



## 'TOWN AND VILLAGE GREENS' – HOW THIS CAN AFFECT FUTURE DEVELOPMENT OF YOUR LAND



Any area of land that has been used by local people for sports and pastimes as of right for at least 20 years is capable of being classified as a town or village green ("TVG"). The consequences of such a classification may frustrate or delay development of land.

The Law pertaining to TVGs has evolved significantly from its customary law origins. Under section 15 of the Commons Act 2006, anyone can apply to register land as a town or village green, where:-

*"A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for*

*a period of at least 20 years"*

There is a body of case law analysing in detail each of the requirements above, but prevention (where possible) is better than the cure. Landowners need to assess and address risks prevented by TVG legislation, which many commentators see as providing a means for members of the public to submit spurious applications in order to stymie development.

Against this background, the Coalition Government is now actively looking at ways of protecting development sites and making sure that the legislation is used for its original purpose to preserve and improve the protection afforded to town or village greens and prevent those areas of land from being lost to unscrupulous landowners and developers.

Until the legislation is reviewed by the Coalition Government it is imperative that landowners actively monitor the land they own to identify any activities by members of the public which could possibly amount to use of the land "as of right". Where such activity is detected, developers need to take positive steps to challenge that use and to show there is no acquiescence to it, including the following.

1. **Signage** – but get it right. In R v Oxfordshire County Council (2010) – the landowner had erected signs which stated "No public right of way" however the court held that the signs directed only to the paths on the land and not the whole of the land. However, notwithstanding persistent vandalism and damage, appropriate signage was considered adequate (together with other evidence) to de-register a TVG which had been registered for 9 years Betterment Properties (Weymouth) Ltd v Dorset CC 2010.
2. **Fencing** – In the Betterment case above, the landowner had consistently taken steps to repair fences which were persistently damaged by members of the public. Where development land is fenced off, developers should ensure a regular inspection regime is implemented to maintain the integrity of the fences.
3. **Due Diligence** – Before buying land, developers should ensure that all appropriate searches and enquiries are made pre-contract. Remember, usually, the Seller's solicitor is bound by responses given in writing. A Commons Registration Search must be carried out. If there is doubt over former use of land, statutory declarations as to historic use should be sought from the owner or previous owner.

### LIVERPOOL

Horton House, Exchange Flags, Liverpool, L2 3YL  
0151 600 3000

### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921

4. **Compulsory purchased land with planning permission** – In the recent case of BDW Trading Ltd (t/a Barratt Homes) v Spooner (2011) land was compulsory purchased by the local authority. The land was then sold to a developer and planning permission was granted. Subsequently, an application was then made to register the land as a TVG, the matter went to an inquiry and the inspector recommended registration as a TVG. The High Court held in that case, that the combination of the CPO and grant of planning permission trumped commons registration.

If all else fails then it may be possible to obtain legal indemnity insurance, but this will not prevent such registration and will be expensive. What it may provide, subject to the exact terms of the policy, is a war-chest to cover legal and other expenses in the event matters go to trial for determination. It may also cover wasted costs including architects fees, planning application costs and other associated costs. Importantly, it should also provide compensation for any reduction in land value arising as a result of land being determined as a TVG.

**For further information or help with any land issues you may have please contact:**



**Rupert Jackson**  
Head of Agricultural Law  
Tel: 0151 600 3396  
Email: [rupert.jackson@brabnerscs.com](mailto:rupert.jackson@brabnerscs.com)

#### DOES AN OLD FARMHOUSE QUALIFY FOR AGRICULTURAL PROPERTY RELIEF?

The First Tier Tax Tribunal has confirmed that the principals for establishing whether a farmhouse is character appropriate is still one of fact and degree, taking into account all surrounding circumstances.

In the case of *Golding and Middleton v HMRC*, the Tribunal heard that the deceased had for more than 65 years farmed 16 acres of land and throughout this time lived on that land in a 3 bedroom house where he had raised his family. His executors claimed Agricultural Property Relief (APR) on the house, land and farm buildings thereon. HMRC accepted at the outset that the land and farm buildings attracted APR and that the house was in fact a farmhouse. However, it considered that the farmhouse was not character appropriate to the land and therefore could not attract APR.



#### The facts

When the deceased commenced farming he had 600 free range chickens and 7-10 cattle. He harvested fruit off the trees and grew vegetables. The farm produced milk and grew wheat, barley and oats for sale. The deceased used buildings on the land for agricultural purposes and stored some of the picked fruit in one of the bedrooms in the house.

