

The End of New Town and Village Greens?

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BACKGROUND TO REFORMS



- Current proposals in the G&I Bill need to be seen in the context of the Defra Consultation paper (July 2011)
- Also need to be seen in the context of the Government's attempt to remove or reduce what it sees as obstacles to development
- That goes some way to explaining how we end up with the approach in the Bill which would preclude an application for a new TVG is specified but wide development related circumstances

USE OF REGISTRATION AS MEANS TO RESIST DEVELOPMENT



REASONS FOR CHANGE



- 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])

LEGISLATIVE BASIS: s.15 of the Commons Act 2006



Subsection (1) provides that:

Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

Subsection (2) applies where-

- (a) **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; and**
- (b) **They continue to do so at the time of the application.**



TVGs?



CAUSE FOR CONCERN?



- Warnefield Meadow is an 8.5 ha area of land in east Oxford. It was registered as a village green in 2010. The Friends of Warnefield Meadow, which submitted the application, said that the total cost of the process exceeded £0.5 million and possibly amounted to £1 million. The owner has been unable to develop the land, and its value has plummeted from £11 m to £500, 000.

CAUSE FOR CONCERN?



- In Buxton, a TVG application held back the potential for the town's economic growth by frustrating plans for employment land, and also held up the development of new leisure facilities and 575 new homes. High Peak Council spent a reported £100, 000 in legal advice contesting the registration of a new green in the High Court.

THE SOLUTION?: THE BILL



- Amend **section 15** of Commons Act 2006
- **Trigger events** and **terminating events** precluding and then allowing again new TVG applications (s.15(1))
- **Schedule 1A** details what these events are



New s. 15C Registration of greens: exclusions



- (1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land ('a trigger event').*
- (2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land ('a terminating event').*

SoS's Power to Make Orders



- (3) The Secretary of State may by order make provision as to when a trigger or terminating event is to be treated as having occurred for the purposes of this section.
- (4) The Secretary of State may by order provide that subsection (1) does not apply in circumstances specified in the order.
- (5) The Secretary of State may by order amend Schedule 1A so as to
 - (a) specify additional trigger or terminating events;
 - (b) amend or omit any of the trigger or terminating events for the time being specified in the Schedule.
- (6) A trigger or terminating event specified by order under subsection (5)(a) must be an event related to the development (whether past, present or future) of the land.

NB. Lords Amendment 18 would make this power subject to the affirmative parliamentary procedure



(7) For the purposes of determining whether an application under section 15 is made within the period of two years mentioned in section 15(3)(c), any period during which an application to register land as a town or village green may not be made by virtue of this section is to be disregarded”.

**TRIGGER EVENTS:
PLANNING APPLICATIONS**



(1) An application for planning permission in relation to the land which would be determined under section 70 of the Town and Country Planning Act 1990 (“the 1990 Act”) is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.

(2) An application for planning permission made in relation to the land under section 293A of the 1990 Act is first publicised in accordance with subsection 8 of that section.

**TRIGGER EVENTS:
DEVELOPMENT PLANS**



(3) A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).

(4) A development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004 Act.

**TRIGGER EVENTS:
NEIGHBOURHOOD PLANS**

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- (5) A draft of a neighbourhood development plan which identifies the land for potential development is published for consultation in accordance with regulations under section 38(A)(7) of the 2004 Act.
- (6) A neighbourhood development plan which identifies the land for potential development is made under section 38A of the 2004 Act.

(NB. Lords Amendments 37 to 40 make minor and technical changes to certain trigger and terminating events e.g. correcting the provisions referred to in respect of neighbourhood development plan proposals and ensuring that the trigger event would be publication by the planning authority of the neighbourhood plan)

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- (7) A development plan for the purposes of section 27 or 54 of the 1990 Act, or anything treated as contained in such a plan by virtue of Schedule 8 to the 2004 Act, continues to have effect (by virtue of that Schedule) on the commencement of section 13 of the *Growth and Infrastructure Act 2013* and identifies the land for potential development.
- (8) A proposed application for an order granting development consent under section 114 of the *Planning Act 2008* ("the 2008 Act") in relation to the land is first publicised in accordance with section 48 of that Act.
- (9) An application for such an order in relation to the land is first publicised in accordance with section 56(7) of the 2008 Act.

**TRIGGER EVENTS BEFORE
COMMENCEMENT**

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"For the purposes of the application of section 15C of the Commons Act 2006 (as inserted by subsection (1) above), it does not matter whether an event specified in the first column of Schedule 1A to that Act occurred before or on or after the commencement of this section".

NB. Lords Amendments 29 to 32 would bring forward commencement of Clause 14 of the Bill and Schedule 4 to the Bill so that they come into force on Royal Assent rather than two months after that date

APPLICATIONS MADE BEFORE
PROVISION COMES INTO FORCE 

“ The amendment made by subsection (1) does not apply in relation to an application under section 15(1) of the Commons Act 2006 which is sent before the day on which this section comes into force”.

FINAL THOUGHTS..... 

- Clause 14 amends s.15(3) so that, where the application is made after the claimed use has cease, the period within which an application to register a new TVG may be made is reduced from 2 years to 1.
- Clause 17 amends an existing power to allow regulations to prescribe more flexible fees in relation to applications made under Part 1 of the 2006 Act, including applications to register land as a TVG. Any fees prescribed under this power will be set out in secondary legislation.

THE END OF TVGs? 


