



Westfield Common Residents' Association
8 Moor Lane
Woking
Surrey GU22 9QY



24th November 2011

The Planning Inspectorate
Room 4/05
Kite Wing
Temple Quay House
Bristol
BS1 6PN

Dear Sir

Common Act 2006 – Section 16; Proposed Exchange of Common Land at Westfield Common (CL121 Woking) reference COM299

With reference to the application dated 25 October 2011 by Woking Borough Council to deregister an area of Westfield Common and exchange this with replacement land, please note this letter of objection submitted on behalf of the membership of the Westfield Common Residents' Association ('WCRA').

Our concerns are outlined below and I look forward to discussing these points in detail at the Public Inquiry.

I request that receipt of this objection is acknowledged.

Yours faithfully

Bill Corney, Chairman, Westfield Common Residents' Association

Objections & Evidence

Concerns regarding the 'legitimacy' of the proposed replacement land

- 1 The replacement land offered comprises:
 - "Replacement land North" – 394 square metres of 'amenity land' to the front of 1-11 Willowbank, Woking, Surrey, GU22 9PD and land immediately to the east of the pond on Westfield Common.
 - "Replacement land West" – 220 square metres of amenity land forming a natural extension of the common to the south of Westfield Way and to the West of the new proposed access road.
 - "Replacement land South" - 560 square metres of scrub land to the front of a derelict house known as "Oaklands", Balfour Avenue, Woking, GU22 9NJ and land immediately to the south of the same.
- 2 We have some concerns regarding the legitimacy of the inclusion of replacement land North and Replacement land West as suitable replacement land outlined below:

Replacement Land North

- 3 Under the Commons Act 1899, a scheme for the management of the Common was established 9th December 1924 by the Urban District Council of Woking (the predecessor to Woking Borough Council, formed in 1974). The scheme for management established byelaws for the management of a parcel of miscellaneous Common land comprising Smarts Heath, Prey Heath and Westfield Common (see ref. 1).
- 4 Under the Commons Registration Act 1965, the land was registered as unit no CL121. The official register states that the registration relates to land registry title SY454321.
- 5 Title SY454321 relates to land at Smart's Heath, Prey Heath and Westfield Common which is registered as freehold belonging to Woking Borough Council.
- 6 We are surprised by the inclusion of this bit of land in exchange as the land in question was already offered and accepted in exchange for Common Land required to produce the access road into the Willowbank estate that resulted in a loss of registered common land to facilitate the development.
- 7 The developer of the Willowbank Housing estate (Simmons Country Homes) and Woking Council entered into a legal agreement to exchange this land and also carry-out improvement works to the pond on the common to the west of the Willow Bank terrace that faces west onto Westfield Common (see ref 2). This decision was validated and approved by the Planning Inspectorate.
- 8 Following exchange Woking Borough Council made an application to the land registry to have the exchanged land added to title SY454321 (the title relating to common lands as Smart' Heath, Prey Heath and Westfield Common as managed under the scheme established in 1924. This request was not processed by the Land Registry for administrative reasons.
- 9 The land however (for whatever reasons) was not added to the official commons register (CL121). The reasons are unclear why this did not happen. Legally WBC entered into an agreement to exchange, approved by the Planning Inspectorate and subsequently attempted to add the land to its existing title (SY454321).
- 10 Note 7 of 'Notes of completing an application to deregister or deregister and exchange common land issued by the Planning Inspectorate (see ref. 3) states that 'the replacement land must not already be registered as common land or as a town or village green (see section 16(5)(b)), or be subject to a statutory right of access'. I respectfully suggest that this land should be on the register and is therefore ineligible for exchange in line with the guidance note.

- 11 Regardless of this point, the land in question is already public access land, is indistinguishable from the rest of the common, has well developed tracks / paths that merge seamlessly with others across the common and has no clear boundary or byelaws indicating that Woking Borough Council consider this to be separate from the rest of the common.
- 12 Woking Borough Council might not recognise the existing tracks as a formal right of way but the boundary fence to the land from the Willowbank terrace has been dropped to allow ease of access to the track across this land which merges seamlessly with a track across the rest of the common (see below):



Figure 1 - Path from Willowbank to Westfield Common

Replacement Land West

- 13 This is a new inclusion by Woking Borough Council and was not included in the informal consultation carried out in December 2010 / January 2011 so this is our first opportunity to comment upon it.
- 14 According to the land registry this land is part of title SY454321. A scanned extract of the title plan for SY454321 is shown below:

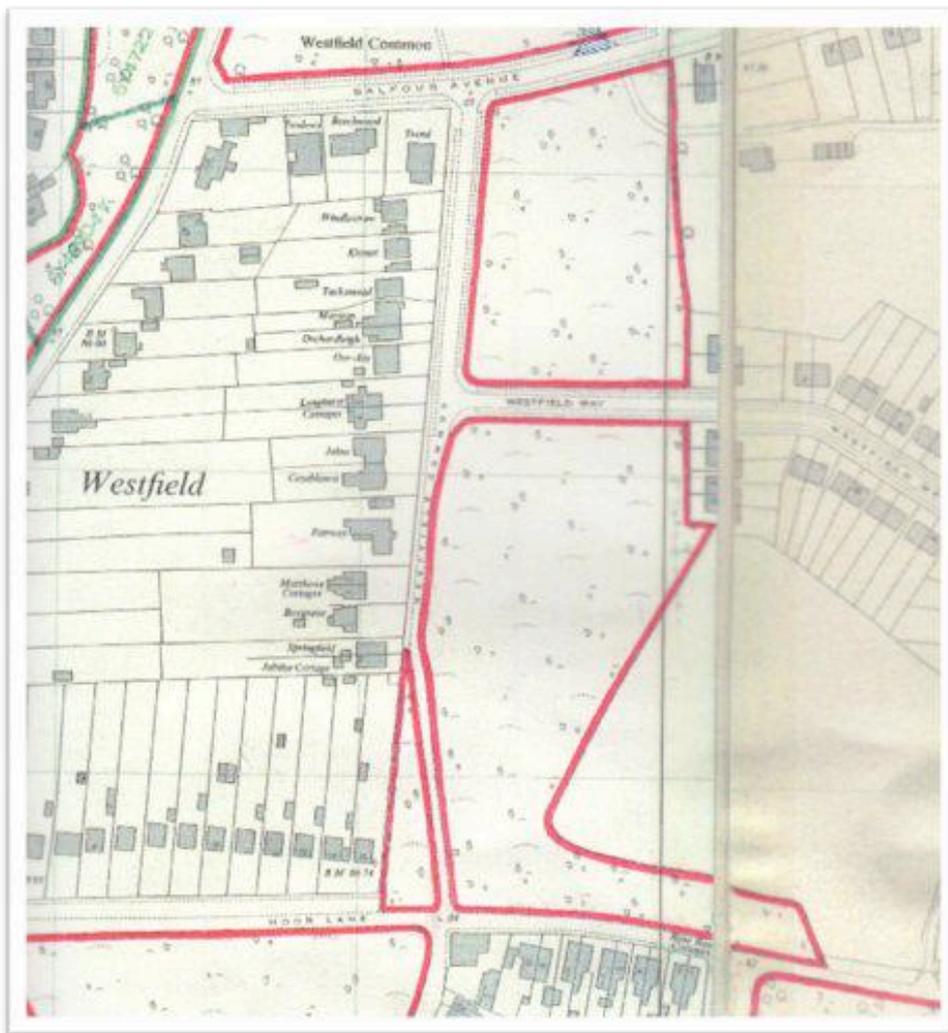


Figure 2 - Title Map SY454321

- 15 From this map it can be observed that there is no distinct boundary equating to replacement land west. The map shows in red the border of the title identified as Westfield Common on the map.
- 16 The western boundary of this land appears to equate to the original property boundary of Westfield Farm, which was developed as a Housing Scheme (the Westfield Farm Estate) under the provisions of the Housing Act, 1925 (see below).