By the time the deceased died, aged 81, he had mainly been growing vegetables for his own consumption and had only 70 hens. He no longer kept any cattle and the eggs the farm produced were sold to a handful of customers from the farm gate. Financial reports prepared by HMRC's expert showed that the turnover of the farm ran to only a couple of thousand pounds a year, and that the deceased could not possibly survive on this income alone.

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Horton House, Exchange Flags, Liverpool, L2 3YL  
0151 600 3000

#### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

#### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921

The Tribunal heard that the house itself was in a poor condition, nearing dilapidation, with no electricity upstairs, the only bathroom downstairs, the kitchen 'spartan' and the roof being covered in part by tarpaulin.

The executors alleged that the deceased had worked the farm until his death, he declared his takings to HMRC as business receipts which HMRC had always accepted as such and he had purchased a new tractor and trailer only 2 years prior to his death. The Tribunal heard that the deceased was content to maintain a straightforward rural life and that after his family had grown up and moved away he did not require the same level of income as he had previously. They conceded however that the income from the farm represented at most 25% of the deceased's total income and that he had relied heavily on his life savings. The executors evidenced that there were comparable size farms with similar farmhouses and that historically, the house had always been used as a farmhouse.

HMRC considered that a 3 bedroom farmhouse occupied with 16 acres of land was not suited to modern farming practices and that there did not need to be a house present to farm the land. HMRC argued that in considering whether a farmhouse was of character appropriate the level of farming activity and the functional requirement of the farmhouse needed to be taken into account. It argued that the deceased's activities were unlikely to give rise to any profit at all. HMRC calculated that the deceased's 70 hens represented less than 1% of a commercial bird free range unit and the time spent working the farm could only amount to 4% of the annual labour requirements. On that basis, it concluded that the level of activity on the land did not give rise to a functional requirement for a dwelling house to serve the land. Further, HMRC argued, the state of repair of the house was below standard.

### The decision

The Tribunal found that the farmhouse was character appropriate to the 16 acres of land farmed with it. It was satisfied that the state and condition of the farmhouse was such that it would only be acceptable as a farmhouse and acknowledged that farmhouses did not often meet the higher luxury standards that a normal domestic property would.

The Tribunal asked itself whether the deceased was farming. It accepted that the farm was not profitable, but the fact that the deceased had been self funding and had not relied on any government assistance indicated that he had sufficient income. The recent purchase of the tractor and trailer also evidenced that the deceased was working the farm. It noted that the deceased was elderly and it would be unreasonable to expect there to be extensive activity. The lack of substantial profit was not found to be detrimental to whether a farmhouse is character appropriate so long as there was in fact farming activity.

The fact that HMRC had accepted the deceased's submission of business receipts during his life time and that it had agreed that APR could be claimed on the land and the farm buildings did not escape the Tribunal's attention. The Tribunal went on to note that the only purpose for which the farm would be purchased would be to work it up to its former potential.

The Tribunal referred to the principals of character appropriate laid out in the *Antrobus* case. It found that historically the house had been used as a farmhouse and that it was of a size and proportion suitable for the farming of the 16 acres it served.

### Conclusion

In determining whether a farmhouse will attract APR, the following factors will be relevant:

1. Whether the house is of a size and proportion suitable to the land it serves
2. Whether the house been historically used as a farmhouse
3. Whether a reasonable person would initially consider it as a farmhouse
4. Whether the rural lay person would consider the house to be a farmhouse
5. Whether the house dominates the land it serves

It is clear that the standard of living is to be assessed through the eyes of the working farmer and not measured against a normal domestic residence.

#### LIVERPOOL

Horton House, Exchange Flags, Liverpool, L2 3YL  
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#### MANCHESTER

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The Tribunal has made clear that the profitability of the farm is not a relevant factor and has acknowledged that as farmers grow older and their work rate drops that the resulting reduction in income will not prevent APR from applying.

**For more information on looking after your wealth, wills and estate planning matters please contact:**



**Duncan Bailey**  
Partner, Private Client  
Tel: 0151 600 3451  
Email: [duncan.bailey@brabnerscs.com](mailto:duncan.bailey@brabnerscs.com)

## YOU MAY NEED TO REGISTER YOUR SEWAGE TREATMENT SYSTEM OR SEPTIC TANK!



If your home connects to a small private sewage treatment system or septic tank, you may be required to apply for an environmental permit from the Environment Agency, or register with the Agency as exempt from the need for a permit.

