Town and village greens are areas of open space which by custom have been used by a significant number of the inhabitants of the town, village or parish for the purposes of recreation and playing lawful games.

Where land is registered as a town or village green, it is protected by long-standing legislation (known as the Victorian Acts) that effectively means that the land cannot be developed.

Where land is the subject of a proposed development, a campaigner against the development may apply for the land to be registered as a town or village green. In the short term, this will delay and possibly deter the development. In the long term, if the registration is successful, the land will be protected by the Victorian Acts and it is unlikely that it could be built on.

The old law relating to town and village greens operated under the Commons Act 2006 which is being amended by the Growth and Infrastructure Act 2013 (‘GIA 2013’). Parts of this Act came into force on 1 October 2013, other parts are coming into force on dates to be confirmed or are already in force. Section 15 of GIA 2013 which came into force on 1 October 2013 amends the Commons Act 2006 to say that a landowner can deposit a statement accompanied by a map (showing the land to which the statement applies) to bring an end to any recreational use of land as a town or village green. The application has to be in a prescribed form, and accompanied by a map, to a scale of not less than 1:10,560 showing the boundary of the land to which the application relates in coloured edging. There will also be a fee payable to the relevant authority. This fee is yet to be decided by the authorities, but is likely to be £100s.

In order for land to be registered as a town or village green, the land must be used ‘as of right’. This means that it has been used without permission, force or secrecy for at least 20 years as recreational use. The statement which the landowner makes ‘interrupts’ this 20 year period, effectively preventing anyone from registering it as a town or village green. Following a statement made by a landowner, a new period of ‘as of right’ use can begin. This means that a landowner will need to register this statement before the completion of every 20 year period and the ‘clock’ starts again.

If land has already been used ‘as of right’ for 20 years (or more), an application could be made to register it as a town and village green, thereby preventing any potential future development of the land. By making the Statement, the landowner will trigger a one year ‘grace period’ in which an application for a town or village green can still be made. This ‘grace period’ has been reduced by GIA 2013 from two years to one year in England, and is two years in Wales. On receipt of any application, the Commons Registration Authority in England will send an acknowledgement of receipt and will publicise notice of receipt of the application on their website. Also, in order to bring it to the attention of users of the land, the authority must post notice of the application for not less than 60 days at or near at least one obvious place of entry to the land to which the application relates. This will put recreational users of the land on notice that the Statement has been made. They could then decide to make an application to register the land as a town and village green, if they can show 20 years’ use. This is a risk that a landowner will need to consider before making the Statement.

A recreational user of land, which has been used for recreational purposes for 20 years or more, who thinks the landowner or local council may want to develop the land, and wants to continue to benefit from exercising their right, will need to be proactive and apply to register the land as a town or village green before a Statement is made, as the making of a Statement will then trigger the one year grace period. This has already been done in cases of parks, duck ponds and cricket pitches. In a case called Lewis v Redcar, which went all the way to the Supreme Court in 2010, an application made was effective to prevent part of a golf course from being developed. Using this can not only be employed to prevent future developments, but could potentially also be used as a threat by recreational users to get planning applications for a development watered down.

Section 16 of GIA 2013 creates a new Schedule 1A in the Commons Act 2006. This schedule sets out ‘trigger events’ and ‘terminating events’. Every trigger event has a corresponding terminating event. The trigger events are related to the development of land which occurs within the planning system. If there has been a trigger event, then any application to register land as a town or village green will be rejected, unless its corresponding terminating event has occurred. This effectively means that unless one of the terminating events has taken place, once a trigger event has occurred, the land cannot be registered as a town or village green.

Examples of trigger and terminating events are:

<table>
<thead>
<tr>
<th>Trigger events</th>
<th>Terminating events</th>
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<tbody>
<tr>
<td>When planning application is first publicised</td>
<td>On the withdrawal or refusal of the application, or if the development isn’t started within a specified timescale</td>
</tr>
<tr>
<td>When a development or neighbourhood plan</td>
<td>On the withdrawal or adoption of the consultation drafts of a development plan</td>
</tr>
</tbody>
</table>
consultation is published
When a development or neighbourhood plan is adopted On revocation of the plan, or if a relevant policy is superseded, or if the neighbourhood plan no longer has effect
When a development consent order is first published On the expiry of two years from publication, or when the accepted application is publicised

These provisions apply in England only; there are separate provisions for Wales and Scotland.

Although these new provisions could help prevent town and village green applications, they should be used with care if land has been used for recreation for more than 20 years, to avoid sparking applications in advance of protection occurring through a trigger event. In each case the landowner should consider carefully whether to make the Statement which may depend on whether a planning application is imminent.