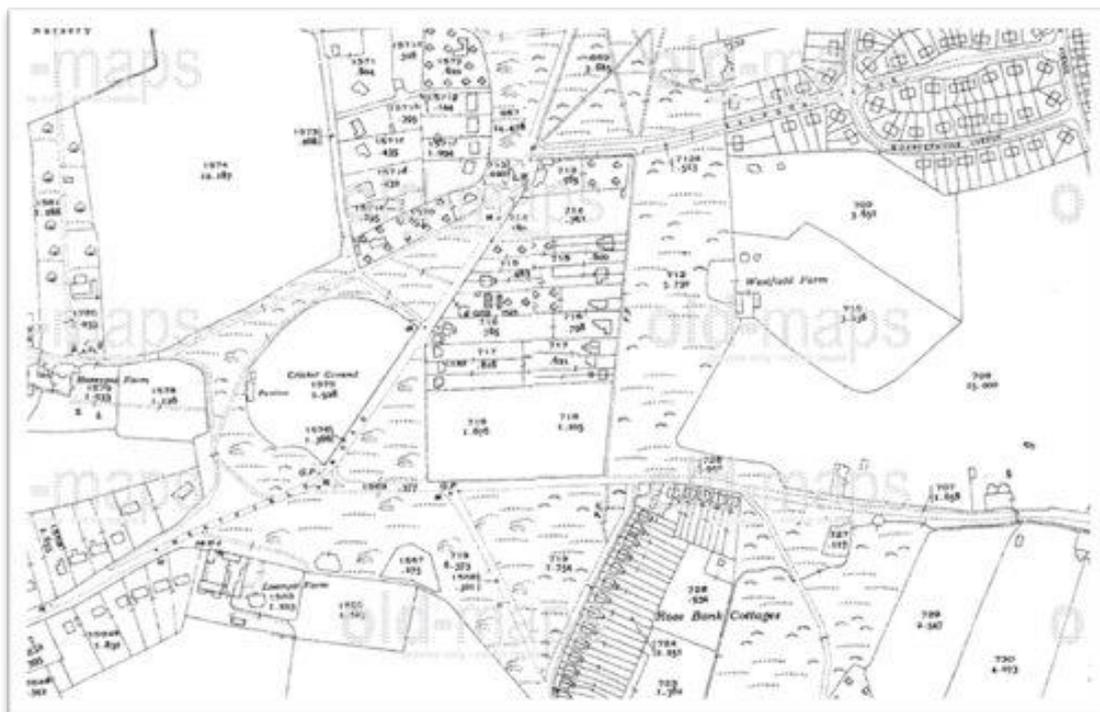


Figure 3 - Extract of Ordinance Survey Map (published 1935 to 1936)

- 17 As part of this Housing development a road now called Westfield Way was constructed over Westfield Common. Indeed the northern boundary of the road follows the northern edge of the original farm boundary (labelled Westfield Farm).
- 18 Subsequent OS maps produced for this area all document the land as Westfield Common and include no reference to any form of access to the houses off Westfield Way (nos 42 and 43) aka 'the informal muddy / gravel road' (see below). This OS map matches the land registry title.

