

TOWN AND VILLAGE GREENS -

LEGAL UPDATE
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STRUCTURE OF THE LECTURE



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ISSUE 1 – THE FACTUAL BACKGROUND



- 185 VILLAGE GREEN APPLICATIONS IN 2009.
- 3650 VILLAGE GREENS IN ENGLAND COVERING 8150 ACRES.
- 220 VILLAGE GREENS IN WALES COVERING 620 ACRES.

ISSUE 2 – THE KEY LEGAL SOURCES



- THE PRINCIPAL LEGISLATION IS NOW CONTAINED IN:
 - THE COMMONS ACT 2006.
 - GROWTH AND INFRASTRUCTURE ACT 2013
 - THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND) REGULATIONS 2007.
- KEY LEGAL CHANGE IS THE INABILITY TO REGISTER LAND AS VILLAGE GREEN WHERE A TRIGGER EVENT HAS OCCURRED.
- TRIGGER EVENTS ARE SET OUT IN SCHEDULE 1A OF THE 2006 ACT.

ISSUE 3 – THE KEY LEGAL TEST



- KEY CRITERIA FOR REGISTRATION IS SET OUT IN SECTION 15(2) OF THE COMMONS ACT 2006 NAMELY
 - *“WHERE A SIGNIFICANT NUMBER OF INHABITANTS OF ANY LOCALITY, OR OF ANY NEIGHBOURHOOD WITHIN A LOCALITY, HAVE INDULGED AS OF RIGHT IN LAWFUL SPORTS OR PASTIMES ON THE LAND FOR A PERIOD OF AT LEAST 20 YEARS”*

ISSUE 4 – THE EFFECT OF REGISTRATION AS VILLAGE GREEN.



- CANNOT BE BUILT UPON IN EFFECT AND MUST REMAIN OPEN.
- SECTION 12 OF THE INCLOSURE ACT 1857 MAKES IT AN OFFENCE TO INTERRUPT THE USE OR ENJOYMENT OF A VILLAGE GREEN.
- SECTION 29 OF THE COMMONS ACT 2006 MAKES IT AN OFFENCE TO PLACE ANY TYPE OF BUILDING ON THE LAND UNLESS IT IS FOR THE BETTER ENJOYMENT OF THE GREEN.

CONSEQUENTLY DESIGNATION AS A VILLAGE GREEN HAS BECOME AN IMPORTANT TOOL FOR OBJECTORS OPPOSED TO DEVELOPMENT

ISSUE 5 - TRIGGER AND TERMINATION EVENTS



- SECTION 15(C) AS AMENDED BY GIA 2013 EXCLUDES THE RIGHT TO APPLY FOR A TVG WHEN A TRIGGER EVENT HAS OCCURRED WITHIN THE PLANNING SYSTEM IN RELATION TO THE LAND.
- AT ANY TIME WHEN THE RIGHT TO APPLY IS EXCLUDED THE REGISTRATION AUTHORITY MAY NOT REGISTER THAT LAND AS A GREEN.
- THE RIGHT TO APPLY REMAINS EXCLUDED UNTIL A TERMINATION EVENT OCCURS IN RESPECT OF THE LAND.
- BOTH SET OUT IN SCHEDULE 1A OF THE 2006 ACT.
- TRIGGER EVENTS RELATE TO THE DEVELOPMENT OF LAND SUCH AS APPLICATION FOR PLANNING PERMISSION OR DRAFT LOCAL PLAN THAT IDENTIFIES THE LAND FOR DEVELOPMENT. THERE ARE 14 TRIGGER EVENTS.
- TERMINATING EVENTS ARE SUCH AS WITHDRAWAL OF A PLANNING APPLICATION OR WHERE PERMISSION IS REFUSED AND ALL APPEALS ARE EXHAUSTED.

