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| **Application Decisions** |
| Site visit made on 29 April 2025 |
| **by A Behn Dip MS MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 June 2025** |

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| **Application A Ref: COM/3345059**  **Land at Hempton Green, Hempton, Norfolk** |
| Register Unit: CL294 |
| Registration Authority: Norfolk County Council |
| * The application, dated 12 April 2024, is made under Section 16 of the Commons Act 2006 (“the 2006 Act”) to deregister and exchange common land. * The application is made by Raynham Trust Company No 1 Ltd and Raynham Trust Company No 2 Ltd. * The release land comprises a total of 10,830 m² at the north-eastern end of Hempton Green. * The replacement land comprises 11,300 m² of land to the southwest of Hempton Green, east of where Hempton Green Road and Raynham Road meet.  |  | | --- | |  |  |  | | --- | | **Application B Ref: COM/3345054**  **Land at Hempton Green, Hempton, Norfolk** | | Register Unit: CL294 | | Registration Authority: Norfolk County Council | | * The application, dated 15 March 2024, is made under Section 38 of the 2006 Act for consent to carry out restrictedworks on common land. * The application is made by Norfolk County Council (the Council). * The application is for highway works to facilitate the construction of a four armed roundabout to replace an existing cross roads and subsequent road realignment. Works include drainage, removal of existing carriageway, new road construction, signage, landscaping and backfilling. A temporary work area, compound area and fencing will also be required, all of which would be returned to their prior condition once works are complete.  |  |  | | --- | --- | |  |  | | |

**Decision: Application A**

1. Consent is granted and an Order of Exchange given in accordance with the application dated 12 April 2024, to deregister and exchange common land at Hempton Green, Hempton, Norfolk. As part of the Order of Exchange, a copy of the application plan (Drawing A) showing the areas for deregistration and exchange is attached to this decision.

**Decision: Application B**

1. Consent is granted for the proposed works in accordance with the application dated 15 March 2024 (the area of works is attached to this Decision as Drawing B) and is subject to the following conditions:

* The works shall commence no later than 3 years from the date of this Decision.
* Any temporary fencing and work areas are removed and the ground reinstated within one month of the completion of works.
* Planning consent is granted and all relevant mitigations are in place.

**Preliminary matters**

1. Following advertisement of the above applications, 10 objections / representations were received. I undertook a site visit of the release land and the exchange land on Tuesday 29 April 2025, in the company of representatives of the Council, the representative for the landowner and two local objectors to the proposals. The applications have been determined on the basis of the written evidence and my own observations of the sites and surroundings.

**The Applications**

1. In 2018, following ongoing safety concerns regarding the number of collisions recorded at the crossroads, predominantly through drivers failing to give way, along with the significant traffic delays caused by the existing road layout, a feasibility study for improving the Dereham Road Crossroads was undertaken. The study culminated in the proposal to construct a four arm roundabout to replace the existing unsignalized crossroads, resulting in the two applications under consideration.

**Main Issues**

1. I am required by Sections 16(6) and 39(1) of the 2006 Act to have regard to the following in determining these applications:

(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, regard should be given 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 both applications. 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. In terms of Application A, The Secretary of State’s 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 Secretary of State’s expectation will be that the interests (notably 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, Application A proposes the release of land belonging to CL294, totalling 10,830 m², located to the north east of Hempton Green in the vicinity of the crossroads where the C550 Hempton Green Road and the B1146 Dereham Road meet. The area of the proposed replacement land totals 11,300 m², and although one objector suggested that the replacement land was smaller, this equates to a net gain in the area of common land of some 470 m².
3. The net gain of common land from the replacement land would exceed the area of release land, and 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.
4. In qualitative terms, the release land consists of metalled road surfacing which already forms part of the public highway and areas of open grassland or shrub land made up of bracken and gorse that verge the highway. There are two mature trees in the release land which would require felling, which have been categorised as C and identified as not playing a significant role in the local landscape. These will be mitigated by replacement trees. Albeit the release land sits within the Hempton Conservation Area, the area under consideration mostly verges the busy crossroads. Although accessible to the public, the release land borders the adjoining roads, has a very uneven surface, and is populated with rabbit holes and mole hills, presenting a hazard when walking.
5. The proposed replacement land is situated approximately 500m south west of the release land and is former agricultural land, bordered to the north east by Hempton Green and to the south by more arable land. The replacement land sits adjacent and contiguous to part of the common and is sheltered from nearby roads by a wooded area. While the Open Spaces Society (OSS) consider that this cannot be regarded as similar quality to the long uncultivated land of the release land, the replacement land is a pleasant open area that has been seeded with a mix of grasses, wild flowers and herbaceous plants. While I accept the comment that the replacement land would not form part of the ‘ancient green’ and that there are some already sheltered areas of the common, the proposed exchange land does comprise a far more pleasant environment for recreation than the release land, which are strips of land directly adjoining the existing highway, whose recreational use is extremely limited as well as being adversely affected by passing traffic and associated noise.
6. There were representations from some objectors that being situated 500m from the release land, the replacement land was poorly related and in effect isolated and further to travel to, with limited access. Although I appreciate the distance from the release land is further to travel for those residents north of the common, it is closer to those to the south. On my site visit I noted that there were a number of public rights of way on the common to the south east of Hempton Green Road that would facilitate access to the replacement land and there was an additional informal access across Raynham Estate land further south, which the representative of the Raynham Estate advised could be made a formal public right of way.
7. In summary, the release land comprises strips of land leading up to and adjoining a busy crossroads. It is adversely affected by traffic and noise, from which there is no escape, and offers very limited scope for recreation. While not ‘ancient common,’ the replacement land is of a greater area and offers a better experience in terms of safety, amenity and as a usable space for recreation. Moreover, the replacement land is away from and screened from the traffic and associated noise emanating from the adjoining roads. It is a considerably more pleasant environment to be in. I therefore conclude that, when looked at as a whole, the replacement land is of at least equal value to the release land and accords with the consents policy in that regard.

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

1. The common is not occupied and albeit some objections referred to historical grazing rights that would be affected should the common land be released, it was clarified at the site visit and from my review of the records that there are no registered rights of common on Hempton Green. As such, I am satisfied that the interests of those occupying or having rights over the land are not adversely affected by the proposals.

***The interests of the neighbourhood***

1. It is clear that local residents value the land that forms Hempton Green and of importance, the loss of the area of release land would not interfere with the ability of the neighbourhood to access or use the common as a whole. The land that is currently highway, but which would not be required following the movement of the road, would be regraded, reseeded and restored to common. As a result of the proposed roundabout construction works, there would also be improved footways verging Hempton Green Road and Dereham Road, as well as dropped kerbs where the public rights of way cross the new section of road, along with some dedicated crossing points.
2. The OSS considered that the public enjoyment of the northern part of the common would be highly damaged should approval be granted and aligning to this, they were of the view that the public used the entirety of the common including the roadside verges.
3. While I do not doubt that there may be use of the common beside the roadside edges, the sections of the common land proposed to be released adjoin two fairly busy roads. Due to their proximity to the highway, the strips are dominated by traffic noise and not necessarily a pleasant environment to be in. On my site visit I also noted a low grass bund inset slightly back from the road edges on a large part of the common, which would likely restrict use at those points. A local resident advised that the grass bank had been constructed by the Council to keep unwanted vehicles off the green. Public use of the common that I observed on my site visit generally kept to the public paths that criss-cross the area. The paths, both informal and formal, had cut throughs where they met the bank, to allow easier crossing of the bund.
4. Reference was made to use of the northern part of the common by the memorial hall, who held a car boot sale four times each year, with that part of the common being used for parking cars. The area used for parking was pointed out to me at the site visit. I recognise that the parking area would be closer to a road should the applications be approved, however the loss of the release land would not impact the parking area itself.
5. One objector considered that the road was only dangerous at 4pm in the months of December and January due to the position of the setting sun and that in their many years of living in the area, they had not observed an accident. However there have been 32 recorded accidents at the junction which resulted in injury, six of which were serious. Albeit this was over a period of 20 years, the Council advised that the occurrences formed in clusters and correlated to drivers becoming habituated to any low cost safety measures that had been implemented at the crossroads. I also noted from the planning committee notes that the son of a supporter of the proposals had been hit by a car that had not given way at the junction.
6. Whilst I acknowledge the comment from the OSS that the benefits appear to be in the interests of the motorist, rather than local residents, I would consider that a proportion of the motorists are local residents. Improving the safety of the junction through the introduction of a roundabout along with better pedestrian facilities for adjoining footways and crossing of the roads is also in the interests of local residents. It is undoubtedly in the interests of the neighbourhood that the levels of accident occurrence and congestion experienced now and the likelihood of further congestion and more accidents in the future, would be lessened by the highway improvements proposed.
7. I therefore conclude that, on the whole, the exchange of land and the works proposed in these applications would not adversely affect the interests of the neighbourhood or affect future use and enjoyment of the common.