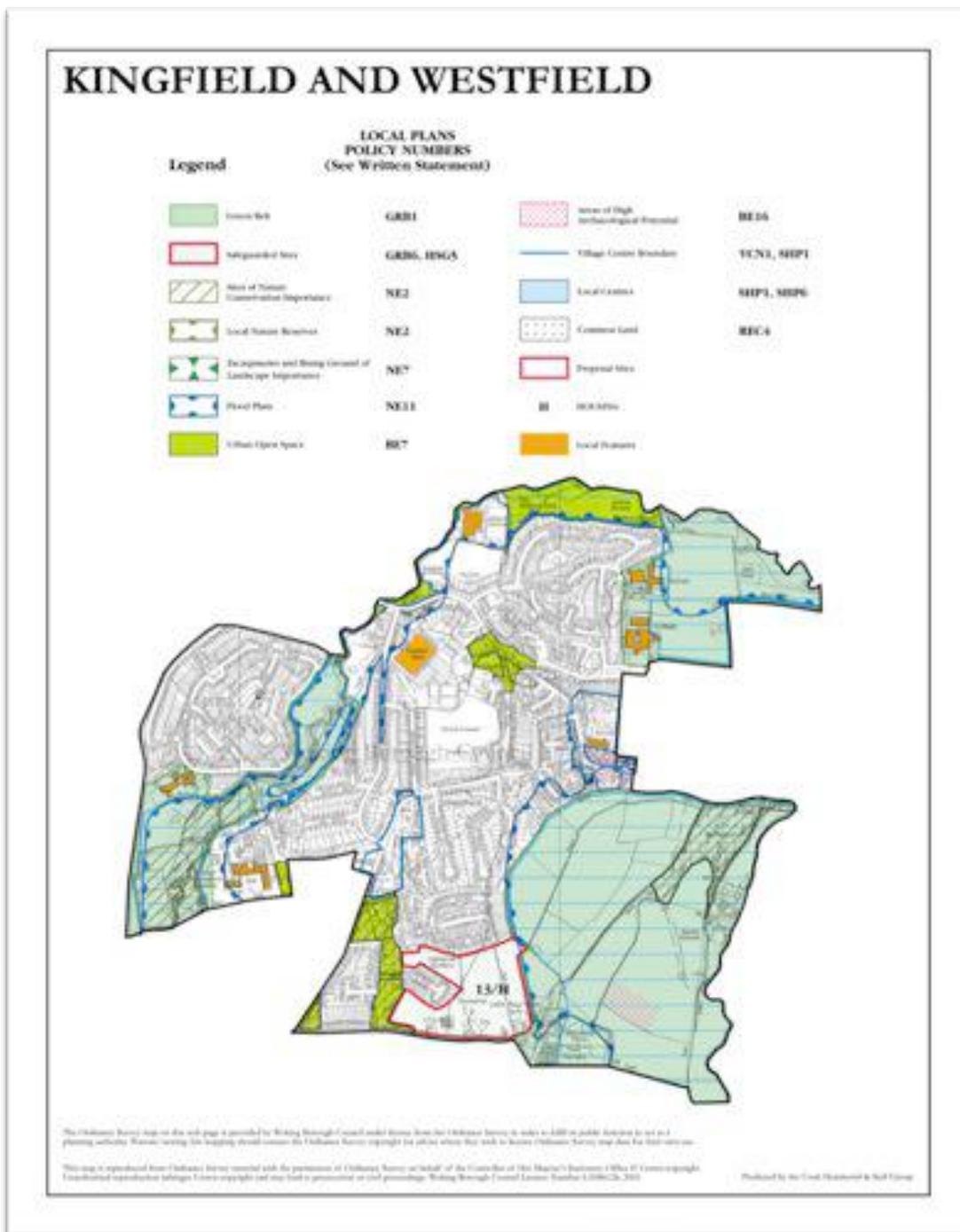


Figure 4 - Extract of OS map (1968 - 1971)

- 19 We hold the view that construction of Westfield Way involved the net loss of Common Land (to construct the road access) and that the evidence suggests that this piece of land was incorporated into Westfield Common following the completion of this development.
- 20 Until relatively recently this land (and the adjoining land selected for proposed access road that adjoins the proposed exchange land) was not a 'muddy informal access' to the properties but was in fact land indistinguishable from the rest of the Common.
- 21 The land was inaccessible to vehicles as it had wooden bollards on its border with Westfield Way to prevent vehicle / road access.
- 22 We understand from talking to local residents that the bollards were temporarily removed to allow access to one of the properties to allow access by Ambulances to one of the elderly residents living in the adjacent properties who had mobility issues and required frequent ferrying to and from hospital / medical facilities.
- 23 Woking Borough Council stated in their application to the Planning Inspectorate that they have tried to restore the bollards. They have stated that the residents have "objected to their loss of informal access" and that the formalisation of road access will improve both the visual aspect of the land and prevent fly tipping.
- 24 With all due respect, Woking Borough Council has pre-existing powers to prevent unlawful access and address fly tipping (a criminal offence) and has not tackled this.
- 25 It does not follow that the only way to address this is by building an access road. If anything it could be argued that an improved access road will just provide deeper access to the common for more flytipping. With respect to existing fly tipping, it has been the litter picking efforts of local residents and WCRA that have resulted in the removal of fly tipping materials not the vigilance and active management of Woking Borough Council.
- 26 Several well formed old paths / tracks cross this land and merge seamlessly with tracks across the rest of the southern part of Westfield Common. Residents and locals have had unimpeded

access and were unaware of any land distinction. There is no border between this bit of land and the rest of Westfield Common. The land is described by Woking Council as 'forming a natural extension' of Westfield Common and indeed it is. It is indistinguishable and residents have long exercise their rights to roam across it.

- 27 In the planning inspectorate guidance notes, note 8 states "We would not expect to see the stock of public access land diminished by an offer of replacement land that was already subject to some form of public access".
- 28 We hold the view that this land is already subject to some form of public access both in practise by rights exercised by local residents over many years and that the replacement land in question is recognised as public open space by Woking Borough Council.
- 29 Attached below is the local plan map (Woking Borough Local Plan: Adopted August 1999 for Kingfield and Westfield) produced by Woking Borough Council all the replacement land is identified as: Urban Open Space (BE7); Sites of Nature Conservation Importance (NE2); and Common Land (REC4). It is clear from this designation that the Council regard the replacement land as public open space by their own definitions.