ISSUE 6 – THE REQUIREMENTS OF AN APPLICATION



- SECTION 15(1) ENABLES ANY PERSON TO APPLY. APPLICANT DOES NOT NEED TO HAVE USED THE LAND IN THE MATTER ASSERTED.
- IF THE USE HAS CEASED THEN STRICT TIME LIMITS NOW APPLY – WITHIN 1 YEARS OF CESSATION. APPLICATIONS SUBMITTED MORE THAN A YEAR AFTER CESSATION MUST THEREFORE FAIL.
- OPEN NOW TO LANDOWNERS TO REGISTER LANDOWNER STATEMENTS WHICH PREVENT LAND BEING REGISTERED AS TVG.
- THE ONUS OF PROVING THAT THE LAND HAS BECOME A TOWN OR VILLAGE GREEN LIES UPON THE APPLICANT. LJ PILL IN **R V SUFFOLK EX PARTE STEED** STATED IT IS NO TRIVIAL MATTER FOR A LANDOWNER TO HAVE LAND REGISTERED AS A VILLAGE GREEN SO IT MUST BE PROPERLY AND STRICTLY PROVED.
- IN **BERESFORD [2004]** LORD BINGHAM OBSERVED IT IS ACCORDINGLY NECESSARY THAT ALL THE INGREDIENTS OF THIS DEFINITION SHOULD BE MET BEFORE LAND IS REGISTERED

ISSUE 6 – LANDOWNER STATEMENTS



- LANDOWNER STATEMENT BRINGS TO AN END ANY RECREATIONAL USE AS OF RIGHT OVER LAND TO WHICH THE STATEMENT APPLIES.
- THE EFFECT OF A LANDOWNER STATEMENT IS IN LAW TO INTERRUPT ANY SUCH PERIOD OF USE AS OF RIGHT.
- DOES NOT PREVENT A FUTURE PERIOD OF 20 YEARS BEING ACCRUED FROM THAT DATE.
- SUCH A STATEMENT IS RECORDED IN THE REGISTER

ISSUE 7 – WHAT LAND CAN BE REGISTERED AS VILLAGE GREEN



- OPEN TO REGISTRATION AUTHORITY TO REGISTER A SMALLER AREA BUT NOT A GREATER AREA THAN THAT APPLIED FOR – **OCC V OCC**.
- **NEWHAVEN CASE** HEARD IN SUPREME COURT 10 DAYS AGO – AREA OF BEACH WITHIN OPERATIONAL AREA OF NEWHAVEN PORT COULD BE REGISTERED AS VILLAGE GREEN DECIDED BY C OF APPEAL. KEY ISSUE FOR THE SC IS WHETHER THE CONSEQUENCES OF REGISTRATION TO THE LANDOWNER IS PART OF THE STATUTORY TEST OR NOT.
- ADDITIONALLY HELD THAT A TIDAL BEACH COULD BE REGISTERED.

ISSUE 8 – HAS THE LAND BEEN USED BY A SIGNIFICANT NUMBER OF INHABITANTS?



- THOSE USING THE LAND MUST BE A SIGNIFICANT NUMBER OF THE INHABITANTS.
- SULLIVAN J IN R (OTA ALFRED McALPINE HOMES) V STAFFORDSHIRE CC [2002] EXPLAINED THAT THE WORD SIGNIFICANT IS AN ORDINARY WORD IN ENGLISH AND IS NOT USEFULLY PARAPHRASED.
- “WHAT MATTERS IS THAT THE NUMBER OF PEOPLE USING THE LAND IN QUESTION HAS TO BE SUFFICIENT TO INDICATE THAT THE USE OF THE LAND SIGNIFIES THAT IT IS IN GENERAL USE BY THE LOCAL COMMUNITY FOR INFORMAL RECREATION, RATHER THAN OCCASIONAL USE BY INDIVIDUALS OR TRESPASSERS”
- ONLY USER BY A SIGNIFICANT NUMBER OF INHABITANTS OF THE LOCALITY OR NEIGHBOURHOOD OF A LOCALITY WILL SUFFICE – LEEDS GROUP V LEEDS CITY COUNCIL [2012]

ISSUE 9 – HAS THE LAND BEEN USED BY INHABITANTS OF A LOCALITY OR A NEIGHBOURHOOD OF A LOCALITY?



