

A new way forward?

Developers are no strangers to the issues surrounding town and village greens.

Registration of land as a town or village green (TVG) has become a potent weapon for resisting development. Applications may be submitted at any time, including after development has begun and so can act as a 'last ditch' attempt to stop development.

The developer's dilemma

Although it is possible to carry out a search, a TVG is not always immediately apparent - sometimes local signage has to be relied on to ascertain whether or not a site is a TVG and even then it is not always conclusive.

Once an application to register land as a TVG has been made, the land that is the subject of the application is effectively sterilised against further development until the application has been determined.

Contesting applications for registration are costly for developers, both in terms of time and money. Developers may spend years assembling land and obtaining permission only to find that a viable claim has been made. Making an application is free to the applicant and there is no mechanism for discouraging vexatious or speculative applications notwithstanding costs imposed on landowners, developers and registration authorities. The decision in *R (on the application of Lewis) -v- Redcar and Cleveland Borough Council* [2010] UKSC 11 has encouraged the registration of a TVG, not only defensively when development is planned, but also pre-emptively to block any future development. Indeed, it has been described as being used as 'a weapon of guerrilla warfare against development of open land'.

Where a hearing is unavoidable, parties are forced to engage in time consuming and fact sensitive litigation. Successful registration is worse still, since development of the land then becomes impossible or at least severely limited.

The implications for a developer where there is a registered TVG are significant. The land cannot be used for access purposes or for development for at least 20 years. With no set registration procedure, house builders may have to wait months or years until a decision on a pending application has been made.

With applications to register a TVG rising to almost 200 in 2009 alone and the registration process described as 'notoriously complex' the Department for Environment, Food and Rural Affairs (DEFRA) published a consultation paper proposing changes to the process, in particular to ensure that development proposals are not hindered by TVG applications going forward. The results of the consultation, launched in July and concluded in October, are awaited with considerable interest.

DEFRA Consultation

Five proposals were put forward as follows and it is the integration of these which has been suggested to overcome the issues.

- **Streamline sifting of applications**

Currently, applications for registration are considered by a registration officer. Few applications are rejected and the applicant is given an opportunity to strengthen their case before a decision is made, usually during a hearing which often includes legal submissions. This results in significant delays in the system and costs to all parties involved.

The new proposal enables those applications which have insufficient evidence or would not meet registration criteria to be sifted out at an early stage. This would in turn reduce costs for weaker or poor quality applications, allow greater efficiency in the process, limit delays and enable determination of the application to be delivered sooner. However, the danger of applications being rejected for insufficient evidence when they are capable of being put right must be looked into further.



town and village greens

- **Landowners declarations**

This proposal allows a landowner to deposit a map of land and make a declaration that any use of that land is with the landowner's permission and therefore counter any evidence of use as a claimed TVG during the period while the declaration remains in effect.

As well as providing a shield for landowners, this would allow affected land to be identifiable from publicly available registers and provide a straightforward test for registration. The deposit, however, would not have an effect on potential TVG applications for two years, which may trigger an influx of new applications in the meantime and it would only primarily benefit well-informed landowners.

- **Character test**

Under this proposal, which should help maintain public support of TVGs, a character test would be used to establish whether land is similar to the popular and traditional perception of a TVG, i.e. in the centre of a village or town, bounded by roads, with benches, bins and perhaps a telephone box. By introducing a further technical test, only land which is unenclosed, open (not covered by, for example, scrub or trees) or uncultivated would be eligible for registration, therefore non-conforming applications would quickly be rejected.

- **Integration with local neighbourhood planning**

This involves integrating the TVG registration process and the planning system so that land which is subject to planning applications or permissions for development would be prevented from being registered as a TVG. Allowing the consideration of the site's future to be left in the hands of local people and their council, this proposal will also help to protect developers from the potentially considerable costs associated with having to abandon worked up projects. It supports the delivery of housing and other sustainable developments as well as helping to counter those applications made principally to delay developments.

- **Charging Fees**

At present, there is no fee for application to register a TVG. This is not to suggest, however that it is a low-cost procedure. The registration authority acts as a tribunal to consider applications, which requires substantial amounts of time and resources and complex cases often result in holding a public enquiry, costing on average in excess of £13,000.

It has been proposed that in order for the authorities to recoup some of their costs, the submission of an application for registration as a TVG should be accompanied by a fee, with a suggested limit of £1,000. A further proposal (although this has not been previously tested) recommends that successful applications are refunded. It is intended that this will deter applications with little chance of success and encourage those which match TVG criteria.

What next?

It is likely that the Government will make a decision on reform in early 2012. Although it is not yet known how the process will be changed, any changes which give clarity to the system must be a step forward for the development industry. There is real hope that the consultation will result in a practical solution to the tensions which led to it: the protection of sites in longstanding public use against the facilitation of the delivery of housing and infrastructure in a timely and efficient manner. Whether or not such reforms are likely to be offset by the National Planning Policy Framework proposals remains to be seen.

If you would like to discuss any of the issues raised in this update, please contact:



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