***The public interest***

1. In the wider sense, there is notable benefit to the public, in that these applications are aimed at addressing the current safety issues that have manifested over a number of years due to the current road layout. On a lesser note the proposed roundabout would also help reduce the traffic congestion that is present during the busiest periods of the day. In line with the relevant sections of the 2006 Act, consideration also needs to be given to the following:

*The conservation of the landscape*

1. The proposed highway improvements include the construction of a roundabout and the realignment of the roads where they approach the roundabout. There was concern from objectors that the visual amenity of the landscape at this location would be permanently harmed, with the OSS considering that the proposals, which place the roundabout closer to the village, would form an unsightly alien feature, jarring terribly with the character of Hempton Green.
2. The OSS went on to note that they would have accepted the proposed roundabout as a necessary, albeit intrusive measure, but they did not believe that this was the only possible solution and felt it should be rejected. Whilst the choice of proposed measures is more of a planning matter, I consider that it is relevant to discuss them, in that they relate to the landscape setting.
3. The location of the proposed roundabout was an understandable matter of contention amongst some objectors as its proposed position would be nearer to some residential properties than the current crossroads. The Council had considered various positions for the location of the roundabout, however the alternative locations either impacted on the Hempton Green County Wildlife Site (CWS) or would have placed it nearer to sites of historical interest such as St Stephens Priory or the Holy Trinity Church.
4. Whilst one objector considered that the roundabout should be situated on the scrub adjacent to the CWS, the Council pointed out that this would require significant clearance of vegetation which could cause an ecological impact to wildlife and protected species. The same objector also considered that there would be increased light pollution from traffic on the realigned roads, however the level of traffic is an existing element, and amendments to the road layout would not affect the light pollution caused by vehicles already travelling along the roads. I accept the comment that the headlights will sweep across the landscape, however this sweeping is already in existence should cars be turning left or right on any arms of the cross roads already in place.
5. While the OSS and most objectors considered that traffic lights would be less harmful to the landscape and also a more fitting safety solution, the Council did not agree. They felt that traffic lights were suited to more urban environments where significant numbers of pedestrians and cyclists needed to be catered for, in addition to motor vehicles.
6. The Council were further of the view that the infrastructure required for traffic lights, which included light heads on all arms of the crossroad, overhead street lighting on all 4 approaches and associated warning signs etc would be far more detrimental to the environment and visual amenity than the proposed roundabout, as well as costing far more in maintenance and replacement, cost being another issue that was of concern to some objectors.
7. The OSS considered that the management of the reinstated areas next to the proposed roundabout would not sufficiently hide the visual impact of the roundabout, despite it being at a lower level than the common. While there would be a level of visual impact, I consider that the visual impact of traffic lights, its associated overhead lighting and the resulting stationary traffic would be more visually intrusive than a roundabout. The lighting infrastructure required by the installation of traffic lights would also, almost certainly, cause increased light pollution on the common, compared to the proposed works.
8. The Council advised that the proposed roundabout had been designed to maintain a semi-rural appearance and minimise visual impact, with no overhead street lighting and at a similar vertical level to the current crossroads, which sits slightly below the common. The Council also felt that a roundabout would minimise the time that vehicles were delayed at the junction, compared to traffic lights, which in turn would be better in terms of air quality.
9. Other concerns from objectors were that they felt that other less invasive measures had not been tried or considered, with the OSS being of the view that the Council were merely predicting that low cost measures would lose effectiveness over time. In response the Council advised that over a 20 year span other low cost and less impacting measures had been implemented, such as refreshing road markings, vehicular activated cross road warning signs, directional map signs and clearance of vegetation to increase visual splay. However, while these measures proved successful in the short term, the Council advised that they ultimately became ineffective and personal injury accidents began reoccurring.
10. I recognise that the proposed roundabout would take up a larger surface area than the current cross roads and would alter the landscape to some degree. I also accept the comments that a roundabout would be an ‘alien’ feature in a historic common land setting, however the alternative option of traffic lights on all arms of the cross roads would also form an alien feature in this setting. The level of lighting and infrastructure required would visually impact the setting much more than a roundabout, which sits below the level of the common and does not require the artificial illumination needed for traffic lights.
11. I agree with the OSS, that although the Council have deemed the roundabout and the decision of its location as the least damaging, that the works would, both individually and collectively, result in more urbanisation of the landscape and would thereby cause some harm to that landscape. However that harm would be experienced in the context of the existing crossroads which already exhibits a semi-urban character.

