

OPEN GREEN SPACES

AN INTRODUCTION TO THEIR LEGAL STATUS AND PROTECTION

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Open Green Spaces - An introduction to their legal status and protection

Introduction

The laws relating to the protection and use of public open green spaces are complex. It is easy to miss them, not easy to find specific answers about them, they can be complicated, cumbersome and contradictory to apply! On top of that they can sometimes lead to long, expensive court cases!

However, open space laws can be very powerful and useful for protecting and effectively managing what may be valuable community assets. As a local councillor, manager or owner it is important to be aware of the legal framework covering your green spaces (to know what you or others can or cannot do) and understand what the options for enforcing the laws are (what can be done in practice).

This short guide aims to set out clearly and in simple terms what the laws are and how they apply in different situations. It is designed as a starting point to getting to grips with the legalities of green spaces and to point you on to other organisations and resources if you need to dig deeper.

Please note that this guidance is non statutory and should not be taken as a definitive statement of the law. Sources of further information are referenced throughout the guide.

How this guide works

The guide is split into four sections.

Section 1: The first section provides an overview of the different areas of the law that might affect your open green space and the way you manage it.

Section 2: The second section is a brief introduction to Common Land and Town & Village Green (TVG) laws, looking at changes brought by the regulations arising from the Commons Act 2006.

Section 3: The third section is a collection of Frequently Asked Questions generated through our work with green space managers and communities across Cumbria. These are mainly focused on TVG law. We have taken your questions, described the laws that affect these situations and suggested possible solutions using real examples.

Section 4: The final section is a list of contacts, links and sources of advice, information and guidance that we think you will find useful.

What do we mean by open green spaces?

In the context of this document we are discussing open green spaces that are within or near to towns or villages and that have public access, for example village greens, informal play areas or meadows and fields. They are spaces that are important to the community in some way perhaps as a recreation facility, somewhere that's good for wildlife (and useful for learning about the environment) they are accessible to the public or community, or just as a peaceful place that looks nice and helps make our place feel like our place.





Section One: How open green spaces may be protected

Open green spaces are perhaps best defined by the type of protection they have. Protection comes mainly from two separate, parallel systems:

- A. The planning policies of Local Authorities (derived from national Planning Policy Guidance or Statements)
- B. Common Land / Town & Village Green laws.

A. Planning policy protection

Local Authorities decide which open green spaces should be classified by applying national Planning Policy Guidance to the needs of the local community. These classifications will become part of the Local Development Frameworks. In 2010 PPG17 will be combined with Planning Policy Statements 9 and 7 called Planning for a natural and healthy environment.

In Cumbria most, but not all, open green space has been classified by the six District Councils and the two National Park Authorities. They classify using a variety of headings such as Green Gap, Important Open Space, Amenity Open Space etc. This means that Planning Policies advise that the land generally should remain as open space. However in some cases special local circumstances may arise and the land use may change.

For more information on local green spaces and how planning policy affects them have a look at your Local Plan / LDF (held by your District Council or National Park).

For more information on national Planning Policy Guidance/Statements have a look at the planning portal pages in www.planningportal.gov.uk To see PPG 17 or its successor the Planning Policy Statement, go to www.planningportal.gov.uk/england/professionals/policy/policydocuments/

Planning Policy and its associated procedures is the system that offers green spaces protection from or vulnerability to development for housing etc.

B. Common Land / Town & Village Green laws

These are discussed in detail in the following two sections. It is important to note that these laws are completely distinct from and derive from entirely separate origins than planning guidance systems.

These laws offer protection for people's rights over the land and from damage to the land itself.





Other ways open spaces may be protected

Some open green spaces may also be covered by byelaws put in place by the Parish or Town Council (local councils). Some may also be covered by specific covenants; some may be covered by access, landscape, wildlife or heritage designations (legal frameworks).

All of these can be useful and relevant in seeking to establish what the position is in relation to any open space. Research is a key element of the work needed to protect an open space - often the answer to a particular problem comes from an unexpected source.

It is also worth noting that many open green spaces in our towns and villages have no planning or other form of protection on them at all.

In terms of how open spaces are acquired, transferred

and managed there are several other national laws giving powers to local councils. These include the Open Spaces Act 1906 s9, 10 and 15; the Public Health Act 1875 s164 and the Local Government Act 1975.

The Open Spaces Act 1906 is particularly relevant. This deals with the powers and obligations of Trustees and local authorities in relation to the management of open spaces. It can be a useful piece of legislation to refer to when seeking to ensure that the local authority / parish council take steps to protect the village green or small areas of Common Land.

There may be other designations or forms of protection on your green space. A good way to find out is to look on the website www.magic.gov.uk which will show these.

More information can be found from websites for Defra, Natural England, Open Spaces Society or your local council may be able to help.





Section Two:

An overview of Common Land & Town and Village Green Law

The term common land can be used generically to describe both common land and town and village greens - land registered under the Commons Registration Act 1965 or Commons Act 2006. Both types of land were originally waste land of the manor and it was only the 1965 Act which made the two categories of land mutually exclusive for the purposes of registration. Both common land and town and village greens are registered by Commons Authorities but on separate registers. Land cannot now be both common land and TVG, but even more confusingly, it is possible for a TVG to have some rights of common over it!

