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| **Application Decision** |
| Site visit made on 26 April 2022 |
| **by Helen O'Connor LLB MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 25 May 2022** |

**Application Ref: COM/3289169**

**Land south of Eridge Road, Tunbridge Wells, Kent**

**Grid Reference TQ 57818 38561**

Register Unit: VG22

Registration Authority: Kent County Council

* The application is made under Section 16 of the Commons Act 2006 (the 2006 Act) to deregister and exchange land registered as a town or village green.
* The application is made by Aldi Stores Limited (owner of the release land and the replacement land).
* **The release land** comprises of approximately 60.1m2 of land to the south of Eridge Road, Tunbridge Wells.
* **The replacement land** comprises of 60.1m2 lying west of the release land and to the front of 15-16 Eridge Road, Tunbridge Wells.

Decision

1. The application is granted.

Procedural Matters

1. Register Unit number VG22 is known and referred to as Tunbridge Wells Common but nevertheless is registered as a town or village green for the purposes of the 2006 Act. During the application the nature of the proposal was revised from solely the deregistration of town or village green land to include exchange land. I am satisfied that the interested parties have been given an opportunity to comment on the revised proposals and therefore, no one will be significantly prejudiced by my determining the application on this basis.

Main Issues

1. Section 16(1) of the 2006 Act provides that the owner of any land registered as a town or village green may apply for the land (‘the release land’) to cease to be so registered. If the area of the release land is greater than 200m2 a proposal must be made to replace it with other land to be registered as town or village green (‘the replacement land’). In this case, the release land is below 200m2 but nevertheless it is proposed to replace it with other land.
2. I am required by Section 16(6) of the 2006 Act to have regard to the following in determining this application:

(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; (section 16(8) of the 2006 Act provides that this includes the public interest in: nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.)

(d) any other matter considered to be relevant.

The Application

1. The deregistration of the land to the south of Eridge Road, Tunbridge Wells is sought primarily to facilitate the residential development of other land to the south but outside of the town or village green. A planning application (reference 21/03298/FULL) has been submitted to develop that land. The release land would provide the principal access into the proposed development site.

The Release Land

1. The release land amounts to approximately 60.1m2 and is adjacent to Eridge Road close to the entrance to a petrol filling station. The irregularly shaped sloping land is partly hard surfaced and part grass verge. For the purposes of identification, a copy of the application plan is attached to this decision at Appendix A. The release land is edged in red.

**The Replacement Land**

1. The replacement land comprises a broadly rectangular parcel of garden land measuring approximately 60.1m2 a short distance to the west of the release land. It lies adjacent to an area of grass verge and footway that forms part of the town or village green and to the front of 15-16 Eridge Road. It is not presently accessible to the public and a low boundary wall separates the parcel from the adjacent town or village green. I observed the land to be somewhat overgrown at my visit with additional temporary wire mesh fencing above the low boundary walling. The replacement land is edged in light green on the attached application plan at Appendix A.

**Representations and Objections**

1. Four substantive representations were made in response to the notice of the application, whereas Kent County Council and Historic England offered no comments. The initial representations were made prior to the applicant revising the application to include replacement land. The Open Spaces Society originally objected to the proposal due to the absence of replacement land but following the inclusion of such land they have subsequently confirmed that they no longer object in principle subject to the following matter. They state that the release land is subject to Part XV of the County of Kent Act 1981 (the 1981 Act) and point out that whilst an Order made under section 17 of the 2006 Act may make supplementary provision in relation to such local Acts, it is not automatic. To avoid an anomaly, they consider there should be a supplemental provision in the Order to address this.
2. The Tunbridge Wells and Rusthall Commons Conservators (the Conservators), point out that the policy of the Secretary of State is to avoid the net loss of town and village greens. Whilst acknowledging that exchange land has now been proposed, they state that their preference would be for funding of ring-fenced projects planned by the Conservators. They indicate this would be separate to the on-going discussions regarding planning obligations relating to the planning application for residential development and they maintain an objection on that basis. They also consider that the replacement land would need to be protected by the 1981 Act. Subsequent to the receipt of these comments, it is understood that there have been continuing discussions between the applicant and the Conservators regarding the terms of a section 106 planning obligation associated with the planning application. Nevertheless, I have taken the matters raised during this application into account.
3. Natural England consider that the location and condition of the release land means that it is unlikely to be used for informal recreation. The small area of regularly mown grass and low growing scrub vegetation limits the nature conservation value of the release land, and its deregistration would be unlikely to have any significant detrimental impact on the local landscape. They further refer to the submitted planning application on land to the south and consider that there is potential arising from this development for the enhancement of nature conservation, tree planting and financial contributions towards the upkeep of Tunbridge Wells Common.
4. Finally, a letter of support has been received from a local resident who points out that the release land is within a conservation area, as is the land to the south that is the subject of the submitted planning application. Reference is made to the statutory duty in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to preserving and enhancing the character or appearance of conservation areas. It is submitted that the proposal would assist in bringing a difficult site forward for development that has been a longstanding prominent eyesore detrimental to the appearance of the conservation area. Moreover, wider public benefits would accrue from facilitating the productive residential use of a brownfield site in accordance with an allocation in the development plan.

