

Campaign for Planning Sanity

LOCAL COMMUNITY SUPPORT FOR ADVERSE PLANNING & DEVELOPMENT APPLICATIONS

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VILLAGE GREENS A SHORT BRIEFING

Old 1965 Procedure

The law on Village/Town Greens changed on the 6th April 2007, although there are still some pending applications under the old law, this briefing paper should be used for those applications. Some aspects of the new changes are for the better, others are for the worst, the most important negative aspect is to allow for the de-registration of village greens on an application by a developer where planning permission has been granted.

The whole question of village greens is complicated and should be looked at very carefully, far too many are lost through badly put together applications, and badly conducted campaigns. But the end results can be more than worthwhile, the registration of a village green gives the land the greatest protection of any other status, virtually no development can take place on a village green (*subject to the new provision on de-registration - see below*).

First read carefully the notes attached to the application existing application form¹. You will be required to make a declaration as to the facts before a solicitor (*commissioner of oaths*), this has the same status as an affidavit, so think hard about the information it contains.

We shall deal in detail with the consequences of the 'Trap grounds'² case below, but it is important as a consequence of this case to ensure that until you actually submit your application to the Registration Authority that you maintain secrecy, because the conditions that must be proven must exist at the date of the lodging of the application, all a landowner needs to do to defeat an application is to post a private keep out, or notice saying use of the land is with his permission before the day of the lodging of the application (*this aspect does not apply to the new process as there is a two year backdating provision*). You will also be required to submit at the time of your application all of the information to support your case, that does not mean every conceivable scrap of information, but it should be as complete as possible.

To get your village green accepted and registered you will be required to prove all of the following:-

inhabitants of a defined locality (*or neighbourhood of a locality*) have used the land for legal 'sports & pastimes' as of a perceived right for a **period of 20 years**.

Providing, those points can be demonstrated then the land is registered, okay it is not that simple, there will in most cases be an objection from the landowner who will attempt every conceivable way of wriggling out of the land being registered, particularly if the land (**as is most often the case**) is up for development. Therefore residents have to be prepared to fight hard.

You will need to produce 2 maps, one showing the actual boundaries of the proposed village green and the other the catchment area of the site, both are very important for different reasons. The site itself must be clearly shown in order that there is no dispute over where you are asking the village green to go, you should also make this very clear on your letters asking for support (*more later*), in order that the land owner or other objectors cannot later argue that the person completing the form actually meant a completely different piece of land.

The catchment area must also be clearly shown, you must insure that all your letters of support

1 <http://www.planningsanity.co.uk/forums/vg/html/vgforms.php>

2 <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060524/oxf.pdf>

reflect this, and that all those completing them do genuinely live within that area. However, this element has been watered down with the Sunningwell and Oxford cases (*but it is not worth giving the other side ammunition*). You must make sure you start using the term '**inhabitants of the neighbourhood of a locality**'. The question of the locality must be given careful thought, it should genuinely be an identifiable community, not simply a few streets cobbled together for the application. However, this has now been clarified by the Countryside and Rights of Way Act 2000, which is fully explained in

- 79. Section 98 of the Act revises and clarifies the third limb of the definition of town and village greens contained in section 22 (1) of the Commons Registration Act 1965.
- 80. Under the first part of the revised definition the land will be regarded as village green provided that it is land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right. The implications of this are that the commons registration authority will need to be satisfied only that a significant number of local inhabitants have used the land in a qualifying manner. Use by people not from the locality will therefore be irrelevant. Furthermore, use of the words "**any locality, or neighbourhood within a locality...**" is intended to clarify that a locality does not necessarily equate to an administrative area, e.g. an entire parish, but rather to a suitable area which the land in question might reasonably be expected to serve as a green.
- 81. The second part of the revised definition provides that the local inhabitants must either continue to use the land in a qualifying manner or must have ceased to use the land within any period prescribed in regulations. (*The Trap Grounds case has clarified this further and made it clear that it is the 20 years counting back from the date of the application that count, and even if another period is specified that the criteria must still apply on the date of the application, therefore it is not needed to go back into ancient history, or to attempt to prove a period longer than that required by law.*)
- 82. The revised definitions contained in this section come into effect on 30 January 2001. The Government is still considering what provisions should be contained in subsequent regulations.