About Common Land

A small amount of green space in or near villages is designated as Common Land. Common Land is so called because it has rights of common over it, such as rights to graze animals, to cut turf or bracken etc. Historically rights of common attached to a particular property e.g. a house or farm and are transferred with the property as owners / tenants etc change. The registered rights are based upon the number of livestock that the dominant land i.e. the farm could support. There are some areas around the country where the rights registered are probably much higher than the actual number of stock that can be grazed.

Commons are essentially unfenced open spaces. They are a remnant of the medieval manorial system: the lord of the manor owned the whole of the land but local farmers were allowed to graze and make use of the wasteland of the manor.

Commons don't just have agricultural traditions - since the 16th century they have also been used for recreation and pastimes such as horse racing or shooting.

Any common essentially has interest to three groups:

- the owner of the land
- the commoners with grazing or other rights
- the public who may wish to gain access to the common

In addition commons have an important status in terms of landscape and in wildlife and habitat protection. Many are designated as Sites of Special Scientific Interest and as Special Areas of Conservation.

Public access in various forms has been permitted over different types of common for many years and commons, particularly those close to urban areas, have been considered to be important green space (the 'lungs of society') for the population at large.

The Countryside & Rights of Way (CROW) Act 2000 provides the public with a qualified statutory right of access on foot to all registered common land.

The Commons Registers

You can find out if your green space has Common Land status by asking the local Commons Registration Authority to check on the Commons Register. In our case this is Cumbria County Council and the Commons Registration Office is in The Courts, Carlisle.

The register gives the number of the Common e.g. CL24, a description of the land and a map showing its boundaries, the owner (if known), the commoners and what their rights are.

Please be aware that the information on the register was only correct at the time of registration and that information such as names and addresses may have changed since then. To find out definitively who owns the land you should check with the Land Registry Office. See our Open Green Spaces guide to management issues for more information on this.

The Commons Act 2006 provides for the registers to be brought up to date and for some registration errors to be rectified. This process will take a number of years to complete though.

Of note: Cumbria has nearly 280,000 acres of Common Land (30% of the total for England).





What Common Land laws mean in practice

We've described some of the legal aspects of common land that we understand are most likely to affect open green space management below. This is only a very small piece of the whole picture though.

For more information on laws affecting common land refer to the Open Spaces Society's publication: Our Common Land by P Clayden.

A - Don't restrict access

Over 80% of Common Land is privately owned and had only informal access rights over it until the Countryside & Rights of Way Act 2000 came into force. Now most Common Land has open access for walkers.

As a manager/ owner you can't erect fences or undertake any building work that prevents or impedes access to land without specific permission from DEFRA.

S38 of the Commons Act 2006 prohibits what are called 'restricted works' on commons.

Restricted works are actions / things that prevent or impede access to or over the land or involve new surfacing such as concrete, tarmac etc. They also include new fencing, buildings, structures, ditches, trenches and embankments (even if these do not restrict access).

Exemptions: Some types of work are exempt from this list: some improvements, installation of cattle grids by roads and some telecoms apparatus. However, these may still need planning permission and the permission of the landowner.

Getting consent: If you wish to carry out any restricted works you'll need to apply to the Secretary of State (Defra) for consent via the Planning Inspectorate (PINS). PINS will look at your application and make a decision with regard to the interests of those with legal rights on the land; of the neighbourhood and of the public interest. They might give consent and ask you to modify your proposal and / or apply some conditions such as length of time etc. See the PINS website for more information : www.planning-inspectorate.gov.uk/pins/common_land/index.htm

Enforcement: Since 2007, any person can apply to the county court for an order to enforce the prohibitions / consents under civil law (s4 1). More information is given on enforcement against illegal works on the Defra and PINS websites (guidance sheet 12). <http://www.defra.gov.uk/rural/protected/commonland/index.htm>; and: www.planning-inspectorate.gov.uk/pins/common_land/index.htm





B - No driving

S193 of the Property Act 1925 and s34 of the Road Traffic Act 1988 make it an offence to drive a motor vehicle on common land, except when not more than 15 yards from a road or if it is driven in an emergency.

For a long time it was thought that it was not possible to claim a right to drive over common land because you've been doing it regularly for 20 years or more (prescriptive right). The House of Lords has now ruled that such a right of way can be acquired because the lawful authority of the landowner is presumed.

There are other situations where vehicles may be seen on a common, for example where there is a public right of way for vehicles. Sometimes commoners will use vehicles, normally quad bikes, for the purpose of tending their stock. This is permissible as a right ancillary to their main right of common.

C - No unauthorised agricultural activity

S46 of the Commons Act 2006 allows Natural England to control unauthorised agricultural activity that is harming the land, the rights of commoners or the public interest where the landowner or commoners have failed to act.

D - Unclaimed land

S45 of the Commons Act 2006 gives powers to the local authority (described as the Parish Council or Community Council) to protect land that has no known owner or owner listed by Land Registry.