- NEEDS TO BE AN AREA CAPABLE OF DEFINITION.
- LOCALITY – NEEDS TO BE AN AREA CAPABLE OF BEING DEFINED BY SOME DIVISION KNOWN IN LAW SUCH AS A PARISH OR LOCAL GOVERNMENT AREA – **MoD v WILTSHIRE CC** [1995]
- NEIGHBOURHOOD – HAS TO HAVE A DEGREE OF COHESIVENESS – SEE **CHELTENHAM BUILDERS V SOUTH GLOS DC** [2004]

ISSUE 10 – HAVE THEY INDULGED IN THE USE OF THE LAND AS OF RIGHT?

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- SEE LORD HOFFMAN IN **SUNNINGWELL** – FOR THE USE OF THE LAND TO HAVE BEEN AS OF RIGHT – IT HAS TO HAVE BEEN NOT BY FORCE, NOR STEALTH NOR WITH THE LICENCE OF THE OWNER.
- IT IS NOT NECESSARY TO SHOW THAT THE USERS SUBJECTIVELY BELIEVED THAT THEY HAD THE RIGHT TO USE THE LAND. THE TEST IN ESSENCE IS OBJECTIVE.
- THE USER HAS TO CARRY THE OUTWARD APPEARANCE OF USER AS OF RIGHT AND IT MUST BE SHOWN THAT THEIR USE IS SUCH THAT IT GIVES THE OUTWARD APPEARANCE TO THE REASONABLE LANDOWNER THAT THEIR USE IS BEING ASSERTED AND CLAIMED AS OF RIGHT – **LEWIS AT PARAGRAPH 35**.
- SUPREME COURT STATED IN **LEWIS [2010] V REDCAR** THAT THE ASSERTION OF THE PUBLIC RIGHT HAD TO BE REGARDED AS AN ASSERTION OF A PUBLIC RIGHT SO IT WAS REASONABLE TO EXPECT A LANDOWNER TO RESIST OR RESTRICT THE USER IF HE WISHED TO AVOID THE POSSIBILITY OF REGISTRATION

ISSUE 10 – AS OF RIGHT (CONTINUED)



- USE BY FORCE MEANS NOT ONLY BY PHYSICAL FORCE BUT ALSO IN THE FACE OF THE CONTINUING PROTEST BY THE LANDOWNER. IF THE LANDOWNER HAS TAKEN STEPS WHICH WOULD HAVE BEEN SUFFICIENT TO NOTIFY LOCAL INHABITANTS THAT THEY SHOULD NOT TRESPASS ON HIS LAND THEN THE LANDOWNER HAS DONE ALL THAT IS REQUIRED TO MAKE THE USE OF HIS LAND CONTENTIOUS – **LEWIS AT PARAGRAPH 93.**
- USE BY STEALTH MEANS THAT THE USE HAS TAKEN PLACE IN SUCH A WAY THAT THE LANDOWNER DID NOT AND COULD NOT KNOW OF SUCH USE, SUCH AS USING THE LAND IN THE MIDDLE OF THE NIGHT.
- USE BY PERMISSION OR LICENCE WAS EXPLORED IN **R V CITY OF SUNDERLAND EX PARTE BERESFORD** [2003] BY THE HOUSE OF LORDS WHEN DECIDED THAT A LICENCE CAN BE EXPRESS OR IMPLIED WHERE THE FACTS WARRANT SUCH AN IMPLICATION.

ISSUE 10 – AS OF RIGHT (CONTINUED)



- RECENTLY CONSIDERED BY SUPREME COURT IN **BARKAS**. [2014]
- WHERE LAND IS HELD UNDER STATUTORY POWERS FOR RECREATIONAL PURPOSES THE PUBLIC HAVE A STATUTORY RIGHT TO USE THE LAND FOR RECREATIONAL PURPOSES.
- SO WHERE SUCH USE TAKES PLACE IT IS AS OF RIGHT AND NOT AS TRESPASSER SO NO QUESTION OF USE AS OF RIGHT WITHIN SECTION 15(2) OF THE COMMONS ACT 2006 COULD ARISE.
- AN LPA WOULD ASSUME THE USERS WERE EXERCISING THEIR STATUTORY RIGHT TO USE THE LAND.
- IT WOULD BE IMPOSSIBLE FOR THE LANDOWNER TO INFER THAT MEMBERS USING THE LAND AS OF RIGHT.

