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# Application Decision

Site visit made on 31 August 2016

by **Susan Doran** BA Hons MIPROW

appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 11 October 2016

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## Application Ref: COM788

### Village Green Land, Limpenhoe, Norfolk

Register Unit No. VG 150

Registration Authority: Norfolk County Council

- The application, dated 6 April 2016, is made under Section 16 of the Commons Act 2006 to deregister and exchange part of the Village Green.
- The application is made by Cantley Parish Council<sup>1</sup>.
- **The release land** comprises 4,970 square metres of land forming the greater part of the Village Green and is situated behind Hill Farm, Limpenhoe.
- **The replacement land** comprises approximately 1,500 square metres of land situated adjacent to Limpenhoe Village Hall and Church.

**Summary of Decision:** The application is refused.

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### Preliminary matters

1. Section 16(1) of the Commons Act 2006 ('the 2006 Act') provides, amongst other things, that the owner of any land registered as a town or village green may apply for the land ('the release land') to cease to be so registered. If the area of the release land is greater than 200 square metres a proposal must be made to replace it with other land to be registered as a town or village green ('the replacement land').
2. I carried out an inspection of the release land and the replacement land accompanied by representatives of the applicants, Cantley, Limpenhoe and Southwood Parish Council ('the Parish Council'), Catherine Moore (Clerk), Richard Attwood (Chairman), and Norma Knight (Councillor), and Ann Russell and Denis Carter (Objectors).

### Main Issues

3. I am required by Section 16(6) of the 2006 Act to have regard to the following in determining this application:
  - (1) The interests of persons having rights in relation to, or occupying, the release land;
  - (2) The interests of the neighbourhood;
  - (3) The interests of the public<sup>2</sup>; and

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<sup>1</sup> Now known as Cantley, Limpenhoe and Southwood Parish Council

<sup>2</sup> Section 16(8) of the 2006 Act provides that the public interest includes 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.

- (4) Any other matter considered to be relevant.
4. I will also have regard to published guidance<sup>3</sup> in relation to the determination of applications under Section 16.

### **The application**

5. The land proposed to be deregistered is known as Limpenhoe Recreational Allotment and was registered under the Commons Registration Act 1965.

### ***The release land***

6. The release land lies to the south west of Hill Farm and the junction of Reedham Road and Sandy Lane, 0.75 miles from Limpenhoe village. It is accessed by an adopted highway which also accesses the Farm and cottages from the east, and by a public footpath which meets the adopted highway from the northwest. The release land comprises an area of woodland and scrub vegetation. Nearby are Limpenhoe Marshes and Limpenhoe Meadows Site of Scientific Interest ('SSSI'), part of Broadland RAMSAR and the Broads Special Area of Conservation. The applicant states the release land does not form part of Limpenhoe Common. However, it lies within the Broads Authority 'National Park'.

### ***The replacement land***

7. The replacement land is adjacent to the Church and Village Hall, 0.15 miles from Limpenhoe village. It lies within the setting of the protected landscape of the Broads Authority 'National Park'. It is currently agricultural land, but has been granted planning permission for change of use to recreational land. It is proposed to fence the site with a post and wire fence (probably later to be removed) together with a native species hedge. One entrance point, via a gate, is proposed from the track to the west of the site, between the land and the Village Hall play area, providing access from the road and Village Hall.

### **Representations**

8. Objections were made by Ann Russell, Denis Carter, Christine Fisk, Bruce Aitchison, and the Open Spaces Society ('OSS').
9. Representations were received from Historic England, the Broads Authority, and Natural England.

### **Reasons**

#### ***Interests of persons having rights in relation to, or occupying, the release land***

10. The land is owned by the applicant. There are no registered rights over it. There is no evidence before me that the proposal to deregister will have any adverse effect in this regard.

#### ***Interests of the neighbourhood***

11. By providing a more central location within the village, alongside the Village Hall and Church, I consider the replacement land would positively benefit the neighbourhood. Its situation would be more convenient for many villagers and

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<sup>3</sup> Common Land Consents Policy Guidance, November 2015, Defra

other members of the public to access, and it would lie alongside the existing facilities<sup>4</sup> which are used on a regular basis for a variety of activities. As a result it is likely that more people would be encouraged to use it for outdoor activities given that location. By contrast, the release land is located further away from the village, and there is little awareness of it.

12. Whilst I accept that there would be a significant benefit to the neighbourhood in registering the replacement land as Village Green, the issue of size arises. The release land is three times the size of the replacement land. The Parish Council believes the community considers the exchange of the release land for the replacement land to be a fair and reasonable one. The benefit of a central location and manageable future maintenance costs (within their annual budget) they believe outweigh the difference in the size of the land.
13. It is suggested the release land would provide opportunities for fetes and other village activities bringing the community together, as well as providing space for Brownies, Guides and Scouts to camp. However, I agree with the OSS that its size does not seem sufficient to comfortably accommodate such activities. In addition, the scheme proposed by the Biodiversity Study (if initiated) includes scrub and tree planting as well as wild flower meadows, such that the scope for the type of activities described, and their extent, would in my view be further limited due to its small size. Likewise, the scope of engaging in the typical activities associated with a Village Green would be limited by the size of the replacement land. I accept that the replacement land may be in keeping with the Village Hall and Church in terms of size, and it is argued by the Parish Council is commensurate with the needs of the community. However, I consider it is disproportionate to the release land in terms of *its* size. I reach this view even when taking into account that not all the Village Green is likely to be useable due to the mature trees.
14. The Parish Council points out that considerable work would be required to bring the release land into use, including inspections of the trees and clearance, for which there are no funds currently budgeted. I take this aspect into account in terms of the interests of the neighbourhood, but note that no costing or detail of the works required has been provided.
15. Overall, whilst I consider that the replacement land offers recreational value in keeping with the needs of the small community of Limpenhoe, I find that the proposed exchange is detrimental to the interests of the neighbourhood in terms of a significant reduction in area (loss) of the Village Green.