Other laws affecting Common Land

Other laws that might affect management of Common Land near you are s61 of the Criminal Justice and Public Order Act 1994 in relation to trespassers (people who the police believe are intent on residing there) and s23 of the Caravan Sites and Control of Development Act 1960 which empowers a District Council (or National Park Authority) to make an order prohibiting caravans on land for the 'purpose of human habitation'

For more information on Common Land, rights of common and the laws affecting them have a look at the Department for the Environment, Food and Rural Affairs (Defra) web site <http://www.defra.gov.uk/rural/protected/commonland/index.htm>; and PINS website : www.planning-inspectorate.gov.uk/pins/common_land/index.htm





Town & Village Greens and the Law

Some open green spaces are designated as Town or Village Green (TVG). The origins of this designation are similar to those of commons in that they were originally pieces of manorial land that could not support high quality or intense farming. They may be what are sometimes referred to as 'manorial waste lands'.

The differences between common land and town or village greens is that town and village greens are generally small areas of land, they are usually in or on the edge of settlements and they are traditionally areas where local people indulged in lawful pastimes or sports.

How TVGs are protected

Town and village greens, including those newly registered, are protected by two Victorian laws:

- Section 12 of the Inclosure Act 1857 against injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. It imposes a criminal sanction for the offence of injury to village greens.
- Section 29 of the Commons Act 1876 makes encroachment or inclosure of a green, interference with or occupation of the soil or the erection of any structure unlawful unless it is with the aim of improving the enjoyment of the green.

² C here is for Cumberland as the register came into being before Cumbria did! Other VGs are given a W for Westmorland or L for Lancashire.

Neither of these are easy to pursue and in practice there have been few (if any) prosecutions on the basis of these offences. The possibility of a criminal offence being committed will often however have the desired effect.

Town and Village Green register

As with common land you can find out if an open green space near you is a town or village green by asking your Commons Registration Authority. The Commons Registration Office also keeps the register for town and village greens. As with the common land register, each village green has a number, for example VGC34², the characteristics of the land and boundaries are described and shown on a map, the owner is listed and any rights or amendments are shown.

You can visit the office to view the register or access a digital version with interactive maps on Cumbria County Council's website www.gis.l.cumbria.gov.uk/eggp

Most of the TVGs in England and Wales were initially registered as a result of the Commons Act 1965. Their status as village greens arose by virtue of their allotment as a green or by customary rights. If greens were not registered at the time of the Act, they lost their status as a protected Village Green. Since then some new greens have been created but these are still quite a low proportion of the approximately 3870 TVGs in England and Wales.





Creating a new TVG

Up until the introduction of the Commons Act 2006, the 1965 Act was the principle regulation defining registration. The new provisions of the Commons Act 2006 in relation to Village Greens were brought into force in England in April 2007. The 2006 Act now replaces the 1965 Act albeit that the basic principle behind the provisions for registering new greens remains the same.

It is possible to create a new town or village green to protect an area of land that has been used

- for lawful sports and pastimes
- as of right (which means that it was not with permission, force or secrecy)
- by the local inhabitants
- for more than 20 years up to the date of the application

It can be a long process as it involves gathering a lot of evidence to prove that local people have used it for this

period and may lead to an Inquiry in front of a Village Greens Inspector to consider the evidence and legal issues. It is impossible within the confines of this booklet to go into the detail of the cases on registration of new Greens.

Suffice it to say that nearly every part and word of the test for the creation of a green has been subject to litigation and parliamentary debate! Defra may be consulting on a review of this process in 2010 - check the Defra and PINS websites for more information and updates in case the process changes.

It is also possible for a landowner to dedicate an area of land as a TVG under section 15 of the Commons Act 2006.

For more information contact the Open Spaces Society (www.oss.org.uk) or see the Defra and Pins websites : <http://www.defra.gov.uk/rural/protected/commonland/index.htm>; and www.planning-inspectorate.gov.uk/pins/common_land/index.htm





How the law is enforced

It is highly likely that, the vast majority of people in a community will never have heard of the two Victorian laws above (or even the term registered Village Green) therefore won't be aware they're breaking them or that others may be!

But these Victorian Acts only have any relevance if they are enforced. In both cases this means someone needs to know what the law is, notice the offence and then wish to do something about it. Important issues will be whether material harm has been caused to the green, if there has been interference with the public's recreational enjoyment, the proportion of the green affected by development or activity and the duration of interference with the green.

A churchwarden, the owner, a parish, community or district council or an inhabitant of the parish can bring an action (a legal proceeding) against anyone causing an offence in respect of s 12 of the 1857 Act. Anyone living in the parish can bring an action against someone causing an offence in respect of s29 of the 1876 Act.

Legal proceedings are sometimes called 'laying an information', which means you must lay information before the local magistrates' court. In plain English: you (the complainant) should make a written statement in clear language describing the offence, when and where it happened and giving your name and address and that of the person you allege committed the offence. You should send this to the magistrate's court for the area where the green is, a summons may then be issued then the case would come to court and evidence etc given under oath.

The case will have to be proved beyond reasonable doubt. This is a high standard of proof and it can be difficult to prove an offence even in circumstances where at first glance the case looks clear cut.

If the person is found guilty they will probably be given a fine. In practice any fine will be small but it will prevent continuing illegal activity by the defendant on the Green.