ISSUE 11 – FOR A PERIOD OF 20 YEARS



- LAW REQUIRES THAT LOCAL INHABITANTS HAVE USED THE LAND FOR NOT LESS THAN 20 YEARS.
- THAT PERIOD SHOULD CONTINUE UP TO THE DATE OF THE APPLICATION.
- IN **OXFORDSHIRE CC V OXFORD CITY COUNCIL** LORD HOFFMAN CONFIRMED THE PERIOD OF 20 YEARS MUST BE CONTINUOUS.

ISSUE 12 – AND CONTINUE TO DO SO AT THE TIME OF THE APPLICATION?



- FOR LAND TO BECOME A TVG IT HAS TO BE USED FOR LAWFUL SPORTS OR PASTIMES – **SUNNINGWELL PC DECISION**
- SPORT OR PASTIME MUST FALL WITHIN THE COMPOSITE CLASS WHICH INCLUDES THOSE ACTIVITIES WHICH ARE PROPERLY CONSIDERED TO BE A SPORT OR PASTIME.
- DOG WALKING AND PLAYING WITH CHILDREN WILL SUFFICE.
- BUT USE OF A PUBLIC FOOTPATH DOES NOT CREATE SUCH A RIGHT
- CAR PARKING NOT ACCEPTABLE – **SOUTHAMPTON CORP.**
- FISHING ACCEPTABLE.
- PICKING BLACKBERRIES ACCEPTABLE.

ISSUE 13 – PILOT IMPLEMENTATION AREAS



- 7 AREAS WHICH ARE SUBJECT TO THE PILOT IMPLEMENTATION PROVISIONS – APPLIES TO NON-UNITARY AUTHORITIES IN DEVON AND KENT, CORNWALL, HERTFORDSHIRE, HEREFORDSHIRE, LANCASHIRE (NOT BLACKPOOL) AND BLACKBURN AND DARWEN.
- SEE DEFRA GUIDANCE – GUIDANCE TO APPLICANTS IN PILOT IMPLEMENTATION AREAS.

KEY DIFFERENCE IS USE OF FORM C₉ WHICH CAN BE OBTAINED FROM THESE PILOT IMPLEMENTATION AUTHORITIES.

ISSUE 14 – RECTIFICATION OF REGISTER



- SUPREME COURT CONSIDERED 2 CASES IN FEBRUARY 2014 – **BETTERMENT PROPERTIES AND PADDICO.**
- SUPREME COURT RULED THAT DELAYS OF FOUR YEARS [BETTERMENT] AND 12 YEARS [PADDICO] WERE ACCEPTABLE UNDER THE PROVISIONS OF SECTION 14(B) OF THE COMMONS REGISTRATION ACT 1965 IN THAT THERE WERE NOT PREJUDICIAL TO ANY PARTY AND THEREFORE THE ENTRIES ON THE REGISTERS SHOULD BE RECTIFIED.
- IN BETTERMENT THE LAND REGISTERED IN 2001.
- IN PADDICO LAND REGISTERED IN 1997.
- SUPREME COURT DETERMINED THAT IN BOTH CASES SECTION 14 DID NOT CONTAIN ANY TIME LIMIT FOR SUCH APPLICATIONS.
- UNDER SECTION 14 ANY PARTY CAN APPLY FOR RECTIFICATION OF THE REGISTER IF NEW EVIDENCE COMES TO LIGHT.

ISSUE 15 – COMMONS LAW



- COMMONS ACT 2006 ALLOWS OPPORTUNITY TO REGISTER LAND AS COMMONS IN THE SEVEN PILOT IMPLEMENTATION AREAS.
- IF REGISTERED AS COMMONS LAND THEN THE PUBLIC GET THE RIGHT TO GAIN ACCESS OVER THE WHOLE AREA.
- ELIGIBLE FOR LAND WHICH IS WASTE LAND OF THE MANOR THAT IS OPEN UNCULTIVATED AND UNOCCUPIED LAND PARCELS OF A MANOR.
- APPLIES TO THOSE APPLICATIONS FOR COMMONS LAND WHICH WERE PROVISIONAL BUT NOT CONFIRMED