'JCG' followed by a stylized flourish.

Ms Janet George
Secretary of St. Nicholas Community Forum
(Local Residents' Group)

SNCF APPENDIX 1 RESIDENTS TESTIMONIES.

From: Kathryn Banks

Sent: 14 December 2020 11:15

Statement about the common land: Kathryn Banks (Ferens Close, the Sands)

Until Durham County Council fenced off the common land, my family and I used it most days.

While the remaining Sands common land has grass to run around on, the area around the coach park was special for its lovely trees. I walked back and forth pushing my babies in the buggy so they could look at the trees. My eldest child liked to make circles around the trees that surround the site, and run his hand over the bark. We got to know every tree and had some memorable encounters with ducks! The coach park could also be used by children older than mine after the coaches left – for example as a place to ride a bike.

The path above the river was appealing because of the trees around the coach park and the wide green buffer between the path and the coaches. I pushed all my babies along the dirt track under the trees so that they could fall asleep. I understand there is a planned concrete track next to the proposed carpark, however this is hardly the same. From the larger common land, too, the belt of trees around the coach park screen the area beyond, making the whole of the common land much more pleasant. As we walk alongside the river towards the city centre, or play games on the large green area, the trees around the coach park form our view.

We would not be able to use the replacement land. I understand it is not available during ground nesting season but anyway it is too far away and via too problematic a route. The previous site was so easily accessible from the town centre and the Sands housing that we could (and did) walk to it just for a quick trip to look at the trees. By contrast, the proposed replacement is at a considerable distance from the centre of town, at least a 30-minute walk even for adults. Moreover Sidegate is not accessible with a buggy (it is cobbled with just a very narrow pavement) and after that there is a main road which would not be a great route to walk with small children.

The common land encouraged visitors to come to the city because it enabled coaches to wait in the city centre so (often elderly) tourists could return to them at will. But it was also a place that local people like us knew like the back of our hands. I am saddened to think that its loss may become permanent just to provide a privileged few with the extraordinary luxury of designated city centre parking.

Ferens Close

DH1 1JX

From: Lindsay McEwan
Sent: 11 February 2021 09:30

Hi Janet,

Until it was fenced off, I used to enjoy walking through the trees next to the coach park to and from work each day. It was a significantly nicer route to the station than over Milburngate Bridge next to busy, loud, smelly traffic.

When they were younger the kids enjoyed mucking around in the treed area, rummaging around for sticks and other interesting things, going down the river bank to splodge at the river's edge and watch the ducks.

The pavement next to coach park was very narrow so we used to walk through the coach park instead, to and from the swimming pool. We weren't the only ones as I often saw others doing the same.

The replacement land is too far away. Nor is it on the way to the station or swimming pool! I don't see myself or family using it. There's already plenty of accessible outdoor space at Aykley Heads anyway.

From our house, the replacement land is about 2.5 km walk (including a stretch next to a busy, loud, smelly road) and would be a 30 to 40 minute walk to get there. The kids would never get that far, never mind getting back home again. I think it's a ridiculous offer.

Lindsay
Mayorswell Close
DH1 1JU

From: HARRINGTON, ALEXANDRA K.

Sent: 16 February 2021 16:54

Dear Janet

Please find my objections to the de-registering of common land, which you are welcome to forward (and thank you!). I hope that they are helpful.

I object to this de-registration on principle, but also because that land was a feature of family life. My two daughters and I often used that land – for skateboard/scooter/bike riding/netball throwing practice when the coaches weren't operating (much safer than on the actual road). We picked grass for our guinea pigs from the trees around the coach park, too (there was a particular kind of grass that they especially liked!). We also collected conkers from the wonderful horse chestnuts that were at the back (every year without fail). The loss of the trees in that area is a great pity. We also used to cut through the coach park every day to walk to work and school over the bridge and along the river. We are very unlikely to use the land offered since it is too far away from home to be of any use.

All best wishes
Alex Harrington
Wearside Drive
DH1 1LE

From: Kirk Lester

Sent: 09 February 2021 15:16

Hi Janet,

Re: The common land next to the new county hall.

It would be nice if it was turned into a garden with seating for people to enjoy. We have far too many buildings in the city as it is. So some more formal green space that people can enjoy would be the best way forward.

I think the members should use the new multi story car park that have been so keen to have built.

Regards

Kirk
Mayorswell Street
DH1 1LQ

From: D WARD

Sent: 11 February 2021 16:35

Hello Janet

Regarding the above:

We are very much opposed to the de registering of the Common Land at the Sands. It's an area we know very well and have used frequently in the evenings to meet friends and walk in the Sands riverbank area. It is completely cut off to us now but was a pleasant public space in keeping with the adjacent green spaces and the trees, now felled, brought the grassland and hard standing together.

We wouldn't use the suggested replacement land. Despite its name, Rivergreen is not by the river. In fact it's separated from it by the East Coast Mainline. The suggested shortest route is a 1.8 km walk from the Sands riverside. The highest elevation difference from the Sands to the proposed Rivergreen site is around 60 metres. That is a long steady climb even before arriving at what is a large grassed field holding little interest. Then there is the return journey.

DCC's suggestion that Rivergreen area is an adequate or useable replacement is fascicle. One would have thought that DCC would want to make the gradually emptying City more attractive rather than less.

Please feel free to use our comments as you see fit,

Best Regards
Diane and Des Ward
Whinney Hill
Durham
DH1 3BQ

From: Susan Womersley
Sent: 18 February 2021 14:33

Hi Janet

Thanks for all the information that you send through regarding local matters.

We would like add our comments in objecting to the de-registering of Common Land, Coach park, The Sands as a place for Council members to park their cars.

We have often used this coach park land for exercising and running around and to walk alongside the river, taking in nature and watching kingfishers diving into the river for fish. I have also used it as a meeting place and have seen many others doing so too.

Whilst the alternative land may be very pleasant it is not a suitable option as it is too far away from our home to get to before starting a run and is up a steep hill, whereas the coach park is on our doorstep, is flat to get to and was a green tree filled cushion between the Sands fields and the start of the urban Durham concrete buildings.

Please feel free to pass our comments on.

Kind regards,

Susan Womersley and Keith Wilson
Finney Terrace

From: Laura Fawcett

Sent: Thursday, March 18, 2021 12:17:59 PM

Dear Janet,

I would be grateful if you will pass on our objections to the De-Registering of Common Land Coach Park on The Sands.

