

|  |
| --- |
| **Application Decision** |
| Site visit made on 18 July 2023 |
| **by Claire Tregembo BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 7 September 2023** |

|  |
| --- |
| **Application Ref: COM/3317299****Hamsterley Village Green**Register Unit No.: VG45 (Part)Registration Authority: Durham County Council  |
| * The application dated 15 February 2023, is made under Section 16 of the Commons Act 2006 to deregister and exchange land registered as a village green.
 |
| * The application is made by Hamsterley Parish Council and Matthew and Tracy Betney.
 |
| * The release land comprises 92.7 m2 of land outside of Green View, Hamsterley.
* The replacement land comprises 92.7 m2 of land at Green View, Hamsterley.
 |
| **Decision: The Application is granted.** |
|  |

**Preliminary Matters**

1. I undertook a site visit on 18 July 2023 with members of Hamsterley Parish Council and a representative from the developer, Forric Homes.

The Application

1. The application is made to allow the provision of access to a proposed development comprising twelve dwellings which have been granted outline planning permission. A reserved matters planning application is currently being considered by the planning authority. An earlier Section 16 application with no provision for replacement land was refused in July 2022. My decision will be made solely on the merits of the application before me.
2. The village green consists of 13.113 acres made up of roadside verge and traditional green. The area requested to be released is 92.7 m2 and is part of the roadside verge in front of Green View, Hamsterley. It is part grass verge, part metalled access to Green View and the development site, and part stoned access to Blacksmiths View. There is also a public right of way over the green and access road. The proposed replacement land is 92.7 m2 made up of three parcels, two parcels in front of Green View and one behind the neighbouring social club. These areas are currently part grass and part metalled but will be entirely grass on completion of the proposed development.

The Main Issues

1. Section 16(1) of the Commons Act 2006 (the 2006 Act) provides that the owner of any land registered as common land or village green may apply for the land (the release land) to cease to be so registered. Section 16(3) and (4) of the 2006 Act provide that if the release land is not more than 200 square metres in area, the application may include a proposal to register land in place of the release land.
2. I am required by section 16(6) of the 2006 Act to have regard to the following in determining the application:
3. the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
4. the interests of the neighbourhood;
5. the public interest, which includes the interest in nature conservation, conservation of the landscape, protection of public rights of access and the protection of archaeological remains and features of historic interest;
6. any other matters considered to be relevant.
7. I have had regard to Defra’s Common Land Consents Policy Guidance (November 2015) (the 2015 Policy) in determining this application, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its own merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from this guidance.
8. Section 3 of the 2015 Policy sets out the overall policy objectives to safeguard and protect commons and greens. Paragraph 3.2 seeks to ensure that our stock of common land and greens is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit. Paragraph 5.2 sets out that even when the land to be deregistered is not more than 200m2 the Secretary of State will usually expect land to be offered in exchange for the land being deregistered to not allow our stock of common land and greens to diminish.
9. Paragraph 5.3 of the 2015 Policy sets out in general, that the Secretary of State will grant consent where no replacement land is offered only in exceptional circumstances. Such circumstances are most likely where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. An application for deregistration where no replacement land is offered is most unlikely to be granted if no compelling public interest is served by the deregistration.

Reasons

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

1. One of the applicants has informal access over the release land and the exchange will allow them to develop their land. The other applicant is the owner of the release land. An adjoining landowner also uses the release land as informal access, and they will be granted additional land for parking as part of the proposed development.
2. There are no registered rights recorded over the land. The release land is part of a public right of way, but access will still be possible along the proposed new road which is intended to be adopted.

***The interests of the neighbourhood***

1. As the existing green forms part of the roadside verge, it has limited use for recreational purposes. The replacement land is the same size as the release land. Therefore, the exchange is unlikely to have any impact on recreation and access for the neighbourhood.
2. The proposed development will provide housing for the area including two affordable homes which will benefit the neighbourhood.

***The public interest***

*Nature conservation*

1. Natural England (NE) does not consider there will be any benefit to nature conservation as a result of the exchange.
2. Most of the release land is currently metalled or stoned to provide access to properties behind the green. The proposed replacement land will be entirely grass, including land that is currently metalled. Some of the existing metalled green is proposed to be reinstated to grass. I consider the increase in grassland will be a slight benefit to nature conservation.

