

The Commons Act 2006

Introduction

The Commons Act 2006 (the 'Act') received Royal Assent on 19 July 2006. However, the key provisions of the Act did not come into force until 6 April this year. Despite this, the effects of the Act are already being felt.

The key issue relates to the registration of land as a town or village green. Once land has been registered almost nothing can be done with it. The impact of this will depend upon your point of view. For villagers wishing to protect their village green it will provide protection. For a developer or landowner seeking to develop a 10 acre field on the edge of a town, it may come as a surprise to find the land has been registered as a town or village green and that it cannot be built upon. Any development which had been carried out would be unlawful and a court could require its removal.

Registration of Land as a Town or Village Green

Currently, an application for registration as a town or village green can be made under s22 (1A) Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000). The conditions are:

- 1 the land must have been used for not less than 20 years;
- 2 a significant number of inhabitants of any locality or neighbourhood must have used the land;
- 3 the land must have been used for lawful pastimes or sports;

- 4 the land must continue to be used in this way.

The following should be noted:

- s22(1A) was replaced by s15 of the Act when it came into force on 6 April 2007. However the requirements for registration as a town or village green will still be the same;
- almost any activity can qualify as a lawful sport or pastime. This includes dog walking, picnicking, skateboarding, children's games or berry picking;
- the land can be small, derelict or overgrown and still qualify;
- land can remain registrable for up to 5 years after people have stopped using it.

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S15 of the Act states there are three sets of circumstances in which an application for registration can be made:

- 1 where use as a village green continues to the date of the application for registration;
- 2 where use as a village green ceases before the date of the application and after the coming in to force of s15. In this case, an application can still be made up to 2 years from the date the use ceased.
- 3 where use ceases before the date of the application and before the coming in to force of s15. In this case an application may still be made up to 5 years from the date the use ceased.

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Benefits to Communities

Communities are being encouraged to identify open spaces which are precious to them and register them now as village greens. Few would disagree that what we term as the 'traditional' village green should be protected.

A search called a Commons Registration Search can be carried out to identify whether land is currently registered as common land or a town and village green.

Issues for Developers

There are a couple of key points for developers:

- 1 a successful application for planning permission can still be made on land which is subsequently registered as a village green. However, no development can be carried out if the land is later registered as a village green;
- 2 it would be easy to be unwittingly affected by the change of act governing registration of village greens. A registration authority may refuse to register land under the current law. However, an application under the new s15 when it comes in to force could then be successful.

The land can remain registrable for up to 5 years (depending on the situation) after it has stopped being used. Therefore, in order to avoid any of the draconian enforcement provisions in the Act, it is important to ensure proper due diligence is conducted before land, which might be at risk of registration, is purchased with a development purpose in mind.

In addition, if land has been recently purchased and it is land on the 'urban fringe' which may be at risk of registration, it might be worth conducting further enquiries before commencing any development.

There is a saving provision for any development already begun by 23 June 2006.

Points for Landowners/Developers

If your land is the subject of an application to register it as a village green and the first you hear of it is the making of the application, erecting signs to prevent access will not defeat it.

So, how can landowners and developers protect land from mischievous applications? The key is not to let the land become land on the urban fringe which may be earmarked for development but which local people then use for informal recreation:

- 1 inspect land regularly to make sure you know what is going on there. Approach people on the land without consent and ask them to leave. Keep a record;
- 2 if the land can be actively farmed it is worth it. It can deter people entering the land and stops locals using it 'as of right';
- 3 keep and preserve information showing use of the land eg. aerial photographs, cropping records and anything which shows the use of the land and non-use by local inhabitants;
- 4 put up signs showing the land is private and take photos in case the signs are removed!

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- 5 fence public footpaths so walkers and dogs have to stay on footpaths and not allow them to stray or picnic on land which is not a public footpath;
- 6 write to individuals who trespass and seek assurance they will not trespass again and if necessary take proceedings.

Deregistration of Land

The only certain way of releasing land registered as a village green to allow development, would seem to involve the giving of equally advantageous land of at least equal size as a replacement. According to s16 of the Act an application to the Secretary of State is required, but an application has obviously not yet been made so the mechanism is unknown.

However, provided proper due diligence is conducted before land is purchased any such situation should hopefully be avoided.

Further Information

This information sheet has been prepared to highlight some key issues relating to the Commons Act 2006. It is intended to be for general guidance only and it is not a substitute for specific advice. It is based upon our understanding of the legal position as at June 2007 and may be affected by subsequent changes in the law. For more information please contact Roy Willis on 01892 510000 or email at roy.willis@ts-p.co.uk.