

# Land development on VILLAGE GREENS

Illustration by **Cristobal Schmal**

Historically a town or village green could only be created by custom, which required use since time immemorial. The legislation that now governs village green applications is The Commons Act 2006 (CA 2006), in particular section 15, which came into force on 6 April 2007. The legislation is a hot topic in the development arena because a successful registration of a new village green can have the effect of scuppering a development for good.

## WHAT IS A TOWN OR VILLAGE GREEN?

A green is land that is subject to the right of local people to enjoy for general recreational activities. Significantly, the land does not have to be: primarily grass; situated within a reasonable proximity to a town or village; or suitable for recreational activities.

## WHAT DO APPLICANTS HAVE TO SHOW?

Section 15 of the CA 2006 provides that applications to register land as a town or village green can be made where a significant number of people living in the local area have used the land for lawful sports and pastimes for a period of at least 20 years and that they:

- Continue to use the land at the time of the application; or
- Have ceased to use it before the application was made but after 6 April 2007, and the application is made within the first two years of cessation; or
- Have ceased to use it before 6 April 2007 and the application is made within

the first five years of such cessation.

Anyone can apply, whether or not he is a local person or has used the land.

## WHAT IS THE EFFECT OF REGISTRATION?

Registration confers recreational rights over the green on local people but it does not override the landowner's right to continue to use his land. Once registered, development on that green is precluded.

If land is registered as a village green, the landowner can apply to court for leave to refer the decision for judicial review. In recent cases the courts have failed to allow the decision to be referred. This indicates that not only is it difficult to prevent an application from being successful in the first place, but it is also extremely difficult to review a decision once it has been made.



This legislation has not been heavily tested in court, but the following points have been the basis of a few key judgments:

- How many people must have used the land for at least 20 years? Case law suggests that a 'significant number' may not have to be considerable or substantial.
- In what area do people who use the land have to live? Case law suggests that 'locality' simply has to be a recognisable community with definite geographical boundaries.
- Under section 15 CA 2006, the land must be used 'as of right'. Case law suggests that use of the land must be without force, secrecy or permission. In the majority of cases the issue will be whether the landowner has given permission. If they have, the use has not been 'as of right' and the application must automatically fail. The court has found that permission must be revocable or time limited. Permission itself can be express (by erecting notices on the land that grant temporary permission to use it), or implied. However, permission cannot be implied from inaction or acts of encouragement by the landowner. Consequently, it seems that for an objector to succeed he must be able to prove that he has given permission to use the land subject to any conditions that they, as landowner, place on that use. It must be proved that the permission is conditional or time limited.

The definition of 'green' is wide and therefore landowners need to consider the implications of this legislation on any land within their ownership. As it is not clear whether erecting a sign will ever be enough to protect a landowner from a successful application, landowners may need to consider denying all public access over land which they may, in the future, wish to develop, by fencing it off completely. This was surely not the intention of Parliament. It is certainly fair to say that we may see more land fenced off in future; otherwise development in England and Wales could be significantly hindered by the emergence of more and more village greens.

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