



Department for
Communities and
Local Government



Department
for Environment
Food & Rural Affairs

Consultation on registration of new town or village greens

Proposed amendments to Schedule 1A (Exclusion of Right
under section 15) to the Commons Act 2006

July 2013

Department for Communities and Local Government
Department for Environment, Food and Rural Affairs

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The consultation process and how to respond

Scope of the consultation

Topic of this consultation: Section 15 of the Commons Act 2006 sets out the circumstances in which applications can be made to commons registration authorities to register land as a town or village green. The Growth and Infrastructure Act 2013 includes provisions that reform aspects of the system for making such applications. Section 16 inserts a new section 15C and Schedule 1A into the Commons Act. Their effect is that the right to apply to register land as a town or village green ceases to apply where a 'trigger' event related to the development of the land occurs, and becomes exercisable again if a corresponding 'terminating' event occurs.

The Commons Act as now amended also gives the Secretary of State power, subject to a resolution of each House of Parliament, to amend Schedule 1A including by adding new trigger and terminating events.

During the Parliamentary stages of the Growth and Infrastructure Act the Minister announced the Government's intention to include certain additional trigger and terminating events in Schedule 1A.

Scope of this consultation: The aim of this consultation is to explain the proposed additional trigger and terminating events and to seek views before any decisions are made.

Geographical scope: England only

Basic Information

To: This consultation is aimed primarily at local authorities in their capacity as local planning authorities and/or commons registration authorities, organisations with an interest in open space issues, developers and landowners.

Body responsible for the consultation: This consultation mainly concerns planning issues and legislation, and so is being run by the Planning Directorate within the Department for Communities and Local Government, working in collaboration with the Department for Environment, Farming and Rural Affairs which has overall responsibility for the Commons Act 2006.

- Duration:** The consultation will run for six weeks, beginning on Friday 5 July 2013 and ending on Monday 19 August 2013.
- A six week period has been decided in the light of Cabinet Office guidance on consultation. Six weeks is considered to be proportionate and adequate in order to allow interested parties sufficient time to provide a considered response. We have reached this view because the matter is relatively limited in scope, the underlying principles are established in the Growth and Infrastructure Act 2013 and we are simply building upon existing provisions.
- Interested parties** We are contacting all those organisations that were consulted by Defra when it consulted on reform of town and village green legislation in July 2011, together with some additional business and development organisations with a particular interest in the scope of proposals set out in this document. This document is also being published on the Government web site, GOV.UK, so that anyone can respond.
- Enquiries:** E-mail with 'Enquiry' in the subject box to:
TVG.Consultation@communities.gsi.gov.uk
- How to respond:** We are seeking your views directly on the proposals. A Word version of Annex A, the response form, is available on this consultation's webpage. Please send responses by email to:
TVG.Consultation@communities.gsi.gov.uk
- or by post to:
Chris Kent
Planning - Infrastructure and Environment
Department for Communities and Local Government
Zone 1/J5
Eland House
Bressenden Place
London SW1E 5DU
- After the consultation:** Following full consideration of the responses, if the Department decides to proceed with these proposals it will lay an appropriate Order in Parliament.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Help with queries

Questions about the policy issues raised in the document can be sent to the contact given in the 'How to respond' section on the previous page.

A copy of the Consultation Principles Guidance is at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>. Are you satisfied that this consultation has followed these principles? If not or you have any other observations about how we can improve the process please email: consultationcoordinator@communities.gsi.gov.uk or write to: DCLG Consultation Co-ordinator, Zone 4/J1, Eland House, Bressenden Place, London SW1E 5DU.