As you know I was a member of the Save Our Sand committee, we considered during that campaign whether it should be returned to the larger part of the common. It was decided that that part of the common was of use to the community as it stood and we need not take any further action. That said we believe now is the time to return it to the common and help maintain the many uses for the community.

Many of the reasons are still valid and listed below

1. The coach park was valuable for tourists into the city and the council made sure it was well maintained and safe which in turn was of benefit of residents.

2. The trees at that divide that part of the common provide useful shade in the summer to both sides of the common. In the autumn conkers galore for which my and many families and friends over the decades have had hours of fun foraging for.

The trees also provide sanctuary for many species of wildlife including bats and adds to the rural feel to this part of the city.

3. The path adjacent to the coach part of the common is very narrow and is below safe guidelines therefore we and many others would cross into the coach park to walk more safely at that point. It is worth adding that the drainage on the road at that point is inadequate even after minimal amounts of rainfall very large pools of water gather and the only way to stop cars drenching you was to cross into the coach park.

4. We walk several elderly people into the city from the nearby housing estates and often on the way there or back we would use the seating area in the bus park area of the Common to have a short rest and enjoy the surroundings before being able to move on.

4a. We as more able bodies used the natural path off the main part of the common at the back of the bus park and would come out into what was the main car park which was a shorter route and safer. You can also access the riverbank at that point where we have spent many a happy time playing with the family.

5. On an evening when the coaches had left we would often see young people using it for skateboarding (they had usually been moved on quite rightly from the Market Place) but they caused no harm and were safe there. We helped my Neice to learn to ride her bike without her stabilisers on the coach park. We have witnessed many other families with their children using bikes, skates and scooters over the years.

We have lived here for over 23 years and many of our neighbours have lived here nearly twice that. The replacement land offered by the county council is wholly unsuitable as an alternative to the Common land which we have utilised regularly over that time as listed above. It would be impossible to use that land in the same way as it not linked to the common especially to my elderly friends and neighbours. The county council have not thought of how we have used the land and have offered a piece of land which to us is 'neither use nor ornament'.

Please pass on our concerns with thanks

Mr & Mrs McVie
Ferens Close

SNCF Appendix 2 Coach Car Park The Sands Durham 2018



SNCF Appendix 3 Coach park, Common Land ground view.



SNCF APPENDIX 4

Resident information regarding use of coach park area

From: Janet George <[REDACTED]>

Sent: 26 August 2018 15:59

To: Victoria Ashfield <[REDACTED]>; Roger Cornwell <[REDACTED]>

Subject: Common Land info

Dear Both

I had a chat with Mike Chadwick, Ferens Close. He told me that the building on the coach park was an MOD observation hut and the trees were kept to hide it from view.

Mike also pointed out both car and coach park are used as a thoroughfare constantly including pupils from the sixth form. There is heavy use from people walking. Because the road is very narrow by the coach park and a huge puddle develops on the road it is common for people to walk into the coach park, and much safer. He noted that there are access points from the pavement into the coach park facilitating this. It's used as a shortcut by people going across the bridge.

He also says that place is a regular pick up, drop off and turning point for all sorts of people - Freeman's Quay, Sixth Form, visitors - and this amenity would be lost. His point is the frequent public use.

Kind regards Janet

SNCF APPENDIX 5 Meeting with DCC Officers 15th August 2018

From: Catherine Howes [REDACTED] <[REDACTED]@uk>

Sent: 09 August 2018 12:25

To: Janet George [REDACTED]

Cc: Carol Lawther <[REDACTED]>

Subject: Meeting with local residents regarding proposed new County Hall on the Sands car and coach park

Dear Janet,

I have now had the opportunity to check availability. Unfortunately due to existing diary commitments, the options I have to offer are limited to one particularly date. I do however have 3 possible time slots and these are:

15th August at 9am, 3pm OR 4pm.

The meeting will take place in Ian's office, here in County Hall and Lorraine O'Donnell, Corporate Director of Transformation and Partnerships will be in attendance also.

Can you please check confirm if the proposed date is convenient and which time slot you and your colleagues would prefer.

Kind regards
Catherine

Catherine Howes
PA to Ian Thompson
Corporate Director – Regeneration and Local Services
Durham County Council
County Hall
Durham
DH1 5UQ

Tel: 03000 268081

From: Catherine Howes

Sent: 08 August 2018 12:19

To: 'Janet George' [REDACTED]

Subject: RE: Meeting with local residents regarding proposed new County Hall on the Sands car and coach park

Dear Janet,

Apologies for the delay in getting back to you.

I have discussed your request for a meeting with Ian in order to arrange the correct people around the table.

I will look at diaries today and provide you with some options.

Thanks

Catherine

From: Janet George <[REDACTED]>
Sent: 07 August 2018 19:43
To: Catherine Howes <[REDACTED]>; Lorraine Board
[REDACTED]

Subject: Meeting with local residents regarding proposed new County Hall on the Sands car and coach park

Dear Catherine

Just sending another e mail re resident meeting with Ian Thompson regarding the new HQ proposal as I have not as yet heard from you. Could you send me some possible dates please so I can pass on to SNCF members?

Thank you

Janet George

From: SNCF Durham <[REDACTED]>
Sent: 03 August 2018 11:07
To: Janet George
Subject: Meeting with local residents regarding proposed new County Hall on the Sands car and coach park

Janet George Hon Sec.
SNCF Durham

From: SNCF Durham <[REDACTED]>
Sent: 02 August 2018 05:10
To: [REDACTED]; [REDACTED]
Subject: Meeting with local residents regarding proposed new County Hall on the Sands car and coach park

Dear Mr Thompson

Thank you for your reply. It is helpful to know that residents comments will be carefully considered. A meeting would be most useful so perhaps Catherine can send me dates to pass on.

We would like to emphasise that we are passing on the views of very many people to you and perhaps a larger public meeting could also be considered.

