

Commons Act 2006 Section 16

Application by The Therfield Regulation Trust

Deregistration and exchange of land at Royston, Hertfordshire

Application reference: COM/3170236

Date of Inquiry: 30 January 2018

STATEMENT OF CASE FOR THE APPLICANT

1. INTRODUCTION

- 1.1 This is the statement of case on behalf of the Conservators of Therfield Heath and Greens (“the Conservators”), managing trustees of The Therfield Regulation Trust, charity number 277881, (“the Trust”), in relation to the application (“the Application”) made by them under section 16 of the Commons Act 2006 (**pages B1 – B21 of the Applicant’s bundle**). The Application is for the release of 0.67 hectares of land off Sun Hill Royston (“the Release Land”) from registration as common land and for the registration of 0.67 hectares of land (“the Replacement Land”) to the west of Therfield Road Royston as common land.
- 1.2 The Release land is shown edged in red on the plan at **page B20 of the Applicant’s bundle**. The Replacement Land is shown edged in green on the same plan.
- 1.3 The reason for the Application is to enable the Release Land to be sold with the benefit of planning permission. The intention of the Applicant is to apply the money realised from the sale of the Release Land towards the management of Therfield Heath and the maintenance and improvement of the facilities on the Heath.
- 1.4 Planning permission (“The Planning Permission”) (**pages 39 - 44 of the Applicant’s bundle**) was granted by North Hertfordshire District Council for the benefit of the Release Land on 29th May 2015, (Reference Number 14/0234/1). This gave permission for four detached houses and two pairs of semi-detached houses, as shown on the plan at **page 45 of the Applicant’s bundle**. Before the Planning Permission can be implemented the Release Land will need to be deregistered as Common Land.

2. THE REGULATION AND THE TRUST POWER AND DUTIES

- 2.1 The Conservators were first introduced under the Commons Regulation (Therfield) Provisional Order Confirmation Act 1888 (“the Act”) (**pages 5 - 9 of the Applicant’s bundle**), and confirmed in the Award made under the Act in 1893 (“the Award”) (**pages 10 - 17 of the Applicant’s bundle**). The Act was slightly amended in 1990, but not in a manner which impacts on the issues before this inquiry. A slightly corrected version of the Award was issued in 1911 and a transcript (which is all that can be found) is appended at **pages 18 – 20 of the Applicant’s bundle**.
- 2.2 The Award provided for the Conservators to manage the Heath and directed that the Heath be maintained for the benefit of the people of Royston and Therfield, for them to have somewhere to play sports and enjoy the open air. 791 stints were also awarded (one stint being a right to graze four sheep or eight lambs).
- 2.3 The Trust was established by a trust deed dated 1 May 1979 (“the Trust Deed”) (**pages 1 -4 of the Applicant’s bundle**) in order to hold Therfield Heath and Greens. The land was conveyed to the Trustees on the same day, to be held on the terms of the Trust with no additional covenants imposed. The Trust is a charitable trust and is registered with the Charity Commission.
- 2.4 The Trust Deed appointed the Conservators serving at that time as the first property-holding trustees (“the Trustees”), to hold the Heath for the charitable purposes of public access to the Heath and public recreation on the Heath as set out in the Act, and other analogous charitable purposes.
- 2.5 The Trust Deed directed that the management and regulation of the Trust property and all related matters shall remain with the Conservators, meaning the Conservators are the charity trustees in law, or “managing” trustees of the Trust. Effectively, therefore as a matter of law, the Conservators are both property title holders and managing trustees.
- 2.6 The management of the Heath therefore continues to rest with the Conservators, who are appointed in accordance with the provisions of the Award.

- 2.7 The powers of the Conservators are mainly to be found in the Trust Deed or the Award, which also describes the manner in which the Conservators may fund their activities. The Award allows them to improve and add to the beauty of the Heath and it allows them to employ people. The Conservators, however, also benefit from powers in statute including under the Trustees Acts, Charities Acts and the Trustees of Land and Appointment of Trustees Act 1996.
- 2.8 The Trust Deed states that in the case of any inconsistency between the Award and the Trust Deed the Award is to take precedence.
- 2.9 Under the Award the Conservators have the power to apply money which they obtain from rents, donations and by other means towards the maintenance and improvement of the Heath. They also have the power to make byelaws and these are at **pages 26 - 29 of the Applicant's bundle**.
- 2.10 There are no express powers in the Award or 1979 Trust Deed to dispose of property, but, in common with other unincorporated charities, the Conservators have such powers in statute, under section 6 of the Trusts of Land and Appointment of Trustees Act 1996 (**pages 30 - 31 of the Applicant's bundle**). The Conservators may rely on the statutory power to authorise the sale of the Release Land. The position in relation to this has been confirmed by the Charity Commission in a letter to Sir Oliver Heald QC MP dated 25 September 2014, which is at **pages 24 - 25 of the Applicant's bundle**. They must comply with the requirements at sections 117-121 of the Charities Act 2011 in making the disposal, but that is not in general a bar to the sale of land, but those provisions set out the requirements by which sales and disposals should be undertaken. The relevant provisions are **pages 32 - 38 of the Applicant's bundle**.
- 2.11 Some objectors have suggested that the 1888 Act prevents the exchange of land which is proposed in this case. The Act makes reference in clause 2 to a restriction on the sale or exchange of portions of the Heath adjoining the town of Royston, but this has no continuing application, it related to the arrangements at the time of the Award and allocation and the Act specifies that "The Award of regulationwhen sealed.... shall be conclusive evidence that the provisions of this section have been duly complied with." The Award was sealed in 1893.