Assessment

1. In determining the application, I have had regard to the Department for Environment, Food and Rural Affairs Common Land consents policy, November 2015 (the 2015 Guidance) published for the guidance of both the Planning Inspectorate and applicants. Paragraph 3.2 sets out overall policy objectives to protect commons and greens which includes the outcome that the stock of such land is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit.

***The interests of those occupying or having rights over the release land***

1. The information before me shows that no one presently occupies the release land. The register lists a right to graze two cattle and four sheep over the whole of Tunbridge Wells Common, which amounts to approximately 165 acres. The release land is a small piece of land that is separated from the main body of the registered town or village green by a main road. Approximately half of it is hard surfaced. In these circumstances, it is unsurprising that the applicant cannot recollect any instances of the grazing rights being exercised over the release land during their period of ownership. Based on the information before me, there is nothing to suggest that the proposed exchange would have an adverse impact on any person with an interest in the land.

***The interests of the neighbourhood***

1. The 2015 guidance indicates that the issues to be considered in this context include whether the exchange would prevent local people from using the green in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the land as a whole.
2. The restricted size, separation from the main body of Tunbridge Wells Common, proximity to a main road and degree of hard surfacing render the release land as largely unsuitable for sports and recreational use by local people. As such, they would tend to experience it as a spacious verge adjacent to the footway along Eridge Road.
3. The proposed replacement land would be close by and near to the footway. As a result, it would provide a broadly similar experience to the release land for local people, many of whom would be likely to encounter the land when travelling along the highway.
4. Overall, there is nothing before me to suggest the neighbourhood would experience the loss of an existing use or be prevented from using the green in the way they are accustomed to. Nor does the evidence indicate that the proposal would interfere with the future use and enjoyment of the town or village green as a whole.

***The public interest***

*Nature conservation*

1. Limited information is provided in relation to biodiversity at either the release or replacement land, but neither are subject to any national or local designations for wildlife interest. The small size of the release land, extent of hard surfacing, presence of mown grass and proximity to activity on the highway are all constraints that would tend towards limited biodiversity value.
2. The proposed replacement land is to be grassed and is situated adjacent to an existing area of grassed green with a tree. As such, it would be a marginal improvement by comparison to the release land. Therefore, I am satisfied that the proposed exchange would not have an adverse impact upon biodiversity or nature conservation.

*Conservation of the landscape*

1. The release land comprises part of a relatively narrow strip of town or village green along the southern side of Eridge Road. The absence of built form and small area of grass reinforce the sense of spaciousness and greenery between the road and the buildings that line its southern edge. As such, it makes a small positive contribution to local landscape quality.
2. The replacement land would be of a similar scale and has a broadly comparable relationship to Eridge Road. It is proposed that the area would be grassed, and the existing boundary wall and temporary fencing would be removed which would support the sense of spaciousness and greenery. Its proximity to the release land is such that overall, the impact on the landscape character of the immediate area would be neutral.

*The protection of public rights of access*

1. The release land is adjacent to a footway along Eridge Road and there are no physical obstacles to prevent public access, although the topography of the grassed element may deter some members of the public. The proposed replacement land amounts to a similar area, is broadly level and is presently private land over which the public do not have any rights of access. It is separated from the adjacent town or village green by a low boundary wall and temporary fencing, which would be removed. It is proposed that a low timber picket fence would differentiate the proposed replacement land from the grounds of 15-16 Eridge Road. On this basis, an equivalent amount of space possessing similar attributes to the release land would be provided close by. Overall, the proposal would protect public rights of access as the public would be no worse off in consequence of the exchange than without it.

*Archaeological remains and features of historic interest*

1. No archaeological remains or particular features of historic interest on the release land have been brought to my attention. However, it has been highlighted that the release land is in a conservation area, and it has been put to me that the statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should apply whereby special attention must be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Nevertheless, I am not aware that functions exercised under the 2006 Act are within the scope of the duty specified. Even so, I have already found that the proposed exchange would have a neutral impact on the landscape character of the area and as the replacement land is also in the same conservation area, I am satisfied the proposal would preserve its character or appearance.
2. Consequently, in relation to archaeology, features of historic interest or local heritage I have no reason to find that adverse effects would arise as a result of the proposed exchange.

***Other matters considered to be relevant***

1. The proposed exchange would be likely to facilitate the residential development of an area of brownfield land to the south by allowing for an enlargement of the access to that land. A planning application has been recently submitted for 40 retirement apartments and the refurbishment of 15-16 Eridge Road. There would be wider public benefits associated with such a development including boosting the supply and mix of housing and the productive reuse of previously developed land. There is also potential for development to improve the appearance of the conservation area. However, in the absence of a positive decision or resolution from the Council to grant permission, it cannot be guaranteed that the application will succeed, nor the suggested planning obligations secured.
2. Nevertheless, the information provided indicates that the brownfield site is allocated for residential development in the development plan and the proposed exchange would make it more likely that the allocation could come forward for development. There is some wider public benefit derived from development generally proceeding in adherence with stated development plan objectives. Therefore, this carries limited additional weight in favour of the proposal.
3. I have taken account of the Conservators expressed preference for compensatory financial contribution. However, I can find no reference to such a mechanism in the 2015 guidance nor under the deregistration and exchange procedure contained in sections 16 and 17 of the 2006 Act. Moreover, having had regard to the statutory criteria, the proposal would balance the deregistration of registered land by the registration of other land of at least equal benefit, which aligns more closely with the policy objectives set out in paragraph 3.2 of the 2015 guidance. My finding in this regard relates to the administration of the 2006 Act and does not purport to comment or influence any negotiations concerning planning obligations associated with the submitted planning application for residential development.
4. Based on the evidence provided, the release land falls within the provisions of Part XV of the 1981 Act and is coloured red on the plan deposited for the purposes of the Tunbridge Wells Improvement Act 1890 to which the 1981 Act refers. The 1981 Act includes governance measures for the conservators and sets out a duty to maintain and preserve the Tunbridge Wells Commons as identified on the deposited plan. Section 17(7)(c) of the 2006 Act allows for an Order to contain supplementary provision as to the effect in relation to the release land or any replacement land of a local Act, the contents of which would otherwise not automatically disapply. I am satisfied that the 1981 Act constitutes a local Act for the purposes of section 17(7)(c). Consequently, in the interests of good administration it would be appropriate to avoid future discrepancies and confusion regarding the status of the lands to make a supplemental provision in any Order of Exchange in relation to the local Act.

**Conclusions**

1. For the reasons outlined above, I am satisfied that the replacement land would be of at least equal benefit to the release land. I do not find that there are any relevant matters which indicate that the application should be refused.
2. Therefore, having regard to all matters raised in the application and written representations, I find that consent for an exchange of land should be granted and an Order of Exchange given in respect of the application.

Helen O’Connor

Inspector

**Order**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17(1) and (2) of the Commons Act 2006, **I HEREBY ORDER** Kent County Council, as commons and town or village greens registration authority for the area in which the release land and the replacement land are situated:

1. to remove the release land from its register of town and village greens, by amending register unit VG22 to exclude the release land;
2. to register the replacement land as town and village green, by amending register unit VG22 to include the replacement land;
3. to register as exercisable over the replacement land any rights which, immediately before the date on which the release land is removed from the register, are registered as exercisable over the release land and the remainder of the land comprised in register unit VG22.

**Supplementary Provision**

The release land is part of the commons subject to Part XV of the County of Kent Act 1981 and is coloured red on the plan deposited for the purposes of the Tunbridge Wells Improvement Act 1890. Pursuant to section 17(7)(c) of the Commons Act 2006, **I FURTHER ORDER** that the release land shall cease to be part of the said commons, and the replacement land shall be treated for the purposes of Part XV of the 1981 Act as part of the said commons, and as if it were coloured red on the plan deposited for the purposes of the 1890 Act.

**First Schedule** – the release land

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| **Colour On Plan**  **(Appendix A)** | **Description** | **Extent** |
| Edged in red | Land to the south of Eridge Road, Tunbridge Wells. | 60.1m2 |

**Second Schedule** – the replacement land

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| **Colour On Plan**  **(Appendix A)** | **Description** | **Extent** |
| Edged in light green | Parcel of land fronting and to the south of Eridge Road, Tunbridge Wells. | 60.1m2 |

Helen O’Connor

Inspector

**Appendix A**

Not to scale

**Diagram, engineering drawing

Description automatically generated**