*Nature conservation and biodiversity*

1. The OSS drew attention to observations made by the district council in a planning committee document, wherein the district council considered the proposed development would adversely affect the complex ecology of the area. This aligned to another objection that was concerned that the roundabout would impinge on the wildlife in the area. Norfolk Wildlife Services who undertook the Ecological Impact Assessment for the proposals concluded that there would be no significant impact on designated nature conservation sites or valued habitats, no impact upon roosting or foraging bats and negligible impact on commuting bats with the mitigation measures proposed.
2. Natural England who recommended management of the replacement site noted that the site location for the roundabout was not subject to any statutory designations for nature conservation, but also noted that the boundary of the CWS was located immediately adjacent to the works area and that the River Wensum Site of Special Scientific Interest and Special Area of Conservation were nearby, and they recommended all appropriate mitigations were in place prior to planning consent.
3. The OSS questioned whether the replacement land, which was until recently arable land, was of greater value to biodiversity than the uncultivated release land. The Biodiversity Net Gain Assessment (BNGA) classified the common as species poor semi-improved grassland. By contrast, the BNGA stated that the replacement land, sown with a mix of grasses and herbaceous plants would realise an overall net gain of 14.81%, exceeding the mandatory 10% that came into effect in February 2024.
4. One objector felt that it would take many years for the replacement land to accumulate the flora and fauna lost from the release land. I accept the point that habitat creation works take a long time to mature, and this is an unfortunate and sometimes inevitable short-term effect of development of this nature. However, in line with the expectations of the consents policy, the mitigation, in the longer term would result in a net gain in overall biodiversity, compared to the current situation.
5. Norfolk Wildlife Trust who were consulted on the proposals welcomed the plans for the creation and management of the replacement land and were happy with the approach taken by the Council in their management and direction of the replacement land as a hay meadow.
6. I concur with the views of the Council on this matter, in that biodiversity net gains would be realised from the proposed mitigations. Further, it would appear that the proposed works, both temporary and permanent, would not have a notable adverse effect on biodiversity or nature conservation on the common.

*The protection of archaeological remains and features of historic interest*

1. The OSS considered that the Council were under playing the historical significance of the site, pointing out that the common and existing road layout were very old and as important as the nearby built heritage assets, whose setting in the view of other objectors, would be ruined by the proposals.
2. I accept that the existing road pattern and junction are historic and that there are listed buildings near to the Common, as well as the remains of St Stephens Priory and the Church of the Holy Trinity. Albeit there will be no physical impact to the buildings and monument, I agree that the setting in which they sit would be harmed. However that harm would be experienced in the context of the existing highways crossing the common, which have already urbanised the setting to some degree, with the metalled surface of the roads, the associated street furniture and the steady stream of traffic that flows across them.
3. As part of the consultation process the Council had engaged with Historic England (HE), who indicated that they considered that the level of harm to the area would be at the upper end of ‘less than substantial harm.’ HE then went on to acknowledge the public benefits of the road safety improvements and do not appear to have objected to the applications.
4. The Council, when considering the location of the proposed roundabout, took into account the nearby heritage features of St Stephens Priory and Holy Trinity Church and placed the location of the roundabout away from these assets, to reduce the impact on their setting. They also considered that a roundabout would be less intrusive on the setting than options that involved greater quantities of more urbanising furniture.
5. The setting already exhibits a semi-urban character and I do not consider that the proposed works will significantly change this character. With the introduction of a roundabout the road layout will inevitably alter slightly at the point where the roads meet at the current crossroads, however, they will remain, overall, broadly in alignment with their historic route and the overall defined boundaries of the ancient common will also remain.

