

# Registration of new town or village greens – monitoring survey of section 15 of the Commons Act 2006

In October 2009 Defra undertook a repeat of a survey of all commons registration authorities in England previously conducted in 2007 to gauge the level of registration activity under section 15 of the Commons Act 2006. Once again the survey sought information about the number and outcome of applications which were submitted, but this time between 2007 and 2009 (last survey covered 2003-07). The survey also asked for information about the cost of public inquiries to determine disputed applications, and for comments on the registration system under the 2006 Act.

Approximately 43% of authorities responded, and the results are considered to be reasonably representative of all authorities in England. The survey results have therefore been used to estimate activity data for England as a whole, based on an analysis of responses classed by London borough, metropolitan district, non-metropolitan counties, and unitary authorities.

This report summarises the survey data, showing, for each question asked, the activity reported in the survey, **and in parentheses, the estimated activity for England as a whole**. The full survey data are available in an Excel workbook on the Defra website.

Please note that responses may not necessarily agree: for example, in relation to any particular period, the number of applications determined in that period should be equal to the sum of applications rejected and granted in that period, but there are disparities in each year from 2007 to 2009. These disparities are most likely explained by authorities' different interpretation of the questions asked of them.

## Survey Results

### 1 Applications under section 15(1) from 2007 to 30 September 2009

	2007	2008	2009
No. of applications	80 (143)	105 (196)	75 (139)
No. determined (excl. any withdrawn)	23 (44)	37 (73)	40 (77)
No. rejected (incl. any not duly made <sup>1</sup> )	19 (35)	29 (52)	44 (79)
Of those rejected, how many were not duly made	5 (9)	10 (18)	23 (39)
No. granted	9 (18)	13 (26)	9 (17)
No. of public inquiries <sup>2</sup>	14 (26)	25 (48)	21 (40)

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<sup>1</sup> Not duly made means the application was lacking the requisite information to enable it to be processed and determined.

## 2 Public inquiries for section 15(1) applications from 2007 to 30 September 2009

applications made in:		
2007	2008	2009
Barristers x 14 = £195,716 total (26 = £358,265)	Barristers x 24 = £510,803 total (47 = £1,028,668)  Planning Inspectors x 3 = £31,807 total (6 = £60,112)  Senior solicitor x 1 = £1,750 total (3 = £4,583)	Barristers x 17 = £219,073 total (33 = £377,010)  Planning Inspectors x 3 = £19,040 total (6 = £29,619)  Senior solicitor x 1 = £8,053 total (2 = £12,527)

## 3 Applications submitted under section 15(8)<sup>3</sup> from 2007 to 30 September 2009

	2007	2008	2009
No. of applications	7 (13)	13 (23)	12 (20)
No. determined (excl. any withdrawn)	1 (2)	8 (15)	7 (11)
No. rejected	0 (0)	1 (2)	1 (2)
No. granted	1 (2)	6 (11)	8 (12)

## 4 General comments

### Process and regulations

- It is confusing having some parts of the Act rolled out in certain areas and not others.
- The lack of definitive guidance e.g. by way of a circular etc, can be frustrating for both the registration authority and other interested parties. (x2)
- The application checklists developed for the pilot areas would be a good aid to all authorities when 2006 Act is implemented.(x2)
- More detailed guidance on what constitutes an application 'not duly made' would be welcomed. (x5)
- It is not appropriate to be prescriptive as to the process, as this will depend in part on the issues raised by each application, so the authority needs to have discretion in determining each application.

<sup>2</sup> A public inquiry, in the context of greens applications, is one presided over by an impartial person in order to determine the facts and the law using the testimony of the interested parties. It does not include a hearing before a committee.

<sup>3</sup> Voluntary registration of the land by the landowner.

- Few applicants seem to understand the identification of the locality or neighbourhood. Perhaps this could be made clearer in the form.
- It is fair that the owners of the land should be able to see the evidence against them, but we are advised that we cannot disclose the identity of the witnesses as this would be in breach of the data protection rules. The user evidence forms do not advise those completing them that their names and addresses will be disclosed to third parties.
- There should be a stricter time table laid down for both applicants, respondents and also perhaps the authority. (x2)
- There appears to be very little guidance for anyone other than the applicant in the process - the regulations do a huge leap from looking at the application to completion of the registration!