- 2.12 The Conservators are the managing trustees of the Trust under the Trust Deed and in law meaning that election as a Conservator results in automatic appointment as a managing trustee and there is no effective separation of the roles. For clarity, the Conservators occupy three different roles as follows:
- statutory managers, elected under the 1888 Act and associated documents;
 - managing trustees of the Trust, by virtue of their position as Conservators and the operation of law (the Charities Act)
 - Property-holding Trustees, following appointment in accordance with the 1979 trust deed.
- 2.13 The names of the Conservators from time to time, as they are the Charity's Managing Trustees, are published on the Charity Commission's website and within the annual returns of the Trust.
- 2.14 From the above it can be seen that the Conservators have the power to dispose of the Release Land. As managing trustees they must apply any money which is received from doing so towards the Trust's objects, namely the maintenance of the Heath and the provision of public access to the Heath. They also have the power to appoint employees, which could include a warden.
- 2.15 The intention of the Conservators, in applying for the Planning Permission and in making this Application, is to sell the Release Land for development, to generate money to be used to manage the Heath so as to protect and enhance its ecological value and to maintain and enhance the recreational facilities on the Heath, all for the benefit of the inhabitants of the neighbourhood now and in the future.
- 2.16 Without the money generated from the sale, it will not be possible to fulfil all of the plans of the Conservators in respect of land management and provision of facilities and the value of the Heath, both for ecology and for recreation, is likely to decline. This is particularly so as it is coming under increased pressure from large numbers of users. The Conservators have limited means of funding their activities.
- 2.17 The Inspector can rely on the trusts under which the Heath is owned and managed to have confidence that the Conservators will apply the proceeds of sale of the Release

Land for the benefit of the Heath and the public who use it. There is no need for any additional obligation to that effect to be entered into.

- 2.18 It has been suggested by one of the objectors that the deregistration of the Heath will not extinguish rights of access acquired under the Award. This is based on a misunderstanding of the effect of the deregistration. The Applicants have addressed this matter (which they anticipate the Inspector will already be familiar with) in the appendix to this statement of case. This also deals with the implications for CROW access of the deregistration.

3. **THE NEIGHBOURHOOD**

- 3.1 Although the Heath is used by people who come from a surrounding wide area, the Award specifies that it is for use by the people from the neighbourhoods of and surrounding Royston and Therfield, which are the closest settlements. It is the position of the Applicant that the neighbourhood in relation to the Heath is Therfield and Royston and most weight should be given to the interests of the inhabitants of Therfield and Royston.

4. **THE HEATH**

- 4.1 Therfield Heath is an area of 182.18 hectares mainly in the Parish of Therfield near Royston. It is shown edged in red on the Plan at **page 201 of the Applicant's bundle**.
- 4.2 It is mainly open heath land but there are beech belts and woodlands along the southern boundary and an area outside the SSSI which has been developed with playing fields and buildings connected with the use of the Heath for sports and recreation.
- 4.3 The area shown on the plan at **page 203 of the Applicant's bundle** is an SSSI and the citation for the SSSI is at **pages 205 - 206 of the Applicant's bundle**. The SSSI is managed in accordance with HLS agreements under the Countryside Stewardship scheme and has particularly high ecological value.
- 4.4 The Heath is important for recreational purposes for local people and has been for many years, even before enclosure. The history of sporting use has been continuous since before the Award. It includes a golf course which was constructed 125 years

ago, a hockey pitch which was constructed in the 1970s, rugby pitches which have been there for about 56 years, tennis courts which were constructed in around 2010, an archery club and level grass areas where Royston Junior Football Club play and train. It is also used by an organised running club. An area of Heath adjacent to the A505 is leased as a training ground for racehorses, which is an important income source, but its suitability for that is declining as the SSSI management means that the grass cannot be cut during the summer, which allows hazards such as rabbit holes to be hidden and increases the risk to horses and riders. Cricket was played on the Heath for most of the time since the award and there is a wish for it to return.

