

Campaign for Planning Sanity

LOCAL COMMUNITY SUPPORT FOR ADVERSE PLANNING & DEVELOPMENT APPLICATIONS

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VILLAGE GREENS A SHORT BRIEFING

The New Provision of the Commons Act 2006

The new Act¹ and Regulations² make considerable amendments to the existing Commons and Town/Village Green processes. This briefing only deals with the new provisions as set out in the Commons Act 2006³ which came into effect on the 6th April 2007. We will though amend this briefing as more information becomes available. Within this briefing we are only interested in Town & Village Greens we shall though in the near future add a new forum to our main pages that will deal with Commons in relation to planning policy and practice, and the role of commons (*and VGs*) in protecting locally important sites from the developer.

The Act and Regulations introduced a transitional procedure effective from the 6th April 2007, with a time table set to introduce the rest of the Acts provisions over the next 2 years, so watch this site for updates. However, the new provisions are not being applied retrospectively, any applications submitted before the 6th April 2007 will be dealt with under the old procedures, therefore refer first to our old briefing on Village Greens⁴ if you submitted your application before that date. If after this date start by downloading the new national application form⁵.

There are some negatives and some positives in the Act, it will be possible to de register greens (*see below*), albeit there will be strict guidelines and a like for like exchange of land, that really is a retrospective move as this removes the solid protection from developments that greens have benefited from since the introduction of a number of Victorian Acts Victorian Acts and the findings of the court in the *Trap Grounds*⁶ case. Although there will be more positive policing and enforcement of encroachments onto greens.

DEFRA the Government Department responsible for Greens has published a fact sheet on Village Greens⁷.

The new registers (*see for a national register of village/town greens*⁸) like the present will be administered by local Commons Registration Authorities, they will be open to inspection by the public and will be definitive proof of the existence of a green, albeit some greens will clearly exist that are not registered, and others may be created in the future, these will though need as soon as possible to be registered in order to give them the protection they deserve. One of the positive aspects of the new provisions will be the ability to register village greens for up to two years after the rights that were accrued ended, this will prevent landowners from placing a notice on the land that stops the land from being registered. What is to be entered into the register, is first the right that is being registered (*more on that later*), then the actual land and finally if a right is to be attached to a person as opposed to the land, that person. The registration authorities will be as they are at present, that is a County Council, a Metropolitan or Unitary Authority and in Wales a County or County borough. Excluded areas for registration purposes are the New Forest, Epping Forest and

1 http://www.opsi.gov.uk/acts/acts2006/ukpga_20060026_en.pdf

2 <http://www.opsi.gov.uk/si/si2007/20070457.htm>

3 http://www.opsi.gov.uk/acts/acts2006/ukpga_20060026_en.pdf

4 <http://www.planningsanity.co.uk/forums/vg/word/vilgrn1.doc>

5 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/tvg-form44.pdf>

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

7 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/tvg-factsheet.pdf>

8 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/village-green-1993.pdf>

the Forest of Dean. And of course as was the previous case Scotland is excluded from the process as their law is based upon Roman Law which does not recognise prescription, a fundamental principle of Common Law which governs English and Welsh law.

There will be two periods when greens will still be capable of registration even after the green stops being a green (perhaps because a landowner fences up a site). The first is a general two year period when registration can take place with few restrictions, the second is a 5 year period, but excludes land that has been developed due to the grant of planning permission and therefore can no longer be returned to public use. Therefore it is possible to get a village green registered up to 5 years after a land owner prevents access to a site or even where he grants permission to use it or for most other reasons, other than where the use is removed due to some statutory intervention. It is therefore important that you consider these aspects when completing the form, Section 4 of which gives you 3 options the normal option would be 15(2) and the two year option would be that of 15(3), only in the rarest of case would you use 15(4) which is for the 5 year process, if unsure then do not hesitate in asking us as if you use the wrong section it might defeat your registration. Please see our paper on how to complete Form 44⁹. and the Defra Guidance Notes¹⁰ along with their Implementation of Section 15 Guidance Notes¹¹.

At the present time the right is gained where people use the land as of right, whilst that same term is used in the new Act it is reduced in meaning, at present it means that people have used the land with a believe they had the right, that they have not stolen onto the land, nor have they been granted permission. The new provisions take away the later of those concepts that is no longer will the right be capable of ceasing if a land owner has granted people permission to use the land. Therefore many greens that have failed to be registered may under the new regime be capable of registration.