Kind regards
Janet

Janet George Hon Sec.
SNCF Durham

SNCF Appendix 6 Evidence of discussion with DCC Officers 23rd August 2018

From: Lorraine O'Donnell <[REDACTED]>
Sent: 23 August 2018 16:26
To: Victoria Ashfield <[REDACTED]>; Ian Thompson - Corporate Director <[REDACTED]>
Cc: Janet George <[REDACTED]>; John Ashby <[REDACTED]>; William Ault <[REDACTED]>; Esther Ashby <[REDACTED]>; Jane Quilty <[REDACTED]>
Subject: RE: St Nicholas Community Forum / County HQ

Dear Victoria

Thank you for taking the time to meet with us last week.

I'm sorry that I haven't had the chance to get back to you on this yet. I'm about to go on leave and as Ian is currently on leave, we haven't had the opportunity to discuss it. I will get back to you on my return.

Kind regards

Lorraine

Lorraine O'Donnell
Director of Transformation and Partnerships
Durham County Council

From: Victoria Ashfield <[REDACTED]>
Sent: 20 August 2018 13:13
To: Ian Thompson - Corporate Director <[REDACTED]>; Lorraine O'Donnell <[REDACTED]>
Cc: Janet George <[REDACTED]>; John Ashby <[REDACTED]>; William Ault <[REDACTED]>; Esther Ashby <[REDACTED]>; Jane Quilty <[REDACTED]>
Subject: St Nicholas Community Forum / County HQ

Hello Ian and Lorraine,

Thank you for making the time to meet with us last week. I feel we had a very straight exchange of views, though we haven't changed our minds!

We talked about holding a public meeting and Forum members have spoken about this again and many members of SNCF feel that this would be better handled by the Parish Council. John Ashby and I have both requested that the meeting of the Parish Council on 5th

September consider a date for such a meeting and we are proposing the last week of September.

I have therefore cancelled the provisional meeting on 3rd September.

We really hope that you and elected members would also attend that meeting to indicate the respect you have for the views of so many of Durham's residents, and we undertake to ensure that there is a strong, truly independent chair and a well managed meeting.

If you have had a chance to think about our discussions and feel you may be able to come to the meeting with a compromise suggestion this would of course make it a much more positive meeting. For this reason, you may decide you would not want to invite Kier, and we will wait for your views about this. I am very happy to share the planning of the meeting with you.

We can be flexible about the date to make it possible for you and other County representatives to attend.

Kind Regards,

Victoria Ashfield

(SNCF and

Parish Councillor)

SNCF Appendix 7 Invitation to Public residents meeting declined, DCC Officers

From: Ian Thompson - Corporate Director [REDACTED] >
Sent: 14 September 2018 09:42
To: Janet George [REDACTED] <>; Lorraine O'Donnell [REDACTED] <>
Cc: William Ault [REDACTED] <>; Terry Collins [REDACTED] <>
Subject: RE: HQ meeting Monday 17th September

Morning Janet

Many thanks for the email and the invitation to attend the meeting on Monday. As we discussed at our meeting earlier in the Summer, (when it was still warm!) we won't be attending, but Lorraine and I appreciate the invitation. I assume that the points that are made will be captured in a note and, if they add to the comments already made, passed on to us.

I hope the meeting goes well.

Kind regards

Ian

Corporate Director: Regeneration and Local Services

Durham County Council

From: Janet George [REDACTED] <>
Sent: 13 September 2018 18:26
To: Ian Thompson - Corporate Director [REDACTED] <>; Lorraine O'Donnell [REDACTED] <>
Cc: William Ault [REDACTED] <>
Subject: HQ meeting Monday 17th September

Dear Ian and Lorraine

I do hope this e mail finds you well.

As a courtesy SNCF want to let you know that there is to be both a Parish and SNCF Public meeting regarding the planning application to build the new HQ on The Sands. This will be 6.30 -7.00 start, Durham Town Hall, Monday 17th September 2018.

We have no intention of putting any Council Officers on the spot but would be happy if you or your representatives wish to sit in on the meeting and hear what people want to say. We fully intend this to be a well run, productive and useful meeting and are happy for you to remain within the wider audience.

Kind regards

Janet, SNCF

SNCF APPENDIX 8 Invitation to Public residents meeting declined, P. Nixon Kier

From: Nixon, Paul [REDACTED]
Sent: 17 September 2018 18:00
To: Janet George [REDACTED]
Subject: RE: Residents meeting 17th September 2018 Durham Town Hall

Hi Janet

Hope you are keeping well.

Many thanks for your invite.

As you will probably have seen from my out of office response I have today returned from two weeks annual leave. Unfortunately due to prior diary commitments I'm unable to make tonight's event.

Can I please ask you collect any comments and then feed them into the planning process where they can be considered.

Regards

Paul Nixon
Director

Kier Property | 7 Merchant Court, Koppers Way, Monkton Business Park South, Hebburn NE31 2EX
D: 0191 428 7000 | M: 07791 719280 | [REDACTED]

Connect with us | follow us on [LinkedIn](#) | like us on [Facebook](#) | follow us on [Twitter](#)

Kier Property is a trading name of Kier Property Limited | Registered in England No. 4459403
Registered Office: Tempsford Hall, Sandy, Bedfordshire, SG19 2BD

From: Janet George [REDACTED]
Sent: 13 September 2018 18:37
To: Nixon, Paul [REDACTED]
Subject: Residents meeting 17th September 2018 Durham Town Hall

Dear Kier Property Ltd

As a courtesy St Nicholas Community Forum would like to inform you that there is to be both a Parish and SNCF Public meeting regarding the planning application to build the new HQ on The Sands. This will be 6.30 -7.00 start, Durham Town Hall, Monday 17th September 2018.

You may find it helpful for a representative to attend to hear the points raised by members of the public.

Yours faithfully

Janet George
SNCF Secretary

Miss J George
12 Mayorswell Close
Durham
DH1 1JU

Mr Henry Jones
Planning Department
Durham County Council
County Hall
Durham
DH1 5UL

22 February 2019

Regarding the current proposal that Durham County Council build a new headquarters at The Sands, Durham City. DM/18/02369/FPA.

Dear Mr Jones

I would like to bring the following information to your attention and object to the proposal. There is no change in the new documentation which alters the suggested plan by Durham County Council regarding the use of the Sands Coach park.

'The Coach Park' (map extracts from DEFRA's own website) at The Sands is currently registered as a 'common' by DEFRA and is therefore subject to the law and guidance relating to such.