If a prosecution is not successful, the Defendant will normally be entitled to seek an order to recover his or her legal costs. An individual should be cautious about pushing a private prosecution for this reason.

Court action can be very costly. Ideally, to avoid this, the green space manager, Parish Council or community group would have reasonable discussion with whoever was committing the offence, and ask them to remove the works or terminate the activity causing problems. This would lead to a negotiated outcome and both sides and the community would live happily ever after without having to resort to legal proceedings and the bad feelings that inevitably ensue. This would certainly be most welcome where, for whatever reasons, the local situation is particularly sensitive.

A common sense approach and open communication locally would always be the recommended way of sorting out / preventing any potential problems or conflicts of interest.

For more information see the Defra web site <http://www.defra.gov.uk/rural/protected/commonland/index.htm>; and PINS website: www.planning-inspectorate.gov.uk/pins/common_land/index.htm, and guidance note 12 on enforcement against unlawful works on common land; also www.hmcourts-service.gov.uk





Section Three: Frequently Asked Questions (FAQs)

The FAQs are mainly about Town and Village Green laws and how they apply to real life situations. We have focused on these because, as discussed above, they are complicated and are what most people, we have met, ask and feel anxious about. Also other open space policy protections differ from district to district making it difficult to give general guidance and there isn't much common land within towns and villages!

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Frequently Asked Questions (FAQs) - Answers

Finding out about a green space

Q1. Is the land protected?

To find out what laws you are dealing with you need to find out whether the land has any protection. There is no single source of this information. Instead we suggest you check the following:

- Your Local Authority's Local Plans or Local Development Framework - this will tell you whether the land has planning protection at all
- The Commons Registration Authority - to see if the land is registered as a Town or Village Green or Common Land. Search for village greens on Cumbria County Council's online GIS map www.gis1.cumbria.gov.uk/eggp or visit the Commons Registration Office in Carlisle
- The Magic website www.magic.gov.uk - to see if the land has any environmental, historical, landscape or other designations that protect it or its features. If you do not have Internet access, contact Natural England in Kendal.
- Check for ownership details (see below). It may be that there are relevant and enforceable covenants that might restrict the use of land.

Q2. Who owns the land?

The only definitive, legally admissible source of landowner information and the register of title is the Land Registration Office. You can use their web site to make an initial enquiry for a small fee: www.landregisteronline.gov.uk

Unfortunately a great deal of open space is not registered with the Land Registry so you may need to do some detective work. Places to search are: Parish Council, church and local estate records; Local Authority archives, county records service (CCC) or the local studies library.

TVGs will have the owners listed on the register, however if no owner was known at the time of registration, ownership was recorded by default to the Parish Council. This is not acceptable as proof. Also be aware that register details may not be up to date!

It is good practice for Parish Councils to get both their spaces and any un-owned open spaces that they've been managing in their parish registered with the LRO. Knowing who the owner is and/or being the owner can help enormously in many situations.

NALC has an agreement with the LRO nationally to help Parish Councils register their land - get in touch with your local LRO for help and advice. In Cumbria CALC and the Durham LRO are working closely together to help parishes register ownership. Get in touch with either of these organisations and see our Open Green Spaces guide to common management issues.

Q3. Who manages the land?

You should be able to find this out by asking your Parish Council (PC). There may be a known and active management group or organisation. Greens in local authority ownership are generally managed by the authority under the Open Spaces Act 1906 or by a scheme of regulation under the Commons Act 1899. In terms of privately owned greens, the law imposes no obligation on a landowner or other party to actively maintain a TVG. A district council, unitary authority or National Park can make a scheme of regulation under the Commons Act 1899 which would place management of the green in the hands of the council or authority. If the owner is content to see the management of the green transferred to the local authority or if there is no known owner, making a scheme may help resolve uncertainty over management. PCs may have powers to maintain greens under the Open Spaces Act 1906.





Q 4. What can we do to keep our green space for future generations?

This depends on how much protection you would like to have and what you think people will want to use the space for in the future.

Talk to your Local Authority about planning protection, evidencing how much your community values the land. If the land is under threat from development then the planning policy / permission process is the best route to raise objections and negotiate on.

The highest-level protection is to register land as a TVG (see the later question on how to go about this) however you might consider this too restrictive.

It is also possible for a parish or local council to create byelaws that prohibit certain damaging activities like dog fouling etc. Unfortunately byelaws can be time-consuming to produce, difficult to enforce and the penalties not sufficiently off-putting to prevent damaging or anti-social activities.

An excellent form of protection is a strong community that's actively involved in looking after and using the green space.

About Town & Village Greens (TVGs)

(the term village green / green from now on refers to Town or Village Greens)

A. General Village Green questions

Q 5. What is a registered Town or Village Green?

As described above a village green is an area of land for local people to indulge in lawful sports and pastimes. This right is protected in law.

This description might conjure up images of bucolic idylls - a mown grassy round, surrounded by cottages, a few trees flowers etc. This can be the case but many village greens can have very different appearances and can also include areas of river or stream. Surprisingly they can also include roads, as legally land can be both village green and highway. The village green might also include some walls or other boundaries.

