

## **THE PROVISION OF PLAY AND SPORTS EQUIPMENT ON VILLAGE GREENS**

### **Introduction**

1. Town and village greens are open spaces that local inhabitants can use for 'lawful sports and pastimes' registered under the Commons Act 1965 or the Commons Act 2006. What constitutes 'lawful sports and pastimes' may vary from place to place but can include both organised and unorganised outdoor recreational activities. The courts have not defined 'lawful sports and pastimes' but have stated that its scope is broad and can include sports such as cricket, tennis, football and bowls. In the House of Lords (now the Supreme Court) case *R v Oxfordshire County Council ex parte Sunningwell Parish Council* ("Sunningwell"), 'pastimes' were held to include:
  - dog walking;
  - children playing;
  - flying kites;
  - picking blackberries;
  - fishing; and
  - tobogganing in the snow.
2. Local councils can erect equipment (either temporary or permanent) for lawful sports and pastimes, including children's play equipment (such as swings and roundabouts), goal posts, tennis courts, cricket nets and other permanent or seasonal sports.
3. Specific planning permission is not required for the erection or maintenance of small buildings, works and equipment intended for recreation on council land (see paragraph A, part 12 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 SI 1995/418).
4. Non-recreational activities on village greens are generally unlawful and often criminal, pursuant to section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. The two acts are known as "the Victorian Acts".
5. Section 12 of the Inclosure Act 1857 states that it will be an offence:

'If any person wilfully cause any injury or damage to any fence of any such town or village green ... wilfully and without lawful authority lead or drive any cattle or animal thereon, or wilfully lay any manure, soil, ashes or rubbish or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green ... or to the interruption of the use or enjoyment thereof as a place for exercise and recreation.'

9. Section 29 of the Commons Act 1876 states:

'an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance ...'

10. Section 29 of the Commons Act 1876 is particularly relevant to the placing of equipment on a green. To do so is undoubtedly an 'encroachment' and an 'erection' on a green and is thus unlawful **unless** carried out 'with a view to the better enjoyment of' the green. Clearly, any play or sports facilities provided to assist local people to indulge in lawful sports and pastimes come within the exception, so that a local council may lawfully provide these on a village green without infringing the Victorian Acts.

11. It is not always easy to determine whether an activity amounts to an 'interference' or an 'interruption' or is for 'the better enjoyment' of a village green. There has been very little case law to assist with interpretation. In *R (on the Application of Laing Homes Limited) v Buckinghamshire County Council* (2003) the High Court stated simply:

'If a village green is established, any other use involving acts which would interrupt its use for enjoyment and recreation are effectively prohibited.'

12. NALC takes the view that the following activities may be undertaken for 'the better enjoyment' of a village green:

- the siting of cafés, sports pavilions, bowling areas, tennis courts, football and cricket pitches, and skate boarding parks; and
- fetes (this was considered a use compatible with a village green in Sunningwell.)

13. There is a limitation on the size of any building built on a village green. Under section 20 of the Open Spaces Act 1906, an open space, which includes a village green is defined as :

“any land, whether inclosed or not, on which there are no buildings or of which not more than **one-twentieth part** is covered with buildings, and the whole of the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied:

14. NALC takes the view that the following activities may not be undertaken for the better enjoyment of village greens and may, therefore, be unlawful:

- general car parking (i.e. which is unrelated to the recreational use of a green);
- private driveways;
- some (intrusive) wayleaves; and
- the siting of mobile telephone masts.

The test under section 29 of the 1876 Act is whether the erection is made with a view to the better enjoyment of the town or village green. If it is, no offence of public nuisance is committed. Local consultation and perhaps consultation with a group like the Open Spaces Society (who are active in opposing infringements on town or village greens) may be a sensible precaution - see

<http://www.oss.org.uk/?gclid=C16E8N-uv8YCFQoYwwodVYcNpA>

15. The issue of easements over village greens is covered in Legal Topic Note 57 Easements over Common Land and Village Greens.
16. In a few cases, rights of common (e.g. to graze animals) have been registered over a green. These rights co-exist with the right of the local inhabitants to use the green for recreation. If play equipment etc. is placed on such a green which obstructs the exercise of common rights, the right holders are entitled to take legal action to remove the obstructions. Accordingly, the council should ensure that play equipment does not interfere with the exercise of commoners' rights before putting it on the green. Additionally, where a village green is subject to rights of common, reference should be made to section 38 of the Commons Act 2006 (England only) which prohibits works without consent.

## Bringing Proceedings under the Victorian Acts

17. Under section 12 of the 1857 Act, the ‘churchwarden or overseer of the parish in which such town or village green or land is situate, or ... the person in whom the soil of such town or village green or land may be vested’ may commence proceedings in a magistrate’s court. Section 189 of the Local Government Act 1972 states that any reference to a ‘churchwarden or overseer’ should be read as referring to the parish council (or parish meeting if there is no separate parish council), or the community council.
18. A breach of section 29 of the 1876 Act may be prosecuted by the persons mentioned above and also by ‘any inhabitant of the parish in which such town or village green or recreation ground is situate.’
19. The Victorian Acts give power to parish councils, owners and inhabitants to commence proceedings. It is not entirely clear whether the police also have the power to commence proceedings as no express power is given to them. In NALC’s view, the police do have the power. Some legislative provisions state that proceedings may *only* be commenced by local authorities (e.g. section 77(4) of the Rent Act 1977) but that is not the case in respect of the Victorian Acts.

### Other Legal Topic Notes (LTNs) relevant to this subject:

| LTN | Title   | Relevance  |
|-----|---|--|
| 15  | Legal Proceedings                             | Sets out considerations for local councils starting legal proceedings                |
| 20  | Markets and Similar Events                    | Sets out the powers of councils to hold markets, shows and similar events            |
| 23  | Health and Safety                             | Sets out local councils’ duties  |
| 42  | Occupiers’ Liability                          | Sets out the councils’ duties as occupier of the land                                |
| 53  | Protection of Common Land                     | Sets out the provisions of section 38 of the Commons Act 2006 Act in further detail. |
| 57  | Easements over Common Land and Village Greens | Sets out the responsibilities of councils to protect village greens in more detail.  |