If you fail to obtain a permit or register when required to do so, then you will be committing a criminal offence. In England, the registration requirement has recently been relaxed pending a Government review of the registration requirement, though the existing system has been kept in place so that householders and relevant occupiers of land can still register for an exemption if they wish, perhaps to enable a house sale.

In Wales, the existing registration system remains which means that the existing registration deadlines still apply, so in Wales discharges to surface water must be registered with the Agency immediately and discharges to groundwater by 1 January 2012.

### Background

The Environmental Permitting Regulations 2010 came into force on 6 April 2010 and changed the rules regarding discharges of domestic sewage effluent from small septic tanks and sewage treatment plants to surface water or groundwater. The Regulations require all small septic tanks and sewage treatment plants to be permitted by the Environment Agency, or registered as exempt. The Regulations also place certain duties on householders and relevant occupiers of land regarding maintenance of the septic tank or sewage system and the provision of information regarding such systems to a new occupier. The Regulations still apply, except that the Agency will not pursue registration for certain discharges to surface or groundwater in England whilst the Government review is underway. Despite this relaxation in enforcement policy, permitting or registration may still be required.

### Registration

If you choose to register for an exemption, the sewage in question must be domestic in nature and must not contain any trade effluent. The sewage system must meet certain conditions including:

- 1. Size** – The maximum size of sewage system that can be registered is 5 cubic metres per day to surface water via a package sewage treatment plant, and/or 2 cubic metres per day to groundwater via a septic tank and infiltration system.

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**2. Location** – New discharges that are close to environmentally sensitive sites cannot be registered as exempt and may need a permit. New discharges must not be within 30 metres of a public foul sewer and cannot be to an enclosed bank or pond. Where required, planning and building control approvals should be obtained before registering.

**3. Design, construction and installation** – Must meet current British Standards. However existing systems (installed prior to 6 April 2010) can be designed and constructed in accordance with the relevant standards at the time of installation.

**4. Operation and maintenance** – Professional servicing and routine checks must be undertaken and the records maintained.

### Registration guidance

- You do not need to register a cesspool or cesspit, so long as these are sealed systems with no discharge to the environment.
- A discharge from a septic tank straight into surface water cannot be registered. You need to apply for an environment permit or install better treatment for the sewage.
- Registration of a small discharge activity is free of charge and can be done online or by completing a paper form. The Agency will charge a one-off fee for a permit application should one be required (fees currently range from £125 to £885).
- If the discharge includes sewage from more than one property, the discharge only needs to be registered once, and any of the occupiers can register the discharge.
- If you have already obtained a consent to discharge from the Agency, you do not need to register. But if the location to which you discharge changes, you will need to register.
- If you move house, there is a duty on the current occupier (be this owner or tenant) to provide the next occupier (or landlord) with written information regarding:
  - i) Any exempt discharge activity
  - ii) The conditions that must be satisfied to stay exempt; and
  - iii) Any maintenance records from the last five years.

### Enforcement and Penalties

Failure to obtain a permit or exemption is a criminal offence which, depending on the severity of the offence, could result in a fine and/or imprisonment. In light of the current Government review, the Agency has confirmed that they will not pursue registration for a small sewage discharge in England where the:

- Discharge is to ground and is of 2 cubic metres per day or less (this is approximately equivalent to 9 people occupying a single property) via a septic tank and the soakaway is outside a Source Protection Zone 1 (SPZ1). This does not affect the need to apply for a permit for existing sewage discharges made (before 6 April 2010) to groundwater within SPZ1
- Discharge is to surface water and is of 5 cubic metres per day or less via a package sewage treatment plant. This is approximately equivalent to 31 people occupying a single property (for example a small school or residential home)
- Sewage is only domestic
- The sewage system is maintained in accordance with the manufacturer's instructions and a record retained of all maintenance (including regular emptying of septic tanks)
- Discharge does not cause pollution of surface water or groundwater.

However, if a discharge causes or is likely to cause pollution, the Agency may consider taking enforcement action.

### Registration requirement (England)

At the moment, registration is not required in England if you meet the criteria outlined above, but you may still voluntarily register and you will need to register if you cannot meet the criteria set out by the Agency. The result of the Government review is expected to be announced in the next few weeks. We will provide an update on this in due course.