- 4.5 The buildings on the Heath include a former sports club house which is leased from the Conservators and now run on a commercial basis as a café and bar. The Rugby Club has changing facilities for two teams and there are storage containers for rugby, running and archery equipment. There are three areas set aside for car parking.
- 4.6 The Heath is open to the public and in addition to the formal sports which use the facilities described above it is also used by many people for informal recreation such as walking, dog walking and training, running, kite flying and picnicking.
- 4.7 Other organised activities take place from time to time such as the Kite Festival which is organised by the local Rotary Club (see letter at **page 109 of the Applicant's bundle**) and is an important part of their fundraising programme. In addition, a fun fair and circus visit. A fun run, a harvest trail and a 10 kilometre run take place as well as numerous charity events. The Heath plays an important role in the social and civic and sporting life of the town and it is important that its environment and facilities continue to be of a high standard now and in the future.
- 4.8 There are more than a thousand members of the various sports clubs and many hundreds of people use the Heath at weekends (see photo at **page 110 of the Applicant's bundle**). The approximate membership of the various clubs which use the Heath is as follows:

- Royston Hockey 230
- Royston Rugby 450 including children section and ladies section
- Royston Runners 220

- Royston Archery 85
- Royston Youth Football 185
- Royston Cricket Club based at Therfield and Whaddon 85 full plus 125 children
- Royston Golf Club 245
- Parkfit and Fighting Fit/Heath sports club gym 170

4.9 The facilities on the Heath have not kept pace with modern requirements. There are no public toilets on the Heath and changing facilities are inadequate, especially for the Rugby Club, which has difficulty fulfilling its safeguarding of children responsibilities with the current facilities.

4.10 The hockey pitch is not of the standard now required for league hockey and consequently the Club has not played matches on the Heath since the 1980s. The need to travel 30-45 minutes to find a pitch in the last six years has led to a decline in the membership of the Club and it faces the possibility of closing within a few years if better facilities are not available in Royston. The Hockey Club, which began on the Heath in 1958, is significant to the sporting and social life of Royston and has been well regarded in Hockey league circles.

4.11 At busy times there is considerable pressure on the car parks which suffer damage, particularly in wet weather and the car parks need improvement to continue to accommodate the demand (see photo at **page 111 of the Applicant's bundle**).

4.12 There is also pressure on the Heath land itself and there is a tension between the recreational use and the ecological value of the Heath. To maintain the value of the Heath both for recreation and ecology requires constant management.

4.13 The increased emphasis on the importance of conservation and on providing access for less able people in modern times places additional burdens on the resources of the Conservators.

4.14 There are various parties called stint holders who have registered rights over the common, including the Release Land. A "stint" is a right to graze sheep on the whole

of the common land. A copy of the register of common rights is **pages 112 - 125 of the Applicant's bundle.**

4.15 None of the stint holders has grazed or expressed a wish to graze sheep on any part of the common for many years. For a number of years no sheep grazed the Heath at all. They returned in 1986 under a Wildlife Enhancement Scheme agreement which was then followed by an HLS agreement under the Environmental Stewardship Scheme entered into by Robert Law. The purpose of the grazing is to maintain a short open and diverse sward.

5. THE HISTORY OF THE HEATH

5.1 Even in prehistoric times Therfield Heath was an important place and within the Heath there are 13 Scheduled monuments and 34 other historic features as shown on the HER (Historic Environment Record) at **pages 218 - 230 of the Applicant's bundle.**

5.2 There are no known features of historical significance on the Release Land or on the Replacement Land and Historic England raised no objection to the proposal. There is a condition on the Planning Permission relating to archaeology to ensure that no historical value on the Release Land is overlooked at the time of development.

5.3 Therfield Heath was common land long before the establishment of the Conservancy. It was historically used for the grazing of sheep by commoners who had rights to graze sheep, known as stints. It was enclosed in 1888 and by that date it was already used for recreation. At the time of enclosure there was a golf course, cricket ground and rifle range on the Heath as well as gallops for racehorses.

5.4 During World War II the area where the buildings and playing fields are now located was used as a prisoner of war camp and extensive concrete remains have been found there. This area is not within the SSSI and has reduced ecological value but high recreational value.

5.5 An outline of the early history of the Heath is at **pages 107 - 108 of the Applicant's bundle.**

6. THE RELEASE LAND

- 6.1 The Release Land is within Royston town boundary and is physically separated from the rest of the Heath by a track called Briary Lane, which is an unmade roadway carrying a bridleway which links to the Icknield Way. There is pedestrian access to the main part of the Heath from Sun Hill Directly opposite the Release Land, which will not be impeded by the deregistration. There is car parking on Briary Lane outside the Release Land which is used by some people who access the Heath from this location. Most people park in the main car parks if they drive to the Heath.
- 6.2 Views of the Release Land are limited so it has little landscape value.
- 6.3 The Release Land is not managed as part of the SSSI but some management has been undertaken. A number of trees had been identified as self seeded sycamores by the arboriculturalist's report at **pages 78 - 90 of the Applicant's bundle**. As they become dangerous they are removed.
- 6.4 The Release Land is of much lower ecological value than the main part of the Heath. It is comprised of poor, semi-improved grassland and ruderal vegetation. There is an area of poor quality broadleaf woodland which is to be retained as part of the Development within gardens. It was acknowledged in connection with the planning application that development of the site will have no material effect on important or protected species and that the woodland and the Therfield Heath SSSI can be protected from the effects of the development.
- 6.5 An ecological report was submitted with the Planning Application and is at **pages 46 - 77 of the Applicant's bundle**. Herts Ecology, when commenting on the Planning Application, did not consider that the LPA would be justified in refusing the application on the grounds of ecology.
- 6.6 The report to committee in relation to the planning application (**pages 91 - 101 of the Applicant's bundle**) states that the ecological value of the site was not sufficient to warrant refusal and there was no objection from Natural England to the application.
- 6.7 There is considerable pressure for housing in the Royston area and the report to committee made reference to the inadequate supply of housing land. The development