*The protection of public rights of access to any area of land*

1. The area of common to be released would not prevent public access to the rest of the common. While I accept the comment from the OSS that the proposed temporary compound would restrict access over its footprint, it is the case that this would be temporary by nature and would cause no lasting damage, or have a permanent effect on the common.
2. Objections expressed concern that as some of the common appears to have been cropped, the replacement land might also be used for agriculture in the future and thereby encroach on public access. Albeit this is hypothetical and a management issue rather than a matter for me to consider, on my site visit I noted fencing around the replacement land clearly separating it from the adjoining arable farmland. The representative for the landowner also advised that the adjoining arable land was to be utilised for biodiversity net gain under a 30 year plan and as a result would not be farmed.
3. Taking all of the above into account, I do not consider that the proposed exchange or associated works would have any significant or lasting adverse effect on public access to the common.

***Other matters***

1. A number of other matters were raised in representations. These included changes in views for some residential properties, access to properties during construction, headlights of cars being directed towards the windows of a property, impact assessments for a historic stone wall, as well as other suggestions of alternatives to the proposed road layout. Whilst these are understandably issues of importance to those who made the representations, they are matters that would be considered as part of the planning permission. They are not relevant to my consideration of these applications, which must be determined on the basis of the criteria set out in Sections 16(6) and 39(1) of the 2006 Act, as expanded upon in the consents policy.

**Conclusions**

1. The ongoing safety issues at the existing junction on Hempton Green have culminated in a proposal to introduce a semi-rural roundabout at that location. The proposal which is intended to reduce the number of collisions and reduce the congestion which also occurs at that location, necessitates the release of an area of common land bordering the highway, which would be replaced with other land.
2. The replacement land proposed in Application A is quantitatively a larger area and qualitatively would be of greater value than the release land in terms of potential for biodiversity and as land suitable for recreation.
3. I also understand that although there is support for this scheme, it is subjective by nature and open to the alternate views before me, with different parties taking different stances as to whether the harm that would be caused to the landscape, either visually or historically, is minor or significant. It is clear that the works proposed in Application B would result in some visual harm to the historic landscape, and I concur with HE considering that the harm would be at the upper end of ‘less than substantial.’
4. This has to be weighed against the benefits to the public and the neighbourhood that the proposed roundabout scheme would bring, most importantly to the safety issues that the current road alignment creates. The works proposed offer a clear benefit to the public in terms of increased safety and an underlying benefit of reducing queuing at the junction, as well as providing enhanced pedestrian facilities. Whilst there is an increased urbanising effect on the common when compared to the existing cross roads, the common already exhibits a semi urban character and any harm should be considered in that context.
5. Whilst objectors considered that less harmful alternatives should be considered, such as leaving the road junction as it is and employing other measures such as traffic lights, I consider that the Council have provided a persuasive argument that traffic lights would cause more visual harm, and would be ecologically and environmentally more damaging than the proposed roundabout. I am also satisfied that other low cost safety measures have been implemented over time, but lost their effectiveness, resulting in a reoccurrence of accidents. I consider that aesthetically, and as a practical necessity in reducing the accident record and congestion issues, a roundabout is visually more sympathetic to the surroundings and nature conservation than other suggestions discussed above.
6. The construction in itself will not prevent public access or use of the common and the replacement land ensures there is no reduction in the area available for recreation. Indeed the replacement land provides a better opportunity for recreation than the release land which directly borders the highway. Evidence also indicates that there will be little impact on nature conservation or ecology and that there will be a net gain in biodiversity that exceeds the mandatory requirement.
7. In weighing the overall balance, I conclude that the proposals in Application A and Application B are acceptable and that consent should be granted.

Mrs A Behn

INSPECTOR

**CONSENT 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** Norfolk 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 units CL294 to exclude the release land;
2. to register the replacement land as common land, by amending register unit CL294 to include the replacement land; and
3. to register as exercisable over the replacement land (in addition to remaining exercisable over the remainder of the land comprised in register unit CL294) any rights of common which, immediately before the date on which the release land is removed from the register, are registered as exercisable over the release land and the remainder of the land comprised in register unit CL294.

