

County of Kent Act 1981

PART XV

TUNBRIDGE WELLS PROVISIONS

102. In this Part and in Schedule 3 to this Act., —

- " the Act of 1890 " means the Tunbridge Wells Improvement Act 1890;
- " appointing authority " means each of the persons by whom conservators are appointed in accordance with subsection (2) of section 103 (Constitution of conservators) of this Act;
- " the commons " means the Tunbridge Wells Commons delineated and coloured red, blue and green on the plan;
- " the conservators " means the conservators of the commons constituted by the Act of 1890 and this Act;
- " the former borough " means the Royal Borough of Tunbridge Wells as it existed immediately before 1st April 1974;
- " the freeholders' committee " means the committee appointed to act on behalf of the freehold tenants of the Manor of Rusthall ;
- " the Grove " means the land in the former borough described in the indenture of 1703 referred to in the scheduled agreement and known as the Grove or Mount Sion Grove;
- " the Lord of the Manor " means the Lord of the Manor of Rusthall for the time being ;
- " the plan " means the plan deposited for the purposes of the Act of 1890;
- " the scheduled agreement " means the agreement set out in Schedule 3 to the Act of 1890;
- " the Tunbridge Wells Council " means the Tunbridge Wells Borough Council.

Interpretation of Part XV.

1890 c. ccxxxv.

The Commons

103.— (1) Notwithstanding the repeal of the Act of 1890 the conservators in office at the commencement of this Act shall continue in office until 31st December 1982, the management of the commons shall continue vested in the conservators and they shall exercise the functions assigned to them by this Act.

Constitution of conservators.

(2) The conservators shall subject to any casual vacancy consist of 12 persons appointed as follows:

- (a) four by the Lord of the Manor, who may nominate himself and his steward and bailiff or any other person as he may think fit;
- (b) four by the freeholders' committee from among persons whose names appear in the register of freehold tenants of Rusthall Manor directed to be kept by the Rusthall Manor Act 1863;
- (c) four by the Tunbridge Wells Council from among the persons who are members of the Tunbridge Wells Council for wards comprised within the former borough.

1863 c. lxxi.

(3) The incidental provisions set out in Schedule 3 to this Act shall apply in relation to the conservators.

104.— (1) Each appointing authority shall not later than 1st December and not later than 1st December in each third year thereafter make their respective appointments in accordance with subsection (2) of section 103 (Constitution of conservators) of this Act:

Appointment of conservators

Provided that the Tunbridge Wells Council shall make their appointments not later than 1st December in each year.

(2) Each conservator so appointed shall (unless he shall previously die, resign or become disqualified) continue in office from 1st January next following his appointment

- (a) in the case of a conservator appointed by the Tunbridge Wells Council for a term of one year; and
- (b) in the case of any other conservator for a term of three years; and shall be eligible for reappointment:

Provided that an appointing authority may at any time remove any of the conservators appointed by him or them and appoint another person in his stead for the remainder of the term of office.

105.— (1) A person appointed as a conservator may at any time resign his office by written notice delivered to the clerk to the conservators.

Casual
Vacancies

(2) Where any person who is a conservator

- (a) ceases to be qualified to be a conservator;
- (b) dies;
- (c) ceases to be a conservator by reason of resignation;

the conservators shall forthwith declare his office to be vacant and notify the appointing authority.

(3) A casual vacancy occurring in the office of conservator shall be filled by the appointing authority by whom the conservator was appointed by the appointment of another person to fill the vacancy.

(4) A person appointed under subsection (3) above to fill any casual vacancy shall hold office until the date upon which the person in whose place he is appointed would regularly have retired and he shall then retire.

106. No conservator shall receive any remuneration nor may any officer of the Tunbridge Wells Council act as a conservator:
Provided that nothing in this section shall operate to prevent the steward or bailiff of the Lord of the Manor from receiving remuneration or holding any office of profit other than under this Part.

Conservators
to act
gratuitously.

107. The acts and proceedings of any person nominated to the office of conservator and acting in that office shall notwithstanding his disqualification or want of qualification be as valid and effectual as if he had been qualified.

Validity of acts
done by
unqualified
persons.

108.— (1) The conservators shall have a duty to maintain and preserve the commons.

(2) The conservators may for the purpose of this Part—

- (a) execute works of drainage and improvement of the commons;
- (b) plant trees and enclose such trees with fences of a character as not to be likely to injure animals turned out on the commons;
- (c) maintain footpaths and provide seats for the public on the commons.

