Open Spaces Society

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Open Spaces Society response to call for evidence: Inquiry into the general principles of Planning (Wales) Bill

Summary

- The Open Spaces Society objects to part 7 of the Planning (Wales) Bill which will prevent local people from applying to register land as a town or village green when it is threatened with development.
- There is no evidence that the TVG process is undermining the planning process.
- The changes will severely prejudice local people, their health and well-being.
- We propose alternative measures which bring the village green process closely in line with the planning process, remove vexatious applications and speed up determination, without amending the law.

The Open Spaces Society (formerly the Commons, Open Spaces and Footpaths Preservation Society) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them, throughout England and Wales.

The society took a lead role when the Commons Bill (now Commons Act 2006) went through Westminster. It is this 2006 Act which the Planning (Wales) Bill proposes to amend. We are a statutory consultee under the Commons Act 2006. The society is represented on Wales Environmental Link and the Welsh Commons Advisory Group. We work with community councils, local authorities and the public. We are named as statutory consultees in regulations, under Playing Fields (Community Involvement in Disposal Decisions) (Welsh) Measure 2010.

This response deals solely with Part 7, 'changes in relation to town and village green legislation'. The society believes there is no need to introduce these provisions.

The Society strongly disagrees with the suggestion that the proposals strike a balance between the need to preserve land used as a town or village green (TVG) and providing greater certainty for developers. There is no evidence that the TVG process is undermining the planning process. The Independent Advisory Group (IAG) report concluded that the planning system is conceptually sound and not in need of root-and-branch reform. At point 5.58 the report stated that parallel procedures should be permitted unless there is a good reason for putting a planning permission in place first.

The report confirms that responses from town and community councils, other voluntary groups and the public showed it was difficult to engage in the LDP process or to influence policy decisions due to the combination of complexity, length of process and lack of transparency.

The IAG report notes the conclusion of the Penfold report; however the proposals go way beyond Penfold's conclusions. Penfold's recommendation H was that there be a review of the operation of the registration of TVGs in order to reduce the impact of the current arrangements on developments that have received planning permission. The report concluded that where the possibility of a TVG application has been considered as part of planning, the subsequent granting of planning permission should then provide protection from TVG application for the duration of the permission.

There is little evidence to justify such a proposed restriction on TVG applications. We are dismayed that the Welsh Government should advocate change when it has no up-to-date evidence to prove that change is necessary. We are also dismayed that it proposes to copy the Westminster Government in making these changes.

The Society proposes amendments to regulations and guidance, rather than new legislation, to improve the current system (see our appendix 1).

Potential barriers to the implementation of these provisions

One of the main difficulties is to align the greens system more closely to the planning process and to enable local people to apply to register rights to use land as they have for many years, while ensuring there are no delays.

To clarify, the Penfold review 2010 was concerned with consents required for a development other than for planning permission. It identified changes to ensure greater certainty, speedier decisions and reduced duplication. Non-planning consents (of which the village green process is but one) play an important role in delivering a wide range of government objectives. We trust that all of these are being looked at, rather than singling out the village green process, which has little or no impact on the planning system.

Across Wales over 90 per cent of planning applications are granted consent, 80 per cent of which are determined by some authorities within eight weeks (Independent Advisory Group report). We urge you to consider carefully the Penfold recommendations, which were that there be a review of the operation of registration of town and village greens in order to reduce the impact of the current arrangement on developments that have received planning permission. The report concluded that, where the possibility of a town or village green application has been considered as part of planning, the subsequent granting of planning permission should then provide protection from town or village green applications for the duration of the permission.

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Unintended consequences

Our fear is that people will not know that the land they have used and loved is under threat from planning until it is too late to save it. Most people do not engage with the planning system, nor do they know that in order to protect their customary use of the land they must register it as a green. It is only when land is under threat that they realise that their use and enjoyment of it is at risk. It is grossly unfair to local people to introduce a system whereby they lose their rights with no opportunity to record them.

Green spaces in urban and suburban areas are vital for the health and well-being of the population, it is essential to have places where people can walk and children can play, which are close to home. These spaces may not be anything special, just a bit of scruffy land perhaps, but they give people a sense of place, and are of crucial importance. The proposals undermine the ability of local people to protect the places they love.

We feel that speculative planning applications will be made deliberately to engage one of the proposed new 'trigger events' and this will prevent genuine applications to record the historic rights of local people who have used the land for recreation for many years. The introduction of the landowner statements further restricts the rights of local people to apply to register land as a village green.

Financial implications of the Bill

The Department for Environment, Food and Rural Affairs (Defra) carried out a recent survey of village green applications (published June 2014). The figures show there are still few applications and that the new system, (following amendments to the Commons Act 2006 in England) with the cost of introducing it, has not reduced the total number of applications. Officer hours have more than doubled from 67 in 2011 to 148 in 2013. The number of applications is still low and in 2013 was only one fewer than in 2011 (2011: 123 applications; 2012: 132; 2013:122). However no such surveys have been carried out in Wales.

