Town and village greens (T&VG) are protected by section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. Section 12 makes it a criminal offence to do anything which injures a green or interrupts its use as a place for exercise and recreation. Section 29 also makes it an offence to permanently encroach upon or inclose a green, or to build upon or disturb the soil of a green otherwise than with a view to its better enjoyment.

It is not possible to apply for consent under section 38 of the Commons Act 2006 to carry out works on a T&VG unless it is subject to a scheme of management under the Metropolitan Commons Act 1866 or Commons Act 1899, or to a Provisional Order Confirmation under the Commons Act 1876. Even where there is such a scheme or Act consent under section 38 does not authorise works which constitute an offence under sections 12 or 29.

As an alternative to a s38 application, where works are proposed on a T&VG, and there is suitable exchange land available, you may wish to consider applying to us under s16 of the Commons Act 2006 to deregister the T&VG (or a part of it) and offer an exchange of land (see “Notes on completing an application to deregister and/or exchange common land or town or village green”).