Power to
conservators to
execute works

109. The inhabitants of the borough of Tunbridge Wells shall have free access to and a privilege at all times of playing and attending at games and of enjoying recreation upon the commons without payment but subject to such byelaws and regulations as are hereinafter mentioned and with power for the conservators as they consider expedient

- (1) to set apart any part of the commons for cricket, football, or other games;
- (2) to form any cricket, football or other ground and to enclose the same with posts and chains or with open fences so as to prevent cattle straying thereon; and
- (3) to prescribe as to the persons who shall use the same for cricket, football or other games and the times when the particular persons may exclusively use the same for cricket, football or other games as aforesaid.

110.— (1) The conservators shall maintain the commons free from all encroachments except as herein provided and also except that they shall have power to permit temporary enclosures to be made and tents or booths to be erected on such occasions as they shall think fit.

Commons to be preserved from encroachments.

(2) It shall not be lawful for any persons other than the conservators without the consent of the conservators in writing to make any temporary or other enclosure of any part of the commons or to put any tents, removable lodges, fences, posts, rails or other matters or things thereon or to make any road or footpath except over such portions of the commons as are coloured red on the plan or to lay any sewer, drain, pipe, waterway or other work of a like nature in or through any part of the commons.

(3) Nothing in this section shall interfere with any right of the water authority to make and maintain such sewers as may be necessary for effectually draining the borough for the purpose of the Public Health Acts or the Water Act 1973.

1973 c. 37.

(4) Nothing in this section shall prejudice or affect the rights of the British Gas Corporation under paragraphs 1 and 2 of Schedule 4 to the Gas Act 1972 in respect of the land coloured red on the plan.

1972 c. 60.

111.— (1) The conservators may make byelaws under this Part for all or any of the following purposes:—

Power to make byelaws.

- (a) for the improvement and management of the commons and the preservation of good order and conduct among persons frequenting them;
- (b) for the protection of property, trees, shrubs, ferns and other plants and for the protection of paths;
- (c) for the prevention of nuisances, annoyances, obstructions and encroachments;
- (d) for the prevention of the deposit of road sand or rubbish or other matter;
- (e) for the regulation of sports and games played thereon;
- (f) for the regulation of the use of animals let out for hire thereon and of persons letting out for hire or using animals thereon and in general the regulation of riding on the commons;
- (g) for the prevention of vehicles, including bicycles, being parked or driven or horses being exercised on any part of the commons not set apart by the conservators for the purpose;
- (h) for the prohibition and prevention of the fouling of any ornamental or other lakes, ponds or waters, the regulation of skating and sliding thereon, the prevention of the destruction or injury of aquatic or other birds or of other animals or of fish therein;
- (i) for the prevention of the posting of bills or placards on any wall, railing, fence, tree, lamp-post, walk, pavement or seat or elsewhere and the prevention of the removal of any such wall, railing, fence, tree, lamp-post, walk, pavement or seat;
- (j) for the regulation and if need be the prohibition of placing, drying or bleaching of clothes, household linen or other materials or things and the beating and cleansing of carpets or like articles;
- (k) for the temporary enclosure except on Christmas Day, Good Friday and Sundays of portions of the commons not exceeding six days at a time for the protection and-renewal of the herbage thereon;

- (1) for the prevention of all acts and things tending to the injury or disfigurement of the commons or the interference with the use thereof by the public for purposes of exercise and recreation.
- (2) Any person who contravenes any byelaw made under this section shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding £50.
- (3) Subsections (3) to (9) and (11) of section 236 and section 238 of the Act of 1972 shall apply and have effect with respect to byelaws made by the conservators under this section as they apply to byelaws made by a district council, as if references
 - (a) to the authority by whom the byelaws are made, to a district council or to the local authority were in each case to the conservators;
 - (b) to the area to which the byelaws are to apply were to the commons;
 - (c) to the proper officer of a district council were to the clerk to the conservators.

112. The conservators may appoint officers for securing the observance of this Part and of the byelaws made thereunder.

Power to appoint officers.

113.— (1) If any tree on the commons falls or is felled by the conservators the tree shall thereupon become the property of the Lord of the Manor.

Rights of Lord of the Manor

- (2) The Lord of the Manor may trim or brush up the branches of any tree which may obstruct the access of light to or overhang or be otherwise prejudicial to any house of his on the commons.

114. Nothing in this Part shall

Savings.

- (1) be construed as placing under the care of the conservators any highway on or across the commons;
- (2) affect the land delineated and coloured brown on the plan and such land shall not in any way be subject to the jurisdiction of the conservators nor be under their control or management ;
- (3) prejudicially affect any estate, interest or right of a profitable or beneficial nature, in, over or affecting the commons or any part thereof as subsisting at the commencement of this Act or which could or might have been enjoyed if this Act had not been passed.