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Horton House, Exchange Flags, Liverpool, L2 3YL  
0151 600 3000

#### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

#### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921

If you would like further information on the issues in this article or for any environmental and regulatory matters you may have please contact:



**Claire Gregory**

Head of Environment and Regulatory  
Tel - Liverpool office: 0151 600 3284  
Tel - Manchester office: 0161 836 8858  
Email: [claire.gregory@brabnerscs.com](mailto:claire.gregory@brabnerscs.com)

### TRANSFER OF PRIVATE SEWERS AND DRAINS – WHAT THIS MEANS FOR PROPERTY OWNERS



On 1 October this year, the Government transferred all sewage pipes outside the boundaries of a property to local water and sewerage companies - and you may have received a letter from your local water supplying company relating to this.

At the present time, property owners are usually responsible for the sewage pipes that drain into public sewers – up to the point where they connect with those sewers. People are often unaware that they are responsible for repairs and on-going maintenance of these drains or pipes until a problem arises and they are faced with a large bill.

The transfer will provide more effective maintenance, reduce disputes over repair costs and will allow better management of the sewerage network. The cost of the transfer will be met by an increase in water/sewerage rates.

Property owners will remain responsible for the private drains within their boundary, but concerns have been raised about home owners who wish to build an extension or conservatory – will this require buildover agreements with the local authority? We await a decision on this, but in the meantime those owning or buying property ought to be aware of this.

The Government body DEFRA (Department for Environment, Food and Rural Affairs) has estimated that the rise in home owners' bills will be between £3 to £14 per annum, dependant on the state of the pipes and also on OFWAT, who regulate the water industry's charges.

If you require more information or have any concerns with regards to your property and the transfer issues that may result from this please contact:



**Philip Byrne**

Associate, Commercial Property  
Tel: 0151 600 3311  
Email: [philip.byrne@brabnerscs.com](mailto:philip.byrne@brabnerscs.com)

**LIVERPOOL**

Horton House, Exchange Flags, Liverpool, L2 3YL  
0151 600 3000

**MANCHESTER**

55 King Street, Manchester M2 4LQ  
0161 836 8800

**PRESTON**

7-8 Chapel Street, Preston PR1 8AN  
01772 823921

## EASING OF PLANNING RED TAPE ON AGRICULTURAL BUILDINGS



Environment Ministers have indicated that they will consider proposals to ease planning controls over agricultural buildings. The Independent Farming Regulation Task Force (“the Task Force”) has recently advised the Department for Environment, Food and Rural Affairs (DEFRA) that agricultural buildings and seasonal workers’ accommodation of less than 465 square metres should only need planning permission on holdings of less than 5 ha.

Under proposals outlined by the Task Force, larger farm and staff accommodation structures would be subject to a “prior notification” procedure. This would give Local Planning Authorities a chance to decide whether they

want to intervene on siting and design issues, but prevent them from considering the need for the development. The proposals recommend that only structures bigger than 1,500 square metres should fall under full planning control.

The Task Force also suggests that polytunnels should be given specific permitted development rights under the General Permitted Development Order 1995. However, it is accepted that Local Planning Authorities should still be able to comment on minimum distances between polytunnel blocks, plot coverage, maximum heights and separation distances from homes.

The Task Force, set up to consider all aspects of farm regulations, concluded that planning controls can impose “significant burdens and costs” on England’s small farmers.

DEFRA has indicated that it will publish an initial response to the recent report from the Task Force this Autumn and a full version should be ready early in 2012. Early indications appear to suggest that the Coalition Government are impressed by the report with agricultural minister Jim Paice recently commenting that “This is an impressive piece of work with strong recommendations for reducing the burden that red tape places on the people who produce our food”.

**For a full copy of the report prepared by the Task Force or to discuss any planning matters you may have please contact:**



**Kevin Halewood**  
Deputy Director of Planning  
Tel: 0151 600 3365  
Email: [kevin.halewood@brabnerscs.com](mailto:kevin.halewood@brabnerscs.com)

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If you would like to receive the bulletin please let us know by contacting  
Liz Fox at [Liz.Fox@brabnerscs.com](mailto:Liz.Fox@brabnerscs.com)

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### LIVERPOOL

Horton House, Exchange Flags, Liverpool, L2 3YL  
0151 600 3000

### MANCHESTER

55 King Street, Manchester M2 4LQ  
0161 836 8800

### PRESTON

7-8 Chapel Street, Preston PR1 8AN  
01772 823921