



# Application Decision

Inquiry held on 4, 5 and 6 March 2009

by **Peter Millman BA**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs pursuant to Regulation 3(1) of The Deregulation and Exchange of Common Land and Greens (Procedure) (England) Regulations 2007 to hold a public inquiry and to determine the application.

The Planning Inspectorate  
Common Land Casework  
Team  
4/05 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 8050  
email: commonlandcasewo  
rk@pins.gsi.gov.uk  
**Decision date: 9 April  
2009**

## Application Ref: COM21 Crowborough Common

Register Unit No. CL19

Registration Authority East Sussex County Council

- The application, dated 6 May 2008, is made under Section 16 of the Commons Act 2006 ("the 2006 Act") to deregister and exchange land registered as common land.
- The application is made by Mr M J Wilson, Chairman of Crowborough Beacon Golf Club Ltd. ("the Golf Club")
- **The release land** comprises 1.39 hectares of land in two parcels: 0.79 hectares at the junction of and being on the north side of and having a frontage of 160 metres to Southview Road and on the south-east side of and having a frontage of 90 metres to Beacon Road; and 0.60 hectares on the south side of and having a frontage of 68 metres to Southview Road and lying to the east of the Club House between the first tee and the private road leading to Alchornes Lodge.
- **The replacement land** comprises 1.46 hectares of grassland adjoining the eastern side of Ghyll Farm lying to the east of Sweethaws Lane.

**Summary of Decision:** The application is refused.

## Preliminary matters

1. Section 16(1) of the 2006 Act provides, among other things, that the owner of any land registered as common land 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 common land ("the replacement land").
2. In this case there are 1.39 hectares of release land at Crowborough Common. The replacement land was originally stated to comprise 1.39 hectares, adjoining the south-eastern side of the Common. A discrepancy between the description of the replacement land and its depiction on a plan was noted, and an amended plan, showing an area of 1.46 hectares of replacement land, in the same position but with slightly different boundaries, was substituted. I do not consider that any person's interest has been prejudiced by this late revision of the dimensions of the replacement land. The Golf Club owns both the release and the replacement land.

3. The plan attached to the application showing the release and replacement land is at page 13 of this decision. The release land is outlined in red and marked 'X' and 'Y', the replacement land in light green marked 'Z', and the register unit, Crowborough Common - CL19, in dark green. The amended plan of the replacement land is at page 14.
4. A public inquiry into the application was originally scheduled to start on 8 October 2008, but was postponed on that day because the capacity of the venue was inadequate for the number of people attending.

### **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;
  - (b) the interests of the neighbourhood;
  - (c) the public interest, which includes its 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.
6. There are additional requirements in section 40 of the Natural Environment and Rural Communities Act 2006, under which I must have regard to the Secretary of State's duty to conserve biodiversity, and, because the land is within an Area of Outstanding Natural Beauty, section 85 of the Countryside and Rights of Way Act 2000, under which I must have regard to the purpose of conserving and enhancing the natural beauty of the area.
7. I drew the attention of the parties at the inquiry to Defra's *Common Land Consents Policy Guidance*, published in June 2008. This sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process in sections 16 and 38 of the 2006 Act. The outcome relevant to deregistration is that *our stock of common land and greens is not diminished – that, on balance, any deregistration of registered land is balanced by the registration of other land of at least equal benefit*.
8. The *Policy Guidance* also notes that *In applying the criteria [in s16(6) of the 2006 Act] the Secretary of State will look at the application not only as it is, but will consider whether the application proposes the best possible outcome: it may be that a more acceptable outcome could be achieved by adopting a different approach*.
9. The *Guidance* lists some of the considerations which should be taken into account under the headings in s16(6) (paragraph 5 above). Of relevance in this case are the following questions it suggests should be asked:
  - i. *Does the proposed replacement land add something that will positively benefit the neighbourhood?*

- ii. *Does the loss of the release land mean that local people will be prevented from using the common in the way they are used to?*
- iii. *Are there potential benefits to nature conservation from carrying out the proposals? It may be appropriate to consider indirect benefits.*
- iv. *What will be the impact of the replacement land in relation to nature conservation compared with the release land?*
- v. *What will be the impact on the landscape if the proposals succeed? Is the landscape in a specially designated area, such as... an area of outstanding natural beauty? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green (e.g. if development of any release land might spoil the view... on the remaining part)?*

