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PLANNING & ENVIRONMENTAL

TOWN AND VILLAGE GREENS DEVELOPER TOOLKIT

It may come as a surprise that the topic of town and village greens (“TVG”) has become quite active and even more of a surprise that it has generated a number of decisions through the courts, including the Supreme Court.

In the current economic climate a number of developers have sites in “land banks” which may be in danger of village green applications unless the developer has carried out detailed due diligence on acquisitions and has sought to prevent informal public use.

Existing TVGs are protected by the Inclosure Act 1857 and the Commons Act 1876. As of April 2007, applications for registration of land as a TVG are governed by the Commons Act 2006 and the criteria is set out below:

A person can apply to register land as a “green” if he/she can show that:

- (a) a significant number of inhabitants;
- (b) of any locality or neighbourhood within a locality;
- (c) have indulged in lawful sports or pastimes on that land;
- (d) as of right (i.e. without force, secrecy or permission);
- (e) for not less than 20 years and they continue to do so at the time of the application for registration

TVGs can be an issue for those with open spaces which are used by local residents. It is

a consideration that ought to be taken into account when acquiring land for development. It may not be immediately obvious whether the criteria applies to land that you own or are interested in acquiring. For example, “significant” can be as few as six people and a “lawful sport” and “pastime” can include dog walking or kite flying. A TVG doesn’t haven’t to look like an idyllic area of land which conjures images of people kitted out in whites for a few friendly overs on a Sunday afternoon, it could be a car park or a grass verge. It could be a vast area of land acquired with development potential.

If land is required for development, whether in the short or long term, then you must act to protect the land. The effect of registration as a TVG is to preclude future development taking place.

If you are acquiring land for development then caution may need to be applied. The seller ought to be able to give some assurances and a site visit should be undertaken. Evidence of public use could simply consist of informal paths, holes in fencing and dog walking.

Developers need to be careful about the potential timescales for applications to be made. You may acquire a site which does not appear to have any informal public use since the previous owner has put up fencing and signs. However, an applicant for a TVG registration does not need to lodge their application upon achieving 20 years use of the

land, as of right, for the lawful pastime. Uncertainty is created where a use has been abandoned or prevented but an application can still be made. If the use had ceased before an application was made but had ceased after April 2007, then the application must be made within 2 years of the cessation of use. If the use had ceased before April 2007 then an application can be submitted up to 5 years after the cessation. This is a potential minefield for a developer and flags up the need for detailed due diligence on acquisition.

Disappointed objectors at the planning stage are increasingly lodging registration applications as means of taking a “second bite at the cherry”. The average application takes around 16 months to determine and this can lead to substantial delay in any build programme.

In 2010 alone there has were several important decisions. The decisions have watered down the requirements for registration of a new TVG by widening the interpretation of the criteria.

The decision in *R (on the application of Lewis) v Redcar and Cleveland Borough Council* considered that, as the law stands, ownership of land and its registration as a TVG can co-exist quite happily but the net effect is that land is sterilised and has no development potential.

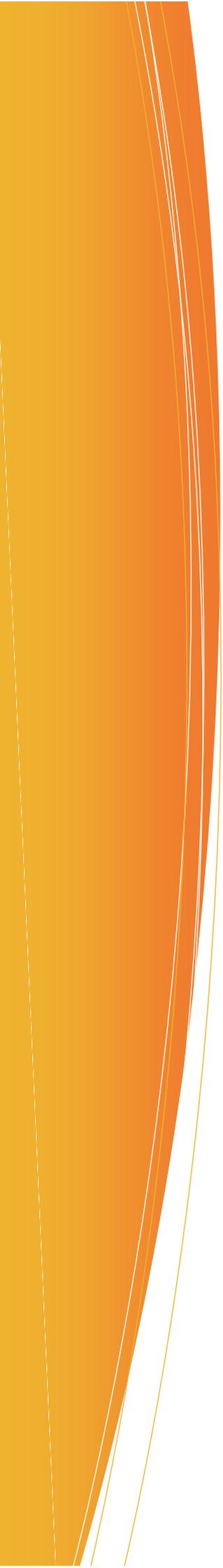
TOOLKIT

Set out below is a checklist which may assist in determining whether land your own or are considering acquiring may be at risk of registration:

| | Question | Yes | No |
|-----|---|-----|----|
| 1. | Are you aware of any groups of people who use the land? | | |
| 2. | If you have answered 'yes' to 1 above, do you know how long they have coming onto the land? | | |
| 3. | Are they "local inhabitants"? | | |
| 4. | Has the land been used consistently for 20 or more years by 'local inhabitants'? | | |
| 5. | Do you know who the group(s) is/are? | | |
| 6. | Do you know how they gain access to the land? | | |
| 7. | Are there any public paths (e.g. public footpaths or bridleways) crossing the land? | | |
| 8. | Do they have permission to be on the land? | | |
| 9. | Has the group(s) been given permission by anyone else, other than you, to be on the land? | | |
| 10. | Does the group(s) come onto the land frequently/regularly? | | |
| 11. | Does the group(s) undertake recreational activities on the land? | | |
| 12. | Is there any signage on the land indicating that it is private property? | | |
| 13. | Do you consider that the wording on the signage is sufficient to prevent a TVG application? | | |
| 14. | Is the signage maintained? | | |
| 15. | Is the land fenced? | | |
| 16. | Is the fencing maintained? | | |
| 17. | Have you considered fencing off the land? | | |
| 18. | Have you ever told a group(s) that the land is private property and they should no longer use the land? | | |
| 19. | If your answer to 18 above is yes, do you have any records? | | |
| 20. | Would you consider taking action against a person who was using the land without your consent? | | |
| 21. | Has any group or persons objected to any planning application by the developer or land owner referring to recreational use? | | |
| 22. | Has any group or persons applied to have this informal pathway registered as a public footpath on the Definitive Map? | | |

Depending upon your answers to the questions posed above you may now find yourself concerned regarding land that you own, or are interested in acquiring, and that the land may fall foul of the provisions of the Commons Act 2006. The land may be held in the affections of those that use it to walk their dogs, so much so that a "local inhabitant" may seek to preserve their use of the land by applying to registered the land as a village green.

If you would like to find out how to protect land which may be at risk of a TVG application or your would like to find out more about the subject then please contact Iain Johnston on 0870 763 1231 or iain.johnston@martineau-uk.com.



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