

# **The Growth and Infrastructure Act 2013 and its impact on Village Green applications**

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A report by the Head of Regulatory Services to Kent County Council's Regulation Committee on Tuesday 18<sup>th</sup> May 2013.

## **Recommendation:**

**I recommend that Members receive this report**

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## **Introduction**

1. The Growth and Infrastructure Act 2013 ("the Act") was introduced into Parliament on 18<sup>th</sup> October 2013, with the primary aim of promoting growth and facilitating the provision of infrastructure by amending various planning and consenting processes so as to remove unnecessary bureaucracy and thereby reduce the lengthy delays that can sometimes affect the delivery of such developments.
2. The Act contains several provisions that relate directly to, and significantly impact upon, the manner in which the County Council is able to deal with Village Green applications. Those provisions have been introduced partly as a result of a consultation undertaken by DEFRA last year in relation to proposed amendments to the system of registration of new Village Greens. Member will be aware that Village Green status confers significant statutory protection<sup>1</sup> on land and places significant restrictions on its future use, thus making it almost impossible for such land to be developed<sup>2</sup>. The reforms were therefore proposed in response to growing concerns regarding the volume, nature, cost and impact of Village Green applications and the perceived misuse of the legislation (i.e. vexatious applications being made to deliberately delay or altogether thwart development schemes). In turn, they seek to achieve an improved balance between protecting valuable open space and enabling development to occur.
3. The Act received royal assent on 25<sup>th</sup> April 2013 and introduces three key changes to the legislation, namely:
  - A restriction on the right to apply for Village Green status;
  - A shortening of the period of grace during which applications can be made; and
  - Landowner statements.The restriction on the right to apply took effect immediately, whilst the other changes will be introduced separately later this year.

## **A restriction on the right to apply**

4. Section 16 of the Act will amend the law on the registration of new Village Greens by inserting new provisions into the Commons Act 2006 (section 15(c) and Schedule 1A)

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<sup>1</sup> Under section 12 of the Inclosure Act 1857, it is a criminal offence to undertake any act which interrupts the use or enjoyment of the green as a place for exercise and recreation. Section 29 of the Commons Act 1876 makes it a public nuisance to encroach, enclose or erect structures on a green. Both offences can be prosecuted in the Magistrates' Court.

<sup>2</sup> The only way in which such land can be developed is for the landowner to go through a lengthy and costly application (the outcome of which is not guaranteed) under section 16 of the Commons Act 2006 to exchange the Village Green land for an equally suitable piece of land nearby.

which remove the right to apply under certain circumstances. As a result, it is now no longer possible to make a Village Green application where planning permission for the same land is pending or has been granted, or where the land has been identified for potential development in local or neighbourhood plans. The full list of exclusions, known as 'trigger events', is listed at **Appendix A** to this report. Where a 'trigger event' has occurred in relation to a piece of land then, subject to the next paragraph, it will not be possible to make an application to register that land as a new Village Green.

5. However, the right to apply will again become exercisable if a corresponding 'terminating event' (also listed at **Appendix A**) has taken place. This provision is intended to overcome situations where, for example, a planning application is made but refused. If there were no 'terminating events', then the land would become permanently immune from Village Green application.
6. In practical terms, this means that before formally accepting an application, the County Council must write to all of the relevant planning authorities (normally the District Council, the County Council's Planning Applications team and the Planning Inspectorate) to ensure that no 'trigger events' have taken place in relation to the land. If they have, and no corresponding 'terminating event' has taken place, then the County Council will not be able to accept the application and it, along with all of the accompanying documentation, will be returned to the applicant.
7. A copy of DEFRA's guidance regarding the restriction on the right to apply is available at: <https://www.gov.uk/town-and-village-greens-how-to-register>

### **A shortening of the period of grace**

8. Under the current provisions, where a landowner challenges recreational use (e.g. by erecting a fence to deny access to the land or a notice prohibiting use) an application has a two year period of grace during which to make an application to register the land as a Village Green. If the application is not made within this period, it will automatically fail.
9. Section 14 of the Act amends the existing legislation to shorten the period of grace to one year. This means that, when this provision comes into force, applicants will need to submit their applications much quicker to ensure that the application is made within the period of grace.

### **Landowner statements**

10. Finally, section 15 of the Act introduces a system whereby landowners can deposit a statement and plan which will bring to an end any use of their land 'as of right' (which is one of the key elements for success for a Village Green application). A similar system is already in place in respect of Public Rights of Way, but there is currently no equivalent for Village Greens.
11. This reform, which is expected to come into force later this year, will enable landowners to prevent permanent rights from being acquired over their land without the costly burden of having to erect fencing or notices to restrict or prevent access. It will also enable local people to continue to enjoy the land for recreational purposes

(until such time as it becomes required for use by the landowner) whilst preventing a Village Green application from being made in the future.