The area identified was granted a lease to the Secretary of State for the Environment in 1982 as a site for a Royal Observer Corps temporary building. This was surrendered by deed on 28th February 1994.

As this area was partly metalled it was simply changed into 'The Coach Park' without any of the necessary permissions from DEFRA (commonly they would have a public enquiry).

It may be considered and construed that a coach park adjacent to and part of the identified common will inevitably bring people into the area that may use or benefit from the said common land. Durham County Council's present plan cannot be viewed in such a way. Durham County Council's plan restricts and inhibits this area for use as a common. Any change of use and to permanently subsume the area is in breach of the law relating to common land.

The report submitted to Durham County Council's planning committee from its Rights of Way officer Nick Howell says; 'The existing coach car park and therefore part of the proposed development site is registered as Common Land. As it is registered Common Land is it therefore also designated as open access land under the Countryside and Rights of Way Act 2000; so the public have a right to walk and run on it ('a right to roam') although in practice these activities are likely limited given the sites current use. If the Common Land is deregistered then its access land status would cease to exist.'

I have discussed this statement with The Open Spaces Society's Hugh Craddock (Case Officer) and he advises that this statement is not the case and is misleading.

Mr Craddock adds -

The common land is in the former city borough of Durham and Framwellgate, and therefore probably subject to s.193 of the Law of Property Act 1925. I say 'probably' because the application of s.193 depends on the land having been manorial waste or a common in 1926 (which it almost certainly was and is unlikely to be in dispute). The right of public access for air and exercise under s.193 therefore arise, and CROW rights do not: see s.15(1) of CROW.

Nor is it correct that, if the common land were deregistered, the present access rights would cease. It may be possible to secure the de-registration of some or all of the land under para.6 of Sch.2 to the Commons Act 2006, if it can be shown that the land has been covered by buildings, or the curtilage of buildings, since the date of provisional registration: I have not examined the detailed circumstances, so cannot advise on that possibility. Even if such an application were successful, in my view, it would have no effect on the s.193 right. Para.(d) of the proviso to s.193(1) provides for the access rights under that section to cease in certain circumstances, but it is far from clear whether de-registration of the land would satisfy either sub-para.(i) or (ii) of para.(d) (assuming, if sub-para.(ii) were in play, the requirements of that provision were satisfied).

If the rights under s.193 did cease, the land remains shown as registered common land on a map of open country and registered common land prepared by the Countryside Agency (now Natural England) under CROW, and the rights conferred by CROW (s.2) would arise as soon as the right under s.193 ceased. The rights under s.2 would endure until such time as the map is reviewed under s.10 — such review has already been set back five years, and it seems likely to be set back again.

We have in our possession documents from Durham County Council's barrister Nicola M Allen, Durham Barrister Chambers 22nd March 2004. This is a Barristers report commissioned by Durham County Council and is effectively a resume of the legal status of this common back to the 19th Century and forms the basis on which this submission is founded.

Yours sincerely

Janet George

Copies to:

Henry Jones Planning Department

Adam Shanley Parish Council

Roberta Blackman Woods MP

Secretary of State Department of the Environment, Food and Rural Affairs

Hugh Craddock Open Spaces Society

SNCF Appendix 10 12th August 2019 11.55am coach park Common Land



SNCF Appendix 11 12th August 2019 12.25pm Common land fenced, locals asked to leave



SNCF Appendix 12 12th August 2019 12.24pm, outside fenced off Common Land



SNCF Appendix 13 Coach park 6th October 2019





SNCF Appendix 15 Common land a place to be used 23.2.20



SNCF Appendix 16 Wildlife activity

From: Vivien Kent [REDACTED]
Sent: 10 March 2021 10:16
To: Janet George [REDACTED]
Subject: Re: Wildlife activity Coach park area The Sands

Hello Janet

We have many records of otter activity along the whole stretch of the Wear through Durham City, in fact at the moment there are two otters (a female and nearly fully grown cub) who are being seen daily at various points between Shincliffe and Kepier.

There are also plenty of records of other wildlife in that area, the river is a known bat corridor, kingfishers are regularly seen and there is a population of roe deer in Kepier Woods. Additionally, on the day of the demonstration on The Sands a hedgehog was rescued at the HQ site. All the mature trees that were felled would have been home to hundreds if not thousands of species of insect.

Best wishes

Vivien

Vivien Kent, PhD

Wildlife [REDACTED]

Email: vivien.kent@gmail.com

Research Gate Profile: https://www.researchgate.net/profile/Vivien_Kent

Website: www.vivienkent.com

Alamy: <https://www.alamy.com/portfolio/vivienkentportfolio>

The Otter Network: www.theotternetwork.co.uk

SNCF Appendix 17 hog rescued from the fenced off coach park distressed in the middle of the day
17.8.20



Michael Watson ▸ Durham City Matters

21 August 2019 at 06:46 · 🌐



Michael Watson ▸ Durham Road Block 20 August 2019 at 20:03 · 🌐

With grateful thanks to Dave Lunn for kind permissions to show everyone that Sandy is doing really well. He has gained weight & is lively.

Sandy was carefully & sensitively handled for the photos, as was Dave Lunn haha.

Shame on Durham County Council for disturbing wild life at the Sands site.

SNCF Appendix 18 Photograph shortest walk route from our neighbourhood to replacement land.



SNCF Appendix 19 Sidegate cobblestones



SNCF Appendix 20 Sidegate narrow, uneven, cobbled, unsuitable for limited mobility



SNCF Appendix 21 top of Sidegate, steps ahead



SNCF Appendix 22 steps to negotiate top of Sidegate



SNCF Appendix 23 Busy A691 Framwellgate Peth top of Sidegate. Further walking of 20-25 minutes from this point.



**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 LOCAL RESIDENT VICTORIA
ASHFIELD**

1. Introduction

1.1 I am a local resident and my home overlooks the Sands: I can see the disputed area from my windows. I am also a Member of City of Durham Parish Council and Chair of its Environment Committee since 2018 and a former (1989 – 2003) senior officer of Durham County Council.

1.2 I have lived adjacent to the Sands for almost 30 years and my children were very small when we came here. The path along the river was a delightful walk to take whether going into or coming from the city and by using the coach park area we managed to avoid all the main roads. We also used the coach park at other times (see 3 below).

