Legal update ——— October 2013

The effect of the Growth and Infrastructure Act 2013 on Town and Village Green Applications

Summary

Section 15(1) of the Commons Act 2006 gives the right to apply to the Commons Registration Authority to have a piece of land registered as a Town and Village Green (TVG). A successful application will be able to show 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.

The effect of such registration means that no development can take place on the land. This has at times been inconvenient for would-be developers. A TVG application stalls development whilst the process of deciding whether or not to register the land takes place. Applications are often triggered when local residents learn of such a development, often when the planning application is made by the developers.

The Growth and Infrastructure Act 2013 (GIA 2013) now ends this period of uncertainty for developers in England, by suspending the right to make a TVG application when the planning permission process begins.

GIA 2013 also gives landowners a procedure to protect their land against future TVG applications, and for the first time applicants will have to pay an application fee. This fee is not set centrally, but by The Commons Registration Authority. The two year time limit after use will be reduced for land in England, so that an applicant must bring its claim within one year.

'Trigger events': Suspending the right to apply for registration of land as a TVG

Section 16 of GIA 2013 came into force on 25 April 2013. This section inserts a new section 15C and a new Schedule 1A into the Commons Act 2006. Section 15C(1) provides that the right to apply for registration of a piece of land in England is suspended when a trigger event has occurred. The right only becomes exercisable again if a corresponding terminating event has occurred. The right only becomes exercisable again if a corresponding terminating event has occurred. The right only becomes exercisable again if a corresponding terminating event has occurred.

- an application for planning permission, under either section 70 or section 293A of the Town and Country Planning Act 1990, is first publicised;
- a draft development plan has been published for consultation, identifying the land for potential development;
- a development plan which identifies the land for potential development is adopted;
- a draft neighbourhood development plan has been published for consultation, identifying the land for potential development; and
- a neighbourhood development plan which identifies the land for potential development is made.

Government consultation on extending this protection

The Department for Communities and Local Government has recently consulted on extending the reforms to include other circumstances. This could mean that the list of trigger events and terminating events is extended and land earmarked for development in statutory development orders; including the community right to build, other neighbourhood development orders and Transport and Works Act orders is also protected. A further update will follow with the outcome of that consultation.

Determining whether a trigger event has occurred

It is likely that the relative timing of applications for registration and the trigger events may prove crucial. The trigger events have different methods of publication laid down in several statutory instruments. If in doubt, the landowner should seek advice to establish whether the trigger has been activated.

Application period reduced where use has ceased

Under the Commons Act 2006, where a piece of land had been used as a TVG for 20 years, but the use had ceased before the application for registration was submitted, there was a grace period of two years for the...
application to be made. This meant in practical terms, that developers could hoard up or otherwise secure potential development land, but would then need to wait for two years before starting development. This would enable developers to “flush out” potential claims, so that any future planning application would be untroubled by TVG concerns.

The good news for developers is that Section 14(3) of the GIA 2013 adds a new section 15(3A) to the Commons Act 2006, which reduces the period of grace to one year, for land which is in England. The two year period remains applicable to land in Wales. This section came into effect on 1 October 2013.

Landowner’s statements can be lodged from 1 October 2013. DEFRA guidance on completion of the statement is to follow.

Fee introduced for application for registration of a TVG

Section 17 of the GIA 2013 also came into effect on 25 June 2013, inserting a new sub section into section 24 of the Commons Act 2006. This allows the Secretary of State to make regulations which allow the body to whom the TVG application is made or decided, to charge a fee.

Conclusion

The changes in TVG registration brought about by the GIA 2013 were vigorously condemned by such bodies as the Open Space Society and the Council for the Protection of Rural England. Certainly, the suspension of the right to make a TVG application on the publication of the application for planning permission was welcomed by the development sector.

It remains to seen how useful this legislation will prove to be for landowners and developers. The pro-countryside lobby is now encouraging the public to make applications prophylactically to protect land. There are interesting times ahead.

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'Secondary Statements': Landowners given a new power to stop time from running

Section 15 of the GIA 2013 inserts new sections 15A and 15B in the CA 2006, which will allow landowners in England to deposit a statement and map with the commons registration authority, to bring to an end any period of use as a town or village green.

This procedure is similar to that of countering claims for rights of way under section 31(6) of the Highways Act 1980. The section envisages that a landowner may make both a TVG and a Highways Act statement at the same time.

Section 15 of GIA is partially in force, from 25 June 2013, and Regulations have now been published, setting out the form of the landowner’s statement and map, fees payable and when the statement is to be regarded as having been deposited. Those Regulations are contained in a Statutory Instrument: The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations)(England) Regulations 2013 – 2013/1774.