Background

1. Section 15 of the Commons Act 2006 sets out the circumstances in which applications can be made to the relevant commons registration authority to register land as a town or village green. In July 2011 the Department for Environment, Food and Rural Affairs (Defra) consulted on proposals to reform aspects of the system for making such applications. Defra published a full impact assessment of the consultation proposals and a summary of responses to the consultation. All these documents are available on the Government website GOV.UK¹
2. Following consideration of responses to that consultation, sections 14 to 17 of the Growth and Infrastructure Act 2013 were enacted to reform aspects of the system for making applications to register land as a new town or village green. Explanatory notes have been published about the effect of each section of this Act, including sections 14 to 17².
3. This further consultation concerns only section 16 of the Growth and Infrastructure Act 2013, which inserts a new section 15C and linked Schedule 1A into the Commons Act 2006. In summary, the effect of these new provisions is that the right to make an application for town or village green registration under section 15(1) in relation to land ceases to apply:
 - where an application for planning permission is first publicised - the exclusion remains in place while the decision is still to be made or if permission is granted;
 - in respect of applications for development consent under the Planning Act 2008 (Nationally Significant Infrastructure Projects); and
 - for land identified for potential development in local and neighbourhood plans, including draft plans
4. The right to make an application is excluded when any of the 'trigger' events in Schedule 1A occur in relation to the land in question, and becomes exercisable again only if any of the corresponding 'terminating' events occur.
5. The proposals outlined here are part of the Government's reforms to remove an overlapping consent process and allow decisions to be taken through the democratically accountable planning system. The existing strong protection for registered greens is unchanged. Additionally, the Government has introduced a new Local Green Space designation which local communities can use, through local and neighbourhood plans, to protect green areas which are special to them.

Introduction to proposals

6. In view of the urgent need for reform, the list of trigger and terminating events in Schedule 1A was constructed to encompass the main planning processes included in our 2011 consultation on proposed reforms to the system for making applications to register new town and village greens. The terminating events included in that schedule did not cover some of the less frequently occurring situations that can arise in the

¹ At <https://www.gov.uk/government/consultations/the-registration-of-new-town-or-village-greens>

² At <http://www.legislation.gov.uk/ukpga/2013/27/notes/contents>

preparation of local and neighbourhood plans, as it was felt this should be done by order following further consultation.

7. Evidence submitted in the Commons confirmed our view that additional terminating events would be needed to ensure that all outcomes in plan-making are covered and that we avoid the situation where the exclusion on town and village green applications remains in place even where no development is proposed, which would be contrary to our policy. Consequently, during the Parliamentary stages of the Growth and Infrastructure Act 2013 we announced our intention to consult on laying a draft order to add new terminating events in order to deal with this issue.
8. We also announced our intention to consult on setting additional trigger and terminating events in order to protect development proposed or permitted by virtue of three matters not already included in Schedule 1A, namely in relation to Local Development Orders, Neighbourhood Development Orders and orders under the Transport & Works Act 1992.
9. We are therefore seeking views on the draft order under section 15C(5) of the Commons Act 2006 at **Annex B**, which is intended to achieve the above aims.
10. We are consulting on the basis that if, following consideration of responses to this consultation a decision is made to insert additional events into Schedule 1A, the protection will apply regardless of whether the events occurred before, on or after the date on which the Order comes into force. This would be consistent with section 16(4) of the Growth and Infrastructure Act 2013 in regard to the matters already covered by Schedule 1A and the draft order at Annex B makes provision to this effect.
11. If, following consideration of consultation responses, we decide to proceed with any or all of the proposed additional trigger and terminating events, or proceed with the proposals in a modified form, then our intention is that a draft order under section 15C(5) will be laid later in the year.

Proposals - Draft Local Plans

12. Schedule 1A sets out trigger events which mean that the right to make a town or village green application ceases to apply in relation to land identified in a development plan document (hereafter referred to as 'local plans'³) for potential development. The trigger event for a draft local plan is when that draft is first published for consultation⁴. The Schedule identifies a corresponding terminating event when the right becomes exercisable again because there is no longer a development proposal (ie. the draft is withdrawn). However certain other situations could arise in local plan-making that are unlikely to be common but which, if they occurred, would mean the exclusion failed to lift even when there was no longer a development proposal. For example:

³ Development plan documents for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004 are known as local plans by virtue of regulation 2 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

⁴ In accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. This follows any earlier, informal consultation and the consultation required by regulation 18 of these Regulations.

