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 Statement of Case of the Open Spaces Society

'Neighbourhood'

1. The Commons Act 2006, section 16 Deregistration and exchange: applications, provides:

   (6) In determining the application, the appropriate national authority shall have regard to—

   (b) the interests of the neighbourhood;

2. 'Neighbourhood' in section 16 is not defined in the Act, but in Cheltenham Builders Ltd, which is a village green case, Sullivan J held that it was not a line on a plan but "*communities with a sufficient degree of cohesiveness*" in relation to the land. Cheltenham Builders is referenced by Holgate J in Tadworth, which is a section 16 case.

3. In Sainsbury's Supermarkets Ltd: natural boundaries or distinct boundaries formed by a large road such as a motorway; the presence or otherwise of facilities which might be expected to exist in a given neighbourhood, including shops, primary schools and a post office; differences in housing types and standards; and differences in socio-economic circumstances.

4. The Sands cannot rationally be said to be cohesive with the land at Aykley Heads: distance, the River Wear, and the East Coast Mainline Railway drive that conclusion.

5. The proposed replacement land at Aykley Heads has cohesiveness with the other open land, Aykley Heads, Framwellgate Moor, and Newton Hall, and the whole area has the independent features and facilities needed to show that these together form a neighbourhood.

Neighbourhood and Localities

6. City of Durham is a parish, as is Framwellgate Moor. Newton Hall, and Aykley Heads around the school, are unparished.

7. A neighbourhood may be situated in one or more localities, see Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust.

8. A parish is a locality: see e.g. Laing Homes Ltd) v. Buckinghamshire County Council.

9. The Aykley Heads neighbourhood spans parts of 2 parishes, plus an unparished area.

Can Exchange Take Place Between Neighbourhoods?

10. The Commons Act 2006, section 16 **Deregistration and exchange: applications**, provides:

    (6) In determining the application, the appropriate national authority shall have regard to—

    (b) the interests of the neighbourhood;

11. The Applicant, at paragraph 29 of its statement of case, cites Tadworth, saying, "*The interpretation of 'neighbourhood' has been described as 'quintessentially a matter for the judgment of the inspector."* That is a misquotation. Holgate J says, at 83, "*Self-evidently the application of that agreed approach to the identification of the neighbourhood was quintessentially a matter for the judgment of the inspector.*"

12. The Applicant continues, "*The Release Land and the Replacement Land may serve different neighbourhoods, although they are only 790m apart as the crow flies.*" 'Different neighbourhoods' is fundamental. 'May' is not a criterion.

13. Tadworth concerns the Inspector's findings as to the extent of the single neighbourhood within which the exchange took place.

14. Section 16(6)(b) speaks of "*the interests of the neighbourhood*". Singular. In DEFRA's *Common Land Consents Policy Guidance November 2015*, at paragraph 4.4, 4th bullet, **The interests of the neighbourhood**, "*Will the proposed replacement land, or outcome intended by the proposed works, add something that will positively benefit the neighbourhood?*" Again, neighbourhood singular, and the scheme of the guidance is about the losses and benefits to the neighbourhood where the release land is situated. If section 16 related to separate neighbourhoods, then the statute might, and certainly the guidance would, be expected to set out criteria, For it might well be said on evidence that the loss of amenity arising from the deregistration of release land in Berwick is more than offset by the increase in amenity arising from the registration of the replacement land in Penzance. If the test in section16(6)(b) were capable of being satisfied by such an exchange, the meaning of the '*interests of the neighbourhood*' would be indistinguishable from those of the public.

The Public Interest

15. The Commons Act 2006, section 16 **Deregistration and exchange: applications**, provides:

    In determining the application, the appropriate national authority shall have regard to—

    (c) The public interest;

16. In DEFRA's *Common Land Consents Policy Guidance November 2015*, at paragraph 4.5, 5th bullet, "*In the case of deregistration and exchange, the Secretary of State 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*."