2. Use by Coaches and thousands of tourists to Durham

2.1 There is a huge "Opportunity Cost" in terms of tourist revenue to the city, involved in the loss of this area as a coach park.

2.2 During the period of "consultation" about the building of the new HQ, during November 2018 to March 2019 I spoke to many of the bus drivers who parked regularly in the former coach park.

2.3 At first none of the drivers had heard about the proposed closure and the alternative arrangements proposed for coaches in the City and they were shocked. SNCF had previously been told by DCC that they had consulted with bus companies who were pleased at the idea of being able to park at a distance and "wash their coaches while they waited". None of the drivers had heard about this so the residents' association provided leaflets for them to take back to their company owner. None of them remembered having been consulted.

2.4 The response from some of the more distant coach providers was that if the planned visit to Durham was (as was sometimes the case) as short as an hour, they might now cease to include Durham in the itinerary as the inconvenience was greater than the selling point of visiting Durham. Yet the advantage to businesses in the city of having a constant stream of visitors, albeit short-term, has always

been recognised as important to the local economy and individual business owners.

2.5 Even those whose stay in Durham was longer indicated that being able to park elsewhere and return for their passengers was not a good alternative. Many of their passengers are older and often infirm people, and the opportunity for them to be able to return to a waiting coach earlier than the planned time was a great selling point. These tourists could return to their coach and rest while others in the party were still visiting the city.

2.6 Most of the drivers mentioned that the fact that this coach park was **free** for users was a huge draw and one of their points taken into consideration when the company owners made decision about tourist itineraries.

2.7 For on-going special events (such as Lumiere, including for its heavy equipment, Gay Pride, the annual Easter Fair, which lasts approximately 3 weeks, and the annual Circuses and other occasional events) the coach park was in great demand as an important place for coaches to drop off / wait for / collect passengers.

3. Use by Families and Children

3.1 The area of the "former coach park" was a lovely mix of hard standing and "untamed" trees and bushes.

3.2 The hard standing meant that the area was ideal for children to learn to ride a bike: living as we do on a steep hill which would have been dangerous for beginners and young riders it was ideal for my children to practise.

3.3 The trees right across the former car park were beautiful and some just reaching their prime, but those in the area of the coach park were much older and more established and as the area was quieter it had a range of wildlife using it. Otters came from the river banks, (I have seen a video taken by a neighbour of the otters playing in the water), the swans wandered here and herons could be seen from this site as they fed on the river's edge. All have now been banished by the building noise. Hedgehogs were seen on the site even as the fencing was being installed. In the week the original Heras fencing went up around the coach park I watched some residents climb round it to rescue a hedgehog who had become trapped inside.

3.4 Now there is not even the opportunity for the hedgehogs to leave (if they are inside) or use the area (if they are outside). The whole area is part of the well-known "bat-feeding corridor" but many mature trees were removed in the first days of the council's acquisition of the area. The mature trees here (a few examples still remain on the eastern periphery, after public request) were of greater encouragement to the bats than the younger trees in the car park. Other trees on the Sands nearer the river have been reduced by the river flooding over the years and are only now being replaced by the Parish Council, so the loss of these mature trees is irreplaceable.

3.5 The path alongside the river, accessible from the disputed land, was a natural sylvan walkway, overhung by trees and accessible directly to the river down a

muddy slope where ducks, geese and other water-life mentioned could be seen. That path will now be a concreted walkway with no access to the river.

The Sylvan path at the river banks



3.6 The use of this land with young children going to and from school was an opportunity every day for a lesson in ecology which my children enjoyed and benefitted from. The ability to view the river life from this land without being unsafely too near the river was an advantage with young children.

4. By Dog walkers

4.1 Now my children have grown up I walk this area almost daily with my collie dog. I let her run free on the Sands and afterwards cross the Penny Ferry Bridge to access the other side of the river and walk towards the city. The hard standing of the coach part where she used to chase her ball is now fenced off, so we are unable to enjoy that part of the ritual and have to access the bridge by the roadway.

4.2 Although I can no longer get close to the river adjacent to the disputed land, I have noticed the reduction in bird song and small animal scuffles when I am inspecting the trees which the Parish Council planted in 2020 on the Sands- side of the newly constructed fence. The swans and the herons have gone and the geese are reduced to having a very small area of river bank between the new building and the National Savings office and signs of small animals are now fewer.

4.3 The ecology has been lost and the integrity of the riverside walk has gone. The reinforced fence which replaced the Heras fencing has been concreted into the ground (encroaching a further metre into the remaining Sands common land) and is contaminating the land on which new trees have been planted.

4.4 The Parish Council and local residents are ready to replant and maintain the disputed area until the wild habitat can regain a footing should the land be retained as a public coach park or returned to a more natural state.

5. The irrelevance of the "exchange land".

5.1 The replacement land is a total irrelevance to any resident of this area. It is not an area which would ever be accessed in the same way as the disputed land.

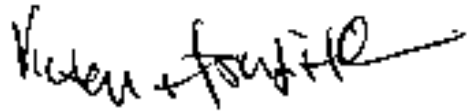
5.2 As a long-term resident of this area, I chose where I live because it is near the river and easily accessible for riverwalks. It would never occur to me to use the land at Aykley Heads as an alternative walk. The area is about a 45 minute walk from the riverbanks (where I start my walk) and includes a section impassible by the elderly, infirm, or those with children and pushchairs. The access is adjacent to the busy A691 road. I wouldn't walk my dog there and my usual time allocated for exercise would be over when I arrived.



Narrow, cobbled, stepped, inaccessible path to the exchange land.

5.3 I do at times venture further afield for dog walking and take my car to alternative venues, but I try to avoid this when possible. Aykley Heads would fall into the "occasional other venues" category and I have been there to walk the dog. In fact what the Council is offering is nothing new and while walking in that area I have never approached the "exchange land" because it is signed "ground nesting birds" and walking through there with an exercising dog would be less than wise.

Signed,

A handwritten signature in black ink, appearing to read "Victoria Ashfield". The signature is written in a cursive style with a long horizontal stroke at the end.

Mrs Victoria Ashfield
Local Resident of Durham City

**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 COUNCILLOR ROGER CORNWELL

ON BEHALF OF THE CITY OF DURHAM PARISH COUNCIL

1. I am Roger John Cornwell and I live at 40 The Avenue, Durham, DH1 4EB
2. I am a Councillor on the City of Durham Parish Council. The Council came into being on 1 April 2018 and I was one of the first councillors elected on 3 May 2018. I chair the Parish Planning Committee.
3. I was a member of the County Durham Local Access Forum, where I represented the interests of users. Local Access Forums (LAFs) are statutory bodies, created by the Countryside and Rights of Way Act 2000, to advise decision making organisations, primarily in our case Durham County Council, about making improvements to public access for outdoor recreation and sustainable travel. I served from its inception in February 2003 until July 2015, when I resigned in order to be able to give more time to the preparation of a Neighbourhood Plan for the area that is now the City of Durham Parish.
4. The Parish Council delegated responding to the informal consultation about the proposed de-registration of the Common Land to the Planning Committee, and a response was made on 3 June 2019. A copy is attached [Appendix RC 1]
5. On 12 August 2019 the County Council's contractors Kier fenced off the common land although the County Council had not even commenced formal procedures to have the land de-registered.
6. On 22 August 2019 the County Council commenced the formal process to deregister the common land and proposed replacement land at Aykley Heads.

7. The Parish Council's objection to the deregistration has been supported and encouraged by local residents and residents' associations, who have provided helpful information that has helped to guide our case and our decision making.

Getting to the replacement land

8. Although the County Council states that the replacement land is 799 metres from the release land, this is a straight line distance to the nearest point. The shortest walking route is 1860 metres. This is illustrated in a note originally written in September 2020 and reproduced as Appendix RC 2.
9. All of the common land at The Sands, including the release land, is adjacent to public highways. This means that as well as having open access on the common land itself, there is a right of access onto the land. This is illustrated on the map at Appendix RC 3, where the adopted highways are pink and the release land is lilac.
10. By way of contrast, there is no right of access onto the replacement land (shown on the map at Appendix RC 4 in lilac). All of the adjacent paths are permissive in nature and could be closed by the owner – Durham County Council – without any formality. There are no public rights of way on the Aykley Heads estate – the nearest is the part of the purple route east of the railway line, shown on the map in Appendix RC 2 (re-checked 11 March 2021)
11. The adopted highways maps are from the County Council website.

The replacement land and public accessibility

12. The Open Space Needs Assessment 2018, referred to below as the OSNA, was part of the evidence base for the County Durham Plan. It is referenced in Policy 26 and its supporting text. The extracts from the OSNA are at page 53 in the Applicants bundle.
13. Within paragraph 5.1.5 there is a description of how sites are classified as 'accessible natural green space', and this includes local nature reserves. The replacement land is a part of the Aykley Woods Local Nature Reserve.
14. The online OSNA map¹ was accessed on 10 March 2021 and zoomed in to show the Aykley Heads estate and Aykley Woods Local Nature Reserve. A screenshot of this map is reproduced at Appendix RC 5. It shows the area of the replacement land is included in ref OSNA1591 Aykley Heads as an Accessible Natural Green Space.
15. The replacement land is fenced off with three stands of wire, which is quite slack and is not barbed. It does not constitute a real barrier and in several places, as shown in Appendix RC 6, photograph 1, I could see worn paths leading across the replacement land.

1

<https://durhamcounty.maps.arcgis.com/apps/View/index.html?appid=51d8840ed89a479787a7f569098dd4c1>

16. There are two more pictures (Appendix RC 6, photographs 2 and 3) taken from the eastern boundary of the replacement land, looking north-west and west. Again, very clear paths can be seen showing that the land is being accessed. All of these photographs were taken on 9 March 2021.
17. I am aware of notices relating to ground nesting birds that were posted around the replacement land, which indicates a degree of sensitivity. On 9 March 2021 I made a site visit to the replacement land, accompanied by the Parish Clerk and our barrister. We saw several of these notices.
18. The notices were removed from the periphery of the replacement land at some point between March 9 and March 13, and official notices about the forthcoming Public Inquiry were added. Appendix RC 7 shows pairs of photographs taken on the dates indicated, showing before and after views. The first pair is taken looking north from the southern perimeter, and the second pair looking south from the north.
19. I am also aware of notices on the land in the past. These were fixed to a board close to the metal gate on the north-west corner of the replacement land. These are shown in Appendix RC 8.
20. The relevant paragraph is on the right-hand page, below the photographs:

The number of birds on the site also increases each year and particularly ground-nesting birds who find it increasingly difficult to find suitable grassland habitat where they won't be disturbed. To help these birds have the best possible chance of rearing their young, please keep to the mown paths and your dog close by.

The left-hand sheet is still in place, the right-hand sheet was not there on 9 March 2021.

21. Google Earth allows the viewing of historic aerial photographs and the one shown at Appendix RC 9 was taken on 3 February 2020. It shows a clear mown path though the replacement land.
22. Therefore prior to March 2021 the public was discouraged from leaving the route of mown paths in order to protect ground-nesting birds. However this did not amount to a ban, and the evidence both from the OSNA and the evidence on the ground is that access was permitted and actually happened.
23. Since March 2021 the signs asking the public not to enter the replacement land have been removed. This means the public are no longer discouraged from entering the site.

Conclusions

24. The Parish Council supports the evidence of other parties about the status of the release land at The Sands, and the use made of it.
25. The replacement land is too far from the release land, and too difficult to reach, to be a suitable alternative.
26. The replacement land is already available for public use.
27. Consequently we ask the Inspector to refuse to deregister the 1,675 square metres of land at the Coach park, The Sands, Durham City and the giving in exchange of about 18,371 square metres of land at land east of Rivergreen Centre, Aykley Heads, Durham City.



Roger Cornwell

15 March 2021

APPENDIX RC1

City of Durham Parish Council
Office 3 D4.01d
Clayport Library
8 Millennium Place
Durham City DH1 1WA

3 June 2019

Peter Howson
Accommodation Strategy Officer
Asset Management, Regeneration and Local Services
Durham County Council
County Hall
Durham City
DH1 5UL

Dear Mr Howson,

**Informal consultation for the proposed application for deregistration, Section 16
Commons Act 2006, of part of the Common Land at the Sands, Durham City.**

Thank you very much indeed for your letter of 25th April offering the City of Durham Parish Council the opportunity informally to comment on the County Council's proposed application for deregistration of part of the Common Land at the Sands in Durham City.

This informal consultation was discussed at the meeting of the Parish Planning Committee held on 24 May 2019 to which the full Parish Council meeting on 23rd May had delegated this matter.

The Committee noted that Durham County Council is preparing to submit a deregistration application under Section 16 of the Commons Act 2006 in order to replace a small area of common land at The Sands in Durham City. The land being replaced (referred to as the 'release land') is currently used as a coach park. A larger area to the east of the Rivergreen Centre at Aykley Heads (the 'replacement land'), currently in use as meadowland, has been identified as the proposed alternative. The 'release land' is required as part of the proposed site for the County Council's new Headquarters building.

The Committee further noted that "*replacement land is required to be within the vicinity of the release land and to be suitable for grazing animals. The council considered other options for the replacement land, but following review, the land to the east of the Rivergreen Centre*

was identified as the most suitable, due to its proximity to the release land and the fact that it is meadowland. Both the release and replacement land are owned by the council."

It was also noted that the County Council's Public Rights of Way Officer states that: *"The existing coach car park and therefore part of the proposed development site is registered as Common Land. As it is registered Common Land is it therefore also designated as open access land under the Countryside and Rights of Way Act 2000; so the public have a right to walk and run on it ('a right to roam')."*

At this informal consultation stage, the Parish Council is not required to set out a full representation, but a general indication of its views would be appropriate. The Parish Council Planning Committee, after due consideration, agreed to oppose the permanent loss of this part of the Common Land at The Sands, which should be used for public enjoyment and recreation without impediment. The substitute area at Aykley Heads being suggested by Durham County Council is land more than two miles away. The people using the Sands Common do so because it is within walking distance for them and is adjacent to the city centre. To reach the land east of the Rivergreen Centre would take locals over 30 minutes to walk to and is an area already open to those who do live in proximity to it.

Accordingly, the City of Durham Parish Council objects on the above grounds at this informal consultation stage to the permanent loss of this part of the Common Land at The Sands. If you have any questions on this please do not hesitate to contact me.

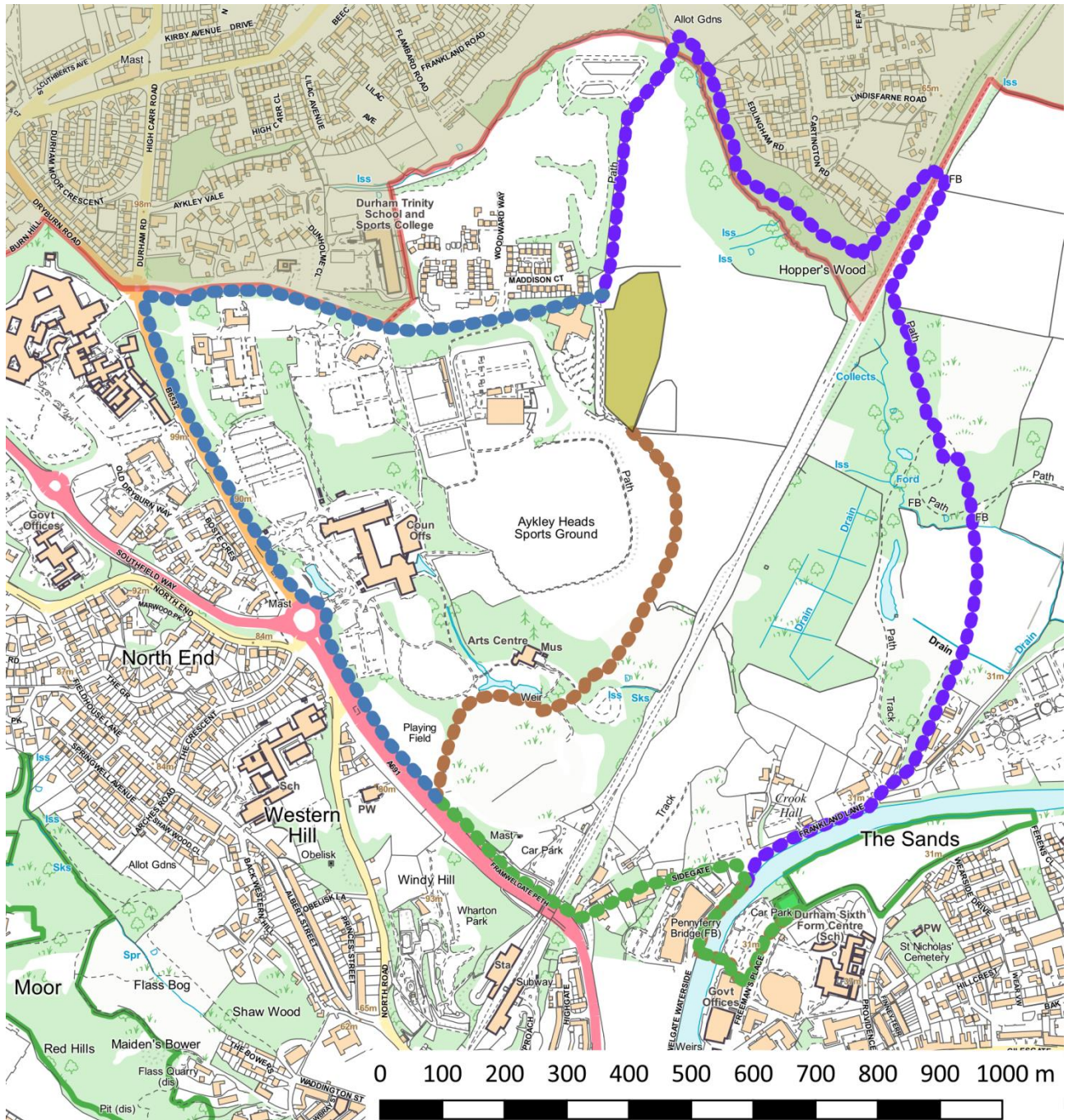
Yours sincerely

Adam Shanley

Clerk to the City of Durham Parish Council

City of Durham Parish Council

Possible routes to the replacement common land



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Durham County Council state that the distance from the common land they wish to release and the replacement land is 799 metres. We agree with this figure, but is a direct distance as the crow flies and in practice to get from one to the other requires crossing both the River Wear and

the East Coast Main Railway Line. These constraints add considerably to the distance that a pedestrian would have to travel. We have investigated three possibilities, shown on the map above. All go from the existing pedestrian entrance to the coach park, along Freemans Place, across Pennyferry Bridge and along Framwelgate Waterside (shown in green)

The shortest route (still in green) goes via Sidegate and the footpath alongside Framwelgate Peth to the approach to the former DLI Museum. Here (shown in brown) it follows permissive paths to the southernmost point of the replacement land. This route is **1,860 metres** long.

The disadvantage of the shortest route is that it relies for almost half of its length on permissive paths which can be closed without any formality and indeed might well be, given the County Council's plans to develop the Aykley Heads estate. We therefore investigated a route entirely on public highways (shown in blue from the point where it diverges from the first route). This is **2,710 metres** long.

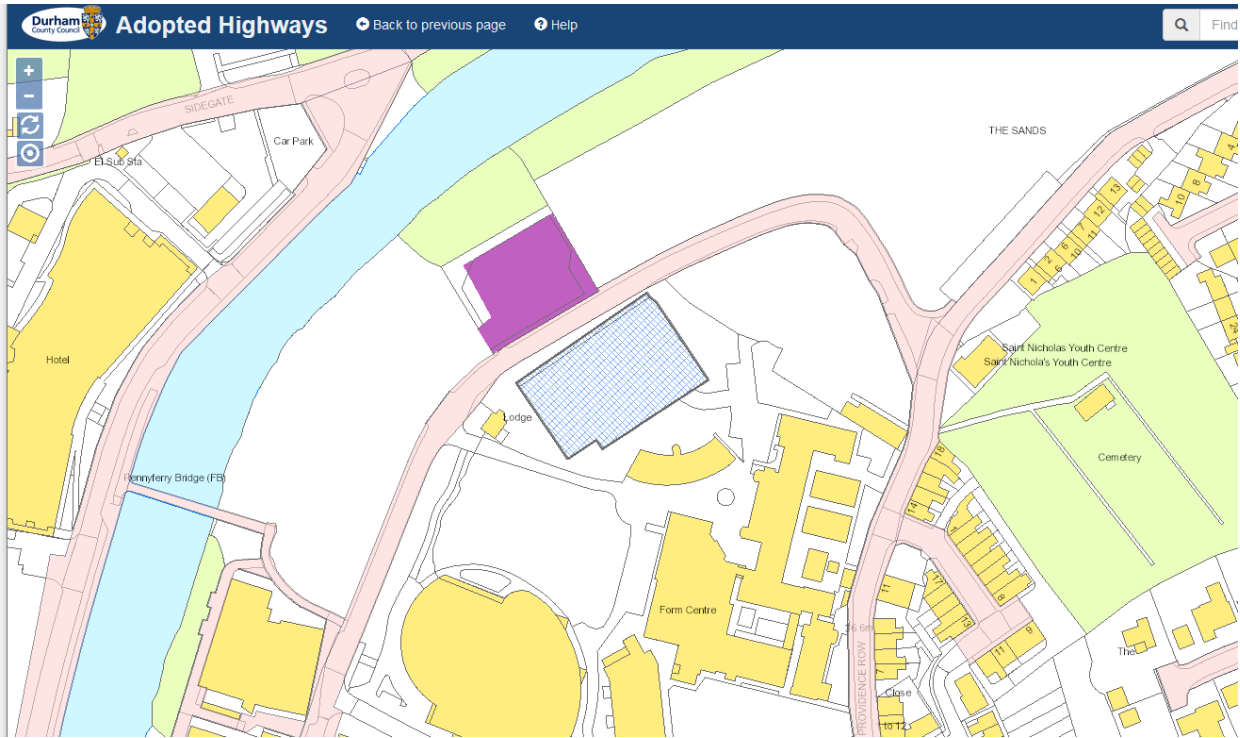
By way of contrast we looked at a route (shown in purple from where it diverges) down Frankland Lane, along public footpaths to a footbridge over the railway, then via paths in Hopper's Wood and a cycleway. This is the most attractive route, but by far the longest: **2,920 metres**.

In our view even the shortest of these routes is not in the interests of the neighbourhood, and so the replacement land offered is not suitable.

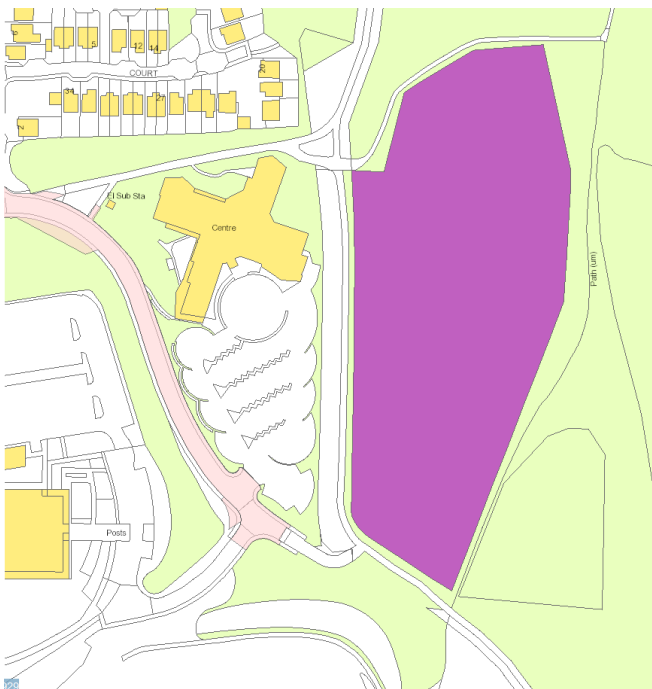
Roger Cornwell

6 September 2019

APPENDIX RC3



APPENDIX RC4





APPENDIX RC6 PHOTOGRAPHS OF THE REPLACEMENT LAND

Photograph 1



Photograph 2



Photograph 3



APPENDIX RC 7 NOTICES ON THE REPLACEMENT LAND



21 April 2020



13 March 2021



22 May 2019



13 March 2021

APPENDIX RC 8 NOTICES ON THE REPLACEMENT LAND – GROUND NESTING BIRDS



APPENDIX RC 9 AERIAL PHOTOGRAPH