A new concept in the Act is to enable for the first time voluntary registration by land owners of greens. This may be useful where a land owner wants to rid himself of a piece of land that has little benefit other than as recreational land

Where ownership of a village or town green cannot be established then a local authority may assume the role of landowner and exercise the rights required for the protection of the land, presumably including maintenance. This includes parish councils, which could be very useful for local communities. The old scheme had no such provision and therefore many greens became derelict sites as they were not maintained.

A further negative point is that under the Act provision will be able to be made for costs to be payable by, the applicant, the registration authority, or the objector. This aspect has not yet been introduced but we are told by DEFRA that it will be in the near future. On cost one aspect that could be a problem will be the requirement to provide a plan in a 1-2500 scale this will be very costly unless you can get one from your main library, the Local Planning Authority or a friendly surveyor, from the Ordnance Survey the cost would on average be £400.00.

The new process includes new application forms¹², there is also to be a detailed process for the determination of applications, the old position of no process is not helpful and gives a hit and miss affair to the registration of greens, with little certainty as to the potential outcome of any application, hopefully the new process will ensure fairness all round. In 95% of all cases there will be a local inquiry into the application,, most Registration Authorities will appoint a barrister to act as the inspector, whilst others will engage an inspector from the Planning Inspectorate. Until the full

9 <http://www.planningsanity.co.uk/forums/vg/html/vgform-faq.php>

10 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/guid-app-tvgreen.pdf>

11 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/registration-faq.pdf>

12 <http://www.defra.gov.uk/wildlife-countryside/issues/common/pdf/form44.pdf>

process is published then the local inquiry has no set down procedure which is causing problems of a non structured procedure that gives confusion the failure to provide sufficient information or to provide information at the wrong time. But the local inquiry process is flexible enough to overcome these difficulties, however, we recommend that you push your Registration Authority to put in place its own process until the national scheme is introduced. However, note that we are getting reports (*notably Staffordshire County Council*) that registration authorities are saying they can only do X number of applications a year on cost grounds, this in our view would be contrary to peoples rights under Article 6.1 of the ECHR right to a fair hearing within a reasonable time, if you need representation on this complex area of law let us know and we will compile a letter for you, and possibly represent groups at local inquiries.

So just what does registration of a village green do first it protects the rights of the users to take part in sports and pastimes on the land, it is a criminal offence even for a land owner to interfere with those rights, however, it is not quite that simple in that it should be viewed as a partnership, that is the land owner may not interfere with the rights of the user and the user may not interfere with the right of the land owner to use his land as he always has , for instance for a farmer to cut hay, or to play organised sports on a marked out sports pitch. Next, it is offence to enclose any part of the village green albeit that a village green can now have perimeter fencing erected, the effect of this is that as a building would enclose the area, it become unlawful to build on the land. The registration takes precedence over other legislation such as the grant of planning permission (*but see de registration*) therefore even if planning consent is granted you should submit your application for registration asap. Ownership of the land does not change, although there is an ability under the new procedures for an application for registration to take over the maintenance of a village green, although there is no obligation to do so, and presumably only where there is no known owner and the council or parish council are not willing to take on the maintenance.

There is no legal obligations or costs involved in applying for registration, although the government have indicated that they are to put forward provision for a registration fee, they have not done so yet. The primary cost is that of the supply of the required plan, the OS plans cost on average £400.00 although there is no reason why you could not draw your own plan providing you can get it to scale. Ordnance Survey is the normal place to get plans but they are expensive, some main libraries such as the Reference Library (Round Library) in Manchester have copies of all plans in Greater Manchester, local architects might also be a good source. You can also purchase online site maps for an average of £50 by doing a Google search, but you must be sure that you are getting the right scale, location and it cover the entire site area. You will also require the statutory declaration to be endorsed by a solicitor, they usually charge about £8.00 for doing that.

Most opposed applications should now be done by local inquiry, as I say at present there is no set down process or procedure at the inquiry. However, whilst it has no statutory force it is often best to push the registration authority to use the planning inquiry procedure process as this gives some structure to the presentation and supply of documents. However, irrespective of the process to be used you should have your own witnesses prepare formal proofs of evidence, we can help by making sure that your proofs are correctly set out, indeed on our resource section you will find a top and tail example letter. These would then be read out at the inquiry with appropriate expansion if needed. The inquiry process should be along the lines of opening submissions which is an overview of your case, followed by the applicants witnesses, then the witnesses for the objectors, them closing submissions, which is the time to set out legal arguments, to sum up the case, but is not a time to introduce any new points. Then the inspector would do a site visit accompanied by the parties, but this is not a time for further debate but simply an opportunity to look at all the features of the site.