17. The Durham County Council *Open Space Needs Assessment 2018* was part of the evidence base for the *County Durham Plan* (adopted in 2020). The proposed replacement land is therein as "*accessible natural green space*". This is confirmed on page 825 of the Applicant's bundle, where the Applicant's Planning Officer describes the site as "*designated as an area of accessible open space*".

18. The proposed replacement land already has a formal designation for public access, and therefore fails the Secretary of State's policy test as set out above.

19. Even if the proposed replacement land is held to be within the scope of the guidance on existing public access, then it is anyway manifestly not in the public interest that the public of The Sands neighbourhood is obliged to walk at least 1.73 kilometres just to access the new site. Further, land immediately adjacent to the proposed replacement land is already acknowledged public access land to which The Sands residents can already walk if they wish. Indeed, the public are *de facto* invited so to walk.

Other Matters in the Applicant's Statement of Case

20. At [21] "*There is no public user of the Replacement Land other than in connection with a permitted, annual, cross country running event."* The Applicant has scheduled the proposed replacement land as *"accessible natural green space"*, and has further described it as *"accessible open space*." The tell-tale path marks indicating that people cross the fences to access the land also contradicts the Applicant's assertion here.

21. At [21] "*The Replacement Land has no habitats or wildlife designations, protected species …*" The land has '*Ground Nesting Birds*" warning notices on the fences.

22. At [23] "*It is close to the wider network of permissive and public footpaths*." That is simply untrue. The proposed replacement land is not "close" to public footpaths. The closest

part of a public footpath appears (from the Ordnance Survey map) to be the crossing of the East Coast Main Line some 465 metres distant, and largely inaccessible anyway. There is no viable public footpath network in the immediate area.

23. At [23] "*It is extremely accessible on foot from The Sands and elsewhere, and by motor vehicle.*" This statement cannot stand up in the face of the evidence about topography and distance. It is not by any metric "*extremely accessible on foot from The Sands*". The land is, as explained above, about 1.73 kilometres distant, and quite steeply uphill, from The Sands by the least difficult route. Again, as explained above, there is no public car parking at Aykley Heads.

24. At [23] the Applicant states, "*The Replacement Land is approximately 0.79km to the north of the Release Land.*" It might be, but that supposes an ability for the public to ford the River Wear, and cross the East Coast Main Line where there is no crossing.

25. At [26] "*The public can and does easily enjoy this right of access on the balance of The Sands. It would easily be able to do so on the Replacement Land if the application is granted.*" Again, as stated above, it would not be "*easy*" for the public to transfer its enjoyment of The Sands to the proposed replacement land.

26. At [30] "*The proposed Replacement Land would positively benefit its neighbourhood. It would open up an attractive area of land for public recreation …"* Is the Applicant indicating by *"its neighbourhood*" that the proposed replacement land is in a different neighbourhood from the proposed release land? In our view it cannot be if the application is to succeed. Anyway, the replacement land is already scheduled by the Applicant for "*accessible open space*".

27. At [30] "*Depending upon their address, past or current public users of the Release Land for air and exercise (if any) would find the Replacement Land more or less convenient or equally convenient.*" Not at all. The distance and topography involved defeats this assertion.

28. At [30] "*The Replacement Land would represent a quantitative and qualitative improvement.*" Quantitative, yes, but qualitative, not at all. A much larger plot of much worse character and public utility is no public benefit at all.

Summary

29. Leaving aside the history of how the Applicant has wrongly inclosed the proposed release land against the public, if this application is taken 'on its merits', then it must fail on various individual counts:

- The proposed replacement land is in a different neighbourhood.
- The proposed replacement land is already publicly accessible open land.

- The distance and topography means that the proposed replacement land is of little, if any, utility to the public of the neighbourhood of The Sands.

30. The Open Spaces Society respectfully asks the Secretary of State to reject this application.

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