In addition new guidance and training will need to be provided.

The changes proposed in the Bill will require additional work for all planning authorities who will have to carry out research and respond to questions from the officers processing town and village green applications as to whether any 'trigger events' from Schedule 6 have taken place.

Conclusion

The Society proposes a more balanced approach.

1. Before allocating land for development, the local authority must be satisfied that the land is not capable of being registered as a town or village green, ie that local people have not enjoyed 20 years use of the land for informal recreation without being stopped or given permission.

2. If the authority is not satisfied with this, it must give early notification to local people so that they may gather evidence and submit an application for registration as a green if they wish to do so. The authority may allow sufficient time for local people to do this and must not process a planning application until the green status is resolved.

3. In addition, the process for registering town and village greens could be improved and should empower registration authorities to reject vexatious applications, as proposed in our appendix 1.

The Welsh Government has, in implementing other parts of the Commons Act, taken a different and better route than England. For instance, there has been no implementation of Part 1 of the Act, concerned with amendments to the common-land register, before the register has been digitised. We welcome the provision of funding by the Welsh Government for research in this area.

There are no exemption orders for works on common land in Wales, all works require ministerial consent. The severance provisions, allowing leasing of grazing rights, have been introduced in line with *Glastir* for the protection of common land.

In England, however, the government has attempted to mitigate the draconian measures which restricted the rights of local people to apply to register land as a town or village green, (as contained in this Welsh Bill). This is the Local Green Space (LGS) designation, introduced under the National Planning Policy Framework (2012). This provision allows local people to apply to register the land as an LGS if it satisfies the criteria. The land then receives enhanced protection. While we are sceptical of the effectiveness of LGS and have yet to see how it will work, we are concerned that there appear to be no mitigation measures accompanying the Planning Bill.

We urge that the society's alternative proposals are considered and adopted. Representatives from the society have met the Minister, Carl Sargeant, and we should welcome the opportunity to continue discussions to find a workable solution.

Nicola Hodgson
Case Officer
6 November 2014

Open Spaces Society

Appendix 1

Village greens in Wales
The Open Spaces Society's proposals to improve practice and guidance without changing the law

The Open Spaces Society is calling for the following changes in law and procedure to safeguard land which in Wales which is registrable as a town or village green.

New provisions in planning law

Before allocating land for development, the local authority must be satisfied that the land is not capable of being registered as a town or village green, ie that local people have not enjoyed 20 years use of the land for informal recreation without being stopped or given permission.

If the authority is not satisfied of this, it must give early notification to local people so that they may gather evidence and submit an application for registration as a green if they wish to do so. The authority must allow sufficient time for local people to do this and must not process a planning application until the green status is resolved.

New guidance for greens registration authorities (no change in law needed)

Reduce the time and cost of determining greens applications

1. Tighten up the process whereby registration authorities determine that an application is 'duly made', by requiring applications to pass a basic evidential test. For instance, this could be a minimum number of evidence forms (perhaps related to the population of the locality or neighbourhood). If an application does not pass the test, it can be resubmitted with better evidence, but within a limited period.

Introduce time limits through the process

2. At present, the only statutory time-limit in the process is that the registration authority must allow a period of not less than six weeks, after an application has been published, during which objections can be lodged. We suggest the introduction of time limits as follows.

   (a) The authority to determine when an application is duly made within x weeks of receipt.

   (b) The authority to inform the applicant whether the application is duly made within x days of determination.

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(c) The authority to publicise the application within x weeks of determining that it is duly made.

(d) The authority to determine the application within x weeks of the closing date of notice period.

3. The authority to have the power to dismiss irrelevant objections.

4. Applications normally to be determined by written representations or occasionally a hearing, not an inquiry. Use the Planning Inspectorate not barristers as inspectors.

5. Decisions to be delegated to a subcommittee of the registration authority, which meets as often as is necessary to determine them.

6. Introduce a simple appeal process (eg some form of tribunal) for both side, to avoid judicial review.

Deterring vexatious applications

7. Introduce an application fee, which is recoverable if the application is deemed to be valid.

8. Introduce a power to award costs against applicant where application is clearly fraudulent.

Attempting to reach agreement

9. Once an application is judged to be duly made, the registration authority consults the landowner to see if an agreement can be reached, between those with an interest in the land and the applicant, perhaps leading to a voluntary registration of the area, or part of the area, applied for, or for another area in exchange.

Ensure greater awareness between local authority departments

10. Duly-made greens applications to be logged with planning departments, and planning departments to inform registration departments of any planning applications affecting a potential green (CCRI research report 2009*, para 7.7.1 and 2*). Successful greens applications logged with planning department (7.7.3).

11. Local planning authority to consult commons registration officer in preparing Local Development Plans and LDPs to be sent to commons registration officer on adoption (7.7.5).

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*'Study of determined town and village green applications', by the Countryside and Community Research Institute (CCRI) and Asken Ltd, commissioned by Defra and published October 2009.