



Application Decision

Site visit on 15 August 2023

by Mark Yates BA(Hons) MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 10 November 2023

Application Ref: COM/3206697R

Yateley Common, Yateley, Hampshire

Register Unit: CL 24

Registration Authority: Hampshire County Council

- The application, dated 1 November 2016, is made under paragraph 6 of Schedule 2 to the Commons Act 2006 to remove land from the register of common land on the grounds specified in paragraph 6 (2) of Schedule 2 to the Act.
 - The application was made on behalf of Blackbushe Airport Limited.
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Decision

1. The application is granted in part for the two areas hatched blue on the plan attached to this decision.

Preliminary Matters

2. An application was made by Blackbushe Airport Limited ('BAL') in 2016 to deregister common land at Blackbushe Airport. It was asserted that the land in question lay within the curtilage of the terminal building and should be de-registered.
 3. A public inquiry was held on 2-5 April 2019 by Inspector Alan Beckett into the application. His decision of 12 June 2019 that all of the land within the application should be de-registered was challenged by way of Judicial Review. The inspector's decision was quashed by the High Court, and this judgment was upheld in the Court of Appeal. Leave to appeal further was refused by Order of the Supreme Court.
 4. As the inspector's decision was quashed, the original application now needs to be re-determined. For procedural fairness further submissions have been invited from the interested parties. No party requested a hearing, or second inquiry be held.
 5. I have re-determined the application on the basis of the written representations of the interested parties and my observations when I visited the site. Representations have been submitted on behalf of BAL, Hampshire County Council ('HCC'), the Open Spaces Society ('OSS') and Mr Tipton. I have also had access to the statements and documents submitted in relation to the 2019 public inquiry.
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Statutory Framework

6. I am required by paragraph 6 (2) of Schedule 2 to the Commons Act 2006 ('the 2006 Act') to have regard to the following in determining this application:-
 - a. whether the land was provisionally registered as common land under section 4 of the Commons Registration Act 1965 ('the 1965 Act');
 - b. that 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.

Main Issues

7. The submissions of the parties now focus on the extent to which the application should be approved. It is generally accepted that approval can be given for the de-registration of a lesser area of common land to that included in the application.

Reasons

8. HCC's position by reference to the statutory framework is that the footprints of the terminal building and cafe building located within the application land qualify for de-registration. This position is generally accepted by the OSS. Additionally, HCC accepts that an outdoor seating area to the rear of the cafe building can potentially be de-registered as it could form part of the curtilage of this building. BAL no longer asserts that a more extensive area of common land should be de-registered.
9. The land was provisionally registered on 16 May 1967 and the provisional registration became final on 26 March 1975. Therefore, the tests outlined in paragraph 6 (a) and (c) above are satisfied. The issue that remains to be determined is the extent to which the relevant land was covered by buildings on the date of the provisional registration and whether these buildings have continued to remain in place. In terms of the cafe, consideration will also need to be given to whether an outdoor seating area was within the curtilage of this building.
10. The evidence provided, most notably by Mr Gazzard for BAL, reveals that both buildings were in place at the time of the provisional registration. It is evident that the extent of the terminal building has changed over time. This building was erected in 1953 and subsequently extended in 1958. The part of the terminal building which was located on neighbouring land in the ownership of HCC was demolished in 1996. At the same time, the control tower and staircase at the western end of the building were removed and replaced with a new structure.
11. Mr Gazzard has referred to various images in support of his position that the footprint of the terminal building that existed in 1967, and which has continued to exist, corresponds to a total area of approximately 375.6m². The extent of the terminal building shown on the attached plan reflects the alleged footprint of the building from the time of the provisional registration through to the present day.
12. Having looked at the evidence and submissions I accept on balance that the terminal building was in existence at the time of the provisional registration and that

- this building has remained in place albeit with some modifications to the structure itself in 1996. This means the other relevant tests (paragraph 6 (b) and (d) above) are satisfied in terms of this building. The section removed in 1996 from HCC's land is not part of the application.
13. The evidence reveals that the present cafe building was originally built in 1962/63 and was used as a clubhouse before becoming a cafe in around 1985. Again, images have been provided which show the existence of the original building. Mr Gazzard estimates that the footprint of this building in 1967 equated to approximately 121.9m². Whilst the original building has been subsequently extended, it is only the part that houses the current cafe which is considered to meet the statutory criteria. I accept on balance that the cafe building meets the tests outlined above. Therefore, the remaining issue to be determined is whether an area of land to the rear of the cafe forms part of the curtilage of this building by reference to the statutory tests.
 14. The land now claimed by BAL to constitute the curtilage of the building equates to a rectangular area broadly adjacent to the northern side of the cafe. I noted during the site visit that there was some additional land used by customers of the cafe, but this is not alleged to be within the curtilage of the building. In order to satisfy the statutory criteria, the land needs to have been within the curtilage of the building at the time of the provisional registration and this must have continued to be the case.
 15. I accept that the land could be deemed at the current time to be within the curtilage of the cafe given its proximity and function. It is adjacent to the building and facilitates the operation of the cafe. Additionally, the seating area is separate to other parts of the airport. It was evident from my visit that the outdoor seating area is extensively used by customers.
 16. It is apparent that there has been an outside area that could potentially be deemed to constitute the curtilage of this building from when it was used as a clubhouse. This is most evident from a photograph from 1964 which shows people gathered outside the building. However, the photograph is supportive of there previously being a much narrower area of land between the building and a fence. This is also evident on an enlarged Ordnance Survey map for the period 1973-76 (survey date unknown). Whilst I recognise that the photograph shows some people on the other side of the fence, I consider it more likely that the fence served to demark the original curtilage of the building from the operational part of the airport.
 17. The relevant statutory requirement is that the land was within the curtilage of the building on the date of the provisional registration. It cannot be determined from the evidence that this test has been satisfied in terms of the outside seating area of the cafe. The 1964 photograph reveals that a few years before the land was provisionally registered there was a much lesser enclosed area adjacent to this building than is presently the case. The existence of this smaller area of land is supported by the relevant Ordnance Survey map.
 18. Overall, I am not satisfied on balance that the land claimed to form the curtilage of the cafe existed in this form at the time of the provisional registration. No request has been made to de-register a smaller area of land adjacent to the cafe and the dimensions of the land evident on the 1964 photograph cannot be determined from the evidence. Therefore, I do not find that the relevant test has been satisfied in terms of the outside seating area of the cafe.

Other Matters

19. Mr Tipping has provided background information regarding the common land and raises a number of matters, including the potential future use of the land, other provisions in the 2006 Act, climate change and environmental concerns. However, these matters are not relevant to the statutory tests that I need to apply which are set out in paragraph 6 above.
20. I also find there to be no merit in the assertions made in relation to the application of the 2006 Act in this case. Common land can be removed from the register if it satisfies the relevant statutory criteria. I have no reason to believe that the application by BAL is invalid.

Conclusions

21. Having regard to the relevant matters addressed above, I conclude on balance that the land hatched blue on the attached plan should be deregistered.

Mark Yates

Inspector

