UPDATE FROM SJ BERWIN

The Real Deal
Legal Update

Alerting the property industry
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Town and Village Greens: Stopping bulldozers is child's play

The preservation of open spaces can be an important consideration in the planning permission process. Developers could be forgiven for thinking that the grant of planning permission marks the end of that particular debate, but this is not always the case.

In recent years, the law of town and village greens ("Greens") has become a powerful weapon in the hands of those who oppose the development of greenfield sites. It can sterilise development potential, as demonstrated by the Supreme Court earlier this month.

The Court ruling concerned a site that had been let to a golf club and used as part of a golf course. For many years, local people had also used the site for activities such as dog-walking and children's play, giving way to golfers as necessary. They had done so without the owner either objecting or giving them permission: in other words, as if it was their right. The Supreme Court decided that the local people's recreational use was enough for the land to be registered as a Green.

Being registered as a Green means that the site cannot be developed for other purposes and local people are entitled to continue their recreational use of the land, without interruption by the landowner. Where, as in this case, that recreational use has co-existed with the landowner's own use of the site, each must continue to respect the other's right to use the land.

Land doesn't have to be in a town or village to qualify as a Green, and it doesn't have to be a traditional grassed area. Other recent examples of Greens include scrubland, rocks used for moorings, and small patches of landscaping. The fact that land is actively maintained or also put to other uses does not prevent it becoming a Green. Land qualifies as a Green wherever a significant number of local inhabitants have, for 20 years or more, used the land for lawful recreational purposes, in a manner that would suggest they have a right to do so.

Legislation in 2006 made it easier to establish that a site qualifies as a Green. This is the fourth time in a decade that developers and objectors have fought this battle all the way to the highest court in the country. Owners and developers of open land should beware this fast developing area of law.

R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11

How to avoid town and village greens

- When acquiring open land, ask your solicitors to check whether it is already registered as a Green. Land that qualifies as a Green can be added to the register in the future, so also check whether local people can, in fact, use land for recreational purposes, or have done so in recent years.
- Consider blocking off public access or erecting signs unequivocally stating that the public has no right to use the land. A sign stating merely that the land is private land or warning of dangers on the land is not enough. Of course, this action might prompt local people to apply to register the land as a Green.
- It may be possible to get the land released from its status as a Green, by offering other land in exchange, but don’t expect this to be easy.

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