Note that the requirement is not that every user must be an inhabitant of the locality, but that a significant number use the land, that is clearly important. The law was changed because a developer applied for planning permission to develop some meadow land, but before permission was granted a group of local residents applied to have the land registered as a town or village green. The grounds for registration were those introduced by the 2000 Act. The developer's objection related to the number of inhabitants who used the land: they alleged that a '*significant*' number of inhabitants meant a considerable or substantial number and that the applicants had not shown that this was the case. The court held that whether the number of inhabitants using the land was a '*significant*' number was largely a matter of impression. It did not necessarily mean a substantial or considerable number (*particular where there were only a few people living in the locality*). What was necessary was that applicants were able to show that the land was in general use by the local community rather than in use by individuals acting as trespassers. Another important part of the judgement was that the court held that the registration authority was entitled to register a part only of the site identified by the applicants if only part of it satisfied the relevant conditions. (*R on the application of McAlpine Homes Ltd v Staffordshire County Council*).

Those who use the land must have been able to do so with a belief that they were doing so as of a right (*a good synopsis of this is contained in the judgement of Lord Hoffman in the Sunningwell case*), this would mean that they were never challenged on using the land, that there were no signs forbidding its use, no fences or other obstructions. This belief and freedom of access must have been in existence for at least 20 years, this does not mean that every individual using it today must have done so for 20 years, simply that collectively such access with the same conditions and belief existed over that period.

The users must have participated in some form of lawful sports or pastime such as, football, cricket, blackberry picking, walking, horse riding, remember as a perceived right. Lord Hoffman makes this clear in his judgement, that this does not have to be the traditional activities such as 'may pole dancing', but means modern sports and pastimes. These do not have to be '*sports and pastimes*', joined at the hip, but '*sports or pastimes*'.

It is far better to submit your application after you have completed all your research, collected your letters of support in a none hurried way, checking and rechecking the facts, so many applications are lost through people simply running too fast and getting it wrong (*we are always happy to check applications before they are submitted*), but remember not to do so in a public way, as you do not want to tip the land owner off and give him an opportunity to scupper the case.

The number of letters of support you require will depend upon the catchment area, obviously the more the better, but they should all be quality letters, not simply taken from all and sundry, as you would when collecting signature on a petition, remember these people might need to give evidence to the tribunal dealing with the application, remember also that the local authority may write to them and check the facts, the last thing you want is a year long campaign go down the shoot, by the council calling a witness to say they were pressured into signing the letter and never used the land at all, **this can be a reality.**

The Oxford (*Trap grounds*³) case had applications put on hold for up to 18 months but now many of the questions where clarity was required have finally been set out in clear terms. The case started out with an application to the High Court for a declaration after Oxford City Council (*the objector*) and Oxfordshire County Council (*the registration authority*) could not agree on the legal meaning of several findings by the appointed inquiry chair. The High Court judge came to what can only be deemed a considered and sensible approach, much of which was finally upheld by the Lords, whereas the Court of Appeal made a negative judgement that in places seemed contrary to what the Lords have said in cases such as Sunningwell. The main points of the final Lords decision are. that the criteria must be valid at the date of the application, and does not have to continue up until the determination of the application. That a registration authority are not required to reformulate or inquire into the case beyond that supplied by the applicant or objectors.

The decision making procedure is not defined in law, only that the Registration Authority (*County Council - Unitary Authority - Metropolitan Borough Council*) has to consider an application, this has led to different local authorities tackling the decision making in a diverse number of ways. Manchester City Council decides them in all but closed session, albeit they invite the applicant to the meeting, they are not allowed to address them. Wigan hold what could best be described as a cross between a tribunal and a public inquiry (*usually lasting for several days*), before a panel of 3 councillors, who make the decision. Whereas in the Sunningwell case there was a real local inquiry before an independent inspector appointed by the council. It is then worthwhile finding out if your registration authority have any procedures, and if not, say it should be by local inquiry held before an independent inspector, and point to the Sunningwell case as an illustration of the correct

3 <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060524/oxf.pdf>

approach. It is quite important that politics does not enter the decision making process, if you know your local councillors, then you will best be able guess what process will give you the advantage that could be drawn from you local situation, the decision maker is very important to a successful application.

