

## Bellway Homes and Kent County Council (high court)

### Full name

*R (on the Application of Bellway Homes Ltd) v Kent County Council*

### Neutral citation number

[2022] EWHC 2593 (Admin) (14 October 2022)

### Link to judgment

[www.bailii.org/ew/cases/EWHC/Admin/2022/2593.html](http://www.bailii.org/ew/cases/EWHC/Admin/2022/2593.html)

### Summary

This case was a challenge by way of judicial review to a finding by Kent County Council (KCC) that a 'trigger event' had not occurred so as to prevent an application to register land as a town or village green (TVG) under section 15 of the Commons Act 2006 ('the 2006 act').

### Background

Under section 15 of the 2006 act it is possible to register land as a TVG if it has been used as of right for informal recreation for at least 20 years by local people. However, the right to register the land does not apply if that land is subject to a 'trigger event' listed in schedule 1A (in Wales, schedule 1B), such as identification in the development plan for potential development (paragraph 4 of schedule 1A).

On 8 November 2019 Lady L Laws applied under section 15 of the 2006 act to the commons registration authority, KCC, to register as a TVG land at Two Fields, Westbere, four miles north-east of Canterbury in Kent. The land is about 15 hectares, comprising mixed woodland and open areas of grassland and scrub. The western part of the site is owned by Bellway Homes Ltd (the claimant).

On 30 July 2020 the claimant wrote to KCC that the prior adoption of the Canterbury District Local Plan (CDLP) constituted a 'trigger event', because policy OS6 identified the site for potential development; this meant that there was no opportunity to register the land as TVG.

KCC referred this matter to a non-statutory public inquiry and appointed David Forsdick KC to report solely on whether the land was subject to a trigger event. Mr Forsdick concluded that a trigger event had not occurred. On 2 December 2021 KCC decided to proceed with determining the application. Bellway Homes challenged this by judicial review in the high court, and the case was heard by the Hon Mr Justice Holgate.

## Discussion

In his judgment of 14 October 2022 Holgate J dismissed the claim. He noted that there appeared to be only one authority on the meaning and application of the ‘trigger event’ in which a development plan identifies land for potential development. This was [R \(Cooper Estates Strategic Land Limited\) v Wiltshire Council](#). In *Cooper*, it was held that in order to be a trigger event, the development plan itself must achieve the identification of a defined area for potential development but that this is a broad concept and the area need not be restricted to the land in question.

The claimant’s case was focused on policy OS6 of the CDLP. This policy is concerned with ‘green gaps’ which aim to retain separate identities of existing settlements by preventing their coalescence through development. The judge said that the real question was wider, namely whether policy OS6, in the context of the development plan as a whole, constituted a trigger event. This case was very different from *Cooper*, the land lies outside a settlement boundary and there is no presumption in favour of any development. The CDLP does not suggest that there is any need for development in any of the green gaps. The object of policy OS6 is to protect gaps, while allowing for development in closely-defined circumstances.

The judge found that ‘policy OS6 was similar to other policies applicable in rural areas of the district which, in essence, provide criteria applicable generally throughout the relevant area for assessing the acceptability or otherwise of proposals which come forward. They do not themselves identify the land for potential development’.

He dismissed the claim, with the result that there is no trigger event preventing KCC from determining the application to register the land as TVG.

## Comment

This case provides some useful additional analysis on the definition of a trigger event in relation to potential development, providing some comfort to those seeking to register land as TVG. It is not necessarily sufficient (to prevent application) if a policy in a development plan contemplates some possibility of development on a designated area of land: one must look at the policy in the context of the plan as a whole, to see whether the purpose of the policy is to facilitate or constrain development.

