

|  |
| --- |
| **Application Decision** |
| Site visit made on 5 July 2022 |
| **by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 6 September 2022** |

|  |
| --- |
| **Application Ref: COM/3292485**  **Hamsterley Village Green, Hamsterley, County Durham DL13 3RG**  Register Unit No: VG45  Commons Registration Authority: Durham County Council |
| * The application, dated 8 February 2022, is made under Section 16 of the Commons Act 2006 to deregister land registered as a Village Green (VG). * The application is made by Hamsterley Parish Council. * **The release land** comprises 100m² of land outside the property known as Green View, Hamsterley, Bishop Auckland DL13 3RG. |
|  |

Decision

1. Consent is refused.

**Preliminary Matters**

1. 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.
2. This application has been determined solely on the basis of written evidence and an unaccompanied site visit carried out on 5 July 2022.
3. I have taken account of the representations made by Natural England (NE), the Open Spaces Society (the OSS) and Historic England in reaching my decision.

**Main Issues**

1. 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 over it);

b. the interests of the neighbourhood.

c. the public interest; and,

d. any other matter considered to be relevant.

1. I will also have regard to Defra’s published guidance in the Common Land Consents Policy Guidance, dated November 2015, in relation to the determination of applications under Section 16 of the 2006 Act.

**Reasons**

**The Application**

1. The application seeks to provide access to a development of 12no. dwellings (the proposed development), which has received planning permission (DM/17/02967/OUT). This approval is in the form of outline consent with all matters reserved, except for access.

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

1. The release land is owned by the applicant who clearly supports the application. There are no registered rights recorded over the land. The applicant confirms that the release land forms part of a Public Right of Way (PROW) and that an informal right of access over the release land exists for the occupiers of Green View.

***The interests of the neighbourhood***

1. The 2006 Act does not define the term ‘neighbourhood’. However, published guidance in the Explanatory Memorandum to the Deregistration and Exchange of Common Land and Greens (Procedure)(England) Regulations 2007, SI2007 No.2589, makes it clear that the term should be taken to refer to the local inhabitants.
2. It is apparent that the deregistration of the release land would have an adverse effect on the neighbourhood, albeit modest, as no replacement land is proposed. I acknowledge the comments from the applicant regarding the inability to secure replacement land within ‘a reasonable vicinity’ of the release land. However, there is very little to substantiate this view and explain why replacement land could not be secured within the site of the proposed development. Whilst I acknowledge that there would be some economic and social benefits secured through the construction phase and subsequent occupation of the proposed development, there is little evidence to support the view of the applicant that the scheme would be affordable.
3. I accept that the area of the release land is relatively modest in size and the proposed access would appear unlikely to have a significant impact on the public use of the VG. I also note that no objections have been made to the proposed deregistration by any local resident. Nonetheless, the deregistration of this section of the VG to facilitate the subsequent construction of the proposed access would create some visual harm, through an increase in the urbanising of this part of the VG.

***The public interest***

1. 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.

*Nature Conservation*

1. There is no evidence before me to indicate that the proposed deregistration of this section of the VG would harm nature conservation interests.

*Landscape*

1. The land subject of this application is not in a National Park, Area of Outstanding Natural Beauty or covered by any formal landscape designation. Nonetheless, the area subject of this application positively contributes to the wider visual amenities of the VG. NE and the OSS have raised concerns to the application in this regard, especially with no replacement land being provided.
2. It is accepted that the application site comprises mown grassland and hard surfacing where pedestrian and vehicular access to adjoining properties is also present. However, these existing features are subtle and on the periphery of the VG. Whereas, the proposed access would still be on the periphery of the VG, but it would be much more noticeable, through its engineered appearance.

*Public access*

1. It is highly likely that the construction of the access itself, would not limit public access in the long term, although there may be some disruption to the PROW during the construction phase of the proposed development. Furthermore, the Council remaining as owner of the land after deregistration and the nature of the development would significantly reduce the likelihood of access being restricted to the PROW in the future.

*Archaeological Remains and Features of Historic Interest*

1. There is no evidence to suggest that the proposed deregistration would have an adverse effect on any archaeological remains or features of historic interest. HE has not provided any comments on the application, as no heritage assets would be affected.

**Other Matter**

1. The Highway Authority should have joined the application given the PROW crossing the release land. This was brought to the attention of the applicant on 16 February 2022 by email, where a timescale of 21 days was given for the submission of the required information. This information was requested again on 30 August 2022, where the applicant confirmed that they had yet to hear from the Highway Authority.
2. Therefore, whilst there has been non-compliance with requests from the determining authority and a subsequent lack of progress on this matter, I am satisfied that waiving this requirement would be reasonable in this instance, given that the application fails on other issues listed above. Consequently, I am satisfied that no prejudice would occur to any interested persons, including the applicant.

**Conclusion**

1. Overall, in the absence of any replacement land being offered, the deregistration of the release land would result in the reduction to the amount of the VG. Whilst this reduction would be 100m2, this would still represent a reduction in the overall stock of land. The residential development has been advanced as an exceptional circumstance to forego the provision of any replacement land. However, on the evidence provided there is little to substantiate the wider public benefit of the proposed development, particularly on the grounds of affordability.
2. Furthermore, whilst the resultant visual effect arising out of this application in respect of the interests set out above may in isolation, not be sufficient to withhold consent, it is a factor that weighs against the application. Thus, when coupled with the absence of any replacement land or a clear demonstration of exceptional circumstances to form the necessary wider public benefit, I conclude that the application should be refused.

W Johnson

INSPECTOR