

Report to: Lead Member for Transport and Environment

Date of meeting: 20 November 2023

By: Director of Communities, Economy and Transport

Title: Application to de-register and replace Common Land 57 and Common Land 96, known as Foulride Green Common, Lower Willingdon, Eastbourne

Purpose: To seek approval to join an application made under Section 16 of the Commons Act 2006 by Messrs Peter and Robert Vine

RECOMMENDATIONS: The Lead Member is recommended to:

- (1) Agree to East Sussex County Council becoming a joint applicant in the application already submitted by Messrs Peter and Robert Vine to the Secretary of State under Section 16 of the Commons Registration Act 2006 for the de-registration and replacement of a section of Common Land 57 (CL57) and Common Land 96 (CL96), known as Foulride Green, Lower Willingdon Eastbourne, to provide access to and egress from a proposed mixed-use development of land from the A2270 Eastbourne Road at Mornings Mill Farm (granted outline planning approval under WD/2021/0174/MEA); and**
 - (2) Delegate authority to the Director of Communities, Economy and Transport to take all necessary steps in connection with the application, including but not limited to, signing the application form, providing evidence in support of the application and any further requirements of the Secretary of State.**
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1 Background Information

1.1 Section 16 of the Commons Act 2006 allows an applicant to de-register land that is registered as Common Land in the Register of Common Land. That Section also allows for land to be provided to 'replace' the land that has been de-registered.

1.2 To enable the proposed development of land under planning permission WD/2021/0714/MEA, Messrs Peter and Robert Vine wish to de-register a section of existing Common land in Willingdon and Jevington Parish (the Release Land). The Release Land is needed to provide access to and egress from the proposed mixed-use development and it is proposed that it will be replaced with a new area of Common Land next to the development (the Replacement Land).

1.3 The applicants have therefore applied to the Secretary of State for the Environment, Farming and Rural Affairs (DEFRA) under Section 16 of the Commons Act 2006. This application has been made to the Planning Inspectorate. See Appendices 1 to 4.

1.4 The Planning Inspectorate have advised that East Sussex County Council (ESCC), as Highway Authority, should be a joint applicant in this case. This is due to a Public Footpath (maintained by ESCC) running through the Replacement Land.

The Release Land

1.5 The Release Land is a section of registered Common Land within parcels CL57 and CL96 known as Foulride Green, located either side of Eastbourne Road, A2270, at Morning Mill Farm. It is owned by the applicants. Plans are shown at Appendices 3 and 4.

1.6 CL57 is currently 11,380 sqm and CL96 is currently 2,202 sqm. The section to be released from CL57 is 4,544 sqm and the section to be released from CL96 is 658 sqm. A total of 5,202 sqm. This land is shown in Appendices 5-7, which are extracts from the CL Register, a formal record of CL in East Sussex.

1.7 The majority of the Release Land is required for construction of the approved development access and associated highway improvements and will become public highway by way of a highway

improvement and adoption agreement with ESCC, as shown on the accompanying plan hatched red, see Appendix 3.

1.8 The approved highway works are necessary to make the development acceptable. The deregistration of the Common Land is, therefore, necessary to allow the approved development to proceed.

1.9 A portion of the Release Land is existing highway verge on the eastern side of Eastbourne Road.

1.10 The Release Land is of little recreational use, being comprised mainly of open grass and scrub, only a narrow strip of which is mown verge immediately alongside the Eastbourne Road. The public use is otherwise understood to be confined to use of the public footpath (Footpath Willingdon and Jevington 5) which will remain and will be unaffected by the removal of the Common Land status.

1.11 There are no registered common rights on this land.

1.12 ESCC is not aware of any access rights under Section 193 of the Law of Property Act 1925 affecting the existing Common Land.

1.13 There are no known archaeological finds or sites within or in the vicinity of the Release Land.

The Replacement Land

1.14 The Replacement Land, to be granted Common Land status in exchange for the Release Land, is 6,763 sqm and currently a pasture, with a small section forming part of the highway verge.

1.15 The majority of the Replacement Land (5,950 sqm) is adjacent to the southern extremity of CL96 and it will form part of the amenity land to be provided within the development, and adjacent to the water feature which has a dual role as a surface water drainage basin.

1.16 Most of the Replacement Land will be further from the carriageway than the Release Land, therefore increasing the recreational potential of the land and the quality and usefulness of the Common.

1.17 A small part of the Replacement Land is adjacent to the existing highway verge on the south west side of Eastbourne Road.

1.18 Public Footpath Willingdon and Jevington 6 runs from Eastbourne Road heading north east through the south west section of the Replacement Land and development, which accommodates the public footpath.

1.19 The existence of the public footpath facilitates access to the Replacement Land. The proposed Common Land status does not interfere with the public's rights to use the footpath.

1.20 There are no access rights under Section 193 of the Law of Property Act 1925 affecting the Replacement Land.

1.21 There are no known archaeological finds or sites within or in the vicinity of the Replacement Land.

1.22 There are no structures on the Replacement Land.

2 Supporting Information

2.1 The Release Land is sited either side of Eastbourne Road and is of little or no recreational use.

2.2 The Replacement Land will be a larger area and for the most part further away from the road. This will make better use of the existing land and result in an improvement in the quality of the Common Land, for use by the public.

3 Consultations and representations

3.1 The applicant will be consulting on the proposals as part of the application process as directed by the Planning Inspectorate.

4 Conclusion and reasons for Recommendation

4.1 Planning permission was granted for the proposed development in September 2022. The release of the sections of CL57 and CL96 is necessary to provide access to and egress from a proposed mixed-use development of land from the A2270 Eastbourne Road at Mornings Mill Farm.

4.2 The de-registered sections of Common Land would be replaced with a larger area of Common Land with greater amenity value.

4.3 Due to the existence of a Public Footpath ESCC is required by the Planning Inspectorate to be a 'joint-applicant.' However, the public footpath rights are affected by the proposal.

4.4 The Lead Member is therefore recommended to:

- (1) Agree to East Sussex County Council becoming a joint applicant in the application already submitted by Messrs Peter and Robert Vine to the Secretary of State under Section 16 of the Commons Registration Act 2006 for the de-registration and replacement of part of a section of Common Land 57 (CL57) and Common Land 96 (CL96), known as Foulride Green, Lower Willingdon Eastbourne, to provide access to and egress from a proposed development of land from the A2270 Eastbourne Road at Mornings Mill Farm (granted outline planning approval under WD/2021/0174/MEA); and
- (2) Delegate authority to the Director of Communities, Economy and Transport to take all necessary steps in connection with the application, including but not limited to, signing the application form, providing evidence in support of the application and any further requirements of the Secretary of State.

RUPERT CLUBB

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LOCAL MEMBER:

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BACKGROUND DOCUMENTS

None