- 30 Putting aside our view that the land is already common land, the planning inspectorate guidance **does** allow for what it defines as non-statutory public access land to be registered as common land during an exchange where it is under threat of development and registration is justified to protect and provide statutory public access. We examined whether this is justification for its inclusion.
- 31 Both bits of land are unlikely to be under threat from development given their small size, proximity to registered common land and proximity to roads and housing. The land in question is offered a degree of protection due to local planning policies. The applicable planning policies shown in brackets above state the following:

- NE2 - local nature reserves and sites of nature Conservation importance: Development will not normally be permitted within or affecting sites of nature conservation importance and local nature reserves as shown on the proposals map unless it can be demonstrated that it would not directly or indirectly materially harm the nature conservation value of the site. Where development is permitted the council will attach suitable conditions and/or seek planning obligations to ensure no material harm occurs. When considering proposals within or affecting these sites the council will take account of any associated measures to enhance, manage or protect these areas.
 - BE7 - Protection of urban open space: The council will not permit the loss of urban open land which makes a positive contribution to the character and visual amenity of the area, apart from: (i) limited construction of buildings for community or recreational use ancillary to the open space; or (ii) educational use where a need is demonstrated. (iii) where development would not compromise the character of the site.
 - REC4 - Loss of informal recreational open space: Development which would result in the loss of, or reduce public access to, land used for informal recreation will not be permitted unless. (i) there is adequate alternative informal recreational land nearby, and (ii) the recreational use of the land is limited.
- 32 Registration is therefore not justified to protect it as it is unlikely to be under threat as described in the guidance.

Replacement Land South

- 33 The replacement land South is exactly the same as offered in the previously refused application for exchange (COM152). No legal agreement has been put in place to manage the common or this land.

Summary of Proposed Land Exchange

- 34 Replacement land north is not eligible for land exchange having been accepted in exchange for the development of the Willowbank housing estate. We believe this should already have been included in register CL121.
- 35 Replacement land west is land over which there is already public access and it therefore does not constitute a reasonable exchange as it does not increase the stock of public access land.
- 36 The application for exchange therefore consists of the replacement land south which is exactly the same as that rejected by the planning inspectorate in the previous application (COM152) and we would refer you to our objection letter raised in that regard.
- 37 The definitive common map for Westfield Common (CL121) held on the Common Land register is shown below:

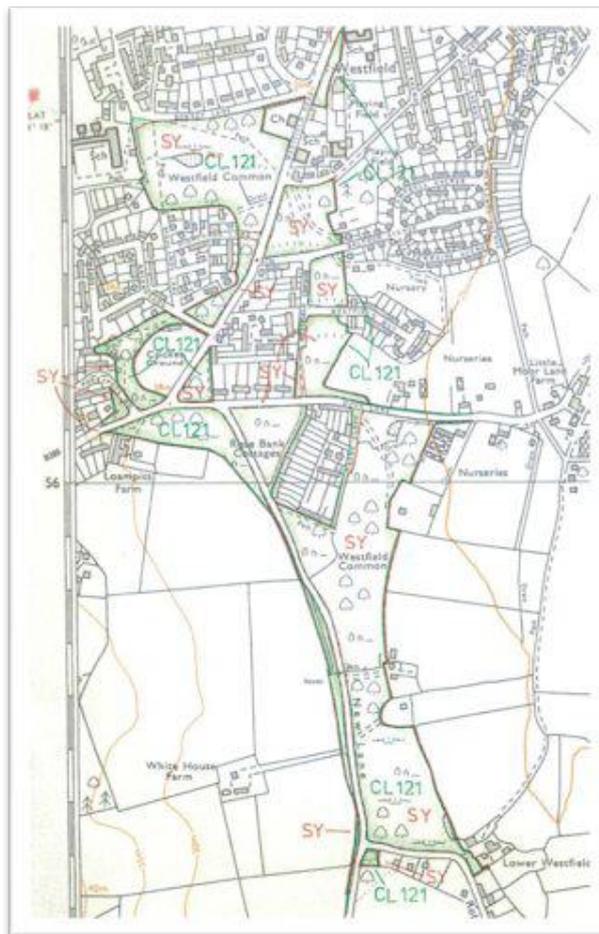


Figure 5 - Extract of definitive map (CL121)