### **The application**

10. Crowborough Common covers an area of about 86 hectares (215 acres), which was formerly waste of the Manor of Alchornes. It lies within the High Weald Area of Outstanding Natural Beauty ("AONB") and is site no. CW61 of Wealden District Council's Sites of Nature Conservation Importance. Its northern end adjoins the built up area of Crowborough, and it stretches southwards and downhill from there into the countryside. The Common was sold to the Golf Club about 100 years ago. The public was granted the right to use the Common for air and exercise under s193 of the Law of Property Act 1925, with conditions and limitations on that use set out in an Order of the Minister of Agriculture and Fisheries in 1936. The fairways, rough, greens and tees of the golf course cover less than half of the Common. The Common contains a variety of habitats, described in the citation for CW61 as *a mosaic of habitats including woodlands, ghylls, heath, and acid grassland*. The Golf Club actively maintains the land used for golf, and as much as it feels able of the remainder of the Common. It was accepted by all parties that unmanaged heathland would gradually change to scrub and then woodland dominated by silver birch. The Golf Club states that the land is managed in accordance with its *Course Management Policy Document*. Paragraphs 11 and 12 summarise the Golf Club's case for deregistration.
11. The Golf Club argues that deregistration of the release land (described in paragraphs 13 to 15 below) would have no effect on those individuals who have rights over the land, since those rights are not exercised. The release land is not used by local people. The replacement land (described in paragraph 16 below) would provide a better alternative. It is easily accessible from the existing Common. A well-used footpath runs nearby. It would provide a secure and private place for local people to sit and picnic away from golfers, and for children to play. The release land has little special actual or potential conservation value, whereas the replacement land, if managed properly, would provide a greater variety of habitat and more potential for improvement. Although deregistration would lead to the loss of one view, the replacement land still gives wonderful views to the south. It would be more difficult for people to access the replacement land, but the release land is neither accessible nor attractive.
12. The Golf Club's membership is currently in decline. The medium and long-term financial outlook is bleak. The Club is attempting to remedy this by entering a

contract to sell the release land for £1.6m to a developer who desires to build a care home. The completion of the contract will be triggered if both the application for deregistration and a subsequent planning application are successful. The Golf Club argues that the long term future of Crowborough Common is dependent upon its own financial success. The Common is valued for its mixed lowland heath landscape and habitats. Without management the whole Common would eventually, through the process of natural succession, become birch scrub and eventually woodland, to the detriment of landscape and habitat. The Golf Club manages the Common at its own expense and to the best of its ability to retain its valued characteristics. If the application succeeds and it obtains planning permission for the release land it will continue to be able to manage the Common. If the application fails it will almost certainly not be able to do so. It is therefore both in the Golf Club's and the public interest to grant the application to deregister.

### ***The release land***

13. The release land consists of two parcels, separated by Southview Road. They are on the northern side of Crowborough Common, close to the edge of the town. The higher parcel, which I refer to as 'the Y land' in the remainder of my decision, has an area of 0.79 hectares and is roughly triangular. The Y land is bounded on its north-west by the A26 road, and on its north-east by wooded common land. A large part of it is covered by a roughly metalled car park facing south onto Southview Road. The part not covered by the car park consists of deciduous woodland with an under-storey of shrubs and plants including rhododendron and Japanese knotweed. There are signs of paths created by human activity through this area. There are two benches between the car park and the edge of the metalled road, facing south. From these benches and the car park in general, which is at an elevation of about 220 metres above sea level, there are extremely spacious vistas southwards. It is possible to see the English Channel through gaps in the South Downs when the air is clear. The tops of the South Downs are 25 kilometres away, the sea 30 kilometres. It is on the Y land that a developer intends to erect a care home.
14. The lower and smaller parcel of release land south of Southview Road is difficult to enter and appears unused by humans. It is also covered with deciduous trees with an under-storey of scrub, including brambles, and is rather boggy in places. If the release land is deregistered and the Y land is developed, the Golf Club intends this parcel (referred to hereafter as 'the X land') to be the site of an overflow car park for the Club.
15. Both parcels are covered by a Tree Preservation Order ("TPO") made 'in the interests of the visual amenity of the locality'. Undisputed evidence is that until around the middle of the twentieth century, before which the Common was managed by grazing and occasional burning, these parcels of land were covered by gorse, heather and rough grass and had a similar appearance to the remainder of Crowborough Common.

### ***The replacement land***

16. The replacement land is on the south-eastern side of Crowborough Common just less than 1 kilometre as the crow flies from the release land, and about 85 metres lower. It is a roughly rectangular piece of semi-improved grass

meadow, joined to the Common on one side, along which is a fence and hedge into which a pedestrian gate has recently been inserted. To the north of the hedge is an area of ancient woodland. There is a path from the gate to a nearby public footpath crossing the Common. Although it is only a short distance from this gate along the path to more open areas of the Common, the path rises steeply to these areas. The replacement land is let. The agreement for the year ending in July 2008 limited its use to the grazing of the tenant's cattle or sheep, and prescribed various conditions related to keeping the land in good order and free of weeds. The meadow lies in a valley. Rushes grow in its lower south-eastern corner, which is probably wet for most of the year. The meadow slopes up to the north and west where it is much drier. There are extensive views from the higher parts towards the South Downs, but they are not as panoramic as the views from the release land and do not take in the intervening countryside or provide a view of the sea.