### **Public interest**

#### *Nature conservation*

16. The release land is covered with a mix of mature trees, scrub and undergrowth. Accordingly, it provides a habitat for a diverse range of wildlife although no significant areas of interest are identified. It is subject to a Woodland Tree Preservation Order which I understand would remain in place were the land to be de-registered.

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<sup>4</sup> These include a small picnic and grass area behind the Village Hall and alongside it a children's playground with play equipment

17. It is proposed that the replacement land be grassed over<sup>5</sup>, and that gaps in the existing hedge running along part of its boundary be filled with native species and that further hedge planting be undertaken. Post and wire fencing erected to establish the boundaries is proposed to be removed once any new hedging has become established. Funding has been secured for initial landscaping works. I understand, however, that the Biodiversity Study proposal for creating new habitats is subject to funding which has not been secured. There is no indication of when or what types of funding may be available to facilitate the scheme.
18. Overall I consider there would be a net loss to the public in terms of nature conservation as the small size of the replacement land and its intended recreational use would mean a reduction in biodiversity when compared with the release land, whether or not the proposals to increase the latter's biodiversity were implemented.

#### *Conservation of the landscape*

19. The release land lies within the Broads Authority 'National Park' and overlooks the River Yare and Limpenhoe Meadows SSSI. As a landscape feature it provides some screening of the agricultural buildings at Hill Farm when viewed from the south and west.
20. The proposed grassing over of the replacement land would be in keeping with the existing landscape at this location, as would the proposed improvements to the hedging along its boundaries. If carried out, the scheme proposed by the Biodiversity Study would in my view enhance the landscape.

#### *Recreation and access*

21. The release land is accessible by and from a public highway<sup>6</sup> linking with Sandy Lane and Reedham Road to the east, and by way of a public footpath crossing The Common connecting with the public highway from the northwest. This provides links to and from Limpenhoe village via Marsh Road to the west and Reedham Road to the northwest, affording opportunities for walking between the village and Village Green. Currently though, the release land is rarely accessed by the community, which may reflect a lack of awareness and/or a lack of maintenance.
22. It is proposed that an existing length of hedge on the replacement land bounding Church Lane would be improved and other native hedging and (temporary) fencing installed whilst the hedge becomes established. The effect of this would be to enclose the replacement land, a significant reason for this being on health and safety grounds. However, there is a bank alongside the road which could form an 'open' barrier itself. In any event, the Parish Council have indicated the land will be made welcoming with clear signage denoting it is available for public access.
23. Formal access is proposed from only one point on the west side of the replacement land via a pedestrian gate. The replacement land stops short of Freethorpe Road on the east side to facilitate an agricultural access to the field. Together these factors are likely to make the replacement land less accessible for those travelling to it on foot from the east. Desire lines over the land are

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<sup>5</sup> It was subject to an arable crop at the time of my site visit

<sup>6</sup> Which runs alongside and provides open access to part of the Village Green

pointed out in the submissions. They suggest an informal preference by walkers to link with the public highways and public footpath to the south and east by effectively cutting off the corner at the junction of Freethorpe Road and Church Road. I note that the scheme proposed by the Biodiversity Study takes account of these. However, it is suggested that additional access points (gaps) could be accommodated within the proposal, subject in part to permissive access being secured over the second track, and with the health and safety of users in mind.

24. The replacement land is separated from the Village Hall and playground by an agricultural access to the land behind, which is owned by the Norwich Diocese. However, I understand there would be permissive rights to enable access across it. It is further suggested that a kissing gate may be installed opposite the gate proposed as part of the access arrangements to the replacement land. This would further facilitate access from the Village Hall land obviating the need to pass along the road.
25. I consider there would be a benefit in terms of recreational opportunities, although (temporary) fencing and hedging would go towards reducing the overall openness and accessibility of the replacement land to the public.

#### *Other relevant matters*

26. The OSS comments that Section 149 of the Inclosure Act 1845 could have been used to effect the changes sought. However, the Parish Council has indicated that, should deregistration be approved, an agreement has been reached that the respective owners will exchange and complete a legal swap of land ownership. In any event, the ownership of the relevant land is not a matter that affects my determination of the merits of this Section 16 application.
27. No other relevant matters have been raised that require my consideration.

#### **Conclusions**

28. The overriding factor is to protect and maintain commons and village greens and to ensure the overall stock of such land is not diminished. The main objective in reaching my conclusions is to ensure the adequacy of the proposed exchange in terms of the statutory criteria. Having regard to my findings, the guidance referred to above (noting its paragraphs 5.1 and 5.2), and notwithstanding the merits of the proposed deregistration, I find the size of the replacement land when compared with the release land, and the disadvantages identified with regard to the public interest, are such that this application should not be approved.
29. Having regard to these and all other matters raised in the written representations, and to the criteria in Section 16(1) of the 2006 Act, I conclude, therefore, that the application should not be granted and no Order of Exchange should be made.

#### **Formal Decision**

30. The application to deregister and exchange village green land at Limpenhoe Village Green, Register Unit No. VG 150, is refused.

*S Doran*  
**Inspector**