

# Town and Village Greens

A briefing note from Manches Property Group

## TRAPS FOR LANDOWNERS

In the long-running saga of Oxfordshire County Council v Oxford City Council, the House of Lords ruled last month that Oxford County Council is free to register the Trap Grounds in Oxford as a class C town green under the Commons Registration Act 1965.

### Background

Regular readers of Firm Foundations will by now be familiar with the facts of this case. In 2002, Oxfordshire County Council received an application to register a nine-acre site in North Oxford, owned by Oxford City Council, known as the Trap Grounds, as a class C town green under the Commons Registration Act 1965. A class C green is one on which local inhabitants have indulged in sports or leisure activities for twenty years or more, as of right. "As of right" means without force, secrecy or permission, and is just one of many criteria for establishing the existence of a class C green. Victorian legislation prevents landowners from building on town and village greens, so they will resist registration as a matter of course.

The law governing registration of town and village greens has become increasingly complex in recent years. An amendment to the 1965 Act in 2001 introduced an additional requirement to the twenty-year rule, that inhabitants must "continue to use" the land as of right, without specifying the date up to which the use must continue. Parliament has had the power to make regulations to clear up this point, but has declined to do so. Oxfordshire County Council, unclear about the application of the new requirement, sought guidance from the High Court on this, and a number of other issues.

The High Court found in favour of the local inhabitants, but the Court of Appeal reversed the decision, ruling that use must continue up to the date of registration. Following the application for registration, the City Council had erected a sign prohibiting access to the Trap Grounds without its express consent. This meant that the inhabitants would have been unable to show continuous use as of right up to the date of registration and the application would have necessarily failed. The Court of Appeal's decision made it much easier for

landowners to defeat applications for registration - once they had notice of an application, they only had to put up signs and/or fences to stop locals using the land as of right, making it virtually impossible for new town and village greens to be registered. Catherine Robinson, on behalf of the inhabitants, appealed to the House of Lords, who heard the appeal at the end of March this year, and delivered their judgment in record time.

### House of Lords' decision

The House of Lords reinstated the High Court's rulings, leaving the County Council free to register the Trap Grounds as a town green. However, the Law Lords were by no means unanimous on all the issues, and new questions arose during the proceedings, including one that might allow the City Council to sell the land for housing regardless of the County Council's decision.

### The main issues:

#### Continued use

When considering an application to register land as a town or village green, the relevant use of the land must have continued up to the date of the application for registration, but not up to the date of registration.

#### What rights do local inhabitants enjoy following registration?

The majority of the Law Lords ruled that once land has been registered as a class C green, it can be used generally for sports and pastimes. Lord Scott disagreed, saying that registration should not entitle local inhabitants to enjoy the land for recreational activities over and above the twenty year use that satisfied the statutory criteria for registration. That would make further inroads into the owner's use of his land, imposing limitations that had not existed prior to registration.

#### Does the Victorian legislation apply to land following registration?

Yes. It will be protected under the Inclosure Act 1875 and the Commons Act 1876, and any building or other works on the land will be a criminal offence.

## Human rights

The Court of Appeal had been mindful of possible challenges by landowners under the Human Rights Act for loss of property rights, and at the end of last year, the European Court of Human Rights ruled in *Pye v UK* that extinction of a landowner's title to registered land by adverse possession was a deprivation of property that could not be justified.

However, a majority of the Law Lords said that the situation with regards to the registration of town and village greens differs in that the owner is not entirely deprived of his land. He retains title to it, together with the right to use the land in a way that is compatible with recreational use by the inhabitants and to the extent that the owner is deprived of doing as he pleases with his land, the deprivation is in the public interest, namely to prevent interference with long-established enjoyment.

## Local Government Act 1972

However, a local authority may be able to exercise its rights under the Local Government Act 1972 to appropriate open land for housing use and then dispose of it free from any recreational rights of the local inhabitants, whether or not the land has been registered as a green. This would overcome any human rights arguments by the City Council, but not by other landowners in similar situations.

## How to recognise a town or village green?

The Trap Grounds, which is composed mainly of scrubland and brambles, may not conform to most people's view of a town or village green but under the 1965 Act, a green does not have to be a green in the traditional sense, so long as it satisfies the statutory requirements. Any attempt to define a green by reference to what is traditional, for example, as a predominantly grassy area used for village fetes and cricket matches, would be inherently uncertain. It would be inadequate to say that a registration authority will recognise a green when it sees one. If Parliament thinks that the definition should be narrowed, it will have an opportunity to do so in the current Commons Bill.

## Commons Bill

The Commons Bill is currently before Parliament. It deals with the issue of continued use (up to the date of the application for registration) but other uncertainties remain. The Bill has had its second reading in the House of Commons and is now at committee stage. Parliament could take the opportunity to clear up the remaining problems once and for all, but if its past record is anything to go by, it will leave the courts to resolve them.

## What next?

For the immediate future, the House of Lords' decision means that the County Council is free to register the Trap Grounds as a class C town green. If it does so, that is unlikely to be the end of the matter, as new issues about what is a green and human rights have entered the debate. Any decision of the County Council may become the subject of judicial review. The City Council is almost certainly taking advice as to whether it can use its powers under the Local Government Act 1972 to ignore the effect of any registration and sell the land for housing anyway. This issue has not previously come before the courts, and is bound to lead to yet more litigation.

## Advice for owners of open land

- Exclude the public from open land by erecting fences, although in cases of long-standing use, this may trigger an application for registration, or
- Erect sturdy signs permitting access. In case the signs are pulled down, take statements from those erecting them, and also photographs, showing the date they were put up. Regularly check that the signs have not been removed. Erecting signage could also lead to locals making an application for registration, if they are aware of the implications of being granted permission.

## Advice for buyers of open land

- A commons registration search will establish whether land is registered as a town or village green, but it won't identify the existence of pending applications for registration. Make an additional enquiry of the relevant registration authority (the county council, or equivalent) to establish whether there are any pending applications, and
- Insist on proper replies to pre-contract enquiries from the seller regarding informal use of the land.

**For further information please contact Roy Withey on 01865 722106 or by email [roy.withey@manches.com](mailto:roy.withey@manches.com)**

This briefing note is merely intended to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases.