



COMMON LAND, VILLAGE GREENS AND RIGHTS OF WAY

DELEGATE NOTES

Wellers Hedleys Solicitors is a trading name of Wellers Law Group LLP, of 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR

Tel: 01483 284567; Fax 01483 284817; Email: roger.taylor@wellerslawgroup.com

DISCLAIMER AND COPYRIGHT NOTICE

The material for this presentation has been designed as an integral part of the presentation solely for the benefit of delegates attending the presentation. The material does not necessarily stand on its own and is not intended to be relied upon for giving specific advice. Comments made on particular circumstances or matters will not constitute and must not be relied upon as advice

To the fullest extent permitted by law, neither Wellers Hedleys Solicitors or Wellers Law Group LLP nor its presenters will be liable by reason of breach of contract, negligence or otherwise for any loss or damage (whether direct indirect or consequential,) occasioned to any person acting, or omitting to act or refraining from acting upon any course material or presentation of the course or, except to the extent that any loss or damage does not exceed the price of the course, arising from or connected with any error or omission in the course material or presentation of the course. Nothing in this paragraph shall be deemed to exclude or limit liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation

Loss or damage shall be deemed to include, but is not limited to, any loss of profits or anticipated profits, damage to reputation or goodwill, loss of business or anticipated business, damages costs, expenses incurred or payable to any third party (in all cases whether direct, indirect or consequential) or any other direct, indirect or consequential loss or damage

The hand out material is the copyright of Wellers Hedleys Solicitors, and no part of it may be reproduced in any form or for any purpose without their prior permission

Wellers Hedleys Solicitors

Wellers Hedleys Solicitors is a trading name of Wellers Law Group LLP, of 6 Bishopsmead Parade, East Horsley, Surrey KT24 6SR

Tel: 01483 284567 Fax: 01483 284817 Email: roger.taylor@wellerslawgroup.com

VILLAGE GREENS

General

Most publications refer to Common Land and Town and Village Greens as one subject, but in fact they are entirely separate and legislation that applies to Common Land does not apply to Village Greens.

The Countryside and Rights of Way Act 2000 relating to rights of way does not apply to such rights across Village Greens. The subject was thought to be too complicated and this thinking is perpetuated by the Commons Act 2006, which repeals the Commons Registration Act 1965 provisions relating to Village Greens, leaving the relevant legislation governing the use of Village Greens as the various Inclosure Acts starting with the Inclosure Act 1845.

What is a Village Green?

The statutory definition, as set out in the Commons Registration Act 1965 is

- (a) land which has been allotted by or under any Act for the recreation of the inhabitants of any locality or
- (b) land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or
- (c) land on which the inhabitants of any locality have indulged in such sports and pastimes, as of right, for not less than 20 years.

This definition was amended by the Countryside and Rights of Way Act 2000 as follows :-

“Town or Village Green means land that has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or which falls within Subsection 1A”

Subsection 1A states that land falls within this section if it is land on which, for not less than 20 years, a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either continue to do so or have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions

Although it is not specifically stated in the Act, it is clear that a neighbourhood or locality has to be a defined area or group, such as a civil or ecclesiastical parish or a specific area within that area

There is power under the 2006 Act for a Village Green to be created with the specific consent of the land owner

Registration of Village Greens

It was generally thought that a Village Green had to have been registered as such under the Commons Registration Act 1965, and that if it was not registered then it was not a Village Green. However in 2004, it was held that registration under the 1965 Act merely recorded its status, registration did not of itself confer that status. As a result statutory Village Greens could continue to be created

There was an earlier legal case in the House of Lords, *Oxfordshire County Council and Sunningwell Parish Council*, where the Parish Council applied for registration of land as a Village Green under the 1965 Act. The facts are quite complicated but the definition of sports and pastimes were given a wide construction by the Court. They found that walking dogs, playing family and children's games, flying kites, picking blackberries, fishing in the stream and tobogganing down the slopes in the snow were sufficient pastimes to create a Village Green under the 1965 Act.

The inhabitants did not have to consider whether they were using it as of right, use for 20 years was sufficient. The land, if it had been used for 20 years as a Village Green, did not have to be registered to achieve this status

It has now been established that dog walking over land is a sufficient pastime to enable land to be registered as a Village Green, although if the walking is along a defined path this might be indication of a public right of way, not use of the whole area as a Village Green. Throwing sticks for dogs over an area off a defined path would probably be sufficient to establish use for Village Green status.

A Village Green need not be an area of grass, in *Oxfordshire County Council and Oxford City Council* (the Traps Ground case) a large part of the area was marshland, and in principle a privately owned beach can be registered

If there is twenty years use and the use is then interrupted, there in a 12 month period during which an application for registration as a Village Green can be made.

