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| **Application Decisions** |
| Site visit made on 21 July 2025 |
| **by Rory Cridland LLM, Solicitor** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 September 2025** |

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| **Application Ref: COM/3354840****Land at Smith’s Green, Takeley, Essex** |
| Register Unit: VG117 |
| Registration Authority: Essex County Council |
| * The application, dated 22 October 2024, is made under Section 16 of the Commons Act 2006 (“the 2006 Act”) to deregister and exchange an area of village green.
* The application is made by the Kennedy Trust and Weston Homes Plc.
* The release land comprises a total of 294sqm of land located on Smith’s Green Lane, Takeley.
* The replacement land comprises 757sqm of land located alongside Smith’s Green Lane, Takeley.

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**Decision**

1. Consent is granted in accordance with the terms of the application [Ref: COM/3354840] dated 22 October 2024, and the plan submitted therewith.

**Preliminary matters**

1. Planning permission (ref 62A/2023/0027) was granted on 13 March 2024 for the erection of 40 dwellings including open space, landscaping and associated infrastructure at Jack’s field, Warish Hall Farm, Smiths Green Lane, Takeley, Essex (“the planning permission”). Nevertheless, this application is concerned with the deregistration and exchange of land under section 16 of the Commons Act 2006 and is a separate, albeit related, application. I have determined it on that basis, but have had regard to the considerations and findings of the previous Inspector where relevant.

**The Application**

1. The application seeks consent for the deregistration of an area of approximately 264sqm of roadside verge forming part of Smith’s Green (VG117) and its replacement with an area of around 757sqm on adjoining land. The replacement land comprises an area of grassland which would be subject to regular management and maintenance, would be open to the public and accessed directly from the shared footpath/cycleway to be provided as part of the development.
2. The planning permission includes conditions which require a new junction to provide visibility and a shared cycle/footway. The application is intended to enable the creation of this access and incorporates an extra section of footway to the south of the site that is currently being sought by the applicant.
3. The applicant explains that the access location was selected in order to utilise the existing field access and to minimise the loss of hedgerow.

**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 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 have also had regard to the Department for Environment, Food and Rural Affairs Common Land Consents Policy (November 2015) (“the consents policy”).

**Reasons**

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

1. The village green is not occupied nor is it subject to rights of common. While I acknowledge that local people use it for a variety of leisure activities, this narrow verge provides only limited opportunities for local inhabitants to engage in lawful sports and pastimes.
2. There is no evidence that the deregistration of this part of VG117 would adversely impact on the interests of others having rights over the land. Accordingly, I find no harm in this respect.

***The interests of the neighbourhood***

1. It is clear that local residents value VG117 and the role it plays in providing safe passage along Smith’s Green Lane. However, even though I acknowledge the high level of pedestrian use along this protected lane, having visited the site it is likely that most walkers would make use of the wider section on the western side of the lane for safe passage and/or recreation as opposed to the release land which is narrow, directly adjacent to the highway and covered in trees and shrubs.
2. While I accept that some users may prefer to walk along the eastern side of the lane, doing so already poses risks and the reason for seeking to deregister the land is to enable works which would improve visibility and safety for all road users at the new access. Overall, I am satisfied that the proposed exchange would not materially harm the interests of the neighbourhood in respect of highway safety. I also note that similar conclusions were reached when deciding whether or not to grant the planning permission for the new development.
3. However, as noted above, this particular section of village green positively contributes to the verdant and rural nature of Smith’s Green Lane. The removal of a section of hedgerow and the urbanisation of the access would have some, albeit localised, adverse visual impact on the area. This would negatively impact on the interests of the neighbourhood.
4. Nevertheless, it is clear that the replacement land would offer more opportunities as a functional space for outdoor activities than the limited uses that are currently made of the release land. While I accept it might be perceived as being of primary benefit to those living on the new development, it would nevertheless adjoin the existing village green, would be accessible from the proposed new cycle/ footway to the north of the new junction and would be available to the whole neighbourhood.
5. Taking all of the above into account, I consider that, on the whole, the proposal would not adversely affect the interests of the neighbourhood.

***The public interest***

*The conservation of the landscape*

1. VG117 is not located within a local or nationally designated landscape. Furthermore, the visibility of the release land in the wider landscape is very limited. This matter was considered in detail as part of the planning permission and I note that the Inspector found that with a carefully designed and executed landscaping scheme, the landscape and visual effects on the character and appearance of the wider area would be acceptably contained. I have seen no robust evidence that would lead me to conclude otherwise.
2. However, concerns have been raised by a number of objectors that the deregistration of this parcel of land to enable the proposed works to be undertaken would have an adverse visual impact on Smith’s Green Lane and the enjoyment of the village green itself.
3. These concerns are well founded. While the lane is interspersed with various accesses to dwellings or fields, most are unobtrusive and appear congruent with the setting. The introduction of an urban access into the surroundings would appear discordant with this rural, tranquil setting. The removal of a section of hedgerow would expose the buildings forming part of the new development and while I accept the proposed new planting associated with the replacement land would help soften the visual impact over time, in the intervening period it would appear at odds with the existing character.
4. Furthermore, it would increase the perception of danger due to the risk of coming into conflict with traffic. This would be deleterious to the overall enjoyment of VG117, albeit only marginally.
5. Consequently, while I am satisfied that there would not be a material adverse effect on the public interest in conservation of the landscape, I find there would be some localised visual harm resulting from the proposal which weighs against the granting of consent.

