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| **Application Decision** |
| Site visit made on 11 October 2022 |
| **by Helen O'Connor LLB MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 12 October 2022** |

**Application Ref: COM/3294779**

**Land at Wastes of the Manor of Preston, Hitchin Road, Preston, Hitchin SG4 7TZ**

Register Unit: VG004

Registration Authority: Hertfordshire County Council

* The application is made under Section 16 of the Commons Act 2006 (“the 2006 Act”) to deregister land registered as a village green.
* The application is made by Mrs Margaret Trinder on behalf of Preston Parish Council (owner of the release land).
* **The release land** comprises of approximately 70m2 of land.

Decision

1. The application is refused.

Main Issues

1. Section 16(1) of the 2006 Act provides that the owner of any land registered as a village green may apply for the land (‘the release land’) to cease to be so registered. Section 16(2) specifies that 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 village green. The release land in this case falls below that mandatory threshold.
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 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.

(d) any other matter considered to be relevant.

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 benefit of both the Planning Inspectorate and applicants.

The Application

1. Although described as Wastes of the Manor of Preston, the application concerns registered village green unit VG004 which comprises several sections. The application concerns a small area of village green currently within Preston Recreation Ground but adjacent to the annexe of a residential property known as Hartings.
2. The deregistration of the land is sought primarily to release the land to provide a garden to the annexe at Hartings.

The Release Land

1. The release land is an irregularly shaped parcel amounting to approximately 70m2.It is located within but at the edge of Preston Recreation Ground, west of Hitchin Road and south of Hartings. The land comprises mostly of uneven ground and areas of ruderal vegetation. There is mesh fencing and a line of trees forming a hedgerow to the eastern boundary which separates the land from the highway. To the west is a post and rail fence, which together with a residential annex building defining the northern boundary separates the recreation grounds from Hartings.
2. 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.

**Representations and Objections**

1. Two representations were made in response to the notice of the application. Natural England (NE) state that the land is not subject to any statutory designations for nature conservation for which NE consent is needed, nor are they aware of any notable level of biodiversity at the site. However, they consider a change in the status of the land to private garden land would preclude public access and its recreational and sporting use. They do not anticipate any benefits to nature conservation or the landscape arising from the application. They highlight sections of the 2015 Guidance outlining the limited circumstances where the deregistration of village green land in the absence of replacement land may be acceptable. Nevertheless, they recognise that the sale of the land would raise money that has the potential to be spent on serving the wider public interest. On that basis, no objection is raised.
2. The Open Spaces Society (OSS) strongly object to the loss of the land from the overall stock of village greens. They do not consider that exceptional circumstances have been shown to justify the proposal. They assert that concerns regarding lack of use due to an absence of maintenance are matters which the parish council ought to address and do not amount to a sound basis for deregistration. In any event, some people enjoy using less accessible areas. They suggest the land has potential to improve biodiversity and/or an informal entrance to the recreation grounds. Notwithstanding that the land is less than 200m2 in size, insufficient justification has been provided as to why no replacement land has been offered.

**Assessment**

1. Paragraphs 3.1 and 3.2 of the 2015 Guidance set out the government’s overall policy objectives to protect commons and greens. They refer to safeguarding commons for current and future generations to use and enjoy and 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. On that basis, it is clarified at paragraph 5.2, that even if the land to be deregistered is not more than 200m2, the Secretary of State will usually expect land to be offered in exchange.
2. Paragraph 5.3 deals with cases where no replacement land is offered, such as in this instance. In general, consent will only be granted in exceptional circumstances, and most likely where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. Examples given include the creation of a slipway for a lifeboat station, or the provision of a disabled ramp to a village hall. Even then, land should be offered in exchange unless there is a compelling reason why this is not possible.
3. It follows that an application for deregistration where no replacement land is offered is most unlikely to be granted if no compelling public interest is served by the deregistration. Consequently, the policy establishes a high threshold test against which the present application must be assessed.

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

1. There are no rights of common registered over the land, and as it forms part of the recreation grounds, there is no individual occupying it. An entry in the register notes rights of access to maintain or make alterations to Post Office plant in, on or over the land. However, based on the information before me and my observations, this would not appear to relate to the small area of the release land. 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***

1. The 2015 Guidance indicates that the issues to be considered in this context include whether the deregistration 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 release land forms part of Preston Recreation Ground, albeit at its edge, and the land is owned by the parish council. In these circumstances the interests of the neighbourhood and matters of public interest are so closely entwined that I have addressed them together in the following section.

