
Application Decision

Site visit made on 27 February 2018

by **Alison Lea MA (Cantab) Solicitor**

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

Decision date: 16 March 2018

Application Ref: COM 3180684

Land at Dovercourt Green, Main Road, Harwich, Essex

Register Units Nos: VG27 and VG239

Registration Authority: Essex County Council

- The application is made under Section 16 of the Commons Act 2006 for consent to deregister and exchange land registered as a village green.
 - The application is made by M. Scott Properties Limited and Chelmer Housing Partnership Limited.
 - **The release land** comprises 160 square metres of land located on the north side of Main Road, Dovercourt, Harwich near the junction with Laurel Avenue.
 - **The replacement land** comprises 160 square metres of land located at Main Road, Dovercourt, Harwich on the adjacent former Delfords factory site approximately 30m to the north-west of the release land.
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Decision

1. Consent is granted in accordance with the terms of the application as amended and the plans submitted with it. 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 Commons Act 2006 (the 2006 Act) provides, amongst other things, that the owner of any land registered as common land or 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 200 square metres a proposal must be made to replace it with other land to be registered as common land or green ("the Replacement Land"). If the land to be deregistered is not more than 200 square metres the Secretary of State will usually expect land to be offered in exchange for the land being deregistered as his policy is not to allow the stock of common land and greens to diminish.
3. The application dated 21 July 2017 did not propose any Replacement Land. However, by letter dated 4 December 2017 the application was amended by the addition of Replacement Land. The revised application was advertised and consulted upon and a letter dated 12 December 2017 with enclosures

confirms that all the correct procedures were followed. I shall therefore make my determination on the basis of the application as amended.

4. I carried out a site visit on 27 February 2018 accompanied by representatives of M. Scott Properties Ltd, CHP and Holmes & Hills LLP.

Main Issues

5. 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, which includes interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) Any other matter considered to be relevant.
6. I will also have regard to the published guidance¹ in relation to the determination of applications under Section 16 of the 2006 Act.

The Application

7. The application has been made because part of the registered village green is required to provide access to a new residential development of 66 dwellings permitted by planning permission reference 16/00729/FUL granted on 24 May 2016.

The Release Land

8. The village green, registered as VG27 and VG239, is a long, linear area of open grass land situated between 2 roads. It is approximately 8700 square metres in size. At one end it is crossed by an area of tarmac which provided access to the former Delfords factory site, which access road was in place prior to registration of the village green. The Release Land includes the existing access road plus an area of grass to either side of the tarmac and falls mainly within VG239. It is intended that a new access and footways will be constructed to serve the new dwellings and that they will be adopted by Essex County Council as highway maintainable at public expense.

The Replacement Land

9. The Replacement Land is within the area for which planning permission has been granted. The eastern boundary would be adjacent to the housing estate access road and the northern boundary would adjoin other open space within the development. The southern and western boundaries would be fenced. It would be laid to grass and accessed by the public from the estate road.

¹ Common Land Consents Policy Guidance, November 2015, Defra

10. The Planning Permission has been implemented and construction of some of the dwellings has commenced. The Replacement Land is within the construction site and public access will not be possible until the development is complete.

Objections and Representations

11. The Open Spaces Society (OSS) objected to the original application. However, as a result of the amendment to include the Replacement Land they have confirmed that they now have no objection. Historic England, Natural England and the Harwich Society have all confirmed that they have no comments.

Assessment

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

12. There are no rights of common recorded in the Village Green Register for either VG27 or VG239. The landowner is the applicant and the majority of the land is the access to a derelict factory. 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

13. The Release Land and the Replacement Land are the same size and therefore the stock of land would not diminish. It is intended that the Release Land would become adopted highway and given that much of the area is already hard surfaced, the effect on the use and appearance of the village green would be minimal. The Replacement Land would form a new area of accessible land. I will consider rights of access to it in relation to the public interest but note that there are no obvious negative impacts on the neighbourhood arising from the application and that no-one has expressed any concerns in this regard.

The public interest

14. Given that much of the Release Land is tarmac, the impact on the landscape and on nature conservation would be minimal. There is no evidence of any archaeological remains or features of historic interest on the Release Land.
15. The village green is an open area of land with access freely available from the roads to either side. However, the applicant states that the village green is used infrequently by the public and I have no evidence to the contrary. The local highway authority has confirmed its intention to adopt the new access as public highway and the Release Land will therefore remain accessible to the public.
16. The Replacement Land will be accessible from the estate road within the housing development. The landowner has confirmed that if for any reason the estate road was not adopted by the highway authority, public pedestrian access to the Replacement Land would be permitted along the

footway to that road. The Replacement Land would be close to the Release Land and the remaining village green and would be laid to grass. Given its location and surface I consider that it is likely to provide a more useable space than the Release Land and therefore provides an overall benefit.

17. As the replacement land is situated within the construction site it will not be accessible until the development is completed and there is therefore likely to be a short period of time during construction when there is no public access to either the Release Land or the Replacement Land. Clearly this is not ideal, but I consider that the short term negative impact of this is outweighed by the overall benefit to the public which will be provided by the Replacement Land.

Any other matter considered to be relevant

18. The Release Land is required to provide access to a residential development which has been granted planning permission by Tendring District Council on a former factory site. It includes the provision of affordable housing.

Conclusions

19. Overall, there is nothing to suggest that the proposed deregistration and exchange would have any adverse effect in respect of any relevant interests. It would also be in the wider public interest as it would facilitate the provision of housing.
20. I therefore conclude that the application should be granted and an Order of Exchange should be made.

Alison Lea

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 Essex 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 Units nos. VG27 and VG239 to exclude the Release Land; and
- (b) To register the Replacement Land as Town or Village Green, by amending Register Unit VG27 or VG239 to include the Replacement Land.