- a local planning authority might decide to delete a development allocation in a draft local plan ahead of examination, but then makes slow progress towards adoption – meanwhile the right in regard to that land would still be excluded
 - a draft local plan may be found to be unsound but is not formally withdrawn; or
 - a draft local plan may be found to be sound, but for whatever reason the local planning authority decides not to adopt it
13. Whilst there is every incentive to get an up-to-date local plan in place and we are actively supporting local councils in this, we consider that such circumstances need to be addressed in Schedule 1A. One option would be to devise separate terminating events to address each such situation individually. However this would be complex. For example:
- a deleted site might come back into a local plan at a later stage, e.g. where this is recommended by an inspector following examination
 - a plan that is found unsound at examination might be capable of being rectified through further technical work without having to withdraw the draft and start the whole process again from scratch
14. We therefore propose a single ‘catch all’ additional terminating event, being the expiry of a specified period starting when a draft local plan is published for consultation. The aim would be to set a period that is:
- sufficiently long to enable a local planning authority to complete the necessary stages to reach adoption of the draft local plan, including any work needed to make amendments or rectify defects
 - not so long as to exclude town and village green applications for an unnecessarily long period that places no onus on the local planning authority to undertake plan-making expeditiously
15. We propose that a two year period strikes the right balance.
16. It should be noted that if a draft local plan is so fundamentally flawed that it needs to be withdrawn and a fresh draft prepared, then publication of the fresh draft for consultation would constitute a separate trigger event and the right to apply for registration of a green would cease to apply in relation to any land identified for potential development. The full period of the new terminating event would then begin again.

Question 1 - We propose to introduce a new terminating event in regard to land identified for potential development in draft local plans, being the expiry of a two year period from when the draft plan is published for consultation. Do you agree with the aim of this proposal?

Question 2 - If ‘yes’ to question 1, do you think 2 years is appropriate? If not, what different period would you suggest and why?

Proposals – Draft Neighbourhood Development Plans

17. The consultation issues that have been described in relation to local plans are also broadly applicable in relation to the preparation of neighbourhood plans.
18. Schedule 1A sets out trigger events when the right to make a town or village green application is excluded in relation to land identified in a neighbourhood plan for

potential development. The trigger event, in respect of draft neighbourhood plans, is when a proposal for a neighbourhood plan is published by the local planning authority for consultation. The Schedule also identifies a corresponding terminating event when the right becomes exercisable again because development is no longer proposed and so no reason to exclude the right (ie. the proposal is withdrawn). However certain other situations could arise in neighbourhood plan-making which, if they occurred, would mean the exclusion failed to lift even where no development is proposed. For example:

- if a draft neighbourhood plan is considered by a local authority to not meet the basic conditions and therefore is not put to a referendum, but is not formally withdrawn
- if the plan failed to get a 'yes' vote at the referendum stage

19. We consider that such circumstances need to be addressed in Schedule 1A. One option would be to devise separate terminating events to address different such situation individually. However, as with draft local plans it would be difficult to cover all eventualities. For example, in the event of a 'no' vote a neighbourhood planning 'qualifying body'⁵ might consider that the draft plan is capable of significant modification to deal with whatever factor caused it to be rejected and decide to restart the plan-making process to take forward other proposals in the original draft.
20. We therefore propose a single 'catch all' additional terminating event being the expiry of a specified period starting when a draft plan is published for consultation. The aim would be to set a period that is:
 - sufficiently long to enable the neighbourhood planning body and local planning authority to complete the necessary steps to make a neighbourhood plan, including further consultation if the qualifying body wished to make significant revisions
 - not so long as to to exclude town and village green applications for an unnecessarily long period that places no onus on the qualifying body and local planning authority to undertake plan-making expeditiously
21. As with local plans, we propose that a two year period strikes the right balance.
22. It should be noted that if a further draft plan is published by the local planning authority, then publication of the fresh draft for consultation would constitute a new trigger event in relation to any land identified for potential development. The full period of the new terminating event would then begin again.

Question 3 - We propose to introduce a new terminating event in regard to land identified for potential development in draft neighbourhood plans, being the expiry of a two year period from when the draft plan is published by the local planning authority for consultation. Do you agree with the aim of this proposal?

Question 4 - If 'yes' to question 3, do you think 2 years is appropriate? If not, what different period would you suggest and why?

⁵ This is the term in legislation. It refers to a parish council or, where there is no parish, a 'neighbourhood forum' of at least 21 people.

Proposals - Local Development Orders

23. A Local Development Order⁶ is a flexible and powerful planning simplification tool that grants planning permission for specified development within a defined area. The procedure for making such an Order requires public consultation.
24. We propose to extend protection from town and village green applications to land in relation to which the terms of a Local Development Order permit operational development.
25. We propose two trigger events, the first of which occurs when a draft Order is first published for consultation.
26. Three corresponding terminating events are proposed to ensure that the right to make a town or village green application becomes exercisable again where there is no planning reason to prevent this, being:
 - (a) *The draft is withdrawn*
 - (b) *The order is adopted*
 - (c) *A period beginning with the day on which that draft is published for consultation expires*
27. The aim would be to set a period that is:
 - Sufficiently long to enable a local planning authority to complete the necessary stages to make the order, including any further work needed to make amendments, for example if any are identified by consultees;
 - Not so long as to exclude town and village green applications for an unnecessarily long period that places no onus on the local planning authority to undertake order-making expeditiously.
28. As with the proposed additional terminating event in regard to local and neighbourhood plans, we think that a two year period strikes the right balance.
29. The second proposed trigger event occurs when a Local Development Order is adopted.
30. Four terminating events corresponding to the second trigger event are proposed, being:
 - (a) *The order expires*
 - (b) *The order is revoked by either the local planning authority or the Secretary of State*
 - (c) *The land is no longer identified for development following a revision to the order*
 - (d) *The Local Planning Authority issues a direction under the specifying that the permission granted by the order does not apply in respect of the land*
31. In a situation where development has been started but not completed at the time that permission under a Local Development Order is withdrawn because one of these events occurs, but permission to complete the development remains in place, then our intention is that the terminating event is not to be treated as having occurred.

⁶ Relevant legislation is at <http://www.legislation.gov.uk/ukpga/1990/8/part/III/crossheading/local-development-orders>

Question 5 – Do you agree that protection from town and village green applications should be extended to Local Development Orders?

Question 6 – If your answer to Question 5 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Local Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Question 7 – Do you agree that in a situation where development has been started but not completed at a time where permission under a Local Development Order is withdrawn, but permission to complete the development remains in place, then the terminating event should not to be treated as having occurred?

Proposals – Neighbourhood Development Orders

32. Neighbourhood Development Orders are a new planning simplification measure. They are similar to Local Development Orders in that they grant permission for development in respect of specified land, but are prepared by qualifying bodies and operate at a more local level. Further information about Neighbourhood Development Orders can be found on the GOV.UK web site⁷.
33. We propose to extend protection from town and village green applications to land in relation to which the terms of a Neighbourhood Development Order permit operational development. Community Right to Build Orders are a form of Neighbourhood Development Order, so the proposals would also apply to them. Further information about Community Right to Build Orders can be found on the GOV.UK web site⁸.
34. As with Local Development Orders, our intention is only to exclude the right to make a town or village green application in respect of sites that are specifically identified for development in Neighbourhood Development Orders.
35. We propose two trigger events. The first relates to when an order is published for consultation by the local planning authority. Three corresponding terminating events are proposed to ensure that the right to make a town or village green application becomes exercisable again where there is no planning reason to prevent this, being:
 - (a) *The draft is withdrawn*
 - (b) *The order is made by the local planning authority*
 - (c) *A period beginning with the day on which that draft is published for consultation by the local planning authority expires*
36. The aim would be to set a period that is:
 - sufficiently long to enable the neighbourhood planning body and local planning authority to complete the necessary steps to make the Neighbourhood Development Order, including consultation if the qualifying body wished to make significant revisions. For example, if the Order fails to get a ‘yes’ vote at the