### Representations

17. When details of the application were published in the Kent and Sussex Courier on 9 May 2008, representations were received from several organizations and bodies, and from more than 230 individuals. One representation gave unreserved support to the application.
18. Representations from individuals objecting to the application related in particular to the loss or spoiling of views from and to the Y land, the distance of the replacement land from Crowborough town and its relative inaccessibility, the harm that would be caused to wildlife, including badgers, on the release land, the lack of worthwhile habitat on the replacement land compared to the release land, the loss of opportunity to use the Y land for children's play and for adults to use as a short cut from houses to a post box and bus stop, and the fragmentation of the remainder of the Common. Other objections argued that the Golf Club could raise money by other means, and that a decision on deregistration should not be made in advance of planning permission for development of the release land being obtained.
19. Representations from bodies added the following points to those made by individuals: the High Weald AONB Unit stated that: *Any actions within the AONB should seek to enhance its special qualities and features. Clearly the deregistration of this site will neither conserve the integrity of the AONB nor enhance its special features and should not be allowed.* East Sussex County Council's Landscape Group commented that: *The future management [of the replacement land] would need to be secured in order to retain it as open space and to retain the amenity value. If the replacement land was managed to improve and enhance the habitat value it could compensate for the loss of habitat in the release land.* The East Sussex Local Access Forum stated that the replacement land was less accessible, especially to those with disabilities.
20. The representation in support argued that views would not be spoilt, that the replacement land was, unlike the release land, accessible for use, and that if the Golf Club was in funds it would be able to maintain the Common for the enjoyment of all.

21. Many representations from individuals referred to matters which are not relevant to my consideration, for example whether there was a need for care homes in Crowborough.

## **Assessment**

### ***Introduction***

22. The legislation described in paragraphs 5 and 6 above requires that I consider various interests and other relevant matters. The Policy Guidance mentioned in paragraphs 7 to 9 above refers to 'the best possible outcome', and to 'potential' and 'indirect' benefits to nature conservation. This suggests that I should consider not only the direct and immediate effects of deregistration on these interests, but also the effects on them to which it is likely to lead.
23. The beneficial future outcomes posited by the Golf Club (paragraphs 11 and 12 above) in terms of the future management of the Common rely on the occurrence of two events. The first is the granting of this application, the second is the subsequent granting of planning permission for development. Planning permission would lead to the completion of the contract and acquisition of funds, which in turn might result in the best possible management of the whole of Crowborough Common, including the replacement land. The detrimental future outcomes posited by the Golf Club are based on the assumption that if I refuse the application the Golf Club's financial position will continue to worsen, leading to the inevitable decline of the Common.
24. The planning process is entirely separate from the process of deregistration. Counsel for the Golf Club, in his closing submissions, acknowledged that a decision to allow this application could not contain conditions or bind a future planning decision maker, but suggested that I could make recommendations in my decision which might be taken into account when a decision was made on a planning application in respect of the release land. Such recommendations might be based on commitments given by the Golf Club. I do not agree. It is not for me to usurp any of the functions of the decision maker in the planning process by making recommendations designed to influence his or her decisions.
25. I cannot, therefore, either forecast or consciously attempt to influence the outcome of a future planning application. The Golf Club gave some assurances at the inquiry about how it would proceed if deregistration was or was not granted, for example with regard to the benches on the Y land (above at paragraph 13) and the management of the replacement land, but none of these is enforceable. The Policy Guidance suggests that weight can only be given to pre-existing legally binding agreements. There is no provision for the inclusion of binding conditions in a decision to grant an application to deregister.
26. Had the Golf Club's application to deregister followed a successful planning application, it would probably have been possible to conclude on some of the likely outcomes of deregistration. Had there, for example, been an approved design for a care home on the Y land, with conditions on the associated landscaping, it might have been possible to conclude on the future effects of deregistration on the landscape (paragraph 9(v) above). As it is, however, with the outcomes dependent upon a process over which I can have no control or influence, it will be possible to come to few, if any conclusions about them.

27. The legislation does not explicitly require me to consider the outcomes of a refusal to grant the application, but it seems to me that since the Golf Club's case relies on argument about the consequences of refusal I can consider them under 'other matters considered to be relevant'.
28. I shall, therefore, approach my determination of this application by considering the immediate effects of deregistration and exchange on commoners and others having rights, on the neighbourhood, on the Golf Club and on the public, taking the release and replacement lands as they exist now. I shall then consider whether there are any outcomes that are likely to flow from a decision to allow or refuse deregistration, including potential or indirect benefits. If there are, then they can be given weight, but I cannot give significant weight to outcomes that are mere possibilities, or would depend upon processes over which I cannot have any control.

***The interests of those occupying or having rights in relation to the release land***

29. Members of the public have various rights in relation to the release land, and I shall consider these under public interest (paragraphs 44-53 below). Because the Golf Club argues that its interest is inextricably tied to the public interest in maintaining the whole Common I consider its interest at paragraph 54 below. The developer intending to build a care home has registered a charge on the Y land. It has made no representations, and I have no reason to believe that its interests are different from those of the Golf Club as far as this application is concerned.
30. Commoners have rights to remove various things, such as firewood and turf, from the land, and rights to pasture and herbage for various numbers of cattle, sheep and horses. It is clear that such rights have not been exercised since before the 1950s. Only one commoner who has a right to graze 5 cattle (although the legitimacy of the registration is disputed by the Golf Club) has announced an intention to exercise those rights. It seems to me in the absence of any fencing on the Common those rights would probably not be exercised over the release land, since it is in close proximity to busy roads. The replacement land would make more suitable grazing. If anything, deregistration and exchange would benefit this commoner, but I give this factor very slight weight.

***The interests of the neighbourhood***

31. The 2006 Act does not define the term 'neighbourhood', although the Explanatory Memorandum to the Deregistration and Exchange of Common Land and Green (Procedure) (England) Regulations 2007 equates it to 'local inhabitants'. There was agreement at the inquiry that in this case the extent of 'the neighbourhood' was the town and parish of Crowborough.

***Amenity***

32. Crowborough Common is used as an amenity by local people. It appears typically to be used for walking, often with dogs – in other words for fresh air and exercise. The X land appears not to be used. It is not fenced off, but it simply does not, in its present state (paragraph 14 above), invite use. The Y land is used. The car park, which takes up a large part of its area, is used as

an overflow car park for the Golf Club, and although the public does not have the right to drive vehicles onto it, public use is tolerated. Pedestrians do have the right to use it. The part of the Y land to the north of the car park is not as wet as the X land, and the undergrowth is sparser. Children have built a camp. It is roughly on the boundary of the Y land and the Common to its north, but children are likely to have come into the Y land when playing round about it. One witness at the inquiry gave evidence that he crossed the Y land when getting from his house to the bus stop on the A26, and similar use is mentioned in a few representations. There are faintly marked paths indicating light human use across this area.

33. Many representations emphasised the remoteness from the town and the inaccessibility of the replacement land (paragraph 18 above). It is some distance from a car park, and a much greater distance from a public car park. It is not easy to find. It would be less accessible for many people with disabilities than the Y land. Children are not likely to play there unsupervised, although it is all, apart from the small boggy area, easily usable once it has been reached. It is much quieter and more tranquil than the release land. Counsel for the Golf Club argued that the amenity of those who use the *whole* common [his emphasis] could not be diminished because the replacement land would become part of that whole. I am not sure that that argument bears scrutiny. An objector pointed out that there were 200 dwellings in the vicinity of the release land, but only 15 close to the replacement land. It seems likely that the Common is used more heavily in the parts closer to the town of Crowborough and that thus the loss of land close to the town would be less likely to be balanced by the gain of land some distance from it.
34. I consider that because of the distance of the replacement land from Crowborough and its relative isolation, it is likely to be even more infrequently used than the release land, and that the tranquillity and openness of the replacement land does not outweigh those disadvantages for local people. It is possible that the qualities of the replacement land might attract people who do not use the release land, but on the other hand they cannot replace the amenity value of having a woodland walk to a bus stop. I conclude that the replacement land is (excluding consideration of views for the moment) an inferior substitute for those who use the release land. I do not give this factor a great deal of weight, because use of the release land as an amenity is not great.
35. It is not clear from the evidence how the replacement land would change, if at all, if the application was granted. The Golf Club Chairman stated that the Club would 'seek to integrate it into the citation [for CW61 – paragraph 10 above] for the rest of the common' and that 'A plan would be put into place'. It seems likely to me that plans are vague because they would depend not only on deregistration but also on a subsequent successful planning application. I conclude that it is unlikely that the value of the replacement land as a place for recreation would increase very much if at all as a result of granting the application. I conclude too that, as a neighbourhood amenity, the replacement land is, and would probably remain, inferior to the release land.

### Views

36. What seems to be most valued by local people about the Y land is the view from it (paragraph 13 above). It is exceptionally extensive and takes in not just the horizon of the South Downs and a glimpse of the sea when the air is clear, but the intervening areas of the Weald. From the benches and the car park these views are framed by groups of trees. The writer of *An Illustrated Guide to Crowborough*, published in 1890, described the view from this area as making *a scene of beauty unsurpassed in the South of England*.
37. In cross-examination, the Chairman of the Golf Club stated that deregistration of the Y land would do nothing to change this view. In one sense that is true, but on deregistration the land would cease to carry public rights – there would no longer be a right for the public to stand (or sit) and look at the view from the car park area.
38. The Golf Club argued that the view from the top level of the first tee, immediately south of the Y land on the opposite side of Southview Road, was almost identical to that from the car park. It also argued that the view from the Y land was not exceptional, but was just one of the many wonderful and different views available from all parts of the Common. It contended that the view from the replacement land was different, rather than inferior, to the view from the Y land.
39. The view from the top part of the first tee must be almost identical to that from the southern edge of the Y land, apart from the position of the framing trees, and it would seem to have advantages, because it can be appreciated without the intervening road in the foreground. Objectors argued that it was inferior, since under the terms of the 1936 Order, golfers took precedence on tees. Although the top part of the tee is only used infrequently, when competitive matches are played, I accept that the possibility of being asked to make way for golfers might make this a less attractive viewing point. But even if the differences are slight, it seems that the area of the car park and the benches has become the traditional place from which distant views are admired. As one representation suggested, it is the spot from which a Crowborough resident might want to show off to a visitor how lucky he or she was to have such a panoramic view. I accept that the appreciation of views is to a great extent subjective, but it is for this reason that I accept that a loss would be felt if the Y land was no longer available even though objectively there might be little difference between a view from it and the view from the first tee.
40. The views from the replacement land are not exceptional. Because it is around 85 metres lower, they take in the top of the South Downs, but not much of the intervening land, and they are not so panoramic. The sea would not be visible even on the clearest day. It is likely that similar views are available from other places accessible to the public nearby. I conclude that the views from the replacement land would not be an acceptable substitute for most local people for the views from the release land.
41. The Golf Club argued that, given the abundance of views of high quality available from numerous places on the Common, the loss of one view should not be accorded great weight. I accept that argument, but since the view from Y seems to be accepted as superior to others it should be given some weight.