- 38 This map is not accurate and up to date, for example, it does not include the Willowbank estate that was built nor does it include the common land exchanges undertaken to build the Willow Bank Housing estate. We hold the view that on the balance of evidence that the parcel of exchange land described, as Replacement Land North and Replacement Land West should already have been added to the official common land register.
- 39 A great deal of cynicism has been expressed by WCRA members that can be summarised in the statement that the proposed exchange is just an accounting exercise designed to create the illusion that much more is being offered than previously.
- 40 It is very disappointing for all concerned that Woking Borough Council and Surrey County Council who are the joint applicants for this proposed exchange could not come up with a better, more elegant scheme that improves the stock of common land, reduces fragmentation and provides a viable consolidated area for nature conservation.

Order of Exchange Matters

- 41 Before making an order of exchange, the Secretary of State must have regard to:
- 42 (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it); (b) the interests of the neighbourhood; (c) the public interest; (d) any other matter considered to be relevant.

- 43 "Public interest" includes the public interest in nature conservation; landscape conservation; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

Interest of the Neighbourhood

- 44 The Westfield Common Residents' Association operational area as defined in our constitution encompasses the whole of Westfield Common. Membership of our association is by household subscription. 95 households are registered as members and we consider our submission representative of the views of local residents.
- 45 The proposed change to the common, which is being made to facilitate a proposed Housing development, are subject of deep concerns within the local area. 191 individuals submitted objections in response to the informal consultation carried out by Woking Borough Council in December 2010 and extended into January 2011 regarding this proposed Common Land exchange. Woking Borough Council stated that 176 gave no reason for their objections. They are referring to a standard letter produced by residents and asking them to enter into a dialogue with WCRA and take account of the objection letter submitted by WCRA.
- 46 Woking Borough Council chose not to reply to the objections or enter into dialogue to determine alternative schemes following this unprecedented level of objection.
- 47 We have no confidence at all that the stated common land boundary will be anything like that outlined in the consultation paper as the form of the proposed development is contrary to the local planning policy (HSG5) and the form of the actual boundary may be substantively different as the detailed planning application has not yet been submitted.
- 48 The developer is free to submit an alternative treatment whose form is not being brought forward to the inspector for consideration in the manner of the common land swap.

The Public Interest

Nature Conservation

- 49 In conjunction with Surrey Wildlife Trust, WCRA together with local residents have organised fly tipping removal and carried out a number of litter removal events on the Common. In particular we have carried out works to mitigate and improve the condition of the replacement land. We would respectfully suggest that the ecological value of this land proposed for release has therefore improved since it was last inspected and this should be considered when evaluating its value.
- 50 Surrey Wildlife Trust (SWT) provided consultancy services to Woking Borough Council to a series of recommendations for improving the nature conservation of value of the common immediately in the vicinity of the proposed release and exchange land. This is referred to by Woking Borough Council as the management plan offered in part to mitigate the loss of Wet Woodland SNCI. SWT are not being appointed as the implementers of this plan nor is it clear how many of their recommendations will be fully adopted.
- 51 The previous planning inspector decision (COM152) stated that in "the absence of a pre-existing legal agreement [she] could not be satisfied that public interest in relation to nature conservation will be met in the provision of replacement land of equal value without a legally binding mitigation and improvement plan". We respectfully submit that nothing has changed in this regard.
- 52 No agency for the management for the Common has been appointed by Woking Borough Council and they have previously stated that such a legal agreement will not be considered until the planning application for the proposed housing site is submitted.

- 53 Surrey Wildlife Trust advocated that a continuous replacement area should be brought forward to help improve the SNCI and biodiversity. The replacement land proposed is highly fragmented. The replacement land North and West has no potential as a replacement for the Wet Woodland habitat that will be lost in the release land.
- 54 In our previous representations regarding COM152, we were concerned that mitigation of replacement land South would be more for the benefit of the adjacent development than the rest of the common as a whole
- 55 In the informal consultation (ref 6) carried out by Woking Borough Council they included illustrations from both sets of potential developers showing the transition boundary transition from Replacement Land South and the proposed housing development. The illustration shows a three-storey apartment block within a short distance from the border. (NB These properties are not in keeping with the form of houses in the surrounding area and would have an overbearing presence on the common in this vicinity).
- 56 A bollarded border between replacement land South and the planned housing development has been proposed. We note that Woking Borough Council have stated that they have problems enforcing existing bollarding.
- 57 We would request that the Planning Inspectors examines the illustrations and considers whether this is sufficient demarcation to prevent the proposed development from having an overbearing presence leading to annexation of this land for the benefit of the proposed new development in practical reality.