permitted by the Planning Permission will make a contribution towards the supply of housing in the neighbourhood, which is a benefit of the proposed scheme to the public.

- 6.8 In 1995 North Hertfordshire District Council (NHDC) made an agreement with the Conservators to allow the Release Land to be used for 5 a side football. Under the agreement the Council was responsible for mowing the Release Land. In 2012 NHDC decided that the land was no longer used for football and had not been for many years. The Council terminated the agreement and immediately removed the goal posts and stopped mowing the area. The correspondence in connection with this is at **page 102 of the Applicant's bundle.**
- 6.9 Although the public is still able to access the Release Land, there is little evidence that it is used for recreation. For some people it is convenient for their homes but far more people make use of the other parts of the Heath and are able to access them in practice. There is evidence of fly tipping, and a homeless youth with mental health issues has been using it until recently. A police report about the youth was made and allocated incident number G4/17/996, although the matter was not taken any further. Photographs of the fly tipping are at **pages 103 - 106 of the Applicant's bundle.** There is a worn track suggesting that people walk across it to access the main part of the Heath but very little distance would be added to their journey if they were to walk on the pavement around the edge following deregistration.
- 6.10 The Release Land would be unsuitable for organised games due to its location adjacent to roads and due to its topography.
- 6.11 None of the stint holders (see paragraphs 4.14 to 4.15 above) have objected to the application for deregistration and none of the registered stint holders (to the best of the knowledge of the Applicant) owns any sheep.
- 6.12 The Release Land would be unsuitable for grazing sheep by exercise of rights of common due to its location and condition. It is separated from the main part of the common by a road and it is surrounded by houses. It has been subject to fly tipping over a period of some years and it would accordingly be necessary to closely inspect and clear it before grazing and to securely fence it to prevent sheep wandering onto the road and into gardens and to prevent dogs from worrying the sheep.

6.13 There would, consequently, be no material loss to the stint holders if the Release Land was deregistered and their unused rights in relation to the remaining Heath would remain undisturbed. The fence between the Replacement Land and the main Heath would be removed following exchange and sheep could have access for grazing if appropriate.

7. THE REPLACEMENT LAND

7.1 The Replacement Land is a strip of woodland bordering the southern edge of the Heath. It runs from the informal parking area on Therfield Road westwards to Fox Covert, which is owned by The Herts and Middlesex Wildlife Trust. Part of the Replacement Land is SSSI and LNR (Local Nature Reserve). Active management of the Replacement Land will enhance the biodiversity, both as woodland, and as part of the diverse mosaic of habitats across the Heath. The management will also enhance the woodland as a feature within the landscape and as a site visited by many local people, which is in a visually prominent location.

7.2 There is an existing permissive footpath through the Replacement Land, which is valued by those members of the public who are able to use it. Access to the path is however difficult for less able people and permission could be withdrawn by the owner of the land at any time. A copy of the permissive path agreement entered into by the previous owners on 17 June 1993 is at **pages 126 - 131 of the Applicant's bundle**. The current owner has owned it since 2013. The definitive map from HCC's website (at **pages 135 - 136 of the Applicant's bundle**) does not show the path on the Replacement Land. It is part of the Hertfordshire Way, but on a permissive basis as confirmed by HCC in its email at **page 132 - 134 of the Applicant's bundle**.

7.3 If the Application is granted the public will have the right in perpetuity to access the whole of the Replacement Land, which will be a benefit to the public who wish to use it to access the neighbouring land at Fox Covert and Jubilee Woods as well as the southern edge of the Heath. It is the intention of the Conservators, if the exchange is permitted, to immediately make the land more easily accessible from the highway for less able people and to improve the path so that it is accessible to a wider section of the public than at present.

