

Town and village greens - still a cause for concern

The law in relation to town and village greens was a hot topic, particularly a few years ago, when many applications to register land as a town or village green (TVGAs) were submitted. The perception at the time was that the general objective was to scupper housing development locally. However, during the last two or three years, this topic seems to have slipped off the radar to some extent. There are, however, still significant issues to be aware of to help protect your land-holdings and development objectives.

The Growth and Infrastructure Act 2013 (the Act) brought in provisions which were designed to be helpful to housebuilders and overcome some of the ease with which TVGAs were being successfully used. In parallel with these statutory provisions, the last four significant cases which have been before the courts [1] were, encouragingly, decided in favour of the land owners, rather than the local inhabitants. The overall feeling recently has therefore been that this area of law was not as great a threat as it once was.

However, we can see the possibility of problems looming again, based on the continuing need for new housing and the limitations of the key provisions in the Act. It may only be a matter of time, therefore, before new issues come before the courts. This article highlights some of the potential issues.

The consequences of registration

The basic law is set out in section 15 of the Commons Act 2006. This is that 'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'.

This criteria is met surprisingly easily, and once land is registered as a town or village green, housing development will be prevented on the land in question and its value as a development site will instantly be wiped away.

You will recall that section 15 of the Commons Act 2006, when it first came into force, suddenly provided a useful tool for local people to use, when they were opposed to housing development on open land near where they live. There was thus a surge in the number of TVGA's and when the country went into recession in 2008/2009, and the number of sites being promoted for housing development dwindled, the Government became concerned that this state of affairs was undermining the bringing forward of much needed housing. Consequently, the Government introduced significant changes to the law through the Act.

Changes to the law

Significantly, one of the changes brought into effect by the Act was to insert a new section 15C and Schedule 1A in the Commons Act 2006.

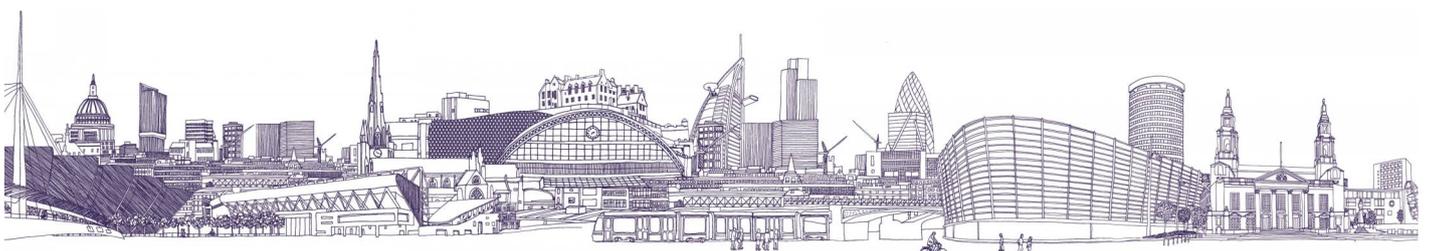
This introduced a new exclusion of a right to apply for registration when a 'trigger event' has occurred in relation to land. Unless, and until, a corresponding 'terminating event' has occurred, the relevant registration authority cannot accept any application to register that land as a town or village green.

Problems with the changes

There are nine trigger events in Schedule 1A. However, some of the specific requirements of the trigger events and corresponding terminating events are not clearly specified and relying on them may not be straightforward.

For example, one of the most commonly used trigger events is when a planning application 'is first publicised'. It may, however, be difficult to know who is responsible for that, or obtain evidence of precisely when it occurred. If a TVGA is submitted at a similar point in time, however, this event would then obviously be of critical importance.

Another related problem can occur in practice. Housebuilders generally carry out consultation with local people in relation to new schemes, prior to submitting an



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application. However, the earliest trigger event occurs after an application is submitted and 'publicised' (unless another trigger event already applies). Therefore, local people who are opposed to the development proposal are alerted to it and could submit a TVGA before the landowner's interest is afforded protection by the Act.

In relation to the other trigger events, another one is if the land is identified in a development plan document for potential development. The corresponding terminating event includes the document being withdrawn or the document being adopted. However, it is unclear what happens if there are any significant amendments to the draft development plan document before it is withdrawn or adopted.

These problems may lead to further court decisions and developments in this area of law, given how much there is at stake if a TVGA is ultimately successful.

In the meantime, it is difficult to say with any certainty whether the trigger events and corresponding termination events offer the protection that was expected.

Conclusion

Given the above, we are of the view that you must consider very carefully how far you can use, and rely on, the provisions in the Act.

We also consider that it is still usually essential for an owner of land to assess and monitor the position in relation to their land ownership, to ensure that no trespass takes place, and that rights cannot accrue in the first instance.

In addition, housebuilders should have regard to whether the relevant trigger event protects all the land that needs to be protected from a TVGA. For example, an application will only serve as the trigger event in respect of the red edged application site. Any land outside of that area can still be the subject of a TVGA and this could, in itself, still impact on the development proposal under consideration.

If land is being newly acquired, it is also advisable to consider obtaining appropriate insurance cover and obliging the vendor contractually to participate in providing historic evidence to assist you in the eventuality that a TVGA is submitted at a later date.

Given the serious consequences of a TVGA being submitted and ultimately resulting in the registration of land as a town or village green, specialist legal advice should also be obtained to assist you at all stages in the process.

[1] *Betterment Properties (Weymouth) Limited -v- Dorset County Council* [2012] EWCA Civ250

Paddico Limited -v- Kirklees Metropolitan Council [2014] A.C. 1072

R (on application of Barkas) -v- North Yorkshire County Council and Another [2014] UKSC31

R (on application of Newhaven Port and Properties Limited) -v- East Sussex County Council [2015] AC1547

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