Protection of the public rights of access to any area of land and the right to air and exercise

- 58 The only observation in this regard are that the public already enjoys such rights on the land identified as replacement land north and replacement land west.

The protection of archaeological remains and features of historic interest

- 59 It is extremely curious that Woking Borough Council does not attach any particular importance to Westfield Common as a historic feature of Woking. Westfield Common is contemporaneous with the historic medieval manors and village of Old Woking. The existence of Westfield Common was first recorded in writing in 1546 thus it predates the existence of modern Woking by hundreds of years. By way of illustration we enclose a copy of John Remnant map of 1719, which is held at the Surrey History Centre. The boundaries of Westfield Common can be observed clearly.

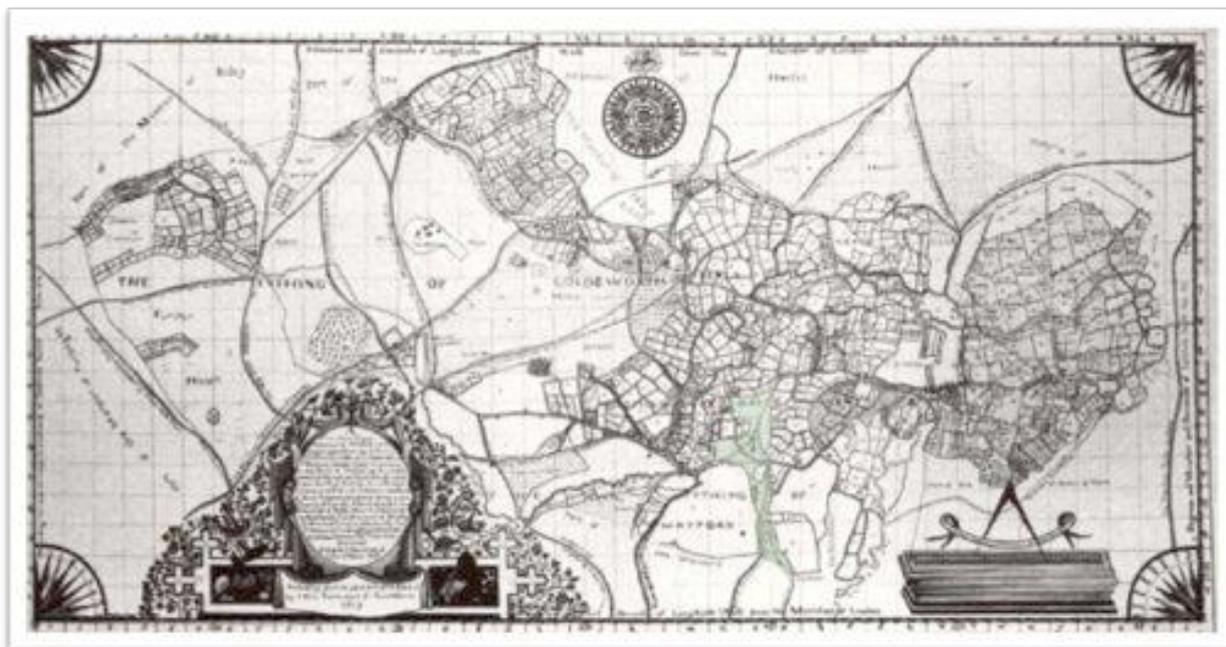


Figure 6 – John Remnant map, 1719

- 60 It would be beneficial for posterity that the drainage ditches which are a historical feature marking the original field and land boundaries are preserved as much as possible particularly with reference to replacement land south and west.
- 61 The same drainage ditches have already be noted by SWT as being important for the migration of aquatic / amphibian species (and water management).

