Devonshires

IT'S THE LAW:
Town & Village Greens
They aren't all green

It's criminal

Land which is registered as a Town or Village Green is subject to a number of legal restrictions. These will significantly interfere with any plans you might have to develop it. In fact they will almost certainly stop those plans in their tracks. The restrictions include…

- It is a criminal offence to cause any damage to a green.
- It is a criminal offence to undertake any act which interrupts the use or enjoyment of a green as a place for exercise and recreation.
- It is a public nuisance (and so an offence) to build on a green (unless it's done with a view to its better enjoyment).

So, whilst you might be allowed to put up a cricket pavilion, you are not going to be able to build any houses.

Search before you buy

It is possible to carry out a search to check whether land is registered as a green. It won't surprise you that as part of almost all conveyancing transactions we carry out that search. But, a clear result before you acquire a site doesn't mean that you are out of the woods. If the land in question meets the requirements set out in s15 of the Commons Act 2006 it may be possible for someone to secure registration after your purchase.

The requirements

The relevant requirements set out in s15 are that *"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".*

As is so often the case, case law and further definitions within the legislation mean that that relatively short sentence brings along with it a whole host of extra detail and complexity.

The High Court has held that reference to a '*significant number*' is not the same as a '*substantial*' or '*considerable*' number. A relatively small number of people may be enough to meet the required threshold. It is, however, important that the significant number of people come from a particular locality. Trafalgar Square probably isn't going to be registered as a green because it's used by people from all across the world rather than being used by people from a particular locality.

What is meant by '*lawful sports and pastimes*' has also been looked at by the Courts. The 'traditional' view of local villagers playing cricket will certainly count. But more modern activities, such as flying remote controlled drones, would also be enough.

'*As of right*' is a critical part of the lexicological jigsaw. And here we get to break out the Latin. '*As of right*' has been interpreted by Judges as meaning *nec vi, nec clam, nec precario*.

Nec vi means without force. If the owner objects, continues to object and will back his objection by physical obstruction or by legal action then further use by locals won't count towards the necessary 20 year period. So if, after 19 years of a field being used by locals as a football pitch, the field's owner puts up fences and 'keep out' signs then the 20 year clock will be stopped – even if some of the locals climb over the fence and continue to play football.

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Nec clam means without stealth or secrecy. If the locals only use the field to play football when the landowner is away (so that he won't find out) then that doesn't count.

Nec precario means without permission. If the owner of the field consents to the locals using his field to play football, making it clear that he could withdraw that consent and stop them in the future, then the 20 year clock won't be ticking.

So what does all this mean when you are looking to buy a site?

On almost all transactions we will undertake a search to check whether the land is currently registered as a green. But that's not the end of the story. It's important to assess whether the land might be at risk of future registration.

As part of standard conveyancing practice we will raise a series of formal 'pre-contract enquiries' of the Seller. These include a question as to whether members of the public use any part of the Property for recreational purposes. So, hopefully, a fair and helpful response to that question will flush out any issues. However, it would be unwise to rely too heavily on replies to enquires. The replies are often not fair and helpful. Even where a response given is false (or less than full) it is not always easy to make a claim against it. And finally, many contracts will seek to specifically exclude liability for omissions where matters would have been revealed by your own inspection of the land.

So it is important that you carefully inspect the land and, amongst other things, check whether it might be being, or has in the past been, used by members of the public. If in doubt you should specifically raise the issue with your solicitors (hopefully us). Don't be fooled into thinking that a town/village green has to be green or that it has to be in a town or village. The designation can equally apply to a concreted patch of land in the centre of a city.

It's not all doom and gloom for developers and landowners

The first question for a developer to ask is ***what 20 year period***? When s15 refers to a 20 year period it broadly means the 20 year period up to the time that a registration application is made. In addition there is a 1 year 'grace' period after use has been stopped.

An applicant can't rely on use from the start of 1970 to the end of 1990 to register land as a green now.

But, if the site has been being used for a continuous period of 20 years and the landowner puts a stop to it, then applicants have a full year after the use has been stopped to make the application.

So, if a landowner knows they are at risk because their land has been used for 20 or more years they can take action to stop the continued use – say by erecting fences. If a year then passes without an application then they are free from risk'

Note that the legislation specifically states that the landowner simply consenting to the continued use (precario) for a year won't be enough to be seen as a break.

Landowner statements

Rather than going to the bother of putting up fences, a landowner can deposit what is known as a 'landowner statement' with the relevant authorities. This will be publicised by them and is deemed to stop the use 'as of right'. That means that if the 20 year clock has not yet been hit then it is set back to zero and the locals would need to clock up another 20 years before an application could be made. If the 20 year test has already been met then the clock is still set back to zero – but applicants have the grace period of a year from the statement to get an application in.

Trigger happy

The best news for landowners and developers came with the introduction of what are known as trigger events by the Growth and Infrastructure Act 2013.

Once a trigger event has occurred in relation to a piece of land, no new applications to register that land as a green can be made unless and until a corresponding terminating event occurs. The trigger events (and their corresponding terminating events) are set out in legislation. Trigger events include (i) the publication of an application for planning permission, (ii) the publication by the local planning authority of a draft local plan which identifies the land for potential development and (iii) the adoption by the local planning authority of a local plan which identifies the land for potential development.

And finally, deregistration

Land that has been registered as a green can, in theory at least, be de-registered. Application for de-registration can be made to the Secretary of State. The procedure is not straightforward and it's very much not a rubber stamping exercise. If the land in relation to which de-registration is sought is greater than 200 square meters then an alternative site must be provided in substitution.

Find out more

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