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| **Application Decision** |
| Site visit made on 13 March 2024 |
| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 07 May 2024** |

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| **Application Ref: COM/3332614****Cockernhoe Village Green**Register Unit No: VG 082Commons Registration Authority: Hertfordshire County Council |
| * The application, dated 2 November 2023, is made under Section 16 of the Commons Act 2006 (“the 2006 Act”) to deregister and exchange common land.
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| * The application is made by David Sample on behalf of Offley Parish Council (the applicant).
* The release land comprises a total of 56 m2 at the side of Luton Road, lying west of the property of Dancote.
* The replacement land comprises 2,700m2 of land adjacent to VG 082 lying south of Cockernhoe Primary School.
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Decision

1. The application to deregister and exchange common land at Cockernhoe Village Green, Register Unit No. VG 082 is refused.

**Preliminary Matters**

1. Following advertisement of the above application, 7 objections and 2 representations were received. I undertook a site visit of the release land and the exchange land on Wednesday 13 March 2024, in the company of the applicant, local objector to the proposal and representative of Offley Parish Council. The applications have been determined on the basis of the written evidence and my own observations of the sites and surroundings.

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 land

 (and in particular persons exercising rights of common over it);

(b) the interests of the neighbourhood;

(c) the public interest, including 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; and

 (d) any other matter considered to be relevant.

1. In considering these tests, I shall have regard to the Department for Environment, Food and Rural Affairs Common Land Consents Policy of November 2015 (“the consents policy”) which has been published for the guidance of both the Planning Inspectorate and applicants.

**Reasons**

1. Although “any other matter considered to be relevant” is listed last in my paragraph outlining the Main Issues above, I intend to address this first because it informs my consideration of the matters to which I must have regard in determining the application. Within this heading I propose to examine whether the exchange land that is offered is at least equally advantageous to the interests set out in Sections 16(6) of the 2006 Act.

**Other matters considered to be relevant**

1. A primary objective in determining applications under section 16(1) is to ensure the adequacy of the exchange of land in terms of the statutory criteria. Therefore, even where an applicant makes an otherwise compelling case for an exchange, the expectation will be that the interests (notably of the landowner, commoners, and the wider public) will be no worse off in consequence of the exchange than without it, having regard to the objectives set out above. The expectation is more likely to be realised where the replacement land is at least equal in area to the release land, and equally advantageous to the interests. I must evaluate the exchange in terms of both quality and quantity. The consents policy indicates that an inadequate exchange will seldom be satisfactory, whatever the merits of the case for deregistration might otherwise be.
2. In quantitative terms, the application proposed the release of a narrow strip of land belonging to VG 082, totalling 56m2, located on the eastern side of Luton Road. The area of the proposed replacement land totals 2,700m2. This equates to a net gain in the area of village green of some 2,644m2. Whilst the application could be granted as replacement land is not required for release land under 200m2. The usual expectation is that land will be offered in exchange for the land being deregistered, as the policy is not to allow the stock of common land and greens to diminish. I must consider the application before me which proposes a net gain of village green from the replacement land which would exceed the area of release land. Therefore, the expectation in the consents policy of the replacement land being at least equal in area to the release land is both met and exceeded.
3. In qualitative terms, the release land consists of a narrow strip of grassed verge and hedging. The proposed replacement land consists of open grass, scrub, a tarmac path, hedgerow and trees. With no physical differentiation between the current village green and the proposed replacement land, the area is currently being used synonymously with adjacent unit VG 082. As such the proposed replacement land is access land which is currently serving the community as an area of access land for carrying out informal sports and recreation activities. Consent is not normally granted where the replacement land is already subject to some form of public access, whether that access is available by right or informally, as this would dimmish the total stock of access land available to the public. Overall, I consider that there would likely be a negative impact in terms of the availability of access land stock. Nevertheless, I shall go on to consider the remaining issues set out at paragraph 3 above.