Evidence

Subject to the later comments, if a Parish or Town Council wishes to establish that a piece of land is a Village Green, it needs to obtain evidence of use for 20 years and apply for registration by completing the relevant application form and sending it to the Commons Registration Authority. A copy of an application form is attached.

If there is sufficient evidence to prove one of the limbs of the definition, registration should be granted by the Commons Registration Authority and the land will then be a registered Village Green.

If an application is opposed there will be a public enquiry at which the use and time will be tested. These enquiries tend to last for a number of days as all the evidence given will be tested by the Inspector.

There have been a number of Supreme Court decisions relating to Village Greens, and in particular the requirement that use be by right. This expression implies that no consent for the use has been granted. If permission, actual or implied, is given then use is by right. The question of what is consent is complicated

It should be noted that if the land is held by a local authority for a stated purpose which gives the public rights, or if the land is subject to bye-laws relating to recreational use, the use of the land by the public is by right, and not as of right. This prevents the land becoming a Village Green

Preventing establishment of Village Greens

If the Parish or Town Council is the landowner and have in mind using the land for development, they must take steps to prevent rights being created. If practical, the land should be fenced to prevent access, alternatively as it is necessary for the land to be used without permission to establish a Village Green, the Council could consider granting permission by erecting notices, or closing the area once a year. If the landowner, by positive acts, such as mowing the grass and providing seating, makes it clear that people are welcome to use the land, the landowner is granting an implied licence which operates to prevent the user being as of right.

The Growth and Infrastructure Act 2013 introduced two ways of preventing the establishment of a Village Green. Section 15 provided that before an application is made for registration, an owner of land could deposit with the Commons Registration Authority a statement to the effect that he had consented to the use of the land by the public. The effect of such a statement is that the 20 year time limit ceases to run. The form is similar to that used to prevent the establishment of a right of way.

If there is a planning application in respect of the land, or it is designated for future development under a Neighbourhood Plan or Development Plan any proposal for Village Green status ceases to apply until either the application is refused or the land is withdrawn from the plan. The planning application has to be made before the proposal for Village Green status is made

Effect of Village Green status

What is the effect of land being a Village Green? In essence the land must be maintained as an open area for recreation. The law relating to rights of way do not apply to Village Greens, vehicles are generally considered to interrupt the use or enjoyment of a Green as a place for exercise or recreation.

It is also an offence under the Inclosure Act 1857 to create a nuisance on a Village Green, and the Commons Act 1876 deems encroachment, enclosure or the erection of a structure on a Village Green to be a public nuisance. As a result of this it is unlikely that vehicular rights of way over a Village Green can be created by long user and it is also difficult for the landowner to give consent to such a right being created

The provisions in the Commons Act 2006 relating to consent for works does not apply to Village Greens. It is generally considered that no works can be carried out on a

Village Green unless they improve the facilities that are available, and even this may be limited. Any work which restricts the lawful exercise of recreational rights is unlawful.

Use of Village Greens for car parking, tennis courts and other facilities are not permitted.

There is no procedure for the de-registration of a Village Green. The only way that land can be removed from the Village Green Register is offering alternative land which can be then designated in substitution. This procedure requires consent through the Planning Inspectorate and normally involves a public enquiry.

It is also possible to de-register if it can be shown that it should not have been registered as a Village Green in the first place. This is however of very limited application

In these circumstances, if the Parish or Town Council is the owner of land and thus able to control its use, it needs to carefully consider whether registration of that land as a Village Green, if the conditions can be met, are in the long term interest of the community.

Ownership

Many Village Greens are owned by Parish or Town Councils. Under the Commons Registration Act 1965 there was power, in the case of a registered Village Green without a known owner, for the Commons Commissioner to order that the ownership be vested in the Parish or Town Council

This provision has now been repealed, and the only right relates to a power for the Parish or Town Council to take steps to preserve the Village Green.

Please note that the Land Registry do not accept an entry in the ownership Register of the Common Register to be conclusive evidence of ownership.

It is difficult to obtain a Possessory Title from the Land Registry in respect of a Village Green, as they are, by their nature, not fenced. If however the Village Green has been actively maintained for at least 12 years without difficulty, the Land Registry may grant title depending upon the specific facts

Commons Act 2006: Section 15**Application for the registration of land as a Town or Village Green**

Official stamp of registration authority
indicating valid date of receipt:

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Note 1

*Insert name of
registration
authority.*

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

** Only complete if the land is already registered as common land.*

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Location:

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ *Insert full name (and address if not given in the application form).*

I.....,¹ solemnly and sincerely declare as follows:—

² *Delete and adapt as necessary.*

1.² I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants)).

³ *Insert name if Applicable*

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

⁴ *Continued*

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said)	
)	
)	
at)	
)	<i>Signature of Declarant</i>
)	
this)	
day of)	

Before me *

Signature:

Address:

Qualification:

*** The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.**

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit
