

Davis, Rob

From: Kate Ashbrook [REDACTED]
Sent: 16 September 2019 13:38
To: commonlandcasework
Subject: The Sands, Durham - Commons Act 2006 section 16 deregistration and exchange

Dear PINS

We have received from Durham County Council its application to deregister part of The Sands in order to build a new council headquarters, and to offer in exchange land to the north of the common but quite separate from it. We wrote to express our concerns when the council consulted us, but never received a response and as far as we can see the application is no different from the consultation. We therefore object to the application.

While we note that the replacement land comprises a piece of land substantially larger than the proposed release land, it appears to us that the land is already public open space. If it is, then the land is already protected from development and open to public access: the public has nothing to gain from such an exchange. We asked the council to inform us for what purpose, and under what powers, the replacement land is held, and whether the council intends to appropriate the land to another purpose, or to be held under other powers, in consequence of the proposed exchange, but received no reply. What is the status of the public's present access to the replacement land? If the public does not have access to the replacement land, why is that, and why will the position change in consequence of the application? We note, in this respect, that the application form states (item 15) that, 'The Replacement Land is proposed to be accessed by a single gate': this is hardly an application which intends to promote the use of the replacement land for public recreation, for it is obvious that, where access is available only through one gate, on an out-and-back basis, the land will be little used. Perhaps that is the council's intention?

The [Secretary of State's policy guidance](#), which applies to the determination of applications under s.16, provides (para.4.5, first bullet) that she: 'would not normally grant consent where the replacement land is already subject to some form of public access, whether that access was available by right or informally, as this would diminish the total stock of access land available to the public.'

We note that the proposed release land is claimed to have been incorrectly registered. We have no evidence as to this, and we note that it is not proposed to pursue an application for rectification of the register. But we do note that consent was given under s.194 of the Law of Property Act 1925 for use of the proposed release land as a coach park. If the intention of the council is that such use is no longer required, and assuming that the consent was not time-limited, then, on cessation of use as a coach park, the land must be returned to use as common land. We do not accept that the effect of the s.194 consent is to exclude the public right of access to the release land under s.193 of the 1925 Act: the s.194 consent could only have that effect if it were a clear and inescapable effect of the consent (for example, if a consent is granted to erect a building on common land). Here, the purpose of the consent was to enable the land to be surfaced for parking coaches, and (*per Attorney-General v Southampton Corporation*) to authorise the intermittent and limited interference with public access which might be presented by coaches actually parked on the land. Thus, the land is no longer used for a coach park, the sealed surface ought to be removed, and public access under s.193 is freely available — except we understand that the council, or its contractors, have unlawfully excluded public access from the land. The position, therefore, is that — had the council not jumped the gun — the release land should and must be restored to its original function as part of the Sands common. There can be no 'discount' from this function because of past use. We add that, in relation to suggestions that the release land was wrongly registered as common land, the Secretary of State's policy guidance provides (para.5.4) that she does not 'see the purpose of section 16 as enabling the deregistration of land which is claimed to have been wrongly registered': instead (para.5.5), 'In considering an application under section 16(1), the Secretary of State will assume that the release land is correctly registered.'

The release land is in the former municipal borough of Durham and Framwelgate and is subject to s.193 of the Law of Property Act 1925. The replacement land also appears so to be subject. What provision will be made to enable use by equestrians in accordance with the rights of access conferred by s.193?

In short, the council proposes to deregister part of The Sands, a precious part of Durham's heritage and valuable recreational space within the city centre itself, with land outside the city centre which is already managed for conservation and to which there will be very limited new public access. That is a very poor deal indeed.

Finally, we note that the council has not disclosed the terms of the consent granted to it under s.194 of the 1925 Act, and we ask that a copy be provided to objectors.

Yours sincerely

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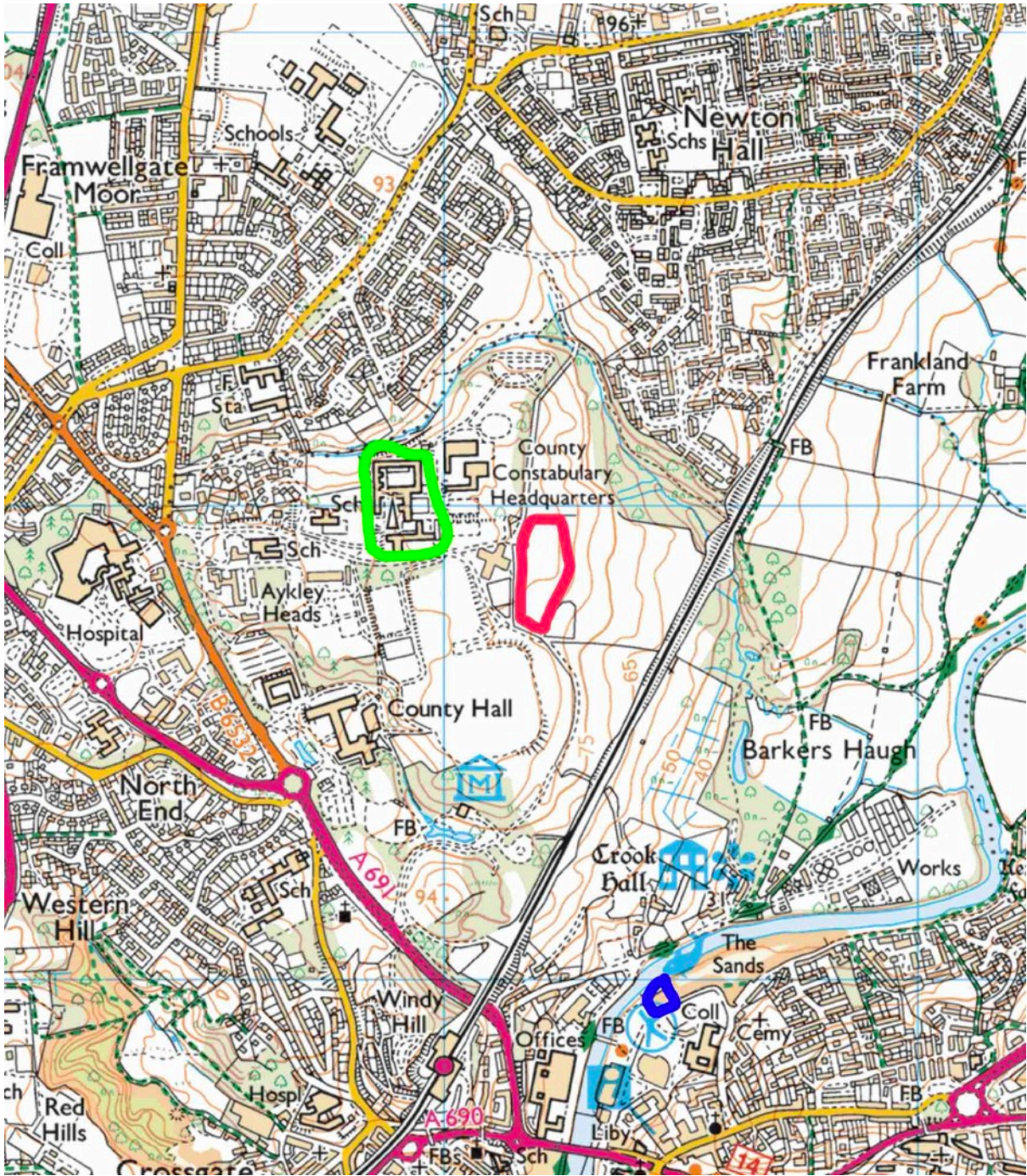
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The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.



The base map is online Ordnance Survey showing the 1:25,000 features set. This 'scale' of mapping is useful because it shows contour lines, roads, tracks, rights of way, and railway lines. The release land is marked (by hand, imprecisely) in blue, the replacement land in red, and the new Aykley Woods housing in green. The map also names Aykley Heads, Framwellgate Moor, and Newton Hall. Pity Me starts just off the map, north of Framwellgate Moor.



7 December 2020. The Sands. **Above:** Looking roughly east-north-east from the roadside footway towards the housing along Orchard Drive. A well-worn path is visible. **Below:** looking the other way at the fence around the release land. A litter bin and life-saving equipment at the riverbank are visible.