## **Conclusions**

12. The new provisions will undoubtedly have an impact upon the number of Village Green applications which the County Council is able to consider and the workload in this respect is likely to reduce. However, the system of landowner statements will create new and additional work, and the workload is therefore likely to shift to accommodate these additional burdens.

## **Recommendation**

13. I recommend that Members receive this report.

## **Background documents:**

Appendix A – List of ‘trigger’ and ‘terminating’ events

## **Contact Officer:**

Melanie McNeir

Public Rights of Way and Commons Registration Officer

Tel: 01622 221628

## Annex C - Schedule 1A of the Commons Act 2006 (inserted by section 16(2) of the Growth and Infrastructure Act 2013)

Trigger events	Terminating events
1. An application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.	<p>(a) The application is withdrawn.</p> <p>(b) A decision to decline to determine the application is made under section 70A of the 1990 Act.</p> <p>(c) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(d) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.</p>
2. An application for planning permission made in relation to the land under section 293A of the 1990 Act is first publicised in accordance with subsection (8) of that section.	<p>(a) The application is withdrawn.</p> <p>(b) In circumstances where planning permission is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(c) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires without the development having been begun.</p>
3. A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 Act.	<p>(a) The document is withdrawn under section 22(1) of the 2004 Act.</p> <p>(b) The document is adopted under section 23(2) or (3) of that Act (but see paragraph 4 of this Table).</p>
4. A development plan document which identifies the land for potential development is adopted under section 23(2) or (3) of the 2004	<p>(a) The document is revoked under section 25 of the 2004 Act.</p> <p>(b) A policy contained in the document which</p>

Act.	relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of that Act.
5. A proposal for a neighbourhood development plan which identifies the land for potential development is published by a local planning authority for consultation in accordance with regulations under paragraph 4(1) of Schedule 4B to the 1990 Act as it applies by virtue of section 38A(3) of the 2004 Act.	<p>(a) The proposal is withdrawn under paragraph 2(1) of Schedule 4B to the 1990 Act (as it applies by virtue of section 38A(3) of the 2004 Act).</p> <p>(b) The plan is made under section 38A of that Act (but see paragraph 6 of this Table).</p>
6. A neighbourhood development plan which identifies the land for potential development is made under section 38A of the 2004 Act.	<p>(a) The plan ceases to have effect.</p> <p>(b) The plan is revoked under section 61M of the 1990 Act (as it applies by virtue of section 38C(2) of the 2004 Act).</p> <p>(c) A policy contained in the plan which relates to the development of the land in question is superseded by another policy by virtue of section 38(5) of that Act.</p>
7. A development plan for the purposes of section 27 or 54 of the 1990 Act, or anything treated as contained in such a plan by virtue of Schedule 8 to the 2004 Act, continues to have effect (by virtue of that Schedule) on the commencement of section 14 of the Growth and Infrastructure Act 2013 and identifies the land for potential development.	The plan ceases to have effect by virtue of paragraph 1 of Schedule 8 to the 2004 Act.
8. A proposed application for an order granting development consent under section 114 of the 2008 Act in relation to the land is first publicised in accordance with section 48 of that Act.	<p>(a) The period of two years beginning with the day of publication expires.</p> <p>(b) The application is publicised under section 56(7) of the 2008 Act (but see paragraph 9 of this Table).</p>
9. An application for such an order in relation to the land is first publicised in accordance with section 56(7) of the 2008 Act.	<p>(a) The application is withdrawn.</p> <p>(b) In circumstances where the application is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.</p> <p>(c) In circumstances where an order granting development consent in relation to the land is made, the period within which the development</p>

	to which the consent relates must be begun expires without the development having been begun.
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### *Interpretation*

In this Schedule –

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2004 Act” means the Planning and Compulsory Purchase Act 2004; and

“the 2008 Act” means the Planning Act 2008.

### *Notes*

1 For the purposes of this Schedule, all means of challenging a decision in legal proceedings in the United Kingdom are to be treated as exhausted and the decision is to be treated as upheld if, at any stage in the proceedings, the time normally allowed for the making of an appeal or further appeal or the taking of any other step to challenge the decision expires without the appeal having been made or (as the case may be) the other step having been taken.

2 Paragraph 7 of the first column of the Table does not apply in relation to a part of a development plan for the purposes of section 27 or 54 of the 1990 Act which consists of—

- (a) Part 1 of a unitary development plan or alterations to such a Part, or
- (b) a structure plan or alterations to such a plan.