**First Schedule** – the release land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged red | Land forming part of register unit CL294, comprising land at the north eastern end of Hempton Green, where the B1146 meets the C550. | 10,830 m² |

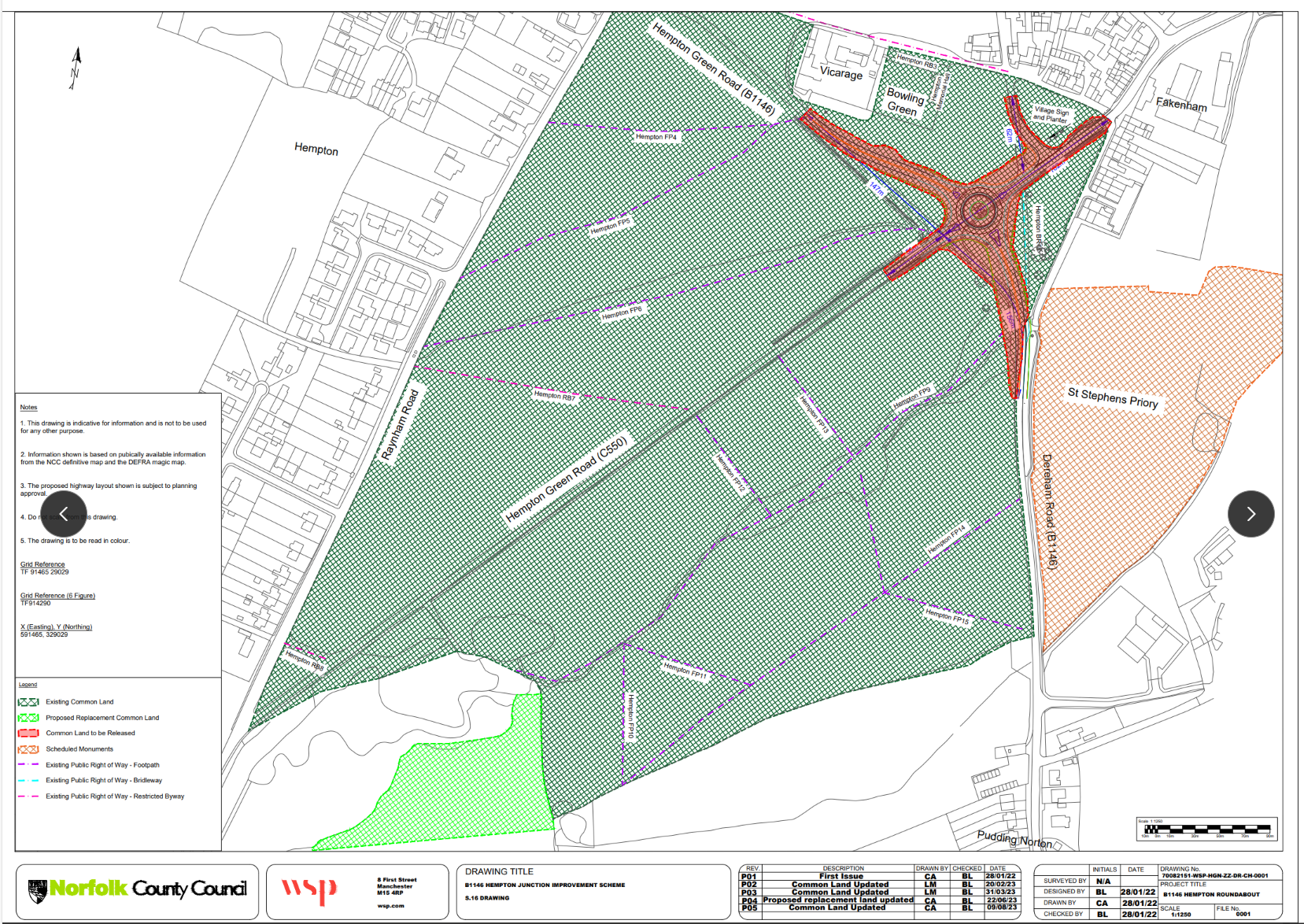
**Second Schedule** – the replacement land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged light green | Land contiguous with the south western end of CL294, east of where the C550 meets the A1065. | 11,300 m² |

Mrs A Behn

INSPECTOR

Drawing A – Release and Replacement Land



Drawing B – Extent pf Proposed works

