



**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**

**REBUTTAL PROOF OF EVIDENCE OF MIKE
OGDEN ON BEHALF OF DURHAM COUNTY
COUNCIL**

23 April 2021

1. INTRODUCTION

1.1 My name is Mike Ogden and I am employed by the Council as the Access and Rights of Way Team Leader. I have been a member of this team for 31 years and have held this particular post since 2012. My Team is responsible for the management of public rights of way and access land within County Durham, and accordingly my duties are primarily to ensure the effective management of the public rights of way network and access land by means of maintenance, enforcement and legal recording.

1.1 This Rebuttal Proof is prepared in response to the Objector's Statement of Case and witness Proofs on the issue of access to and rights of way over the Replacement Land.

2. PERMISSIVE FOOTPATHS

2.1 At paragraph 22 of the Objector's Statement of Case it states:

"Further it is only accessible by permissive footpaths that the Applicant could close."

2.2 The paths which provide access to the Replacement Land are currently unrecorded on the Definitive Map and Statement but as they have been used freely by the public for many years, it is likely that they have acquired public rights on that basis. They are not permissive in the sense that the landowner has given express permission for their use, which permission could then be withdrawn at any time. Any attempt by the landowner to remove them would undoubtedly result in a formal application and/or evidence seeking formal recording. In any event, their existence and retention has been acknowledged in the Aykley Heads Master Planning process.

2.3 It is also of note that vehicular access to the Replacement Land is available from the unclassified Aykley Heads road which is an adopted highway. This is shown shaded grey on Appendix 4(ii) of my Proof of Evidence dated 2 February 2021.

2.4 Michael Hurlow (page 0-94 para 46) – one benefit of becoming registered common land will be that public access will be available and the public will know that they have that right. It is not suggested that public access is currently actively promoted to the replacement land.

2.5 Roger Cornwell (O-166 para 10 and Appendix RC2) – as per 2.2 and 2.3. In terms of distance to walk from the Release Land to the Replacement Land, I clearly state in para 2.7 of my Proof of Evidence that it is a walk of approx. 1.8 km, which ties in with Mr Cornwell’s statement in his appendix 2.

3. EXISTING PUBLIC RIGHT OF ACCESS

3.1 At paragraph 31 of the Objector’s Statement of Case it states:

“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.”

3.2 Land will be recorded in the OSNA on the basis of its characteristics and ability to be used as open space. That is not the same as stating that the land has statutory rights of public access. There are no recorded PROW over the Replacement Land. Any desire lines on the site merely indicate a public desire to use it, not the existence of a statutory right of access. In any event, if the public have been accessing the Replacement Land, they must have been climbing over the post and wire fencing and gates in order to do so. That is not use which would be as of right.