8. ALTERNATIVES

- 8.1 The Conservators have limited options for raising significant funds and the development of the Release Land was identified in 2005 (copy minutes are at **pages 150 - 152 of the Applicant's bundle**) as the best option to raise the significant sum that is needed to secure the future of the Heath and its facilities. Income from rents is not substantial and there are various factors which make the future of some of the tenancies and sustained rental income uncertain.
- 8.2 There were limited options to acquire land for exchange. The northern side of the Heath is edged by roads. Land on the western edge would be a long way from the Release Land and from the main centre of population and the eastern edge is surrounded by built development. The southern edge is bounded by profitable farmland, which the owners were not willing to sell and particularly not at a price which was acceptable to the Conservators, who are obliged to maximise the use of their funds from the sale of the Release Land for the management and improvement of the Heath as far as possible.
- 8.3 The only willing seller of land was Edward Darling of Greys who was the former owner of the Replacement Land. Before the sale was finalised the Replacement Land, together with other land, was bought by Quickpure Ltd, a company owned by Robert Law who was a Conservator. When the Planning Permission was granted he resigned as a Conservator to avoid any conflict of interest. Title to the Replacement Land is at **pages 137 – 139 of the Applicant's bundle** and the Annual Return and confirmation statement of Quickpure Ltd is at **pages 140 - 149 of the Applicant's bundle**.
- 8.4 The price of the Replacement Lane land has been negotiated at arms length between Mr Law's agents and the Conservators' agent. Upon the deregistration and exchange being allowed the Conservators will be in a position to complete the purchase and to undertake management of the Replacement Land.
- 8.5 The Open Spaces Society and Charity Commission were contacted for their views on the proposal and were supportive (**pages 153 - 154 of the Applicant's bundle**).

9. MANAGEMENT OF THE HEATH

- 9.1 The management of the Heath is a complex, expensive and continuing obligation. It must be managed for ecology as well as for the public who use it for recreation and it must be kept safe as well as suitable for its purpose.
- 9.2 A Conservation Management Plan has been drafted by an independent ecologist and land management adviser from Oakbank Game & Conservation Ltd (**pages 155 - 290 of the Applicant's bundle**). This plan provides details of the history and ecology of the site, along with influencing factors such as access and recreation. It makes recommendations for future management, both in terms of ongoing maintenance and restoration, but also ideas for projects that seek to enhance all aspects of the Heath.
- 9.3 Currently there are four agri-environment scheme Environmental Stewardship agreements with Natural England, associated with the site. These agreements are with Robert Law, Royston Golf Club, John Jenkins Racing and the Conservators. Revenue payments are made based upon work done annually to manage the ecology of the different areas of the Heath, for example, grazing or 'cut and collect'. Capital payments were included at the start of some ten year agreements, but the funds only provided a very small contribution towards the actual cost of the work. The rest of the cost was met by the Conservators and in the past, also the Golf Club where it impacted upon the course. The main additional capital cost is scrub control, which is an ongoing job, needing to be done every year. Consequently, the Conservators budget for annual scrub clearance work as well as sward 'cut and collect' management.
- 9.4 Church Hill is the most species-rich area of chalk grassland on Therfield Heath. This area of the Heath has the largest population of the nationally rare Pasqueflower, flourishing alongside several other nationally rare and scarce plant and invertebrate species associated with chalk grassland habitats. The Pasqueflower populations will only persist with annual sheep grazing and sward cutting, along with an absence of scrub. Without this consistent management, the biodiversity of the chalk grassland declines very quickly, as was seen in the 1980s, when the site became relatively unmanaged.

- 9.5 A complex habitat requires complex management, which is expensive. For example, chalk grassland only exists on nutrient poor soils, and as such the grazing of sheep needs to be managed differently from conventional farming. The sheep preferably need to be removed from the Heath at night, to minimise the build-up of nutrients with sheep faeces on 'resting up' areas.
- 9.6 Nutrient enrichment will effectively destroy the chalk grassland by favouring the establishment of coarse grasses on the bare, enriched areas, outcompeting the fine grasses and flowers that typically make up chalk grassland. In terms of recreation, large concentrated areas of sheep faeces on the golf course are not appealing to the public.
- 9.7 The removal of the sheep each night by a shepherd (which is the best arrangement), clearing up by the golf course staff and significant sward repair and restoration work by the Conservators all involve significant cost.

10. THE RESOURCES OF THE CONSERVATORS

- 10.1 The Therfield Regulation Trust financial statements 2012 to 2016 are at **pages 291 - 325 of the Applicant's bundle**. These are published on the Charity Commission's website. The Conservators do not publish separate accounts because they do not deal with money in that capacity.
- 10.2 The resources of the Conservators are limited and this means that they are unable to optimise management of the Heath or to finance the provision of up to date sporting facilities.
- 10.3 The income and outgoings of the Trustees are set out in the accounts at **page 291 - 325 of the Applicant's bundle**.
- 10.4 The Conservators believe that they have maximised the rental and other income from the Heath so far as is consistent with their charitable aims.
- 10.5 In agreeing the rents, account is taken of the ability of tenants to pay. The rents for amateur sports clubs are commensurate with the purposes of the Award. If rents were too high it would be counter productive as the tenants would be unable to pay and

there would be a risk of losing the income completely. Similarly, as the facilities decline in suitability, the rental income is also likely to decline.