First Schedule – the Release Land

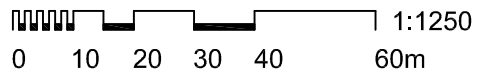
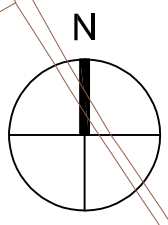
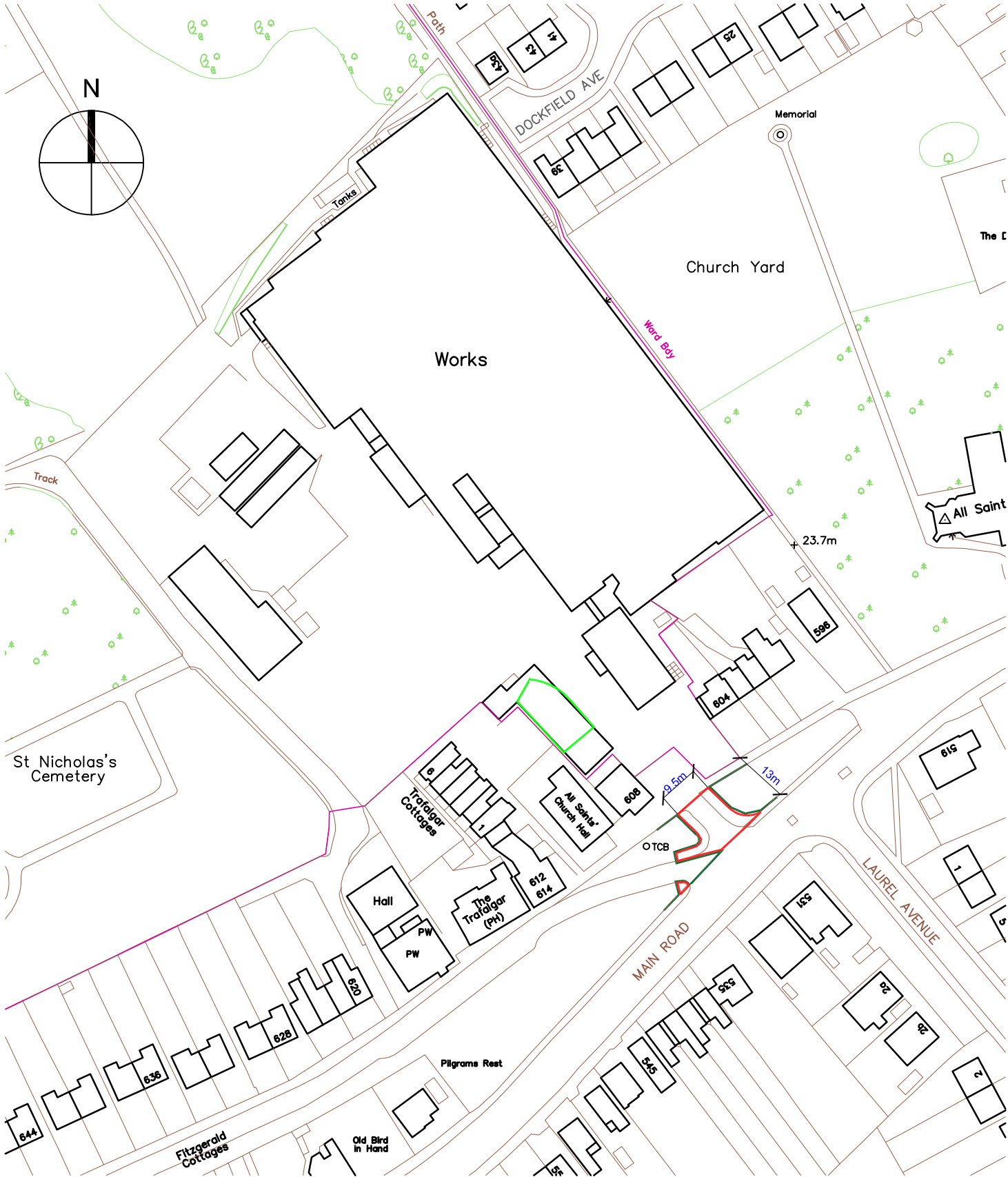
Colour on Plan	Description	Extent
Red	Land forming part of Town or Village Greens Register Units Nos. VG27 and VG239 to the north of Main Road, Dovercourt, Harwich	160 square metres

Second Schedule –the Replacement Land

Colour on Plan	Description	Extent
Light Green	Land at Main Road, Dovercourt, Harwich forming part of new residential development	160 square metres

Alison Lea

Inspector



Vision, form and function

- LEGEND:**
- Area of Village Green to be removed = 160m²
 - Revised Village Green boundary
 - Area of Replacement Land = 160m²

Project: Former Delfords Site
Dovercourt

Drawing Title: Application Map

Client: Scott Properties

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874 The Crescent
Colchester Business Park
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All dimensions to be verified on site by Main Contractor before the start of any shop drawings or work whatsoever either on their own behalf or that of sub-contractors.

Report any discrepancies to the Contract Administrator at once.

This drawing is to be read with all relevant Architects and Engineers drawings and other relevant information.

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Rev	Date	Description	AC	DT
D	09-11-17	general revisions	AC	DT
C	29-06-17	general revisions	AC	DT
B	08-05-17	general revisions	AC	DT
A	03-05-17	general revisions	AC	DT
Revision:	Date:	Description:	Dwg:	Chk:

Drawn:	Checked:	Date:	Scale:	Paper Size:
AC	DT	08-02-17	1:1250	A4
Job No.:	Dwg No.:	Stage:	Revision:	
42709	101.9	Village Green	D	