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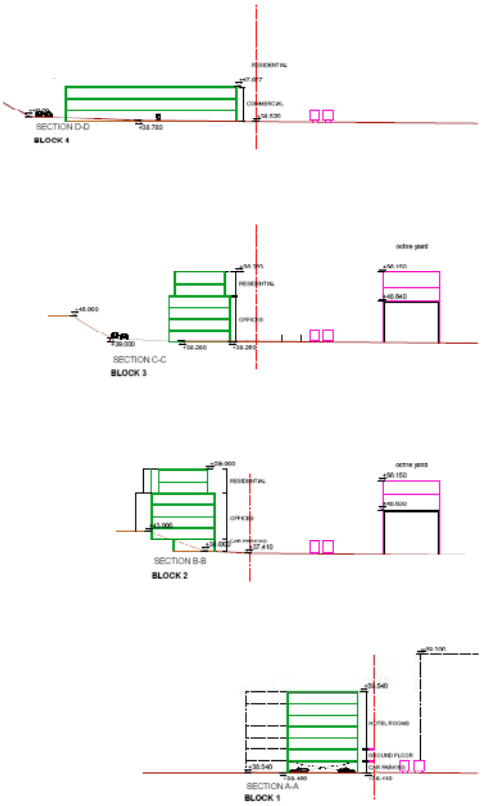
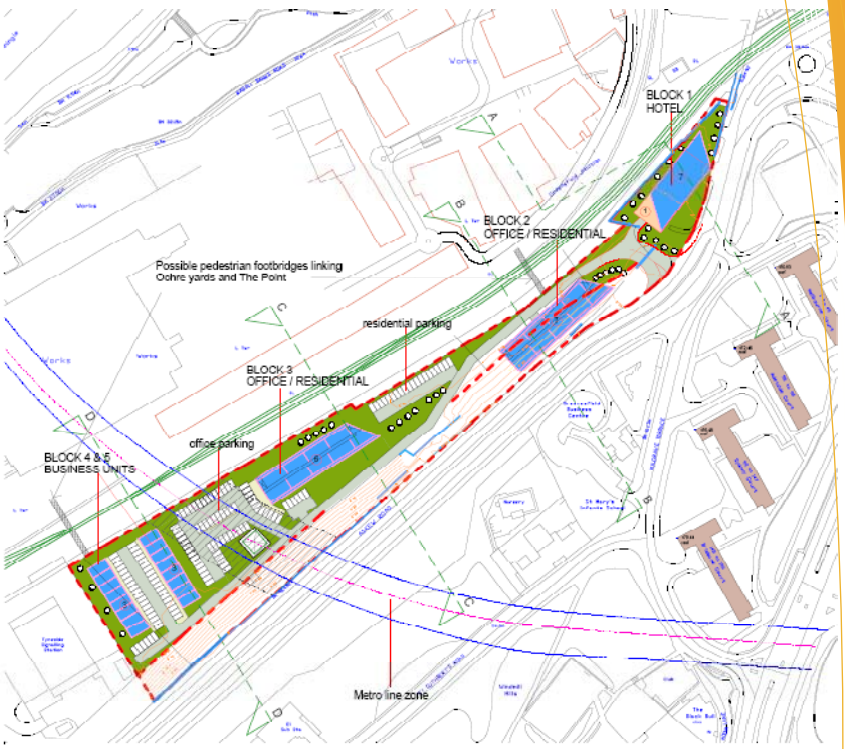
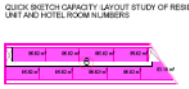
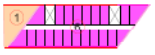






Block 3



Block 1 - hotel rooms

Complex Transport Planning solutions [including new signalised junction] for a Mixed Use Development in one of the NE most congested road networks

Intelligent Transport Planning Solutions

Doing it differently

Introduction

The law relating to the registration of town and village greens ("greens") has been substantially altered when section 15 Commons Act 2006 came into force.

The new law creates long periods (two or five years) during which the status of land will be uncertain. Land registered as a green cannot be developed, and objectors to development are increasingly using applications to register land as a green as a tactic to delay or defeat development.

Principle

recreation. Under two nineteenth century statutes, land designated as a green cannot be developed. Breach of these statutes constitutes a criminal offence.

The Commons Registration Act 1965 was intended to create a complete register of greens, but subsequent cases revealed that the legislation was defective. It is still possible for local residents to apply for a new green to be registered by showing twenty years' uninterrupted use for recreational purposes "as of right", which means without force, without secrecy and without the owner's permission.