In some cases the register shows village green boundaries running through buildings, across gardens and car parks. These may be a result of errors in the initial registration after the 1965 Act. There is now provision in the Commons Act 2006 for any of these mis-registered areas to be removed and replaced by correct area of the green / green's boundaries in the register. However, this part of the Commons Act is not yet in force so at the

present time cannot be used. Contact the CRO for more information.

Q 6. Who is our Village Green for?

As the definition states, village greens are for local people. What local means is subject to litigation. At one stage it was thought to be the local administration area. However it is now accepted that a common sense approach to locality is best. Since 6 April 2007, all applications to register new greens must be supported by a description or plan of the relevant locality or neighbourhood. In reality we can think of greens as being primarily for local people, but others can use them too.

B. Things you can or cannot do on village greens

Q 7. What are lawful sports and pastimes?

This can include any lawful recreational activity on the land. So cock-fighting (an illegal activity) would not be allowed, but many other things you could describe as exercise or recreation would. Examples include organised sports and games like football and rounders, kite flying, fishing, archery and shooting (!), riding or racing horses and ponies, children playing, sketching, painting etc, bird watching, snow balling, sledging, blackberrying, dancing round maypoles, having picnics and just wandering about in the open air. Walking dogs is a recreational activity (if it is for the benefit of the people not the dogs) if you can distinguish between use of a path or short cut across the green and recreational use of the land. Where an activity is so inappropriate for an area that it is either a public nuisance at common law or causes significant damage to the green it is unlikely to be treated as lawful, but ultimately that is for the courts to decide.

Lawful recreation does not include commercial activities. So you can pick fruit on a green as long as it is not for sale, but you can't run commercial fairs or use it as a sales pitch.





Q 8. Can we have festivals and events?

Yes as long as they are not for commercial gain and, critically, they do not damage the green itself. If damage occurs then you would fall foul of s 12 of the 1857 Act and s29 of the 1876 Act (see above).

Q 9. Can we let animals graze on our green?

The owner of the land or someone with rights to graze stock can, provided they do not stop people enjoying exercise or recreation. This might mean the green, or part of it, is grazed for a couple of months of the year and people are put off use for that time. Ensuring that the managers have talked with people who are likely to want to use that area in this time and made their decisions openly and widely known then there should not be misunderstandings or bad feeling about a temporary restriction of use.

Problems might follow if you needed to fence part or all of the green to keep animals from straying - this would fall foul of s29 of the 1876 Act.

Q 10. Can we drive on the green?

No. The exceptions are for vehicles involved in life saving or another emergency and for parking, as long as this is within 15 yards (about 13m) from the edge of the road.

Any other driving on land that's not a road is an offence under s34 of the Road Traffic Act 1988; any damage caused by the driver is an offence under s 12 of the 1857 Act and the Criminal Damage Act 1971.

Whilst the general answer is no, the issue of driving on greens and the impact of the legislation is one which has been subject to debate, but there is little authority of how it relates to Greens. When a right of way exists by prescription (that is 20 years use without force, secrecy or consent) lawful authority (i.e. the consent of the owner) is presumed so there is no offence under s34. However there may be issues from the Acts of 1857 and 1876, which might render the use of a vehicle on a green a criminal offence.

Great care would need to be taken if a right to drive was based on either an express grant of a right of way or on the basis of a prescriptive right. There have been cases where a Parish Council has taken a definitive stance that there is no right (to drive), has subsequently lost the case and had to pay very substantial costs.

Q 11. Can we park on the green?

As mentioned in Q 10, it is not a criminal offence to park within 15 yards of a road, however it is important to note that just because parking is not a criminal offence it doesn't make it a right either. Unauthorised parking will be a trespass and, where they are the owners, the Parish Council will have the powers to take action.

Parking is an offence if it damages the green or stops people's recreation or exercise (under the 1857 and 1876 Acts). Driving over a green without lawful authority is an offence under s34 of the Road Traffic Act 1988. So regular parking (especially in our damp Cumbrian climate) will almost certainly cause a criminal offence as car tyres churn up the turf and rain adds to the erosion.

The reality is that in many cases, villages and village greens came into being before the motorcar and certainly without the volume of vehicles we use today. Parking is a real issue in many places and, where alternative places can't be found, people may end up parking on their green and probably damaging it. Local people might tolerate the parking itself but might not appreciate the muddy mess left as a result!

However even if damage is not done to the surface of the Green it is still not lawful as it interrupts recreational use (under the 1857 Act). Parish Councils also have duties to protect Greens as lands they hold in trust for the public under the Open Spaces Act 1906. Parking would not be deemed as suitable use of open space and would therefore be unlawful under this Act too.

There are various options open to managers wishing to protect the edges of the Green from damage through parking. The legally acceptable way to keep cars off the Green and a practical course of action may be to place low boulders (possibly white painted) around the boundary. There are other options which we discuss in our Management Guide to Open Green Spaces

Parking is a real issue and is not likely to go away. Possible solutions need to be talked through thoroughly with everyone in the community and the best way forward decided together in open discussion.

One-off parking

An independent advisory group, the Common Land Forum, recommended that one-off parking for recreational events should be allowed. This has not been adopted in law yet though - again it is up to local people to work out what's best for your situation. However it only takes one committed objector to prevent such a scheme!