The fact that the Sunningwell and Oxford cases have been decided by the Lords in favour of the local community is very good news indeed for anyone contemplating making a village green application. The first point is that they have made it clear that it is not limited to simply the local inhabitants using the land, albeit they should be the primary users. They also make the point that modern leisure activities are covered by the act. Also that when Parliament approved the Act they clearly had it in mind that there was a need to lessen the rights of land owners, giving rights to those who have gained them through usage over time (20 years).

The Beresford case has been a thorn in the side of successful application for about two years but the House of Lords has now overturned the decision in favour of the local community, the picture is much clearer and ever more difficult for applications to be rejected. One of the sticking points caused by Beresford was the maintenance of the intended Village Green, that should be looked on as, if it is what would normally be regarded as maintenance of a village green then it has to be disregarded, this might also include some formal laying out of the green, including the provision of seating, the cutting of grass and so forth.

The following is a sample form to ask local '**inhabitants**' to complete. The application forms you will need to hand to the Registration Authority on making your application, are now **on-line**⁴. Read the attached notes, as well as the **Regulations**⁵ before you even start to put together your campaign, you should also make sure the **Sunningwell Judgement**⁶ is important reading for all that are active in the campaign. The Beresford⁷ and the Oxford⁸ Lords Judgements are now of equal importance. Other material can be found on the Village Green Forum Index Page⁹.

4 <http://www.planningsanity.co.uk/forums/vg/html/vgforms.php>

5 <http://www.planningsanity.co.uk/forums/vg/vgregs.htm>

6 <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990624/sun.htm>

7 <http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldjudgmt/jd031113/beres-1.htm>

8 <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060524/oxf.pdf>

9 <http://www.planningsanity.co.uk/forums/vg/vg.php>

FORM

This form is intended as a sample letter for members of the community giving support, and is not the applications forms¹⁰.

A VILLAGE GREEN FOR (*name of locality*)

Dear Residents

On behalf of the local community the (*your group*) are intending to apply to the Council (*your council*) to have the land shaded grey (*could be etched with colour, so long as there is no mistake in the boundary of the land you are referring to*) in the map below (state here the written location description of the land, in a clear and concise manner that cannot be misunderstood by the decision makers) registered as a **Village Green**. However before that application is submitted we would welcome your views, it would be appreciated if you could complete the survey below, which we will collect from you in the next few days, or should you miss us please return it to the Campaign (*name it*) at (*your address*) by the DATE (*give then about 2 weeks, but no more than 3*).

If the application is successful it would have little effect upon the way in which the land is currently used, but it would provide protection in law from future development. In order for the Village Green application to be valid in law, it needs to be shown that:-

The inhabitants of (*your defined area for the catchment of the village green*) have indulged on the land in lawful sports and pastimes (*e.g. walking, horse riding, blackberry picking, football etc.*) as of a perceived right, for a period of at least 20 years.

We believe that these requirements are satisfied for this land. However, before making the formal application we want to check with the local people on the following two points:

1: Are you in favour of the Village Green application (*if there is strong opposition we will not do it*) ?

a) Yes to the village green

b) No thank you

2: If in favour, can you help by filling in the statement below about the land ?

I have used the land (*etched grey*) in the map below for the following sports and pastimes

.....

in the period from 19..... to 20.....

I have not been prevented from using the land by its owner during this period. I consider myself to be a inhabitant of and to be local to the land etched grey on the map below

Name

Address

.....

.....

¹⁰ <http://www.planningsanity.co.uk/forums/vg/html/vgforms.php>

Signature

Dated this day of 200....