Activities as innocuous as dog-walking and picking blackberries are often used as evidence of use by local people.

Section 15 Commons Act changes the law relating to the registration of greens, to the advantage of local people and against the interests of developers.

The new provisions

able to apply for the land to be registered as a green. Future development of the land will then constitute a criminal offence.

The new law confirms the recent House of Lords ruling in the Oxford "Trap Grounds" case that use of the land by local people has to continue only up to the time when the application is made (not until registration, which may be months or even years later). Furthermore, once section 15 is brought into force, local people will have two years from the date when use "as of right" ceases to lodge the application. Where use as of right ceased before section 15 is brought into force, the application does not have to be made for five years.

The new law also removes one of the main weapons that landowners have used to protect their position. Once local inhabitants have used land for twenty years for lawful sports and pastimes as of right (ie without permission), the landowner will no longer be able to prevent an application for registration of a green by expressly giving permission for that use.

Currently, giving permission in this way prevents the use being "as of right", so preventing any application for registration of a green being successful.

RACTICAL EFFECTS

protection will depend on the facts. Notices barring entry ought to be as effective as a fence, as they make the landowner's intentions clear. However, the landowner will need to be vigilant to ensure that the notices are re-erected if they are torn down, and it is prudent to ask people to leave the land from time to time, where "keep out" signs are being ignored.

Where, however, twenty years' use has already been established, the erection of a sign or fence will not automatically defeat an application for registration of a green. Where use stops after section 15 comes into force, the application will have to be made within two years of cessation; as explained above, where use had already ceased when section 15 comes into force, the period will be five years.

This effectively means that where registration of land as a green is a real possibility – typically undeveloped land where there is evidence of access by local people for twenty years – the land could be sterilised for a period of two or five years. During this time, development would be risky for fear of a successful application for the registration of a green. And the landowner's actions to try to stop recreational use – barring access either physically or by way of a warning-off notice – might themselves prompt an application for registration. Landowners and developers will be in a difficult position as there will often be uncertainty as to when use for lawful sports and pastimes actually started.

The new provisions do not state what the position will be if application is made for registration as a green of land on which buildings have already been constructed during the two or five year period for applications. Although it seems unreasonable for a developer to be penalised by what is effectively retrospective legislation, there is nothing in the Commons Act 2006 to prevent this, save where development commenced before 23 June 2006. The courts may say that penalising innocent property owners may fall foul of the Human Rights Act, although it is unclear whether any effective remedy would be available.

Local authorities are in a special position where they hold land under certain statutes for recreational purposes, as recreational use of the land cannot give rise to a green.

CONCLUSIONS

The new legislation, will tip the scales in favour of those asserting that an area of land should be registered as a green and, in consequence, an application to register land as a green will assume even more importance in the armoury of those opposing development.

All landowners should now review the current use of any undeveloped land and, where they may wish to develop that land in the future, or sell it for development, should take appropriate steps to prevent the land becoming registered as a green. Where land has definitely not yet been used for twenty years, this is straightforward. But where land has already been used for twenty years as of right for lawful sports and pastimes, the owner will need to bar access for the relevant period of two or five years.

A developer contemplating buying land for development, on the other hand, needs to make a thorough risk assessment and in appropriate cases work with the landowner to ensure that appropriate steps are taken. In high-risk cases, the developer may want to obtain at least partial protection by means of a long-term option or conditional contract and – where it is still available – perhaps indemnity insurance as well.

This briefing is intended as general guidance and is not a substitute for detailed professional legal advice

This newsletter has been brought to you in liaison with our colleague
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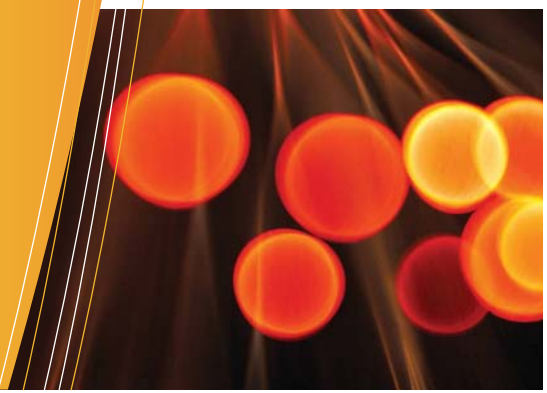

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