There is no cost involved in the inquiry unless you employ any expert witnesses or an advocate (*we can possibly help with this*), as each party is responsible for their own expenditure. In most cases there would not be any need for expert evidence, however, most groups benefit from an advocate, but that does not mean a solicitor or barrister, there is no reason why in most cases one of your own team cannot act as your advocate, we can help with advise and with compiling opening and closing speeches, we can also provide lay advocates for a realistic donation to cover their time at the inquiry. If you employ a solicitor then you can expect to pay somewhere between £200 to £300 per hour, with an average inquiry lasting 3 days, and a further two days for preparation. A barrister is likely to be double that and a QC is likely to be double that again. Therefore if you decide to bring in professionals please make sure you get a clear understanding on cost from the outset. We can help by putting you in touch with appropriately experienced solicitors and barristers. If though you request a Planning Sanity lay advocate then first it depends on availability of volunteers with the relevant experience, and the agreement of a suitable donation, this might reasonably be in the region of £500 to £1000 as a total for the entire inquiry (*plus out of pocket expenses*). We do not charge for our normal help and advise by phone and email and emphasise that there is no reason why most local communities cannot do this without any outside advocate, particularly with our support when things get tough.

De registration will be allowed for the first time, this though will only be authorised by a national authority in England that will be the Secretary of State and in Wales the National Assembly. The process for applications to de register has now passed from DEFRA to the Planning Inspectorate¹³. This will be determined by an inspector holding an inquiry and then reporting back to the Secretary of State, or in Wales the National Assembly, with a recommendation. There will be two classes of land those under, and those over 200 sq metres in area. For those over 200 metres then it will be compulsory for the land owner to provide a new village green, those under they will not be obliged to, but if they do not that will count against the de registration (*but not prevent it*). There is to be a strict list of criteria to be taken into account including - The interests of those using the land - the interests of the neighbourhood - the public interest - any other relevant matter. The bug bear will be in the public interests, as this can be a double edged sword working both for and against de-registration. It will only be the owner of the village green that can apply for de registration, and the replacement land must be in the ownership or control of the landowner, and must not already be a village green. In truth though there will only be a small number of greens that are de registered, and we shall have to see how the process works in practice.

Pilot Implementation Areas

Defra have introduced a pilot scheme within the following areas for the implementation of Part 1 of the Commons Act 2006 that is Devon, Kent (*but not including unitary authorities in these first two counties*), Cornwall, Hertfordshire, Herefordshire, Lancashire (*but not Blackpool*), and Blackburn with Darwen, the procedures, forms and guidance for applications under section 15 have been revised, and are now contained in the Guidance to Applicants in the pilot implementation areas - you should not use the normal Defra guidance nor the form for applications in the pilot implementation areas, instead use the new Pilot scheme the Fact Sheet¹⁴, the Guidance¹⁵ and the Statutory Instruments¹⁶. There are a number of fees introduced for various elements, most of these only apply to Commons Registration and not that of Village Greens with the notable exception of de registration that has a fee of £600.00. However, there is provision for registration authorities to substitute their own fees for those in the SI therefore be aware and please let us know if you are

13 http://www.planning-inspectorate.gov.uk/pins/common_land/index.htm

14 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/regist-pilot-factsheet.pdf>

15 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/pilot-appguide.pdf>

16 http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081961_en.pdf

asked to pay a fee for registration of a green.

Planning Sanity is here to help you complete the forms gather evidence and to present your case. We can do this in many ways and may with a suitable donation and out of pocket expenses act as an agent for you and/or present your case to the inquiry. Please ask for further info. Please though start by reading the guidance notes¹⁷ that are produced by DEFRA and the DEFRA application form guidance notes¹⁸ as well as our own guidance notes¹⁹.

17 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/registration-faq.pdf>

18 <http://www.defra.gov.uk/wildlife-countryside/pdf/protected-areas/common-land/guid-app-tvgreen.pdf>

19 <http://www.planningsanity.co.uk/forums/vg/html/vgform-faq.php>