

# Common problems solved?

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Registration as a town or village green is an extremely effective means of preventing development from taking place on land affected by the registration, and several high profile cases have illustrated this in recent years. Common land and town and village greens make up about 4% of the land in England and Wales (572,000 hectares), and are therefore a significant national resource. The legislation protecting such land, some of which dates from the nineteenth century, has been consolidated and updated in the Commons Act 2006 (**2006 Act**). The Act addresses deficiencies in the previous legislation relating to the registration of commons and greens, and contains some important new provisions which will be of interest to developers.

## Registration as a town or village green

The criterion for registration of land as a town or village green is restated in the 2006 Act. The requirement is 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".

A House of Lords decision involving some potential development land in Oxford this year held that if local inhabitants wish to apply to register land as a town or village green, they must continue to use the land for lawful sports and pastimes up to the date of application for registration. Previously such use had to continue up to the date of the registration itself. This had enabled landowners to fence off land and prevent such use as soon as they heard of a threatened application for registration. The 2006 Act goes further than the House of Lords decision, and provides that the local inhabitants have two years from the date that the required use ceases in order to make an application to register the land as a town or village green. If the use ceased before the Act comes into force, inhabitants have five years to make an application. These provisions will open the door to some applications that would previously have been considered to be out of time, and will bring about further delays to developments where 20 years' use is claimed.

## Exchange of common land

The 2006 Act will allow mistakes on the registers of common land and town and village greens to be rectified. This is a significant improvement on the previous legislation, under which the scope for amendment was very limited, even if land had clearly been wrongly registered as common land. The 2006 Act will also enable land to be de-registered if other suitable land is offered as common land or a town or village green, in exchange for the de-registered land.

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## Management and Protection

The 2006 Act provides for the creation of Commons Councils in order to manage commons (and town and village greens over which rights of common exist). This measure is designed to prevent problems such as overgrazing occurring, and to enable agricultural and other activities on commons to be properly controlled.

The 2006 Act is to be brought into effect in stages. Some provisions came into force in October, and more will take effect next year. Overall, it is designed to strengthen the protection afforded to common land and town and village greens, and to afford better management of them. It will also increase the opportunity for local residents who can satisfy the 20 years' use test, to achieve registration of land as a green.

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