***The public interest***

*The protection of public rights of access*

1. Although there is fencing to the road and fencing and built form delineating the land from private residential property, there is no similar physical barrier preventing access from within Preston Recreation Ground. Accordingly, public access is possible. The levels and presence of vegetation may impede convenient access and would hinder organised recreational use of the site. Nevertheless, I was able to access the land at my site visit and its position and condition may provide some opportunities for children’s informal play.
2. Whilst I have noted the opposing points made regarding the merits of creating a pedestrian access through the release land, that is not the substance of the application before me. It is not for me, when considering the statutory criteria in the 2006 Act, to suggest specific ways in which the land ought to be laid out. However, I am mindful that the land possesses some general potential to be made more accessible to the public. This could, amongst other things, encompass a different maintenance regime.
3. The proposal would result in the land forming a private residential garden to an adjacent property. As a result, it would be fenced off to the exclusion of public access. In the absence of any replacement land this would diminish the stock of village green land and directly contradicts the policy objective of safeguarding such land for current and future generations to use and enjoy. Consequently, this weighs very heavily against allowing the proposal.

*Nature conservation*

1. Limited information is provided in relation to biodiversity at the release land. My observations were that the ruderal vegetation indicates there had been limited management intervention. In combination with the trees lining the eastern boundary and proximity to other woodland, it is likely to be attractive to some wildlife. However, given the modest size of the land, it is probable that it could accommodate relatively limited biodiversity. Nevertheless, depending on the management regime employed, it retains the potential to enhance biodiversity in its own right, as well as part of a larger registered village green.
2. The applicant points out that the current resident of Hartings is agreeable to planting the proposed garden area such that it would become a haven for butterflies and bees. Despite that, there is little guarantee that a private garden would be planted so to secure long term biodiversity gain, and future residents could have other gardening plans. It would seem equally probable that a small garden for a residential annexe would be used for ornamental planting with at least some hard surfacing to allow for sitting out, which would bring with it associated domestic paraphernalia.
3. On the evidence before me, I consider that the potential for nature conservation is greater if the land were to retain its status as village green.

*Conservation of the landscape*

1. Although somewhat neglected, my observations of the release land were that owing to an absence of built form and the presence of vegetation, the land possesses some spacious and verdant qualities. The position and appearance of the release land relative to the remainder of the recreation grounds gives it a natural, peripheral character which contrasts pleasantly with the closely mown principal area of the grounds. This provides visual benefit to the surroundings and users of the recreation grounds even if there has been little active recreational use of the land itself.
2. The proposal would result in the land being fenced off from the recreation grounds. Even with the preclusion of buildings as a condition of sale, the likely boundary treatment and planting of the modestly sized garden would have a domestic character in contrast to the land at present.
3. Overall, I am not persuaded that the proposed alteration in status of the land would bring significant landscape improvement to the surroundings. Moreover, it would extinguish the future possibility of village green users undertaking any landscape improvements on the land itself.

*Archaeological remains and features of historic interest*

1. There is nothing to suggest that the application would impact upon any archaeological remains or features of historic interest.

***Other relevant matters***

1. The applicant has referred to the land as being unused, overgrown and not maintained. It is further asserted that ample provision of recreational facilities would remain due to the proximity of the recreation grounds and Wain Wood. However, paragraph 5.2 of the 2015 Guidance makes clear that the Secretary of State does not interpret the purpose of section 16 of the 2006 Act as being to facilitate the deregistration of ‘unwanted’ or ‘useless’ pieces of common land or green; but to enable registered land to be released in exchange for replacement land of equal value.
2. Moreover, other measures might be reasonably employed to address issues of maintenance and lack of use that stop short of deregistration. To do otherwise would seriously weaken the safeguarding of common land and greens as envisaged in the legislation and 2015 Guidance.
3. It is further asserted that the resident of Hartings has no suitable available land to offer in replacement for the release land. Be that as it may, it does not follow that the high threshold policy test set out in the 2015 Guidance ought to be disapplied. Whilst the individual resident would benefit from the application, there is little before me to indicate that the public interest would be best served by allowing the proposal, still less that there is a compelling public interest justification to relinquish the land.
4. Mention is made that the money derived from the sale of the land would be spent on the maintenance and enhancement of parish council assets. However, whilst several options are outlined, no specific objective has been settled on which reinforces that this was not the primary reason for making the application. In any event, these circumstances fall considerably short of the sorts of wider public interest scenarios described in the 2015 Guidance which may warrant allowing cases where no replacement land is offered.

**Conclusions**

1. Having had regard to the statutory criteria and 2015 Guidance, the proposal would result in a reduction of the stock of village green land which would be detrimental to local public access. The case in support of deregistering the land is not strong when assessed against the statutory criteria and is considerably weakened by the absence of any suitable replacement land. I find the justification put forward insufficient to amount to the exceptional circumstances generally required by the 2015 Guidance.
2. Therefore, having regard to all matters raised in the application and written representations, I find that the application should be refused.

Helen O’Connor

Inspector

**Appendix A** – Not to scale

