

Town And Village Greens – The Strategy For Making A Successful Application

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Structure of the Lecture

- Part 1 - Introduction
- Part 2 - Procedure For Making An Application
- Part 3 - The Evidence Required For An Application
- Part 4 - The Public Inquiry Possibility
- Part 5 - The Formal Decision
- Part 6 – Wales
- Part 7 - Summary And Conclusion

Why register land as a Town or Village Green?



- Land once registered must remain open and unbuilt upon.
 - Section 12 of the Inclosure Act 1857 makes it an offence to interrupt the use or enjoyment of a Green
 - Section 29 of the Commons Act makes all type of building an offence unless it is for the better enjoyment of the Green

Why register land as a Town or Village Green



- Very welcome by local people facing a development.
- It secures the right of local people to enjoy the land for recreation.
- Nightmare for the Developer or Landowner who is contemplating or planning development.
- The potential registration or not of a Village Green is not a material consideration when determining a planning application.

Part 1 - Introduction

Part 1 - Introduction

- The factual background
- Current round of consultation
- The basics of making a successful application
- Key sources

Part 1 – Introduction – The Factual Background



- Current number of Village Greens

Country	No of Village Greens	Total area registered In Acres
England	3650	8150
Wales	220	620

Part 1 – Introduction – The Factual Background



- Current number of applications

Country	No Of Village Greens Applications In 2009
England	185

Introduction – Current Defra Consultation



- Defra are currently consulting on proposals to reform the village green system under section 15 of the commons act 2006.

Part 1 - Introduction

- The basics to making a successful application
 - A significant number of inhabitants
 - Of any locality of 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 continue to do so at time of application or

Part 1 - Introduction

- The basics to making a successful application.
 - But if the use has ceased
 - If cessation of use after 6 April 2007 then the application is made within two years beginning with the cessation of use
 - If cessation of use before 6 April 2007 the application is made within the period of five years beginning with the cessation of use

Part 1 - Introduction

- Key sources of further information:
 - The Commons Act 1886, section 15.
 - The Commons (registration of Town or Village greens) Interim Arrangements England 2007 si 2007/457.
 - Town and Village Green Registration application form 44.
 - Guidance Notes for the completion of an Application for the registration of land as a Town or Village Green – Defra revised September 2010.
 - Getting greens registered (open spaces society)

Part 2 – The formal procedure for making an application

Part 2 – The procedure for making an application



- The two possible procedures currently apply in England .
 - The normal process.
 - Or the identified 7 pilot implementation areas

Part 2 – The procedure for making an application



- The pilot implementation areas
 - Applies to Devon and Kent (but not the unitary authorities in those Counties)
 - Cornwall
 - Hertfordshire.
 - Herefordshire.
 - Lancashire (but not Blackpool)
 - Blackburn and Darwen.
- See Defra guidance – *guidance to applicants in the pilot implementation areas*

Part 2 – The procedure for making an application



- The pilot implementation areas
 - Key points are to use form C9 which can be obtained from the pilot implementation authorities.

Part 2 – The procedure for making an application

- The mechanics of an application
 - Must use Form 44
 - Summary of case for registration
 - Can be supplied from registration authority or found on the internet
 - Regulations establish what information is required in the application
 - Application must be submitted to the Registration Authority
 - Registration Authority will assist with advice on how to submit such an application

Part 2 – The procedure for making an application



- Who may apply for an application
 - Any one can apply – See Section 15(1)
 - *Any person may apply to the commons registration authority to register land to which this part applies...*
 - Applicant does not need to have used the land
 - If group make sure that proper authorisation exists to do so

Part 2 – The procedure for making an application



- Whom is the application made to?
 - The registration authority.
 - Normally the County Council or Unitary Authority.
 - In metropolitan areas the City Council or London Borough Council.
 - If the land straddles two Authorities or more the advice of Defra is to make the application to the area in which the majority of the land is situated.
 - Sometimes one Registration Authority decides that another Registration Authority should deal with the application.
 - Cannot register in New Forest, Forest of Deann or Epping Forest!

Part 2 – The procedure for making an application



- When should the application be made?
 - If use continues then much easier.
 - If use claimed has ceased then strict time limits now apply
 - either 2 years if use ceased after April 2007 or 5 years if use ceased before April 2007.

Part 2 – The procedure for making an application



- The timescale for the consideration of an Application
 - No fixed time imposed on Registration Authority for determination of application
 - Open to RA to ask for further information in support of application

Part 2 – The procedure for making an application



- What happens to the application?
 - Authority decide if duly made and then register it
 - It is publicised by Registration Authority and objectors given minimum of six weeks to respond
 - Then they might receive objections to the application
 - Applicant will be supplied with all the objections and given an opportunity of making representations in response
 - If significant amendments are made to the application then it might necessitate re publicising the application

Part 2 – The procedure for making an application $\frac{L}{C}$

- Voluntary registration by an owner of land
- Need consent of any lease or mortgagee in land
- Covered by Section 15(8) of the Act
- The Registration Authority does not require evidence of the use of the land but open to seek further information
- See Defra guidance notes on the voluntary registration of land as a Town or Village Green

Part 2 – The procedure for making an application



- **Amendment of an application**

- The Registration Authority can exercise discretion in accepting amendments to an application form
- In deciding how to exercise its discretion in accepting amendments then Registration Authority should consider what would be fair to all the parties affected by the registration.
- See Oxfordshire cc v Oxford cc

Part 2 – The procedure for making an application



- **Strategy in making an application**

- Form an action group
- Collect evidence form from Open Spaces Society
- Try and get as much evidence as possible
- Quantity is really important in terms of numbers
- But quality of evidence is really important

Part 3 – The evidence required for an application

Part 3 – The evidence required for an application



Summary of what is required in application:

- Application form 44
- Statutory declaration
- Map showing location of land claimed
- The map showing locality or neighbourhood
- Completed evidence forms or statements
- Supporting evidence

Part 3 – The evidence required for an application



- **The area of land claimed**

- The area of land must be shown on a map and a description of the land.
- Must use an OS map on a scale of not less than 1:2500.
- Land must be identified by means of distinctive colouring sufficient to enable it to be accurately identified by the Registration Authority.
- That map must be an exhibit to statutory declaration which accompanies the application.

