

# **Growth and Infrastructure Act 2013 And Village Greens**

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**October 2013**

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# Overview of Effects of GIA 2013 on Village Greens



- Growth and Infrastructure Act 2013:
  - Reduces the period of grace within which an application for registration of a village green can be made to 1 year
  - Prevents applications being made after certain trigger events such as allocation of land in a statutory plan
  - Provides for terminating events after which applications may again be made for registration
  - Allows landowners to stop user as of right by depositing a statement with the local authority
  - Provides for fees to be charged for applications for registration of a village green
  - Provisions now all in force from 1 October 2013: Commencement orders: S.I. 2013/1488; and S.I. 2013/1766

# Background to Changes Commons Registration Act 1965



- Commons Registration Act 1965 provided for the registration of:
  - land which was common land or a town or village green
  - rights of common over such land; and
  - the ownership of such land
- All disputes relating thereto were to be decided by Commons Commissioners;
- no land capable of being registered was deemed to be common land or a town or village green and no right of common was exercisable unless registered;
- any registration of land or rights was conclusive evidence of the matters registered;
- Registration is determinative positively and negatively: *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 at [43]

## Background (2)

### Characteristics of a TVG



- Section 22(1) of the Commons Registration Act 1965 (as originally enacted) reflected historic origins in Inclosure awards and customary rights in defining a town or village green as land (lettering added)
  - “[a] which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or
  - [b] on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes...”
- The Act provided further for new greens to be created on land:
  - “[c] on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years.”

# Background (3)

## Class [c] Greens



- Since the late 1990s a mass of case law has evolved on the category of class [c] greens under the 1965 Act which are established by 20 years user.
- Lord Hoffman held in *Oxfordshire* at para [68] that a single statutory question had to be asked in assessing whether a green should be registered. However, this is often broken up into six sub-questions: whether
  - (i) “A significant number of”,
  - (ii) the inhabitants of any locality or neighbourhood within a locality”;
  - (iii) indulged... in lawful sports and pastimes”;
  - (iv) “as of right”;
  - (v) “on the land”;
  - (vi) “for a period of at least twenty years”

## Vexed Legislation (1)



This definition of a TVG and its application has been a vexed issue and has now been amended 3 times by:

- Section 98 of the CROW Act 2000
- Section 15 of the Commons Act 2006
- Section 14 of the Growth and Infrastructure Act 2013

## Vexed Legislation (2)



### Section 98 Countryside and Rights of Way Act 2000

Section 22 of the CRA 1965 was amended by the CROW Act 2000 so as to insert a new subsection (1A):

- (1A) Land falls within this subsection if it is land on which for not less than twenty 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, and either—
  - (a) continue to do so, or
  - (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions
- No period was prescribed leading to much litigation (see *Oxfordshire*) and ultimately further amendment.

# Vexed Legislation (3)

## Commons Act 2006



- Provides for registration of common land and town and village greens
- Commons registration authorities continue to keep registers of common land and town or village greens, and to permit amendments to be made to the registers in accordance with its provisions.
- Replaces and improves the registration system established by the 1965 Act but continues to use the registers set up under that Act.
- Its full provisions are to be implemented on a phased basis, region by region. Currently still only seven pioneer areas have implemented it. Apparently the intention is still to roll out the Act's provisions nationally.

# Registration Pursuant to Section 15(1) Commons Act 2006



- Where an application is made to the commons registration authority to register a town or village green under section 15 to the 2006 Act, the applicant must additionally show that
- the use **continued** at the time of the application (section 15(2)); or
- the use **ceased before the time of the application**, and the application is made within a period of two years after the cessation of the use.
- A third possibility, pursuant to section 15(4) was that the use **ceased before the commencement of section 15** (6 April 2007); the application was made **within five years after the cessation of use**; and a number of other conditions were satisfied (but no further applications may now be brought under this subsection)

## 2006 Act Period of Grace for Registration



Section 15(3) of the 2006 Act introduced a 2 year period of grace for the making of an application for registration of a village green after user as of right ceased.

Eg. an application could be made at any point up to two years after the right to use the land was brought into question by fencing the land and/or putting up notices.

# Vexed Legislation (4)

## Growth and Infrastructure Act 2013



Section 15 (3) has been amended by the GIA 2013 so as to limit (in England) to one year the period in which an application for registration of a village green may be made after the asserted recreational rights were contested:

(3) This subsection applies where—

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the time of the application but after the commencement of this section; and

(c) the application is made within *the relevant period*.

(3A) In subsection (3), “*the relevant period*” means—

(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);

(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.

# Hot Off Press



Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013/1488

- New one-year period of grace has just taken effect:

6. Provisions coming into force on 1st October 2013

Subject to article 8, section 14 (registration of town or village green: reduction of section 15(3)(c) period) of the Act comes into force on 1st October 2013.

Art. 8 states

“(2) The coming into force of section 14 of the Act so far as it applies to land in England, has no effect in relation to any cessation referred to in section 15(3)(b) of the Commons Act 2006 which occurs before 1st October 2013.”

(i.e. the reduction to one year will only bite at the earliest in 1 year’s time)

# Cessation of Right to Register a TVG: Trigger Events and Terminating Events



- New Section 15C(1) provides that the right to apply to register a TVG ceases to apply after “trigger events” (but the provision bites only on applications made after the section came into force on 25 April 2013)
- By section 15C(2) the right arises again after a “trigger event” ceases to apply upon the occurrence of a “terminating event”
- Secretary of State has powers to make orders as to when trigger events occur, and what those trigger events are
- The trigger events are set out in new Schedule 1A to the Commons Act 2006

# Trigger Events and Terminating Events (1) Planning Applications



Schedule 1A to the Commons Act sets out the following:

1. Trigger: An application for planning permission is publicised;

Terminating Events:     (a) application is withdrawn  
                              (b) LPA declines to determine  
                              (c) planning permission finally refused  
                              (d) Permission expires

2. Trigger: An application for planning permission under section 293A of the 1990 Act (matters which are urgent and of national importance).