*Nature conservation and biodiversity*

1. The release land consists of a small area of grassland forming the existing access together with some small sections of narrow verge (<0.5m wide) and a section of mature hedgerow.
2. Takeley Parish Council is concerned that the removal of the hedgerow would adversely impact on biodiversity and nature conservation. In support of its position, it has commissioned an ecological assessment which concludes that the existing hedgerow is a habitat of principal importance, is in good condition and should be protected. Furthermore, it considers that there is a risk that the hedgerow provides key habitat for protected species, including bats.
3. I have given this matter careful consideration. Even though I acknowledge the quality of the hedgerow and that its species rich composition provides support for local biodiversity, including foraging and commuting opportunities for bats, reptiles and hedgehogs, the majority of the existing hedgerow would be retained. While I note the concerns of the parish council and accept there would be a small adverse impact on biodiversity and nature conservation, there is no robust evidence that there would be any significant effect on protected species or lasting harm to local wildlife populations more generally. Indeed, I note that Natural England (NE) has raised no objection to the proposal on that basis.
4. Furthermore, it is clear that the applicant has sought to minimise the amount of hedgerow removal and mitigation has already been secured as part of the planning permission, including the proposed new scrub and hedgerow planting, together with the species rich flowering lawn on the replacement land. I agree with NE that once established, this would ensure any localised harm would be minimised.
5. Accordingly, while I acknowledge there would be some localised harm to biodiversity in the short term, I am satisfied that it would remain within acceptable levels and would not result in a significant adverse impact on the public interest in nature conservation.

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

1. Smith’s Green Lane is a protected lane and a non-designated heritage asset. Its significance is derived from its historic context in the village of Takeley, its narrow width and wide unlit grassed verges without footways, the mature hedgerows and general absence of street furniture.
2. When considering the planning application, the Inspector recognised that the nearby heritage assets, the protected lane and the Conservation Area (CA) are inextricably linked. He recognised that the view along Smiths Green Lane from the north is identified in the CA Character Appraisal as a key view which significantly contributes to the rural characteristics of the area. Furthermore, he considered that whilst there appears to be sufficient space behind the visibility splay to replant a hedge as part of an overall landscaping scheme for the site, the removal of the hedge would, in the short-term, result in harm to the significance of the protected lane and a key view into the CA.
3. In view of my findings above in relation to the visual effect of the proposal, I agree with those conclusions. Accordingly, I find the proposed exchange would be harmful to features of historic interest, namely Smith’s Green Lane. I consider this matter further in my overall conclusion below.

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

1. The area of land to be released would not prevent public access to the rest of VG117. Notwithstanding it’s deregistration as village green, it would remain accessible to the public walking along this part of Smith’s Green Lane. While it would no longer offer safe refuge to walkers from vehicles, this would affect only a small section and considerable opportunities to walk along Smith’s Green Lane safely would remain.
2. Furthermore, the provision of the replacement land and its registration as village green would help ensure that overall public access to open space was increased.
3. Consequently, I do not consider that the proposed exchange would have any significant or lasting adverse effect on public access.

**Other matters considered to be relevant**

*Whether the replacement land is equally advantageous*

1. As the consent’s policy makes clear, 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. This is more likely to be the case where the replacement land is at least equal in area to the release land, and equally advantageous to the interests.
2. In quantitative terms, the application proposes the release of around 264 sqm of roadside verge forming part of VG117 in exchange for an area of around 757 sqm on land adjoining the new development. This would result in an overall increase of land registered as village green.
3. In qualitative terms, the release land consists of a narrow section of highway verge covered with mature hedgerows. While it positively contributes to the verdant appearance of Smith’s Green Lane, it offers limited opportunities for recreational activities. Nevertheless, it is cohesive with the rest of the village green and clearly advantageous to the wider neighbourhood in terms of its ability to provide safe refuge to pedestrians walking on this side of the lane.
4. In contrast, the replacement land would be set back from the roadway and separated from the remainder of the green by a large hedgerow. It would appear as physically distinct from the existing green and could be perceived as being an area of open space for use by residents of the new development as opposed to the wider neighbourhood.
5. However, while I accept that the hedgerow would act as a physical barrier, the replacement land would provide greater opportunities for general recreation than the current, narrow section of highway verge. It would be made available for use by the wider neighbourhood and would be less affected by passing traffic and associated noise than the release land. It would also provide additional opportunities for residents of the new development to integrate with the existing neighbourhood.
6. Moreover, I am mindful that increasing the cohesiveness of the replacement land and the remaining village green would require the removal of additional vegetation - with its corresponding impacts on biodiversity and nature conservation.
7. While I acknowledge the concerns of local residents that the replacement land would not form part of the ‘ancient green’, overall, the proposed replacement land does comprise a far more pleasant environment for recreation than the release land.
8. In summary, the release land consists of a narrow strip of land adjacent to the highway which currently offers limited opportunities for general recreation. While not as cohesive with the rest of the village green, the replacement land would nevertheless adjoin the green, would be larger and would offer a better experience in terms of safety, amenity and as a usable space for recreation. 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.