42. I now consider possible future outcomes in terms of views, and whether they should be accorded significant weight. If I grant the application, it is possible that the benches on the Y land will remain; The Golf Club gave an assurance that they would be retained following deregistration and that it would negotiate with the developer to retain them if planning permission were obtained. It seems to me, however, that this is by no means a certain or even probable outcome. It may be that a care home will be built and the seats reserved for the residents or pulled up; it is possible that the land immediately to the south-east of the first tee (the X land) will be developed as a car park. It may be that planning permission will not be given. If that occurs, then there is no reason to doubt that the benches will, at least for the time being, remain, although the views from them may alter if the Golf Club can no longer maintain the Common. It is possible that, as mooted at the inquiry, an organization of local people might spring up and assist in the maintenance of the Common. In my view, however, none of these possible outcomes can be said to be likely to occur, so I can give them no significant weight.
43. I conclude that in terms of amenity and views, the replacement land would not be as valuable to the neighbourhood as the release land, in particular the Y land. Overall it would not add to the benefit of the neighbourhood (paragraph 9(i) above).

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

#### *Nature conservation: the release and replacement land*

44. The TPO (paragraph 15) which covers the release land apart from the car park forbids interference with any trees on the land. The Order was made in August 2008 and it is not clear whether it has or will become permanent. This land has not been managed for very many years. It is in the final stage of succession from grassland to birch dominated woodland. If the TPO has been confirmed, then, whether or not the application to deregister is granted, the character of the land should not alter. Trees may only be felled if they are directly in the way of development which is about to start and for which detailed planning permission has been granted.
45. The replacement land is currently used for the commercial grazing of sheep. I described it in paragraph 16 above. Because it is not subject to any mandatory control it could be managed in a variety of ways.
46. The Golf Club commissioned an expert Ecological Report on the release and replacement lands. Apart from the car park, which was described as of low ecological value or significance, the release land was characterised as 'a relatively species poor parcel of woodland', with a sparse under-storey. The Report described the replacement land as 'acidic semi-improved grassland' which was 'floristically species poor'. It is clear that although the release land is not of any great value for nature conservation (although it is valued for its habitat by local people), the replacement land in its present state is of no significant value.
47. The Ecological Report stated that replacement land had the potential 'for an extremely diverse habitat to be created' because of its proximity to very good quality diverse habitats. Thus a significant gain would be achieved by 'the transfer if the [release] land is managed correctly.' Implicit to the outcomes

posited by the ecologists' Report, however, is the assumption that deregistration and exchange would be followed by a successful application for planning permission and the acquisition by the Golf Club of funds sufficient to effect the desired management. I noted above (paragraphs 23-28) the reasons why I could not give such outcomes significant weight.

48. I accept that one potential outcome of a refusal to grant this application could be the reversion of the Common to scrub and woodland, but it is not the inevitable or even probable outcome. It could equally be that planning permission is sought in any event, and if successful an application to deregister is made, or that the Golf Club explores other options that may be available and suitable for the future maintenance of the Common.
49. I conclude that granting the application would neither benefit nature conservation nor conserve biodiversity in the immediate future (paragraphs 6 and 9(iv) above), and that although there is the potential for benefits to ensue (paragraph 9(iii)), it cannot be said to be probable that they will.

#### *Landscape Conservation*

50. I have already considered the issue of distant views from the release land (paragraphs 36-43 above). I am here concerned with the landscape within the Common and the AONB. As the Golf Club's witness pointed out, deregistration will not of itself change anything.
51. In a letter to members in July 2007 the Golf Club admitted that if the care home were built, the view coming up the 18<sup>th</sup> fairway towards the Club House [and towards the Y land] might not be so attractive. In 2004, commenting on an application to amend the development boundary of Crowborough to include the Y land, a planning officer commented: *development of this site, entailing the loss of a significant number of trees, would be intrusive in the landscape and detrimental to the character of the area, conflicting with national, strategic and local plan policies which seek to protect and enhance the landscape character of the AONB.* Commenting on the application to deregister, East Sussex County Council's Landscape Group stated on the other hand: *A well designed building in a landscape setting could be an enhancement on this site providing it is in character with the local landscape.* It is certain that views within the Common and AONB would change if, for whatever reason, the golf course was no longer maintained and the land became covered in woodland. This might or might not be considered a change for the worse, but the views would, in any event, become less diverse.
52. The comments about the possible future of the Common in the previous paragraph are all conditional on the outcome of a future planning application with respect to the Y land. Even if there were such an application, it is not before me and I cannot influence or predict the outcome (paragraphs 24 and 25 above). The future of the landscape if I grant the application cannot currently be known. There is the potential for both positive and adverse effects on the enjoyment of the remaining part of the Common, and on the AONB (paragraphs 6 and 9(v) above). Since the succession of the current habitat to woodland is not the inevitable, or even likely, outcome of a refusal to grant the application I can only give weight to immediate effects – of which there will be none.