115.— (1) The Tunbridge Wells Council shall pay yearly to the conservators the requisite sum to enable the conservators to defray the expense of discharging their functions under this Part.

Expenses of conservators.

(2) Before 1st January in each year the conservators shall issue to the Tunbridge Wells Council a precept for the requisite sum required for the financial year beginning 1st April next following.

(3) The requisite sum shall be payable half-yearly by equal instalments on 1st July and 1st January in each financial year.

(4) In this section—

" financial year " means a period of 12 months ending on 31st March;

" the requisite sum " means the sum estimated by the conservators to be the sum required to meet their expenditure under this Part in the financial year following the issue of a precept made under subsection (2) above after taking into consideration any money in the hands of the conservators or likely to come into the hands of the conservators during that financial year but shall not in any financial year exceed the product of a rate of 0.3p in the pound, or such greater sum as the Tunbridge Wells Council may by resolution approve, as estimated or calculated for the purposes of section 12 of the General Rate Act 1967.

1967 c.9.

116.— (1) The conservators shall cause to be kept proper accounts of all sums received or paid by them and proper records and audit. in relation to those accounts.

(2) The provisions of sections 154 to 167 of the Act of 1972 except subsections (1) and (2) of section 154 shall with all necessary modifications extend and apply to the conservators as if

- (a) the conservators were a parish council;
- (b) the provisions of this section were provisions of section 154 of the Act of 1972;
- (c) references in section 159 (2) and (3) of the Act of 1972 to " any area to which those accounts relate ", in section 165 (1) (a) to " the area of any body whose accounts are required to be audited in accordance with this Part of this Act " and in section 166 (1) (c) of that Act to " the area of that body " were references to " the borough of Tunbridge Wells " ; and
- (d) references in section 165 of the Act of 1972 to " any such body " and " that body " were references to " the conservators " .

SCHEDULE 3

Sections 102 and 103.

PROVISIONS APPLYING TO THE CONSERVATORS

1. The conservators shall in every year hold not less than four business meetings; they may in every year hold in addition such other meetings as they may determine.

2.— (a) At the first meeting of the conservators held on or after 1st January 1983 and on or after 1st January in each year thereafter the conservators present at the meeting shall appoint one of their number to act as chairman and the chairman shall, unless he shall die, resign or become disqualified, continue in office until the next annual appointment of a chairman.

(b) The chairman shall preside at all meetings at which he is present but in case he shall be absent from any meeting at the time appointed for holding the same, the meeting shall appoint one of the conservators then present to be chairman of such meeting.

3. No business shall be transacted at any meeting unless five conservators at least are present thereat.

4. All questions shall be decided by a majority of the conservators present and voting and in case of an equality of votes the person presiding at the meeting shall have a second or casting vote.

5. Until the contrary be proved a copy of a resolution of the conservators signed and certified by the clerk to the conservators to be a true copy shall be sufficient evidence of the passing of such resolution without further or other proof of the signature of the said clerk or of the said resolution having been duly passed.

6. The conservators shall have power to appoint a committee or committees for any purpose and may delegate to such committee or committees any of their powers and duties.

7.— (1) Minutes of the proceedings of a meeting of the conservators shall be drawn up and entered in a book kept for that purpose and if approved by a majority of the conservators present and voting shall be signed at the same or next following meeting of the conservators by the person presiding thereat, and any minutes purporting to be so signed shall be received in evidence without further proof.

(2) Until the contrary is proved, a meeting of the conservators, a minute of whose proceedings has been made and signed in accordance with this paragraph, shall be deemed to have been duly convened and held, and all the members present at the meeting shall be deemed to have been duly qualified.

(3) Sub-paragraphs (1) and (2) above shall apply in relation to a committee of the conservators as they apply in relation to the conservators.

(4) Until the contrary is proved, where a minute of any meeting of any such committee has been made and signed in accordance with sub-paragraphs (1) and (2) above the committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minute, the meeting shall be deemed to have been duly convened and held and the members present at the meeting shall be deemed to have been duly qualified.

8. Subject to the provisions of this Schedule the procedure and business of the conservators shall be regulated in such manner as the conservators may from time to time determine.

9.— (1) The conservators shall appoint

- (a) a clerk who may if they think fit be the chief executive of the Tunbridge Wells Council;
- (b) a treasurer; and
- (c) such common keepers and other officers as they may think necessary for the proper discharge of their functions.

(2) A clerk, treasurer, common keeper or other officer or servant appointed under sub-paragraph (1) above shall hold office on such reasonable terms and conditions including conditions as to remuneration as the conservators think fit.

10. The conservators may provide and maintain such offices as may be necessary for transacting their business and that of their officers.