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

1. The information before me indicates that there are no rights of common registered over unit VG 082, nor any relevant leaseholders, occupiers or parties with other rights over the land. On that basis, there would be no interference with rights of commoners arising from the works. The land is owned by Offley Parish Council (PC) who are the applicant.
2. The proposed release land would be sold for development purposes if the application was granted. The current landowner would benefit financially, and the potential new landowner would benefit from the possibility of gaining planning permission with access to the development over the release land.

***The interests of the neighbourhood***

1. The 2015 Policy indicates that the issues to be considered in this context include any positive benefits of the application to the neighbourhood, effects caused by the loss of the existing use, and effects on future use and enjoyment.
2. Although the application proposes 2,700m2 of replacement land, this land is already subject to public access so there would be no benefit to the neighbourhood. The application has been submitted with the intention of selling the release land for future development purposes, no planning permission had been granted at the time of this application. Whilst it would have a small private benefit in providing land which could be sold for development purposes, I do not identify any positive benefits to the neighbourhood.
3. The release land is a narrow strip of roadside verge which is unlikely to be subject to sporting or recreation use due to its small scale and proximity to the road. Thus, the effect resulting from the loss of any existing use would be minimal.
4. Register unit VG 082 is comprised of a large area within the village, including sections of highway verge and more extensive open area. Access to other areas of the unit may generally be gained by using the village highways. The release land does not contribute to the use and enjoyment of the village green as a whole due to its size and nature.
5. Thus, whilst the neighbourhood would not loose existing uses of the village green unit and the release would have an acceptable effect on its future use and enjoyment, the application would not positively 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. The release land is not subject to any national or local designations for conservation interest. The limited size of the land and proximity to vehicles on the Luton Road would be likely to limit its conservation value.

*Conservation of the landscape*

1. Whilst the release land does not lie in a National Park or an Area of Outstanding Natural Beauty, it forms part of the verge on the eastern side of Luton Road and as such it makes a modest contribution to the verdant and rural appearance of the village as a whole.
2. NE considers there will be a degree of harm to the character of the green arising from the proposed planning permission if granted, resulting in a more urbanising feature adjacent to the village green itself.

*Public Access*

1. The release land is unlikely to be subject to sporting or recreation uses. As roadside verge, the land is likely to be part of the highway, in which case deregistration as a village green would be unlikely to affect access to the land. Even if it is not a highway, it is probable that the features of the land which I have identified above would deter a proportion of the public from walking on it.
2. As discussed above, the proposed exchange land is inadequate due to the existing public access, therefore, the application for exchange is unsatisfactory.

*Protection of archaeological remains and features of historic interest*

1. There are no scheduled monuments or listed buildings on the land, and there is nothing before me that would lead me to suppose it falls within an area of high archaeological potential. Accordingly, there is little basis to consider that the exchange of land would result in any material harm to archaeological remains or features of historic interest.

**Other matters**

1. Many of the objectors raised concerns about barriers on the school land and potential impacts from future development including an increase in parking issues and safety issues resulting from a second access point to the Dancote property. These issues would be as a result of the possible future development rather than as a result of the proposed exchange of land. Consequently, these are not matters relevant to the application before me, so I have not considered them when reaching my decision.
2. Objectors also raise concerns about why the proposed replacement land has not been registered as village green before previous to this application. I can only consider the application before me, if the application is not granted, there are other mechanisms through which the replacement land could be registered as village green.

**Overall Balance and Conclusion**

1. The application proposed replacement land which already has public access across its entirety. Therefore, the application, if granted, would diminish the total stock of access land available to the public.
2. I consider that granting the application would be against the interests of the neighbourhood, as I cannot place weight on the potential wider benefits, and against the public interest with regard to the rights of access.
3. Taking account of the exchange of land proposed, I am not satisfied that the replacement land confers sufficient public advantage to balance the permanent removal of a strip of land at the southern point of village green.
4. Having regard to these and all other matters raised in the written representations, and to the criteria in section 16(6) of the 2006 Act, I conclude, therefore, that the application should not be granted and no Order of Exchange should be made.

Charlotte Ditchburn

Inspector