- 10.6 A small income is received from the Rural Payments Agency under an HLS agreement for the maintenance of the land above the rifle range, but no income is received from North Herts District Council (NHDC) or Herts County Council (HCC) nor from Royston Town Council or Therfield Parish Council.
- 10.7 The Conservators are currently seeking s106 money through NHDC towards the cost of constructing a junior football pitch, and a s106 contribution from the planned housing development known as Ivy Farm 3 towards capital improvements to the Heath, but as yet there is no commitment for any money to be paid.
- 10.8 With the majority of the income coming from only three tenants, the Conservators' income and therefore their ability to maintain the Heath, are vulnerable to a tenant ending its lease and the uncertain future of HLS payments when all but one of the current agreements end in two years time.
- 10.9 The capital reserves are estimated to be around £100,000 at the end of 2017. It is prudent to maintain a reserve because the Trustees are personally responsible for the management and maintenance of a substantial area of land and property. This is especially true when income is uncertain and is barely sufficient to cover running costs.
- 10.10 The Release Land is expected to realise in the region of £1.4m and a valuation is at **pages 335 - 337 of the Applicant's bundle**. This would transform the resources of the Conservators and protect the future of the Heath.

11. **THE COST OF MANAGEMENT OF THE HEATH**

- 11.1 The routine maintenance of the Heath is costly and the work currently undertaken barely maintains the Heath at its current standard. To prevent deterioration and to make improvements, one off costs need to be incurred on scrub cutting and other more significant ecological management projects. This would stretch the resources of the Conservators further. As a result of lack of resources, it is necessary to prioritise some projects over others which means that in some areas management is not

sufficient to optimise the ecological value of the Heath. There is insufficient money to fund the employment of a warden. Examples of invoices are at **pages 338 - 340 of the Applicant's bundle** and the outgoings are generally shown in the annual return on **pages 291 - 325 of the Applicant's bundle**.

11.2 Significant housing development is planned for, or has taken place in, Royston, Ashwell and Baldock. The Local Plan suggests 5,097 new houses by 2031 including 279 new homes in the Land West of Ivy Farm, Baldock Road opposite the Heath. Extracts from the Local Plan are at **pages 326 - 334 of the Applicant's bundle**.

12. **PROPOSED INVESTMENT AND EXPENDITURE**

12.1 The Conservators' current income and capital does not allow improvement of the recreational facilities, many of which are inadequate to meet current needs. The population of Royston and surrounding towns and villages continues to grow, which is already increasing the footfall and demands on the Heath and its facilities and will continue to do so.

12.2 It is the Conservators' intention to invest some of the money from the sale of the Release Land in the construction of an all weather sports pitch. This would cost around £514,000 plus VAT (an estimate is at **pages 341 - 348 of the Applicant's bundle**) but would then generate an annual income for the future of £30,000 or more per annum from rental the Hockey Club and other users. Planning permission (at **pages 349 - 352 of the Applicant's bundle**) has already been granted.

12.3 At present Royston Hockey Club has to play home matches in Cambridge because the pitch is of inadequate quality for competitive adult hockey. The standard required for pitches of league hockey is at **page 353 of the Applicant's bundle**. This is leading to a decline in Club membership as a need to travel had reduced the level of socialisation. The Hockey Club has previously tried to raise money to finance a new pitch, but without success and is at risk of folding. There is a clear demand for upgraded Hockey facilities on the Heath.

12.4 Additional changing room facilities for all sports played on the Heath are required. They need to accommodate both sexes changing at the same time and comply with the requirements for safeguarding of children. The England Rugby Policy of

Safeguarding in relation to changing facilities is at **page 354 of the Applicant's bundle**. New changing rooms will cost more than £40,000 plus installation. An estimate is at **pages 355 - 365 of the Applicant's bundle** together with some photographs of what could be provided at that price.

12.5 It will be necessary in the foreseeable future to realign the entrance of the Heath car park for safety reasons and to maintain the car park surface. The Therfield Road car park also needs resurfacing and should, ideally, be gated at night.

12.6 Capital expenditure will be needed to restore and extend the square if cricket is to be re-established on the Heath.

12.7 A junior football pitch would cost around £45,000 - £48,000 and an estimate is at **page 366 of the Applicant's Bundle**.

12.8 The additional income generated from enhanced sports facilities would also be used to fund maintenance on the Heath and Heath wardens to ensure that the Heath can be managed in a way that enhances its status as an SSSI.

13. **IN THE EVENT OF THE DEREGISTRATION APPLICATION FAILING**

13.1 Without the proceeds of the sale of the Release Land it is likely that the money available to spend on the maintenance of the Heath would reduce to below that required to maintain its status. The facilities are likely to continue to decline and none of the improved recreational facilities will be delivered. This will reduce both its ecological and recreational value to the inhabitants of the neighbourhood, whose numbers are growing and lead to a decline in the quality of the Heath over time.

