

Land Law

This guidance sheet seeks to give an overview of some of the issues, regarding land, that arise in communities and how the parish or town (local) council may be involved. This includes:

- Disposal and appropriation of land
- Registered and unregistered land
- Common land
- Village or Town Greens

The law relating to land and property is a complex subject and it is always recommended that if an issue arises, advice is sought.

Disposal, Acquisition and Appropriation of Land

The Local Government Act (LGA) 1972 sets out the rules for local councils with regards to the disposal, acquisition and appropriation of land.

A local council may acquire by agreement any land, either in or outside its area, as long as, under section 124 of the LGA 1972, it is for the purposes of:

“(a) any of their functions under this (LGA 1972) Act, or
“(b) the benefit, improvement of development of their area”*

Under section 125 of the same Act, there may be circumstances, such as the land cannot be acquired on reasonable terms by agreement, where the Secretary of State may authorise that land is compulsorily purchased. This is not done as a matter of course and is subject to criteria.

Section 125 of the Act says that, subject to provisions within the Act, land belonging to a local council which is not required for the purposes it was acquired, or has since been appropriated, may be appropriated by the council for any other purpose for which the council is authorised by statute. This means that the council may use land that is no longer required for one purpose for another function they have the power to carry out.

If the community or the council is seeking land for a certain function, it is worth reading guidance sheet 10 on localism rights. This guidance details the “rights” in the Localism Act 2011 which offer new opportunities for securing land and property in communities.

Looking Further

* Functions (powers) under the LGA 1972 are discussed in more detail in guidance sheet 3 on powers and duties.

Section 127 of the Act allows a local council to dispose of land it owns. This may mean by sale or lease.

Disposal of land under this section is subject to certain restrictions. It must be disposed of for a "consideration less than the best that can be reasonably obtained" (i.e open market value). This applies unless it is disposed of for a "short tenancy" (less than seven years) or unless it falls under section 128 of the Act. This section (and the supporting legislation "The Local Government Act 1972 General Disposal Consent (England) 2003", defines specified circumstances where land can be disposed of at less than best price. These are:

"a) That the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects, in respect of the whole or any part of its area, or of all or any persons resident or present in the area;

i) the promotion or improvement of economic well-being;

ii) the promotion or improvement of social well-being;

iii) the promotion or improvement of environmental well-being; and

b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)"

This allows for local councils to act for the benefit of their communities with regards to the disposal of land. This may include, for example the lease of land at "peppercorn rent" to community groups or charities.

Disposal of land subject to Charitable Trusts is not included in this Act but rather falls under the restrictions set out in the Charities Act 2011.

Registered and Unregistered Land

In England, HM Land Registry is the agency through which ownership of land is registered.

Since 2002 moves have been made to make registration compulsory. This is being done cumulatively, as and when land is dealt with by the owner.

If a local council owns land in the community, it may be that it is yet to be registered as there may not have been any activity relating to the land since the compulsory registration was introduced. Registering is not restricted to only when a transaction takes place. It can be done voluntarily before something arises.

Looking Further

* The HM Land Registry website can be visited at <http://www.landregistry.gov.uk>

Local councils may find it beneficial in the long term to register the land they own. It will make it easier for members of the community to find out about what land is owned in the area and where boundaries lie. It will mean that if an issue arises regarding the ownership of land, information is far more accessible and it will save both time, and the need to work through complicated, sometimes very old, deeds and documents.

Common Land

Common land is defined by the rights people have over it. In the majority of cases it is subject to "rights of common". These are rights for things like grazing, fishing and the collecting of wood and timber for certain purposes. Rights of commons must be registered and there are Commons' registers maintained by the principal authority for the area which give details of the land, the rights of common over the land and who owns the land.

People (commoners) are entitled to exercise their rights of common but owners of the common land may do other things with the land as long as those rights are not inhibited. The sorts of things an owner may do include, granting grazing rights or pasturing his or her own animals.

Under the Countryside and Rights of Way Act 2000, there are general pedestrian rights of access on common land.

Common land may be privately owned or ownerless. Local councils may protect ownerless common land as a town or village green in their area. In this context, "protection" refers to preventing unlawful interference.

Village or Town Greens

For the purposes of this guidance sheet, the general term "Village Green", will refer to village or town greens as defined by the Commons' Registration Act 1965, as amended by the Countryside and Rights of Way Act 2000.

This definition refers to land

"which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality

or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes

or if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either—

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions”.

Registered village greens are governed by the Commons Act 2006 although registration takes place through the registration authority, the principal council for the area.

By their very nature, village greens may not be built on. Over the years there has been registering of areas of land as “village greens” as an obstacle to development. The Growth and Infrastructure Bill will bring about certain restrictions preventing the halting of development being a reason for registering a Village Green. This will mean that any land which has been earmarked for development by a local authority in a local plan, or which is subject to a planning application will not be able to apply for Village Green status.