



## Application Decision

Site visit made on 6 January 2016

**by Mark Yates BA(Hons) MIPROW**

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

Decision date: 8 February 2016

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**Application Ref: COM 712**

**Tunbridge Wells Common, Tunbridge Wells, Kent**

Register Unit: VG 22

Registration Authority: Kent County Council

- The application, submitted on 5 June 2015, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister and exchange land registered as town or village green ("TVG").
  - The application is made by Eridge Road Developments Limited ("the applicant").
  - **The release land** comprises of 840m<sup>2</sup> of land at Union House, Eridge Road, Tunbridge Wells, including part of a car park and ramps providing access in relation to Union House.
  - **The replacement land** comprises of 880m<sup>2</sup> of land formerly part of the property known as Park View House, Hungershall Park, Tunbridge Wells<sup>1</sup>.
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### Decision

1. Consent is granted in accordance with the terms of the application, and the plans submitted therewith. For the purpose of identification only, a plan showing the location of the release land and the replacement land is attached to this decision.

### Preliminary Matters

2. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as TVG may apply for the land ("the release land") to cease to be so registered. If the area of the release land is greater than 200m<sup>2</sup> a proposal must be made to replace it with other land to be registered as TVG ("the replacement land").
3. I carried out a site visit on 6 January 2016 accompanied by Mr Wagstaff on behalf of the applicant and Mr Budden and Mr Marshall for the Tunbridge Wells Commons Conservators.

### Main Issues

4. 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

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<sup>1</sup> The driveway to the property previously crossed this piece of land.

release land (and in particular persons exercising rights of common over it);

- (b) the interests of the neighbourhood;
- (c) the public interest<sup>2</sup>;
- (d) any other matter considered to be relevant.

### **The Application**

- 5. The applicant wishes to ensure that the existing ramps that provide access in relation to Union House are outside of any designation to which the 2006 Act applies. Secondly, the applicant wishes to ensure that access will be feasible following any future redevelopment of the building.

### **The Representations**

- 6. Two objections were submitted in response to the application but one of these has now been withdrawn. The outstanding objection is from Mr and Mrs McCall. Tunbridge Wells Commons Conservators<sup>3</sup> ("the Conservators") do not object subject to certain agreed conditions being met. The Open Spaces Society also has no objection to the proposed exchange and considers that the replacement land will be of better quality in terms of the public interest.

### **Assessment**

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

- 7. The release land is owned by the applicant and the car park is operated by Tunbridge Wells Borough Council. There is a right of common to graze two head of neat cattle and four sheep on the TVG between 1 March and 30 November each year, which is attached to the property known as Tye House. However, the nature of the release land does not lend itself to these rights being exercised over it.
- 8. Overall, there is nothing to indicate that any party occupying or having rights over the release land would be adversely affected by the application.

#### ***The interests of the neighbourhood***

- 9. Approval for the relocation of the driveway serving Park View House was approved by Kent County Council on 9 July 2015. Any highway issues arising out of this decision are not matters for me to address. The driveway has now been relocated with fencing erected to demarcate the revised boundary of Park View House.
- 10. In terms of the application that I need to assess, nothing is apparent to suggest that the exchange would have an adverse effect on the neighbourhood. The benefits for members of the public generally, addressed below, are also likely to apply to local residents.

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<sup>2</sup> Section 16(8) of the 2006 Act provides that the public interest 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.

<sup>3</sup> They are responsible for the management of the common.

### ***The public interest***

11. Part of the release land is used as a car park operated by Tunbridge Wells Borough Council. The remainder includes the ramps and enclosed car park forming part of Union House. In my view, the release land serves no useful recreational purpose for the public. There will also be a slight increase in the extent of the TVG if the exchange is granted.
12. Works have commenced in relation to the replacement land with the implementation of the final scheme resting with the Conservators. I note the concern of the objectors regarding the replacement land being isolated. However, the intention is that the low value hedge along the eastern boundary of the replacement land will be partially removed with the existing mature trees retained. This should assist with the integration of the replacement land and the existing TVG. Given the nature of the TVG in this locality, the replacement land could be successfully incorporated into the green and this should be assisted by the involvement of the Conservators in the implementation of the works.
13. From looking at the release land and the replacement land, I consider the latter has much greater value for the public. Further, nothing is apparent to me to demonstrate that the exchange would have an adverse impact upon any of the matters set out in Section 16(8) of the 2006 Act.

### **Other Matters**

14. A separate application made in accordance with Section 19 of the 2006 Act is not a matter before me.

### **Conclusions**

15. There is nothing to suggest that the exchange would impact upon the interests of any person occupying or having rights over the release land. Further, I consider the replacement land to be of much greater value than the release land for local residents and the public generally. Therefore, I conclude that the application should be granted and an Order of Exchange should be given.

*Mark Yates*

**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 registration authority for the area in which the release land and the replacement land are situated:

- (a) to remove the release land from its register of town or village greens, by amending register unit VG 22 to exclude the release land;
- (b) to register the replacement land as town or village green, by amending register unit VG 22 to include the replacement land; and
- (c) to register as exercisable over the replacement land any rights of common 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 VG 22.

**First Schedule – the release land**

<b>Colour On Plan</b>	<b>Description</b>	<b>Extent</b>
Edged red	Land at Union House, Eridge Road, Tunbridge Wells forming part of the town or village green known as Tunbridge Wells Common, register unit VG 22, including part of a car park and ramps providing access in relation to Union House.	840m <sup>2</sup>

**Second Schedule – the replacement land**

<b>Colour On Plan</b>	<b>Description</b>	<b>Extent</b>
Edged light green	Land formerly part of the property known as Park View House, Hungershall Park, Tunbridge Wells.	880m <sup>2</sup>

*Mark Yates*

**Inspector**