

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	20 March 2019
Title:	Application for deregistration of common land at Blackbushe Airport, in the parish of Yateley – Update Report
Report From:	Director of Culture, Communities and Business Services

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1) Summary of information:

- 1.1. Hampshire County Council is the Commons Registration Authority ('CRA') for the purpose of exercising functions under the Commons Act 2006. In 2016, an application was made under section 19 of the 2006 Act by the freeholder of Blackbushe Airport, to deregister common rights recorded on the section of Yateley Common (CL 24) on which the Airport stands. The application relates to an area of approximately 115 acres of registered common land.
- 1.2. Following the advertisement of the application and having had regard to the Regulations which govern the determination of s19 applications, in November 2017 the County Council presented a report to this Committee (included as Appendix 1) which confirmed that the application was to be submitted to the Planning Inspectorate for determination. The report was advisory, to give members of the Regulatory Committee information on the circumstances and processes involved. This report is intended to update Members further on the current state of the application, and the next steps.

2) Legal framework

2.1. Section 19 Commons Act 2006

Correction

(1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2).

(2) Those purposes are—

(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register....

2.2. Schedule 6 Commons Act 2006

(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies to land where—

(a) the land was provisionally registered as common land under section 4 of the 1965 Act;

(b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;

(c) the provisional registration became final; and

(d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.

2.3. Section 26 Commons Registration Regulations 2014

Responsibility for determining applications and proposals

A registration authority must refer to the Planning Inspectorate for determination by it:

(3) Those cases are where the registration authority has an interest in the outcome of the application or proposal such that there is unlikely to be confidence in the authority's ability impartially to determine it, or where a person having a legal interest in the land the subject of an application or proposal (or someone acting on behalf of such a person) has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application or proposal, and—

(a) the application or proposal is made under section 19(4) of the 2006 Act, and seeks—

(i) to add land to, or to remove land from, a register; or

(ii) to correct an error as to the quantification of rights of common in a register; or

(b) the application or proposal is made under any of paragraphs 4 to 9 of Schedule 2 to the 2006 Act.

3) Processing the Application

- 3.1. During the advertisement of the application, a large number of objections were received, including from two individuals who had a right of common over the application land. Considering their legal interest in the land, and the requirements of the 2014 Regulations, the application was subsequently referred to the Planning Inspectorate ('PINS') for determination. Having accepted the referral, PINS subsequently held that the application should be determined following a local public inquiry. This inquiry is due to run between 2-5 April 2019 at The Elvetham Hotel in Hartley Wintney.
- 3.2. Having referred the matter to PINS, the County Council, in its capacity as the CRA, had originally intended to play no active role in the inquiry. However, it has subsequently become clear that the outcome of this application will have significant implications for other areas of common land, both in Hampshire and across the country, as demonstrated by the level of interest from various stakeholders. Consequently, officers have sought the opinion of Counsel on the meaning of 'curtilage', around which this application (and the forthcoming inquiry) will be largely concerned. It is proposed that, pursuant to receiving this opinion, the County Council will submit a written representation in advance of the commencement of the inquiry, which it will also attend.
- 3.3. It should be stressed that the County Council retains a neutral stance in this matter, and officers simply wish to ensure that key legal points upon which the application hinges receive comprehensive consideration at the inquiry, particularly given the implications for other applications which the CRA is likely to receive in the future. Having taken careful account of the need for neutrality, and the point of law involved, the Head of Law and Governance is of the view that it is in the interests of the County Council to support the Inquiry, and Inspector, in the full examination of that issue. Consequently, counsel have been instructed and the Inspector approached with a view to making appropriate representation within those parameters.

4) Summary of report and next steps

- 4.1. That the application to deregister land at Blackbushe Airport has been referred to the Planning Inspectorate for determination, and the application is to be determined by the Inspectorate following a public inquiry (2-5 April 2019). Due to the high profile and potential impact of the application in its role as Commons Registration Authority, the County Council has sought a legal opinion on the matter of 'curtilage'. In that capacity, the County Council intends to submit a written representation to the inquiry and will attend (and may address) the inquiry following consideration of counsel's opinion and the directions of the Inspector. The CRA will adopt a neutral stance and will seek to assist the Inspector, and Inquiry, in a thorough consideration of the point of law involved.

Integral Appendix A

CORPORATE OR LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
	Date

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

File: 03/16 Blackbushe Airport

Countryside Access Team
Room 0.01
Castle Avenue
Winchester
SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

2. Impact on Crime and Disorder:

2.1.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report does not require impact assessments.