*Protection of public rights of access to any area of land and the right to air and exercise*

53. No evidence was presented to the inquiry which suggested that public access to any area of land (apart from the release land) would be prevented as a result of granting the application. Whether or not the application is granted the public will have the same right to air and exercise as it had before.

*The Golf Club's interest*

54. It is in the Golf Club's interest to achieve deregistration of the release land, since that opens up the possibility that it may be sold, resulting in an improvement in its financial situation. Since the desired outcome is also dependent on the granting of planning permission I do not consider that I can give this factor a great deal of weight in balancing it against the immediate consequences of deregistration.

***Any other matter considered to be relevant***

55. I do not consider that there are any matters other than those already discussed which would have an effect on my conclusions.

**Conclusions**

56. Having regard to these and all other matters raised at the inquiry and in written representations, and to the criteria in section 16(6) of the 2006 Act, I conclude that granting the application would provide the potential of a very slight benefit to one commoner, that it would result in a clear, but not great, detrimental effect on the interests of the neighbourhood and the public interest in nature conservation, that there would be no immediate effect on landscape conservation, but that it would be in the interest of the Golf Club, although that interest should not be given a great weight. Overall the detrimental effects outweigh the others. It cannot be said that the outcome of deregistration would be (paragraph 7 above) the registration of other land of at least equal benefit. I conclude, therefore, that the application should be refused and an Order of Exchange should not be given.