14. **SUMMARY**

14.1 It is the Applicant's case that:

14.1.1 The Conservators/Trustees have the necessary power to sell the Release Land and to use the proceeds to manage the Heath.

14.1.2 They are obliged by the terms of the Trusts under which they operate to use the proceeds (and any income generated subsequently) for the management

and maintenance of the Heath and for the provision of recreation facilities on the Heath.

- 14.1.3 Their purpose in applying for deregistration is to facilitate the development of the Release Land in accordance with planning permission already granted to raise money to secure the future of the Heath for ecology and recreation for the benefit of the neighbourhood of Royston and Therfield.
- 14.1.4 The pressure on the Heath is growing due to increases in housing and population which have taken place and which are planned and more expense will be incurred to keep pace with the demand.
- 14.1.5 The standard of the facilities on the Heath has already fallen behind modern requirements and the level of demand and they cannot afford to upgrade them as matters stand.
- 14.1.6 The Heath is important to the social, civic and sporting life of Royston and has been for many years, even before enclosure in the late 19th century. If its importance is to be maintained, investment is needed.
- 14.1.7 The Conservators/Trustees have limited options to enable them to raise money and the sale of the Release Land is the best they have been able to identify. It will do the least possible harm to the Heath as a whole for best financial return.
- 14.1.8 The development will also contribute to the supply of housing in the Royston area, albeit in a small way.
- 14.1.9 The Release Land is separate to the remainder of the Heath and its value as heath has been compromised by development around it and the uses which have been made of it over the years.
- 14.1.10 It has low landscape and ecological value and little recreational value. If it were to be made available for recreation, past experience suggests that few people from a small geographical area would use it. The main Heath and the Release Land are accessible in practice to a much wider group of people. The fact that it is used very little or not at all means that

deregistration would not result in a material or practical loss of used common land area.

- 14.1.11 The Release Land has no value as grazing land for stint holders.
- 14.1.12 There is little prospect of it being restored as chalk grass land. Its main ecological value is in the wooded area which can be enhanced and managed as part of the development. The gardens of the new houses will provide varied habitats.
- 14.1.13 The Replacement Land is the same size as the Release Land but of different character. It is of higher value for ecology and recreation. It links well to the main heath and provides opportunities which are enhanced by that proximity. It allows access to Church Hill and Fox Covert from the highway. There is a permissive path at present but it could be closed at any time. The registration as common land would secure that access.
- 14.1.14 The registration would also secure the right of the Conservators to manage it for the continued benefit of ecology and for recreation. Access could immediately (within a month) be enhanced for the less able.
- 14.1.15 The exchange is, taken in isolation, acceptable. Land of a different character is acceptable by way of exchange but the Inspector is entitled to take account of other factors including the benefits which will accrue from the sale of the land and the outcome intended from the proposed works, both the housing and the recreation and ecological provision.
- 14.1.16 Therfield Heath is of such high conservation, historical and recreational value, that the securing of funds to finance its future management is a factor which should carry significant weight in favour of the deregistration. The circumstances are exceptional. The overall balance of the public interest is in favour of deregistration. The public interest will be prejudiced more if the land is not released because the management of the Heath will suffer.

Commons Act 2006 Section 16

Application by The Therfield Regulation Trust

Deregistration and exchange of land at Royston, Hertfordshire

Application reference: COM/3170236

Date of Inquiry: 30 January 2018

APPENDIX TO THE STATEMENT OF CASE FOR THE APPLICANT

THE CONSEQUENCES OF DEREGISTRATION

1. Section 17 of the Commons Act 2006 sets out the consequences of granting an application to de-register common land.
2. Under section 17 (1) an order must be made requiring the commons registration authority to remove the release land from its register of common land or town or village greens and under subsection (2) to register the replacement land and to register as exercisable over the replacement land any rights of common which immediately before the relevant date [under Section 17 (9) the date on which the commons registration authority amends its register as required under subsections (1) and (2)] are registered as exercisable over the release land.
3. Under Section 17 (4) where immediately before the relevant date **any rights of common** are registered as exercisable over the release land those rights are on that date extinguished in relation to that land
4. Under Section 17 (6) where immediately before the relevant date the release land was registered as common land **any relevant provision** applied in relation to it, the relevant provisions shall on that date cease to apply to the release land; and where any replacement land is registered in its place the provision shall on that date apply to the replacement land instead.