Q 12. Can we camp or caravan on the green?

Probably not - legally it has been generally assumed that camping is not a recreational pastime and that someone putting tents up or placing a caravan on a village green may stop other people from enjoying their right to recreation and exercise.

S 29 of the 1876 Act states that any 'enclosure....or erection thereon', e.g. a tent or caravan, is deemed to be 'a public nuisance' i.e. it is an offence under the Act.

A caravan would be deemed to be interfering with the rights (recreational) of others and would probably damage the surface - both offences under the 1876 Act.

The owner also has powers in common law to remove a trespasser.

Camping and caravanning are best controlled by the development and use of byelaws: in the past local authorities have used s77 of the Criminal Justice & Public Order Act 1994 to create byelaws to remove unauthorised campers from their land. Where land is occupied by travellers the owner will need to pursue possession proceedings.

Static Caravans

If caravanning has become a particular problem on a green and neither negotiation nor use of the 1876 Act can be used to find an effective resolution then a district council has powers under s23 of the Caravan Sites and Control of Development Act 1960 to prohibit residential (static) caravans on the green.

Q 13. Can we fence off the green (or part of it)?

No. This is called encroachment. The 1876 Act specifically refers to enclosure of a green, or part of it, as unlawful.

(In the past you may have heard of people applying to the Secretary of State (Defra) for permission to put up fencing on greens or commons. This was under s194 of the Law of Property Act 1925 and applied to greens in existence since 1926. This has now been superseded by the Commons Act 2006 and no longer applies).

Q 14. Can we put buildings up on the green?

Generally no. Again the 1876 Act makes this unlawful. However, if the buildings are put up 'with a view to the better enjoyment of the green' i.e. for the purpose of recreation or enjoying recreation, then they are allowed.

This means small building work like football nets, rugby posts, tennis-courts, play equipment, seats, benches, shelters and even sports pavilions are all OK.

Village halls and community centres, even if they are for the purpose of hosting recreational activities, are deemed as not directly for recreation themselves and therefore not allowed.

So a shelter designed so that people can sit or stand and watch what is going on on the green is ok, but a shelter to wait for the bus (and facing the road) is not.

Remember that you may also need planning or other permissions as well.





Q 15. Can we put a track across the green?

No, because it would 'injure' the surface of the green and therefore is unlawful under both Victorian Acts. This means that putting down private driveways or access tracks would be unlawful

However there is still a question mark over whether an owner can grant permission for a driveway across a green (developing what is called a prescriptive right of way - see above). Cases brought to the Court of Appeal have gone both ways, and the Under-Minister introducing relevant sections of the 2006 Act said that cases would be judged individually and rely on whether the green was injured (damaged) or not.

Where a prescriptive right of way is claimed over a green, specialist advice should be sought as to the merits of that claim.

Q 16. Can we plant trees on the green?

The owner of the green can if it enhances the enjoyment of recreation i.e. there aren't too many and they do not get in the way of whatever recreational activities people enjoy and / or they enhance the look and feel of the green (visual amenity). Fencing off areas for new trees would not be allowable as it would interrupt recreational activities.

What constitutes 'too many' and 'in the way' would be for your local community to decide.

Commercial tree planting or large tracts of planting would cause a public nuisance and interfere with recreational enjoyment so would be unlawful.

Q 17. Can we make a wildlife area, put in a pond or plants?

In theory the owner can if it enhances the enjoyment of the green, but not if it prevented recreational activities! Again this would be for your community to discuss and make sure everyone's opinions and needs were taken into account.

C. Managers and Owners

Q 18. What rights and powers will a management group have?

If the Parish Council is the management group they will have powers under the Open Spaces Act 1906 to maintain, to make byelaws for and to prosecute for interference with village greens and to manage and control land for recreational use or simply as an open space.

Other management groups will have different powers depending on what agreement has been made with the landowner and the local community and what status the land has.

Q 19. No one is managing our green – what can we do?

If there is a known owner then the Parish Council need their agreement to manage the land or they may work together on a joint management plan.

If there is no known owner then the Parish, District, Local or County Council has powers under the Open Spaces Act 1906 to manage the green. In fact they are under an obligation to hold and administer the land in trust for the public.

Where the Open Spaces Act does not apply there is no obligation for the owner or the council to manage and maintain the land even if becomes unfit or unsuitable for recreation and enjoyment. In this case a positive course of action might be for a community group, working with the council and the landowner, to do whatever work is necessary to manage and maintain the green so that everyone can use it for its intended purpose.

Under section 45 of the Commons Act 2006, where land is registered as common land or TVG but there is no registered owner, a local authority or parish council can take any steps to protect the land against unlawful interference and institute proceedings against any person for any offence committed in respect of the land

A district council, unitary authority or National Park can make a scheme of regulation under the Commons Act 1899 which would place management of the green in the hands of the council or authority. If the owner is content to see the management of the green transferred to the local authority or if there is no known owner, making a scheme may help resolve uncertainty over management.

Have a look at our Open Green Space Management Guide for more information and advice (www.ourgreenspace.org.uk).





Q 20. Who else has a say in how our green is managed?

The key people / agencies involved in the management of greens are the ones already listed: the owner, the Parish Council and the community. The other body you may need to consult with on occasion would be Defra (for permissions etc).

If there are other special considerations such as archaeological or environmental features then you'll need to work with the agencies responsible for those aspects e.g. English Heritage, Natural England, the Environment Agency etc

You may also need to work with the highways department at CCC if your management or activities affect traffic flow; with utilities companies if their cables run over or under the green and other agencies relating to access etc

Q 21. What can the owner of a green do (and what can't they do)?

The owner cannot do anything that interferes with people's rights to enjoy lawful recreation and pastimes. [On the other hand, as noted above, the owner doesn't have to do anything to keep the land in good enough condition to be used for recreation.]

The owner can sell the land, and the purchaser takes it subject to its protected Village Green status.

Q 22. What do we need permission from the owner for?

Mostly the same things as you would need permission for from any landowner: management, maintenance, ground works, special events, anything involving any special features, putting things on the land like goalposts etc

What the community does not need permission for is any of the lawful recreational activities mentioned above (and most other lawful recreational activities you might think of).

Q 23. The owner is selling part of the green to someone else – what will this mean?

Very little in terms of its function as a village green. The owner will have to declare this to the purchaser and it is good practice to inform the CRO and amend the register (this is not obligatory though). The blanket protection of village green status stays on the land no matter who owns it.

It may mean that the management group (if they are not the owners) negotiates a new agreement or that the new owner changes how the green is maintained themselves.

Q 24. I own some land in our village – can I dedicate it to the community as a village green?

Yes. This is now possible for the first time with the introduction of S15 of the Commons Act 2006 from April 2007. If you own some land and would like to register it as a village green, complete the application form as for any other registration (see below), tick the section declaring you are the owner and send this in with proof of ownership (the deeds etc). This is a new process, so we can't yet say how long it will take but we estimate that it will be much speedier than community developed applications.

Once dedicated as a Green the owner cannot then change their mind!

Contact the Commons Registration Officer at CCC for more details.





D. Using the laws

Q 25. Our community would like to get our green space registered as village green – what do we do?

To create a new village green you need to make an application to your Commons Registration Authority (CCC) for the green space to be added to the Town & Village Green register. Once it is on the register it is a village green in the eyes of the law and as such subject to the same Victorian protective laws as any other green.

There are two ways to create a new village green: an easy way and a long and time-consuming way! The easy way is to ask the owner to apply to register the land (see above).

The more complicated way is to apply to register the green (s16 Commons Act 2006) because the local inhabitants have used it as of right (without specific permission, but not illegally) for a period of 20 years (up to the time of application) for lawful sports and pastimes. It is complicated and lengthy, as you need a great deal of evidence to prove this regular, uninterrupted use as of right over 20 years. And it can get even trickier if someone objects to your application.

The information we have given here is just an overview of the process. This is because there is now a guide covering the new regulations arising from the Commons Act 2006 giving very detailed information and advice on how to go about registering a new village green from the Open Spaces Society and guidance on the Defra website. If you are interested in applying for registration we would strongly recommend you get hold of a copy of this guidance before you start! Defra may be consulting on a review of the registration process in 2010 - check the Defra and PINS websites for more information and updates in case the process changes.

Q 26. We do not want to have a village green anymore – what can we do?

Not a great deal. Unless the green was mis-registered in the initial round (and you can prove this) then it is virtually impossible to have it taken off the register.

Q 27. We would really like to use part of our green for something else (a community centre for example) – what can we do?

The only option here, and it is now an easier option as a result of the 2006 Act, is to apply to the Secretary of State (Defra) for a land exchange.

A land exchange involves removing the village green status from an area of the existing village green land parcel (the release land), finding an area of land that's equivalent in terms of area, access and physical characteristics and covering this new area with the (removed) registration status. You do not need to buy the new piece of land but the landowner will have to authorise the registration of their land (they co-sign the exchange forms).

Defra will make their decision by taking into account the interests of those having rights over the release land (this is primarily the recreational rights of local people), the interests of the neighbourhood (the exchange isn't going to adversely affect local people / most people in the area are happy with the exchange) and the public interest (nature conservation, landscape character, access and protection of archaeological / historical features are not adversely affected).

If you are intending to apply for a land exchange under s 16 and s 17 of the 2006 Act you'll have to have consulted with everyone locally and all the other groups / agencies who have an interest in the land.

It is possible but it will require quite a lot of effort and some expense. You will probably also have to apply to the local planning authority for change of use permission for the new land.

For more information on land exchange, see the Defra and PINS websites : <http://www.defra.gov.uk/rural/protected/commonland/index.htm>; and : www.planning-inspectorate.gov.uk/pins/common_land/index.htm





E. TVGs and other laws

Q 28. How does the Disability Discrimination Act affect access to Village Greens?

The Disability Discrimination Act 1995 (as amended by the DDA 2005) places a legal duty on all those who manage any premises (being land of any description) to ensure that they do not discriminate against a disabled person's use of any benefits or facilities on those premises or by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities. 'Reasonable adjustments' to the premises are required in order to ensure that this legal duty is not breached.