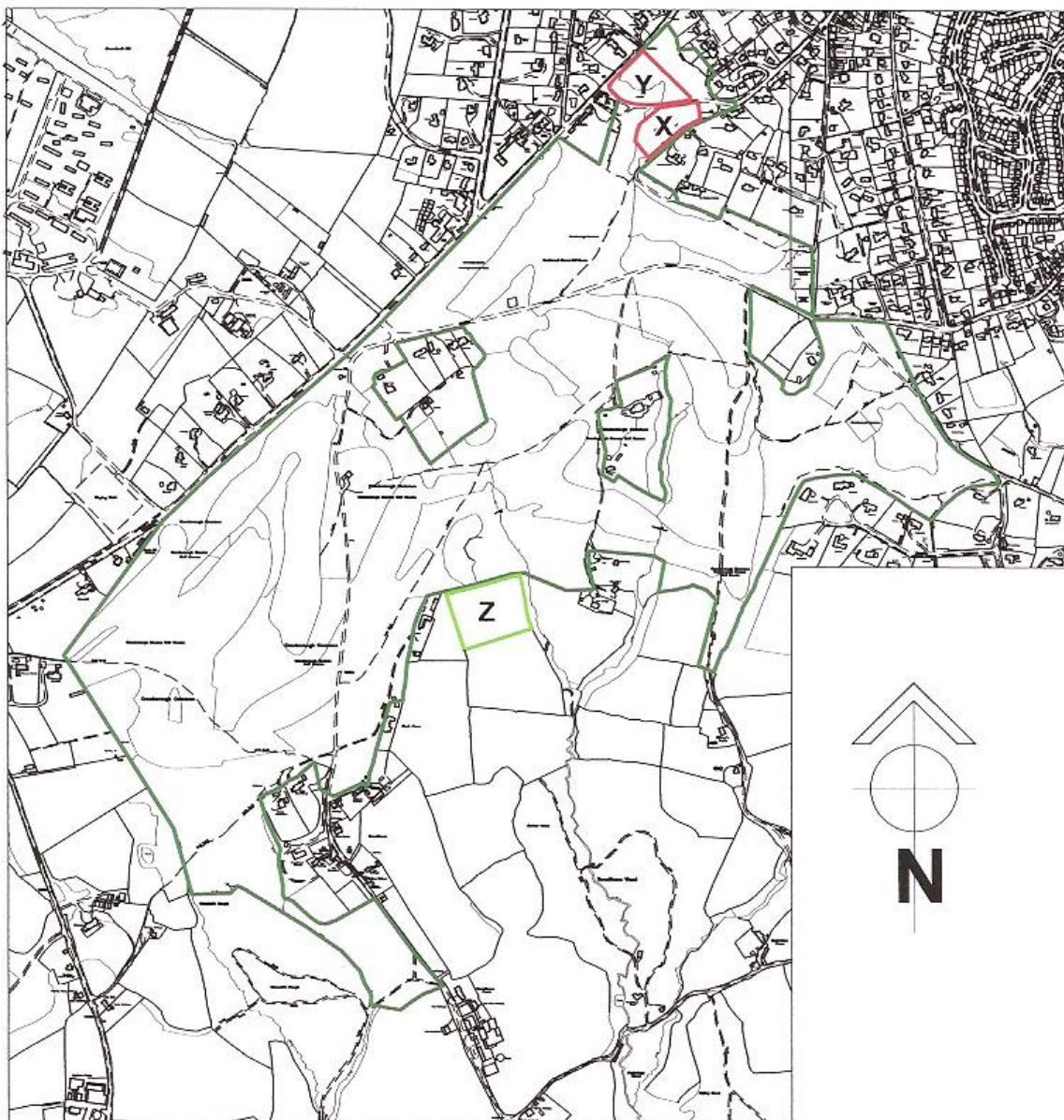
**Formal Decision**

57. The application to deregister and exchange common land at Crowborough Common, Register Unit No. CL19 is refused.

*Peter Millman*

**Inspector**

CROWBOROUGH GOLF CLUB  
SOUTH VIEW ROAD  
CROWBOROUGH

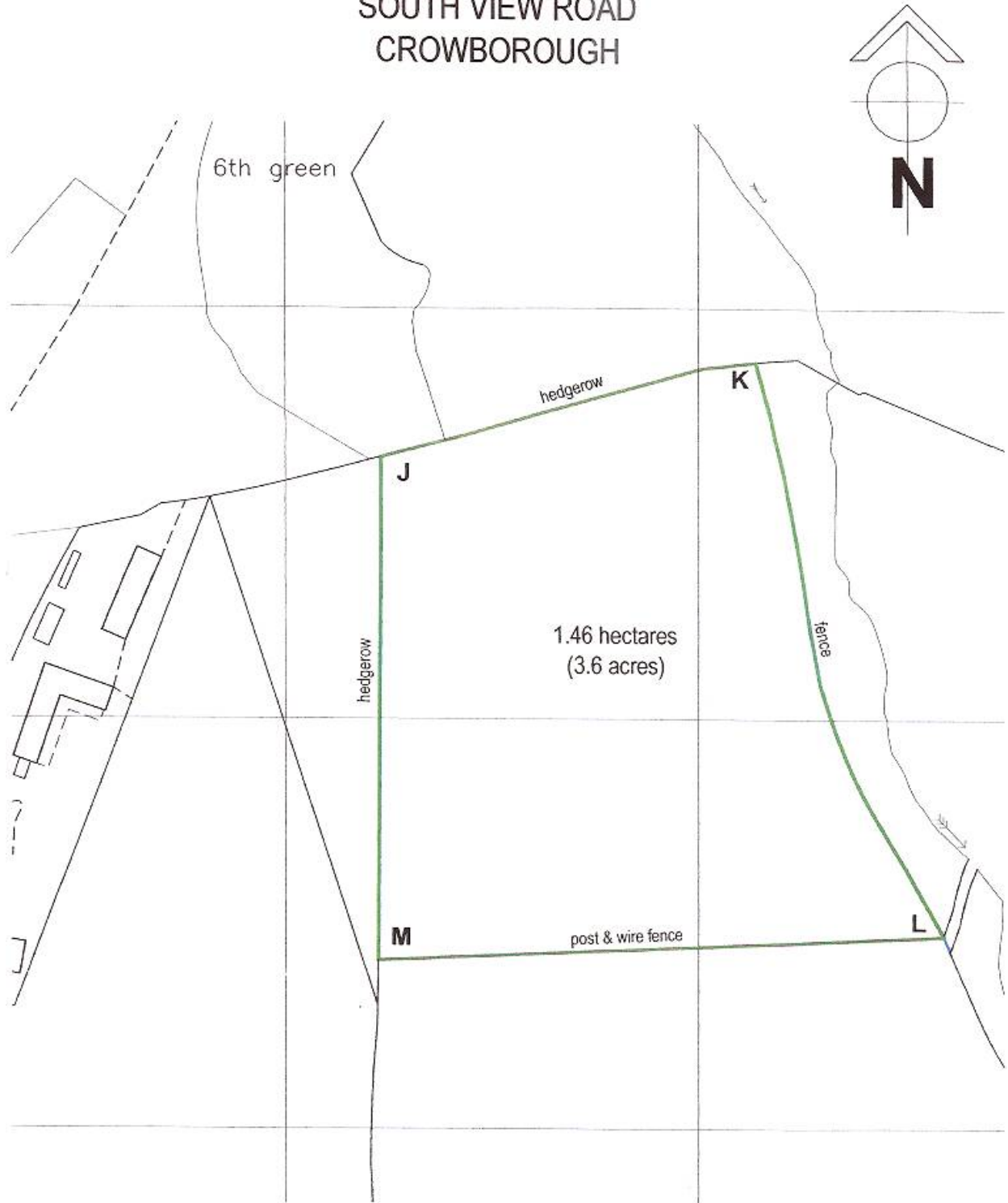


CROWBOROUGH COMMON Scale 1:10000 at A4

- Common land to be exchanged.
- Land to be exchanged for common land.