*Conservation of the landscape*

1. The application land is not within a National Park, Area of Outstanding Natural Beauty, or any other formal landscape designation.
2. NE considers there will be a degree of visual harm arising from the proposals due to the more developed and engineered appearance of the proposed adopted road and visibility splays.
3. No changes or works are proposed within the visibility splay as this land is already open village green. Therefore, there will be no harm arising from the visibility splays.
4. The new road will be more noticeable and have a more engineered appearance than the existing metalled access. However, the proposed footways will merge into the existing footway along Saunders Avenue. Grass verges are proposed on either side of the access for at least ten metres which will be visible from Saunders Avenue. These will be similar in appearance to the existing roadside verge, and they will contain more grassed area than the exchange land. Some of the metalled surface within the exchange land will also become grassland. I consider this will minimise the impact on the landscape.
5. Although there will be some visual harm and impact on the landscape, I do not consider this to be significant.

*The protection of public rights of access*

1. A public footpath runs over the release land and the Highway Authority has confirmed they have joined the application. The released land will provide access for the proposed development, and it is intended for it to become an adopted highway. Although there may be some disruption to the use of the footpath and village green during the construction of the development, long term public access will be unaffected. I understand the footpath is proposed to be diverted within the development, but this will be subject to an application to the relevant council.
2. The Open Spaces Society (OSS) is concerned the existing wall in front of Green View will remain, forming a physical barrier to the green. The applicants have confirmed the wall will be removed as shown on the site layout plan submitted with the reserved matters planning application.
3. The OSS also has concerns that part of the replacement land will be used for parking for Green View as indicated on the outline planning applications. This is not shown on the reserved matters plan and Green View already has a large tarmacadamed area in front of it for parking. I am satisfied that this area will not be used for parking. The proposed additional parking for Blacksmiths View is not part of the exchange land.
4. NE note that only one of the parcels is contiguous with the existing village green. On the indicative application plan, there is a gap between the existing village green and the replacement land on the west side of the proposed road in front of Green View. This is the width of the existing wall and a narrow strip of verge in front of it. However, the reserved matters plan shows the wall removed and the gap grassed to form a link between the existing green and replacement land. The applicants were asked to confirm if the application plan was correct and subsequently submitted a revised plan which included the gap within the replacement land. Therefore, there will be no gap between the existing village green and the replacement land in front of Green View. Access to the other parcel will be possible along the existing footpath and new road. This will effectively provide an area of roadside village green within the proposed development site.
5. As the replacement land is in the same area as the release land and will be accessible from the public highway, I am satisfied there will be no impact on public access as a result of the exchange.

*Archaeological remains and features of historic interest*

1. Historic England has not made any comments regarding the exchange. There is no evidence to suggest the proposed exchange will have an adverse effect on any archaeological remains or historic features. The existing stone wall to be removed appears to be a relatively recent addition.

***Other relevant matters***

1. NE considers the location and size of the replacement land does not represent the required level of mitigation for the loss of land and the level of visual harm to the village green which will result from the proposed development. As the proposed exchange land is the same size as the release land and will result in more grassland than currently exists, I consider the replacement land is sufficient to mitigate any harm resulting from the proposed development.

Conclusion

1. The exchange will allow one of the applicants to develop their land. Another party with access over the release land will benefit from additional land for parking. The provision of new housing, including two affordable homes, will benefit the neighbourhood. Although there will be limited benefits in terms of nature conservation, there will be no harm. There will be some visual harm to the landscape, but I do not consider this sufficient to withhold consent. Although there may be some disruption in access to the footpath and village green during the construction of the proposed development, I consider there would be no long term impact.
2. Having regard to these and all other matters raised in the written representations, I conclude the application should be granted, and an Order of exchange should be made.

**Formal Decision**

1. The application to deregister and exchange land is granted in accordance with the terms of the application (Ref: COM/3317299) dated 15 February 2023 and the accompanying revised plan and an Order of Exchange should be made.

Claire Tregembo

INSPECTOR

**Order**

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to section 17 (1) and (2) of the Commons Act 2006, **I HEREBY ORDER** the Durham County Council as Commons Registration Authority for the area in which the release land and the replacement land are situated:

1. to remove the release land from its register of common land, by amending register unit VG45 to exclude the release land;
2. to register the replacement land as common land, by amending the register unit VG45 to include the replacement land;

**First Schedule** – the release land

|  |  |  |
| --- | --- | --- |
| **Colour On Plan** | **Description** | **Extent** |
| Edged red | Land forming part of Hamsterley Village Green roadside verge in front of Green View, Saunders Avenue, Hamsterley | 92.7 m2 |

**Second Schedule** – the replacement land

|  |  |  |
| --- | --- | --- |
| **Colour On Plan** | **Description** | **Extent** |
| Edged with a thin green line | Land at Green View, Saunders Avenue, Hamsterley to the front of Green View and behind the social club | 92.7 m2 |

Claire Tregembo

INSPECTOR

**Application Plan**