*Alternatives*

1. The Parish Council has drawn my attention to other development sites to the northeast which are allocated in the emerging Uttlesford Local Plan and which it considers could provide alternative access to the development site, albeit at a later date. It suggests that the application should be refused to allow for the exploration of an alternative access for the development over land over which the applicant already has an interest.
2. However, these allocations are currently in draft and there is no certainty that they will be delivered or achievable. As such, I do not consider they provide realistic alternatives to the proposed exchange. Furthermore, I am mindful that the existing planning consent was granted on the basis that access would be taken off Smith’s Green Lane and there is no guarantee that altered arrangements for access would be acceptable to the planning authority.

***Other matters***

1. A number of other matters were raised in representations. These included the impact on traffic and pedestrian safety, the dangers posed to deer and badgers, that the route forms part of National Cycle Route 50, the lack of pavements and street lighting, the risk that changes to the drainage ditch will result in flooding, existing congestion and changes in views for some residential properties. Whilst these are understandably issues of importance to those who made the representations, they are matters that were 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.
2. I note the Open Spaces Society’s (OSS) assertion that the release land might comprise land which is highway maintainable at the public expense. However, the applicant has confirmed that neither the release land nor the replacement land is either owned or maintained by the highway authority and there is no robust evidence before me which would indicate otherwise.
3. As noted by the OSS, the effect of an order granted under section 17 on an application under section 16 is to cause the replacement land to become town or village green. The OSS has raised concerns that the land would not be available to the public at the date the order comes into force. In response, the applicant has confirmed that the replacement land will not be used for construction and will be available to the public immediately. Consequently, I do not consider there is a need to delay the order coming into force.
4. I have noted the concerns of local residents in relation to the consultation and publicity processes undertaken by the applicant. However, the evidence before me indicates that the applicant has undertaken both informal consultation prior to submitting the application and has complied with the publicity requirements of the Deregistration and Exchange of Common Land and Greens (Procedure) (England) Regulations 2007.

**Conclusions**

1. The application is made in order to enable the carrying out of an existing planning consent for the erection of 40 new dwellings. I have found above that the proposed deregistration and exchange would not adversely affect those who occupy or have rights over the land. I have also found that it would not adversely affect the interests of the neighbourhood.
2. In addition, while I acknowledge there would be some localised harm to biodiversity in the short term, this would be suitably mitigated. Overall, I have found that there would not be any significant adverse impact on the public interest in nature conservation. Likewise, I do not consider there would be any materially adverse effect on the public interest in conservation of the landscape.
3. Furthermore, it is clear that the proposal would not have any significant or lasting adverse effect on public access.
4. However, I have also found that it would result in some visual harm to Smith’s Green Lane. I am however mindful that the impact would be highly localised and would not affect the wider landscape.
5. Likewise, while there would be some harm to Smith’s Green Lane as a non-designated heritage asset, this would be clearly outweighed by the public benefits of enabling the carrying out of a major housing scheme as well as providing enhanced pedestrian facilities - benefits to both the neighbourhood and the wider public.
6. Taking all of the above into account, I conclude that the proposal is acceptable and that consent should be granted.

Rory Cridland

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** Essex 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 village greens, by amending register unit VG117 to exclude the release land; and
2. to register the replacement land as village green, by amending register unit VG117 to include the replacement land.

**First Schedule** – The release land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged red | Land forming part of register unit VG117, comprising part of the roadside verge on eastern side of Smiths Green Lane at the field entrance providing access to Jack’s Field, Takeley, CM22 6NZ. | 264sqm |

**Second Schedule** – The replacement land

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| **Colour On Plan** | **Description** | **Extent** |
| Edged light green | Grassed area of land to east of Smith’s Green Lane at Jack’s Field, Warish Hall Farm, Smiths Green Lane, Takeley, Essex CM22 6NZ. | 757sqm |

Rory Cridland

Inspector

Drawing A – Release and Replacement Land