Revised plan of the replacement land.

**SOUTH VIEW ROAD  
CROWBOROUGH**



**REPLACEMENT LAND - PLAN Z (revised layout)**

 Land to be exchanged for common land.

Scale 1:1250 at A4

## APPEARANCES

### For the Applicant

Mr C Zwart of Counsel                      Instructed by Barton Willmore Planning Partnership  
representing Crowborough Beacon Golf Club Ltd

who called

Mr M Wilson                                      Chairman, Crowborough Beacon Golf Club Ltd,  
Beacon Road, Crowborough TN6 1UJ

### Supporters

Mr P Cowie                                        28 Rockington Way, Crowborough TN6 2NJ

Mr D Haslam                                      Calverley, Church Road, Crowborough TN6 1BN

### Objectors

Mrs D Moss                                        24 Medway, Crowborough TN6 2DL

Mr A Everett                                      Old Stable, Beacon Road, Crowborough TN6 1BB

Mr O Thornton                                    1 Holly Court, Beacon Road, Crowborough TN6 1BB

Mrs A Bott, representing                      Hedleys Solicitors, 6 Bishopsmead Parade, East  
Crowborough Town Council                    Horsley KT24 6SR

Mr G Kean                                         Wealden District Council, Pine Grove, Crowborough  
TN6 1DH

Cllr D Larkin                                      Wealden District Council Pine Grove, Crowborough  
TN6 1DH

Mrs Z Gibbs, member of East                    36 Hurdis Road, Seaford BN25 2SS  
Sussex Local Access Forum

Mrs A Hart, commoner and                      Allfreys Cottage, Allfreys Lane, Crowborough TN6  
representing the Open                            3SG  
Spaces Society

Mr M McDonnell, Vice                            2 Balls Green, Withyhyam, TN7 4BU  
Chairman of the East Sussex  
Local Access Forum,  
representing the Ramblers'  
Association

Mr B Carr, Chairman, High                      Anglesey, Poundfield Road, Crowborough TN6 2BQ  
Weald Walkers

Cllr Paul Adams of                                2 Jubilee Cottages, Mardens Hill, Crowborough TN6  
Crowborough Town Council                    1XW

Mrs A Haig McVitty                              Westridge Cottage, Goldsmith's Avenue,

	Crowborough TN6 1RJ
Mrs Y Irvine	The Broch, High Street, Blackboys TN22 5JU
Miss C Dier	Sunrise Cottage, Queens Road, Crowborough TN6 1PT
Mr M Berger	Alchornes Lodge, Southview Road, Crowborough TN6 1HW
Mr P Grose	Loxley, Lordswell Lane, Crowborough TN6 1HX
Mr A Ellis	Mabbs, Southview Road, Crowborough TN6 1HW
Mr B Clegg	Normandy House, Southview Road, Crowborough TN6 1HW
Mrs I Wright	Kilsaran, Fielden Lane, Crowborough TN6 1TL
Miss V de la Bere	Perrymans Farm, Redbridge Lane, Crowborough TN6 3SR
Mr F Miller	Candida, Harlequin Lane, Crowborough
Mr B Dier	Farthings, Church Road, Crowborough TN6 1EE

This list of appearances includes all those who gave evidence from the witness table, but not those who raised or made points of clarification from their own seats.

## **DOCUMENTS HANDED IN AT INQUIRY**

1. Statement of Joy Tasker
2. Statement of Francis Miller
3. Crowborough Golf Club's opening submissions
4. Statement of Mr J and Mrs R Hugget
5. Statement of Mrs Y Irvine
6. Representations on behalf of Crowborough Town Council
7. Statement of Mrs A Haig McVitty
8. Statement of Mrs Z Gibbs
9. Statement from the Open Spaces Society
10. Statement of Mr G Kean
11. Statement of Mr B Carr
12. Extracts from Tunbridge Wells Commons Conservators' website
13. Figures relating to the Conservators' budget 2009/10
14. Extracts from Crowborough Town Council minutes
15. Planning permission for car park
16. 2007 members' consultation letter
17. Statement of Mr T Ellis
18. Statement of Mr A Everett
19. Decision letter from DETR supplied by Mr Dier
20. Statement of Mr McDonnell
21. Statement of Town Councillor Mr P Adams
22. Statement of Mrs I Wright
23. Miss C Dier's speaking notes
24. Statement of Mr P Grose
25. Copy of Tree Preservation Order 2008/0036
26. Extracts from the Commons Register supplied by Mrs A Hart
27. Map showing the layout of holes, fairways, greens etc. on the golf course

28. Course Management Policy Document
29. Letter and Statement from Mr B Clegg
30. Statement of Mrs D Moss
31. Statement of Mr O Thornton
32. Statement of Mr D Haslam
33. Mr Zwart's closing submissions
34. Mr Clegg's closing submissions
35. Tomkins v Tomkins (CA 1948) – reference to meaning of 'relevant'.
36. Extract from the Shorter Oxford English Dictionary containing the definition of 'neighbourhood'.