### **Role of registration authority in determining applications**

- Would be helpful to have further clarification of authority role in determining application when it is also the land owner. (x3)
- The cost of non-statutory inquiries is a huge burden, yet we feel we have to do it because of the risk of judicial review if we get it wrong.
- Disappointed that the regulations do not set out proper procedures when determining a matter without using an independent inspector.
- The quasi judicial function of the registration authority may suggest that determination of applications to register could be more consistently administered if conducted at a national central level, e.g. a government department or Planning Inspectorate following the existing model for the determination of opposed Definitive Map Modification Orders, including holding inquiries or hearings under the statutory procedural rules. The procedure could also incorporate an appeal process other than by way of Judicial Review, again similar to the current rights of way model and Schedule 14 Wildlife and Countryside Act 1981. (x6)

### **Costs/funding**

- It is essential that a fee can be charged for applications as there are costs involved. (x17)
- The authority owns a large amount of land so has a great onus in terms of land management which is costly as well as the costs involved in defending claims made against its own land. These costs fall on the authority as landowner and registration authority and money has to be found to provide a budget for these applications
- The cost of public inquiries is very high and our budget can only extend to a fixed number of applications per financial year. (x3)
- Maybe there should be an independent panel to decide contested cases, but would need a great deal of training. (x2)
- Do not believe that application fees are appropriate. Not all applications are spurious and setting fees too high could deter genuine applications.
- Still far too expensive to use barristers and planning inspectors are not any cheaper either. (x3)
- There are substantial costs implications when an application is made and unmeritorious claims should have costs awarded against the applicant. (x3)

- Unfair that the whole burden of determining the application should fall on the registration authority, and Government should assist in the costs. (x3)
- The processing of applications through to public inquiry is a huge drain on resources in a time of increasing budget restraints. All applications received to date are to halt development, applicants express the desire/need for a public inquiry. On the whole applications are becoming more contentious.
- It is galling to have to go through an expensive procedure just to demonstrate that all parties have had a fair impartial hearing, even when it's pretty clear at the outset that an application is likely to fail. It is rare that we have felt able to dispense with an inquiry, simply because we are concerned about public perception.

### **Other**

- If no reasonably suitable alternative can be found, a publicly beneficial development on a green can be frustrated. In such cases it might be advisable to have a system which can remove the status of the green. (x2)
- Applications are often made to prevent development proposals. However, development is regulated by the planning system. Also the restrictions on what can be done on greens can have the effect of preventing management or regulation of competing recreational uses.
- Would prefer the registration process to be more plan based - we need clear plans at the correct scale, large enough to be able to show any areas of dispute. Inspectors should be encouraged to use plans, not just written descriptions which can be ambiguous. This applies in particular to amended applications where land is added or removed from the original application.
- We are under increasing pressure to expedite applications where planning permission has been granted. We currently have no written policy on this - our normal practice is to deal with applications in chronological order, but we may have to review this policy where there is a significant public benefit in the expedient determination of an application.
- Guidance notes need to warn applicants that it can be a time-consuming onerous exercise.

### **Are there any procedural changes to the registration system that you would like Defra to consider?**

- Amendment to the applicable criteria/definitions thereof would be of great assistance in making the determination of applications more straightforward (saving cost and time on such applications).
- Abandon the transition periods for making applications in section 15 to stop applicants making new applications when their applications made under the 1965 Act have been rejected.
- Should provide a statutory right of appeal to the Secretary of State.
- Defra should publish standard user evidence form on website (including data protection caveat). (x2)
- Need to clarify legislation for a procedure for the formal withdrawal of applications.
- Make it compulsory for interested parties to apply to amend the register when rights and properties are transferred.

**Department for Environment, Food & Rural Affairs,  
Commons Team  
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