

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	15 November 2017
Title:	Application for deregistration of common land at Blackbushe Airport, in the parish of Yateley (Application No. 03/16)
Reference:	
Report From:	Director of Culture, Communities and Business Services

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

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. An application has been made under section 19 of that Act, by the freeholder of Blackbushe Airport, in the parish of Yateley, to deregister the common rights on the section of Yateley Common (CL 24) on which the Airport stands. The Registration Authority is required to grant the application if certain conditions are met. Regulations relating to the application suggest that it should be submitted to the Planning Inspectorate for determination, and therefore this report is advisory, to give members of the Regulatory Committee information on the circumstances and processes involved.

2) Legal framework for the information:

2.1. S.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 2 Section 22

NON-REGISTRATION OR MISTAKEN REGISTRATION UNDER THE 1965 ACT

Buildings registered as common land

6 (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.

(3) A commons registration authority may only remove land under subparagraph

(1) acting on—

(a) the application of any person made before such date as regulations may specify; or

(b) a proposal made and published by the authority before such date as regulations may specify.

3) Purpose of report:

3.1. The purpose of this report is to advise members of the Regulatory Committee that the application has been made, and to set out the process by which it will be determined, for their information.

4) Applicant: Blackbushe Airport Limited, represented by Burges Salmon LLP.

5) Landowners: Falcon PropCo 4 Limited, with title absolute under title numbers HP 623124 and HP707673. Blackbushe Airport has a five-year lease of the Land that is the subject of this application. This has been confirmed in a letter handed to the CRA on 4th July 2017 by a director of the company which owns the freehold, and also indicates that the lessee has the consent of the freeholder to make the application. Therefore, in accordance with advice to registration authorities issued by Defra (see page 7 at <https://www.gov.uk/guidance/commons-registration-authorities-correct-mistakes>), this application can be processed by the CRA.

6) Description of the land (please refer to the map attached to this report):

6.1. The land which is the subject of the application ('the Land') is shown edged red on the plan annexed to this report (**Appendix 1**). It consists of approximately

114.87 acres (46.49 hectares) of land, and is a wedge-shaped piece of land north of the road A30. The land is comprised in the registered title numbers set out in paragraph 5.

7) The application:

- 7.1 The application was received on 4th November, 2016. The application states that it is made under paragraph 6 of Schedule 2 to section 19 of the Commons Act, which covers the mistaken registration of buildings and land as common. The supporting statement to the application is appended as **Appendix 2** to this Report.
- 7.2 Accompanying this statement are three statutory declarations, made by Michael Lambert, Peter Brown and Cameron Ogden. These are large documents, unsuitable to be appended to this report, but they are available for viewing at the office of the Countryside Access Team.
- 7.3 The receipt of the application was recorded and a unique number allocated to it.

8) Processing the application:

- 8.1. The Regulations require the CRA to give notice to all interested parties, that is the representative of the landowner, the Planning Inspectorate ('PINs'), the local District Council, the local Member and all common rights holders. The notice was advertised on the County Council's notice portal, in the local press and three notices were put up on site, on the 24th August 2017. The notice period for receipt of representations relating to the application expired on 8th October 2017.
- 8.2. The notice attracted 112 expressions of objection to the extinguishment of common rights at Blackbushe Airport by the close of the 42-day period, and 6 expressions of support for the application. Two of those objections have been submitted by common right holders on CL24, and who therefore have a legal interest in this application.
- 8.3. The Commons Registration (England) Regulations 2014, (the 'Regulations') set out how such an application is to be processed by the CRA. Section 26 of these Regulations, entitled '*Responsibility for determining applications and proposals*' addresses the question of what body is to determine whether the application meets the necessary legal tests. These are that:
 - a. the land was provisionally registered as common land under section 4 of the 1965 Act (The Commons Registration Act 1965);
 - 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.
- 8.4. Section 26(2) states that '*in cases specified in paragraphs (3) and (4), a registration authority must refer to the Planning Inspectorate for determination by it – (a) any application made to the registration authority in accordance with these Regulations*'. The application has been made according to the

Regulations.

- 8.5. Section 26(3) further sets out details of those cases that must be referred to PINs for determination. These are firstly *'where the registration authority has an interest in the outcome of the application...such that there is unlikely to be confidence in the authority's ability impartially to determine it'*, and secondly *'where a person having a legal interest in the land the subject of an application...has made (and not subsequently withdrawn) representations amounting to an objection in respect of the application..., and –*
(a) the application...is made under section 19(4) of the 2006 Act [Commons Act 2006] 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;...

The other parts of section (3) and section (4) do not apply to this application.

- 8.6. Officers are advised that a person with a legal interest in the land covers the freeholder of the land, any leaseholder, trustee or mortgagee of the land, and those with rights of common over the land. Two of the objections come from a common right holders who therefore have a valid legal interest in the outcome, and this falls under the scope of section 26(3), as outlined in the previous paragraph. Therefore, under this provision, the County Council can refer the application to PINs for determination, and will do so at the expiration of the notice period on 8th October 2017. Members should be aware that it is possible that PINs may decide that this application does not meet the criteria of section 26, in which case the matter would be returned to this Committee for determination in the exercise of its quasi-judicial function.

9) Summary of report of information for the Committee:

- 9.1 That an application has been made to deregister land at Blackbushe Airport in the parish of Yateley, and that this application is referred to the Planning Inspectorate for determination in the first instance, on the grounds that it meets the requirements of section 26(3) of the 2014 Regulations. There is a possibility that the Planning Inspectorate may take a different view, and that the application would then come back to this Committee for determination.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decide whether or not the commons register should be amended, or refer it to the Planning Inspectorate for determination where there is an objection from a person with a legal interest in the outcome.	

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.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

DocumentLocation

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 but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to amend the register of town and village greens in the circumstances described in this report.