For more information please have a look at the Fieldfare Trust's web site and publications or the Sensory Trust's web site. By All Reasonable Means is a guide to improving access for outdoor and countryside managers. You may also find Easy Access to Historic Landscapes very useful. Both are available via www.sensorytrust.org.uk

Q 29. How does Human Rights law affect Village Greens?

The judgements made in the Trap Grounds case show that the landowner's human rights are not affected by a community registering that land as a village green. See Defra website.

Q 30. Can utility companies / local authority put a compulsory purchase order on our green?

Yes, but to do so the order must be subject to a special parliamentary procedure. If the land is less than 250 square yards in area, needed to widen a highway, is being purchased for its protection or suitable land is given in exchange then the Secretary of State can make an order without going through parliament. This falls under the Acquisition of Land Act 1981.

Q 31. Does TVG have open access on it? If it does then does everyone have access or just locals?

No. CROW (Countryside and Rights of Way Act which allows open access) does not apply to Village Greens. It applies to Registered Common Land but, as discussed, that is a separate classification. However it is important to check whether the village green in question does not come under the definition of 'access land' to which CROW does apply. Access Land includes:

- Land mapped in conclusive form as open country (mountain, moor, heath or down)
- Land dedicated under section 16 by a landowner

It is important to remember that CROW does not affect public rights of way and if one exists on the village green you must ensure the right of way is clear of any obstruction. For more information on open access see www.openaccess.gov.uk





Section Four: Useful Contacts

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The Our Green Space project and its communities

The Our Green Space project aims to protect, enhance and celebrate the open green spaces of Cumbria's towns and villages and their heritage, culture and environmental assets. The innovative project funded by the Heritage Lottery Fund and Friends of the Lake District (FLD) hopes to empower local communities and facilitate the conservation of other greens and common land throughout Cumbria. At a strategic level the project is working to develop a greater understanding of the importance, value and potential of green spaces within statutory and other key stakeholder organisations.

The project is managed in partnership by FLD and Action with Communities in Cumbria (ACT) and supported by local, regional and national organisations including Cumbria County Council, Lake District National Park Authority, The National Trust, Cumbria Association of Local Councils (CALC) and the Council for Voluntary Services (CVS).

The project is working with five Cumbrian communities which will act as a learning resource and good practice model for others. Each community scheme highlights different issues facing communities trying to manage green spaces. Learning from the communities, photo galleries, key documents and further information on all aspects of the project can be found at: www.ourgreenspace.org.uk or email info@fld.org.uk

Barrow

Barrow - The Marsh Street Arches and Garden Project has transformed an old rail yard into a green oasis in the middle of an otherwise urban landscape. The new green space improves the image and appearance of the area and provides accessible green space that will improve the physical and mental well being of the local community. Named by local school children as 'The Green Heart Den', it brings together many different sectors of the community - the police, schools, community groups and students who can learn about their local environment, wildlife and history of the area, celebrate the social and industrial past and enjoy activities and events. For more information visit: www.greenheartden.blogspot.com or the OGS website pages on Barrow or email: greenheartden@aol.com

Burgh by Sands

Burgh by Sands - The community at Burgh worked together to buy a substantial piece of land in the village to create a new community green space. This

ambitious community groundwork project is developing a recreation and cricket pitch alongside a picnic area and a wetland with pond, meadows and ditches. The heritage and tourism aspect of the project included mapping walks around the village and onto the Marshes, on site interpretation and oral history workshops. For more information email: tim.bradbury@cumbriacc.gov.uk or see the OGS website pages on Burgh

Great Asby and Little Asby

Great Asby and Little Asby - Great Asby has six registered village greens running through the village beside a beck, between church and houses. The community of both villages have a mainly historical documentary based project working closely with the village school, local crafts people and volunteers. They are focusing on felt making, well dressing, oral history and historical research, investigation of footpaths and bridleways, surveys of the greens and historical walks. For more information visit www.asbyhistorygroup.co.uk; the OGS website pages for Asby or email Graham.parkin@ktd.internet.com

Newbiggin

Newbiggin - This project contains ground works, historical documentary and education aspects focused on the restoration of two covered springs in the village, their usage, history and cultural value. The project has also provided a focus for research into and revival of local customs and traditions associated with village greens and village springs in Cumbria. For more information email newbiggin@onetel.com or see the OGS website pages for Newbiggin.

Nether Wasdale and Wasdale Head

Nether Wasdale and Wasdale Head - The Registered Village Greens at Wasdale Head and Nether Wasdale are focal points for this community project. The aim is to enhance the visual, recreation and amenity value of the spaces through drainage, boundary and restoration work, interpretation of the areas and community events to celebrate their culture, heritage and value. The maypole on the green at Nether Wasdale has been renovated and celebrated with a May Festival. For more information email killick.wasdale@btinternet.com or see the OGS website pages for Wasdale.



This guide has been produced by the Our Green Space project - a partnership between Friends of the Lake District and Action with Communities in Cumbria, supported by the Heritage Lottery Fund. It is based on a guide originally developed by Jo Chaffer of the Rural Greens project, with input from John Collins & Partners LLP and Nicola Hodgson of the Open Spaces Society.

This is one of a series of three Open Green Space guides for managers. The others cover the management of open green spaces, and managing for wildlife.