Other Relevant Matters

- 62 This application for land swap is made to facilitate access to a proposed housing development referred locally as the “Oaklands / Moor Lane” development. The Outline Application for this development (Woking Borough Council reference 2006/0399) was granted 21 April 2006 with matters reserved. However the permission expired on 23 Jun 2011. This land swap is therefore made to satisfy a requirement to demonstrate the delivery of an access route to a proposed housing development which has no form of valid planning permission.
- 63 The final form of the proposed development is not in the public domain as a competitive tendering process is still going on. As such there is no guarantee that this will be the final road access proposed and the developer awarded the contract to build the housing development may indeed bring forward additional access requirements requiring additional common land.
- 64 We are aware from previous consultation events hosted by the potential developers organised by Woking Borough Council that there is likely to be access to ‘for sale housing’ from the southern end of the proposed housing development from Moor Lane. The tenants of houses in this vicinity have already been served notice of eviction in this regard.
- 65 This would entail creating / enlarging road accessed and would remove common land but at uncertain levels (as the plan detail has not yet been shared in the public domain). These changes may not be sufficient to require a consideration of exchange of land on their own but we would advocate packaging this with the other changes being proposed so that overall impact on the common could be considered.
- 66 We therefore hold the view that no common land exchange can be evaluated fully until the full quantum of development is understood and known.

- 67 We have argued this before and Woking Borough Council in defence stated at the public enquiry for COM152, that 'if the planning application for residential development had been brought forward prior to a common land application a similar charge could have been made against them'.
- 68 We don't see the relevance of this point to the determination of this application'. Our view is pragmatic, only when details of the full planning application for the development are available, can the overall impact of the development upon the Common land be evaluated. We would argue that this would be the appropriate time to consider a common land exchange.
- 69 Westfield Common has been subject to significant erosion over time.
- 70 Every historical housing development adjacent to the land involved another slice of common land to be removed. Woking Borough Council has constructed a childrens' play area on the Common north of Balfour Avenue without section 38 consent. Woking Borough Council was planning to build similar on the Common near Bonsey Lane and had to be reminded that section 38 consent was required. Woking Borough Council has enforcement issues with unlawful parking on the Common adjacent to Mayford Grange retirement homes. Road widening on Balfour Road to facilitate access to the new development will involve the loss of common / amenity land adjacent to the common. The common is unmanaged as a wet woodland habitat and flytipping has become routine. The new homes bonuses from the proposed scheme have already been allocated to improvement elsewhere in the Borough and not the area of Westfield. In short we feel that the common and the local residents are under siege.
- 71 The housing development that is proposed should be a catalyst for improving the common – both for the public and for nature conservation. The schemes proposed by Woking Borough Council are sadly lacking in this regard and as a consequence there is great distrust in the scheme.

In summary we cannot see any merits in this application as fails to provide any additional benefit to the Community nor has any thing material been addressed regarding previously refused application COM152.

We therefore respectfully request you to turn down this fresh application.

References

- Ref 1. Woking UDC (9th December 1924) "Scheme made by the Urban District Council of Woking for the regulation and management of Smarts Heath, Pray (otherwise "Prey" Heath ad Westfield Common, Woking.", Deposit reference 6198/3/Box 3, Surrey History Centre.
- Ref 2. Comprises:
- HM Land Registry (20 April 1993) Land Exchange Agreement, Land Registry Act 1925-1986, Transfer of Part between Lacey Simmons Ltd and Woking Borough Council.
 - Simmons Country Homes (12 March 1993), Letter to Chief Planning Officer Woking Borough Council confirming discharge of section 38 exchange.
 - Woking Borough Council, Deposited papers for PLAN 92/0798.
 - Woking Borough Council, Deposited papers for PLAN 92/0190. "Amendment to plan 85/0711"
 - Woking Borough Council, Deposited papers for PLAN 90/0966.
 - Woking Borough Council, Deposited papers for PLAN 87/0670.
 - Woking Borough Council, Deposited papers for PLAN 85/0711.
- Ref 3. The Planning Inspectorate, "Notes of completing an application to deregister or deregister and exchange common land issued by the Planning Inspectorate", Common Land Guidance Sheet, www.planningportal.gov.uk.
- Ref 4. Heidi Cruickshank (03rd November 2010), "Application Decision, Westfield Common, Woking", COM152.
- Ref 5. Woking Borough Council (25th October 2011), "Application to deregister or to deregister and exchange common land or town or village greens: Common Act 2006 – Section 16"
- Ref 6. Woking Borough Council (21st December 2011), "Consultation of Proposed Exchange of Common Land at Westfield Common".