Terminating Events (a); (c) and (d) above

# Trigger Events and Terminating Events (2) Plans



3. Trigger: Draft Development Plan Document identifying land for development is published

Terminating Events: Plan is withdrawn or plan is adopted

4. Trigger DPD identifying land for development is adopted

Terminating Events: DPD is revoked; relevant policy is superseded

5. Trigger: A neighbourhood development plan is published containing proposal for development of the land

Terminating Events: Plan is withdrawn; or plan is made

6. Trigger: Neighbourhood development plan identifying land for potential development is made

Terminating Events: Plan ceases to have effect; is revoked or a relevant policy is superseded

7. Trigger: A development plan or part of it identifying the land for development continues to have effect following the commencement of section 16 of the GIA 2013.

Terminating: Plan ceases to have effect

# Trigger Events and Terminating Events (3) Applications for NSIPs



8. Trigger: A proposed application for development consent under section 114 of the Planning Act 2008 (nationally significant infrastructure project) is publicised

Terminating Events: Two years pass or an application for development consent is publicised (see 9)

9. Trigger: An application for development consent for a NSIP is publicised.

Terminating Events: The application is withdrawn; finally refused; or time for implementation expires.

# Deposit of Statements



- By new section 15A to the Commons Act 2006 (inserted by the GIA 2013) an owner of land may deposit a statement (in prescribed form) with a local planning authority which has the effect of bringing to an end the period during which user as of right may be claimed.
- A village green application could then presumably be brought within the following year but not after.
- New section 15B provides for a register of such applications to be maintained. This is likely to be maintained in tandem with the register maintained for similar purposes in relation to highways.
- Parallel with process under section 31 of the Highways Act 1981

# Formalities for Depositing Statement



- Governed (from 1 October 2013) by Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013, SI 2013/1774
- Reg 2 requires completion of a form, signed by owners of land, accompanied by a scale map
- Reg 4 provides for publicity of the statement for sixty days inter alia by site notices.
- Reg 5 makes provision as to what the register must contain (map, details about land and owner, when statement deposited etc)

# Reasons for Changes



- Big rise in applications is a burden on local authority purse
- Increasing frequency of applications for sites earmarked for development resulting in delays/termination of building work
- Costs to developers and landowners
- Local Green Spaces designation (now see NPPF [76]-[78])

# Summary of Main Changes



- Sites upon which status as a village green can no longer be accrued include:
  - Those currently already allocated in a development plan
  - Those proposed to be allocated in a development plan or neighbourhood plan (once the draft plan is published)
  - Those the subject of a planning application
  - Those the subject of a proposed (or made) application for a nationally significant infrastructure project
- New power to deposit statements ending accrual of TVG rights
- Period of grace for applications for registration reduced to one year

# Major Developments in Case Law On Village Greens



- R (*Barkas*) v North Yorkshire CC [2013] 1 W.L.R. 1521

Where land had been laid out and maintained as a recreation ground under section 80(1) of the Housing Act 1936 or section 12(1) of the Housing Act 1985 the public had a right to use it for recreational purposes. Therefore, the public recreational use of such land would not be “as of right”, within section 15(2) of the Commons Act 2006; and that, accordingly, throughout the requisite 20-year period the local inhabitants had used the field by right and not “as of right”.

- Supreme Court to consider appeal in April 2014

# De-Registration of Village Greens



*Taylor v Betterment Properties (Weymouth) Ltd* [2012] 2 P. & C.R. 3

*Adamson v Paddico (267) Ltd* [2012] 2 P. & C.R. 1

- Both concern the jurisdiction under section 14 of the Commons Registration Act 1965 to rectify the register so as to remove a registered village green. Are concerned primarily with questions of delay: how long after registration may an application for de-registration be made. 6 year limitation period possibly provides a guide.
- Otherwise recognise a very wide jurisdiction to de-register
- Appeals due to be heard by the Supreme Court in 2014.

# Human Rights and Village Greens



- *R. (on the application of Newhaven Port & Properties Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2013] 2 P. & C.R. 14
- **A**pplication was made under section 15(4) of the Commons Act 2006 which applied where the use of the land had ceased before section 15 came into force but the application was made within five years of cessation of use
- Held that the five year period of grace under section 15(4) was not incompatible with article 1 protocol 1.
- Permission has been sought to appeal to the Supreme Court

## Other Developments: Settlement and Mediation

- The application for registration of the Laundry Fields in Bristol has been settled by agreement between landowners and locals and the City Council has registered half of the application site in accordance with that agreement.
- Not clear whether that is consistent with the registration authority's statutory duties: Its appointed counsel advised it not to follow the agreement
- Pitfalls of this approach evident from another Bristol case: *R (SDR) v Bristol City Council* [2012] EWHC 859 (Admin) where locals not happy with registration reflecting mediation challenged the decision (successfully).

# Conclusions



- After the CROW Act 2000 and the Commons Act 2006 and four House of Lords cases expanded the scope for registration of new village greens, there is now a legislative retrenchment.
- It appears that there may be a judicial retrenchment as well, but that depends on what the Supreme Court says, since it is the highest court which has in the past always been the most liberal in this field.
- Perhaps customary rights (eg to hold bonfires) might now be relied on where village green applications have been debarred.
- Otherwise where applications for village green status are debarred arguments as to the public benefits of recreational use of land may still be made in the planning context.