5. By Section 17 (8) “relevant provision” includes a provision contained in or made under
 - (a) Section 193 of the Law of Property Act 1925;
 - (b) A scheme under the Metropolitan Commons Act 1866;
 - (c) An Act under the Commons Act 1876 confirming a provisional order of the Inclosure Commissioners;
 - (d) A scheme under the Commons Act 1899;
 - (e) Section 1 of the Commons Act 1908
- 5.1 Section 193 of the Law of Property Act 1925 (“LPA”) provides for rights of access for members of the public for air and exercise (amongst other matters) to any land which at commencement of the Act [1 January 1926] was subject to rights of common
- 5.2 The 1888 Act confirming the provisional order was made under the Commons Act 1876 and accordingly the 1888 Act and the provisional order for regulation of Therfield Heath and Greens confirmed under it are “relevant provisions” for the purposes of Section 17 (6) and cease to apply in the event of the release land being removed from the register
- 5.3 The provisional order for the regulation of Therfield Heath and Greens acknowledged that Therfield Heath and Greens were a Common within the meaning of the Inclosure Acts 1847 to 1878 and that the Common was waste land of the various manors referred to and that the regulations in the draft provisional order were for the “adjustment of rights” and for “improvement”. Section 3 of the Commons Act 1876 (now repealed) provided that a provisional order for the regulation of a common may provide generally or otherwise for the adjustment of rights in respect of such common and for the improvement of such common and Section 4 set out the things that comprised “adjustment of rights” and Section 5 “improvements”
- 5.4 Accordingly:

- 5.4.1 Rights of access under Section 193 of the LPA will be extinguished on de-registration
 - 5.4.2 Historic rights of common were adjusted by the regulations in the provisional order confirmed by the 1888 Act under the powers of the Commons Act 1876
 - 5.4.3 Those adjusted rights will be extinguished on de-registration
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- 5.5 Until release land is de-registered it is not “access land” land for the purposes of the Countryside and Rights of Way Act 2000 (“CROW”) under Section 15 of CROW..
 - 5.6 Once the release land is de-registered it may potentially be “access land” for the purposes of CROW if shown as open country on a map in conclusive form issued by the appropriate countryside body (Section 1 (1) of CROW). However if development for buildings is proceeding with planning permission then the release land would be “excepted” – Schedule 1 paragraph 9 of CROW – and not access land over which public rights of access under CROW could be exercised.

Commons Act 2006 Section 16

Application by The Therfield Regulation Trust

Deregistration and exchange of land at Royston, Hertfordshire

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SUMMARY OF STATEMENT OF CASE FOR THE APPLICANT

It is the Applicant's case that:

1. The Conservators/Trustees have the necessary power to sell the Release Land and to use the proceeds to manage the Heath.
2. They are obliged by the terms of the Trusts under which they operate to use the proceeds (and any income generated subsequently) for the management and maintenance of the Heath and for the provision of recreation facilities on the Heath.
3. Their purpose in applying for deregistration is to facilitate the development of the Release Land in accordance with planning permission already granted to raise money to secure the future of the Heath for ecology and recreation for the benefit of the neighbourhood of Royston and Therfield.
4. The pressure on the Heath is growing due to increases in housing and population which have taken place and which are planned and more expense will be incurred to keep pace with the demand.
5. The standard of the facilities on the Heath has already fallen behind modern requirements and the level of demand and they cannot afford to upgrade them as matters stand.
6. The Heath is important to the social, civic and sporting life of Royston and has been for many years, even before enclosure in the late 19th century. If its importance is to be maintained, investment is needed.

7. The Conservators/Trustees have limited options to enable them to raise money and the sale of the Release Land is the best they have been able to identify. It will do the least possible harm to the Heath as a whole for best financial return.
8. The development will also contribute to the supply of housing in the Royston area, albeit in a small way.
9. The Release Land is separate to the remainder of the Heath and its value as heath has been compromised by development around it and the uses which have been made of it over the years.
10. It has low landscape and ecological value and little recreational value. If it were to be made available for recreation, past experience suggests that few people from a small geographical area would use it. The main Heath and the Release Land are accessible in practice to a much wider group of people. The fact that it is used very little or not at all means that deregistration would not result in a material or practical loss of used common land area.
11. The Release Land has no value as grazing land for stint holders.
12. There is little prospect of it being restored as chalk grass land. Its main ecological value is in the wooded area which can be enhanced and managed as part of the development. The gardens of the new houses will provide varied habitats.
13. The Replacement Land is the same size as the Release Land but of different character. It is of higher value for ecology and recreation. It links well to the main heath and provides opportunities which are enhanced by that proximity. It allows access to Church Hill and Fox Covert from the highway. There is a permissive path at present but it could be closed at any time. The registration as common land would secure that access.
14. The registration would also secure the right of the Conservators to manage it for the continued benefit of ecology and for recreation. Access could immediately (within a month) be enhanced for the less able.
15. The exchange is, taken in isolation, acceptable. Land of a different character is acceptable by way of exchange but the Inspector is entitled to take account of other

factors including the benefits which will accrue from the sale of the land and the outcome intended from the proposed works, both the housing and the recreation and ecological provision.

16. Therfield Heath is of such high conservation, historical and recreational value, that the securing of funds to finance its future management is a factor which should carry significant weight in favour of the deregistration. The circumstances are exceptional. The overall balance of the public interest is in favour of deregistration. The public interest will be prejudiced more if the land is not released because the management of the Heath will suffer.