Part 3 – The evidence required for an application



- **The lawful sports or pastimes**

- Need to state what lawful sports and pastimes are claimed.
- Excludes sports or pastimes contrary to law!
- Like cock-fighting, badger baiting or prize fighting
- Car parking not acceptable southampton corp
- Found to be acceptable:
 - Archery new Windsor v Mellor
 - Village dancing Abbot v Weekly
 - fishing top jetty, Martinhoe, Devon
 - picking blackberries Sunningwell

Part 3 – The evidence required for an application



- **As of right**
 - Without force – no use of force
 - Without secrecy – use must be open
 - And without permission by the landowner
 - State of mind of the users is not required Sunningwell

Part 3 – The evidence required for an application



- **Significant number of inhabitants**

- see Mcalpine Homes

- The number of people using the land has to be **sufficient** to show that the land is in general use.

Part 3 – The evidence required for an application



- **By local people of a neighbourhood or locality**
 - Locality – an area capable of being defined by some division known to law for example a Parish or Local Government area – mod v Wiltshire cc [1995]
 - Neighbourhood – Cheltenham Builders V South Glos [2004] - has to have a degree of cohesiveness.

Part 3 – The evidence required for an application



– **For a period of at least 20 years**

- Not necessary for an individual to show full 20 years plus.
- What is necessary is that all the evidence taken together shows that use has taken place for at least 20 years.

Part 3 – The evidence required for an application



- **The form of the evidence**

- Witness statements, witness forms of evidence and photographs are likely to be needed.
- A sample questionnaire to use in support of claim is produced by open spaces society.

Part 3 – The evidence required for an application



- **Supporting information:**

- Photographs [Helped if evidence given on photo – when taken and by whom]
- Maps
- Leaflets
- Newspaper articles and photos
- Aerial photographs

Part 3 – The evidence required for an application



- **Statutory Declaration** must be made supporting the application and:
 - Must confirm the truth of the evidence in application
 - Must be sworn before solicitor
 - Each map must be marked as a exhibit
 - Criminal offence to deliberately provide misleading or untrue evidence

Part 4 – The possibility of a public inquiry

Part 4 – The possibility of a public inquiry

- Open to the Registration Authority to hold non statutory public inquiry or hearing into the application
- often held if registration authority own the land
- court of appeal in commons commissioners that inquiries should be held where there is a dispute
- The purpose will be to hear and test evidence
- Helpful for witnesses to attend and orally elaborate on written statements
- Likely to be subject to cross examination
- The Inspector is likely to be an independent person of the Registration Authority usually a Barrister

Part 4 – The possibility of a public inquiry



- Key tips:
 - Applicant goes first
 - Try and get good and credible witnesses with a standing in community
 - Cannot claim costs or make an application for costs

Part 4 – The possibility of a Public Inquiry



- Open to Registration Authority to accept or reject the inspectors decision
- The decision will be in the form of a recommendation
- Decision of Registration Authority open to challenge by Judicial Review

PART 5 – THE FORMAL DECISION

Part 5 – The Registration Authority's formal decision



- **The formal decision** of the Registration Authority:
 - Can accept or reject the application

Part 5 – The Registration Authority's formal decision



- **If the application is successful** then the land will be formally registered as Town or Village Green
- The applicant will be supplied with the details of the registration
- Available to RA to register a lesser area but not a greater area. [See Oxfordshire County Council v Oxford City Council – House of Lords

Part 5 – The Registration Authority's formal decision



- **If the application is unsuccessful** then the Registration Authority will notify the applicant
- **No change to the status of the land**

Part 5 – The Registration Authority's formal decision



- **Repeated, additional and alternative applications**
 - Open to applicant to resubmit application if new significant information that supports the case has arisen or
 - Change in law
 - Or new case law
 - Registration Authority is required to consider a revised application subject to the revised time limits in section 15
 - But open to the Registration Authority to reject repeated successive applications that do not raise any new issues for consideration

Part 5 – The Registration Authority's formal decision



- **Withdrawing the application**
 - Open to the applicant to withdraw the application at any time prior to registration
 - The Registration Authority can decide either to take no further action or to go ahead and determine the application

PART 6 - WALES

Part 6 – The registration of Village Greens in Wales



- Section 15 commenced in Wales on 6 September 2007 and the regulations and guidance are the same as for England

PART 7 – SUMMARY AND CONCLUSION

Part 7 – Summary and Conclusion



- Use the open spaces society website and questionnaire as a starting point
- Quality of evidence is critical
- Must meet the 5 legal tests
- There should be an assumption that the evidence will be tested by cross examination
- Secondary evidence is very helpful

VILLAGE GREENS – MAKING A SUCCESSFUL
APPLICATION



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