7 December 2020. The Sands. **Above:** Looking at the release land and the new council offices.



This aerial photograph (left) shows with red arrows approximately where the following 6 photographs were taken., and the direction of shot. The number on each arrow relates to the sequence of the photographs below.



7 December 2020. Aykley Heads. **Above:** Just past the Rivergreen Centre. The red bin is for dog waste. The replacement land is directly ahead. **Below:** This worn path is to the right, just beyond the red bin. Dog walkers were seen using it to access the open land behind County Hall.





7 December 2020. Aykley Heads. **Above:** The open land behind County Hall, taken back to railway. **Below:** Entrance to the Aykley Wood Nature Reserve. The ground is very wet here. One runner was observed entering.

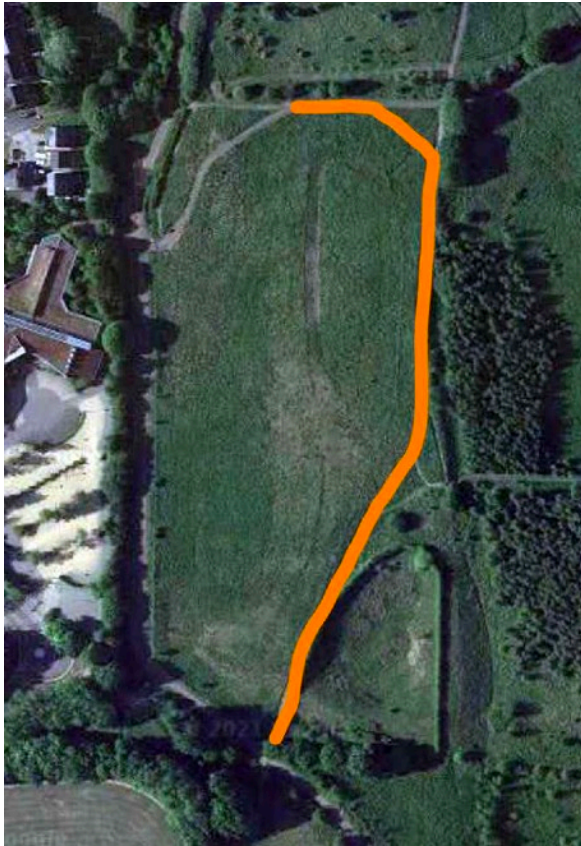




7 December 2020. Aykley Heads. **Above:** Taken walking northwards from the Nature Reserve gate, looking northeastwards towards the railway line. **Below:** After walking further northwards, and branching right at the foot of the replacement land, this notice 'Ground Nesting Birds - No Access'. Looking into the replacement land.



This set of 10 representative photographs was taken on a site visit on 10th March 2021.



This aerial image (left) shows clearly the site and shape of the replacement land. The orange highlight shows the runs of 4-strand wire fence where the 'beaten paths' as photographed, and others, are plain to see on the ground. The sequence of photographs starts at the southern (bottom) end, and proceeds north and anticlockwise.









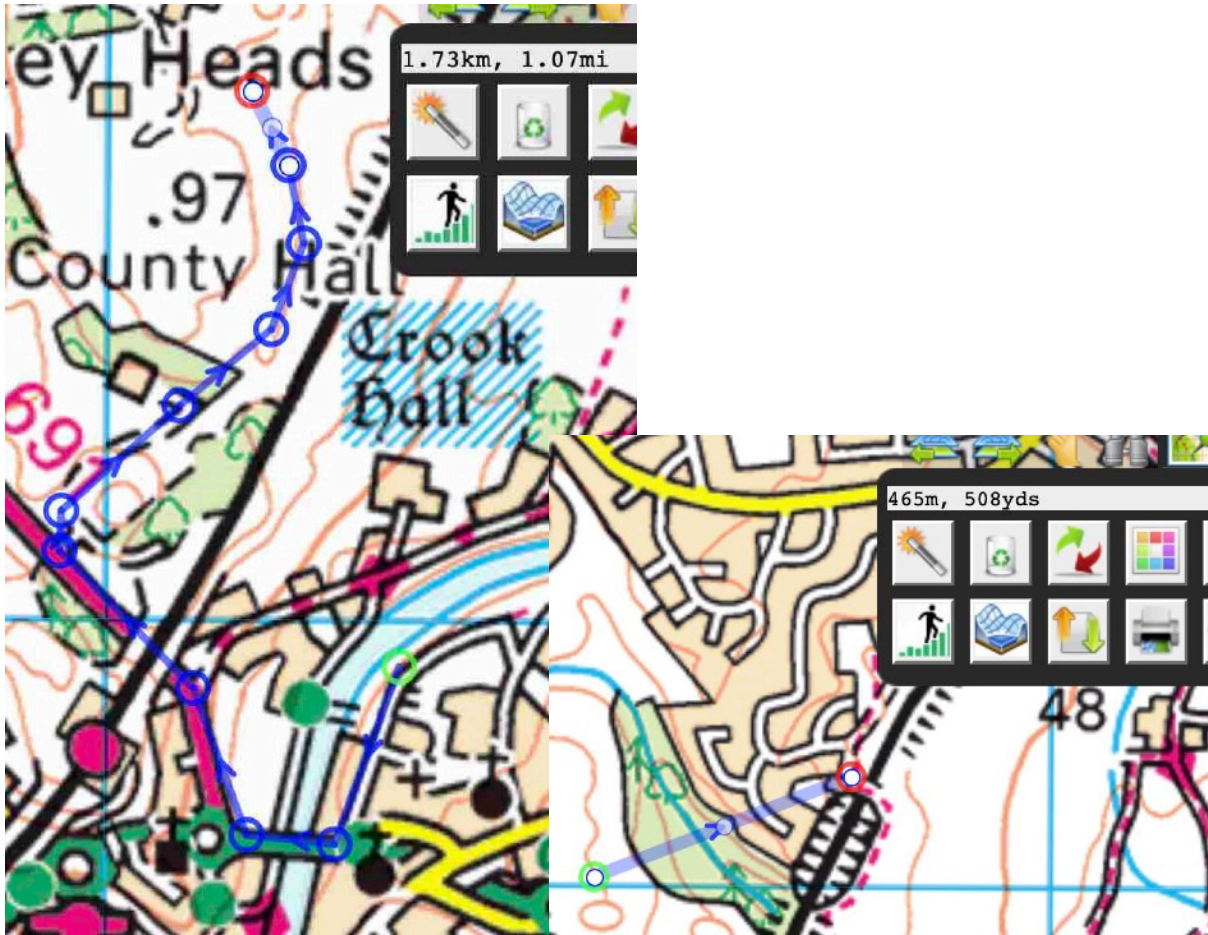


(Above) The fence wire here is clearly 'sprung' consistent with a person passing between the top 2 strands, and lifting the bottom strand to allow a dog beneath. (Below) This is looking south from the top-left corner of the replacement land. The fence here is more substantial and intact.





(Above) This photograph was taken a few metres north of the top-right corner of the replacement land, looking north. House roofs situated at the southern (bottom) end of the Newton Hall estate are clearly visible, within a few minutes walking distance.



The **base map** is online Ordnance Survey showing the 1:50,000 features set. This 'scale' of mapping is useful because it shows contour lines, roads, tracks, rights of way, and railway lines. The online site provides a distance-measuring facility. When checked against grid squares this is accurate. The facility can only measure in straight lines. The measuring tool draws a blue line between circle nodes. Green at the start, blue at interim points, red at the finish.

The **left-hand map** shows the route from the release land, to the road bridge, then up the A691, on to the track behind the museum, and up to the replacement land. Quite crudely, this measures at 1.73 kilometres. In my experience, actual distance on the ground is somewhat greater than a series of straight lines on the map between the 2 end points.

The **right-hand map** shows the straight line distance from the top-right of the replacement land to the footpath bridge across the East Coast Main Line Railway. This is 465 metres.



This map extract is from the online 'Magic' facility provided by DEFRA. It shows the parish boundaries locally, as referenced in paragraph 20 of the *Witness Statement* in this Statement of Case.