⁷ <https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/neighbourhood-planning>

⁸ <https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-build>

referendum stage the ‘qualifying body’ might consider that it is capable of significant modification to deal with whatever caused it to be rejected and decide to restart the order-making process to take forward other proposals in the original draft;

- not so long as to exclude town and village green applications for an unnecessarily long period that places no onus on the qualifying body and local planning authority to undertake plan-making expeditiously

37. As with neighbourhood plans, we propose that a two year period strikes the right balance.
38. The second proposed trigger event occurs when an Order is made by the local planning authority.

Three terminating events corresponding to the second trigger event are proposed, being:

(a) *The order expires*

(b) *Where the order provides that development must have commenced within a specified period, that period expires without development having been commenced.*

(c) *The order is revoked*

39. In a situation where development has been started but not completed where permission under a Neighbourhood Development Order is withdrawn because the Order expires or is revoked, but permission to complete that development remains, then our intention is that the terminating event is not to be treated as having occurred.

Question 8 – Do you agree that protection from town and village green applications should be extended to Neighbourhood Development Orders (including Community Right to Build Orders)?

Question 9 – If your answer to Question 8 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Neighbourhood Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Question 10 - Do you agree that in a situation where development has been started but not completed where permission under a Neighbourhood Development Order is withdrawn, but permission to complete the development remains, then the terminating event should not to be treated as having occurred?

Proposals – Orders under the Transport and Works Act 1992

40. Orders under the Transport and Works Act 1992 (“the 1992 Act”) provide for certain types of infrastructure scheme that may make a significant contribution to community wellbeing and growth. Examples include the Thameslink project now being implemented and extensions to tram and light rail systems in Nottingham and London Docklands. Further information about Transport and Works Act Orders can be found on the GOV.UK web site⁹. A promoter may, when applying for an Order under the

⁹ <https://www.gov.uk/government/publications/transport-and-works-act-orders-a-brief-guide-2006>

1992 Act to obtain the legal powers needed for a scheme, ask the Secretary of State for deemed planning permission for the scheme. This means that the promoter does not need to apply separately to the local planning authority for planning permission and all issues relating to a scheme may be considered at a single inquiry, if one is necessary.

41. We propose to extend protection from town and village green applications to development proposed through Transport and Works Act Order applications which include a request for deemed planning permission in respect of land. To achieve this we propose that a trigger event occurs on publication of a notice that an application under the 1992 Act has been made which contains a statement that request for deemed planning permission has been made in respect of land.
42. Three corresponding terminating events are proposed to ensure that the right to make a town or village green application becomes exercisable again where there is no planning reason to prevent this, being:
 - (a) *The request for a direction for deemed planning permission is withdrawn*
 - (b) *In circumstances where the direction is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted*
 - (c) *In circumstances where the direction is given, the period within which the development to which the direction relates must be begun expires without the development having been begun*

Question 11 – Do you agree that protection from town and village green applications should be extended to Transport and Works Act Orders which include a request for deemed planning permission?

Question 12 – If your answer to Question 11 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Transport and Works Act Orders are appropriate?

Benefits to business and commons registration authorities

43. To date we are unaware of any instances where a town or village green application has been made to try to prevent development permitted by a Local Development Order. No Neighbourhood Development Orders have yet been made, so there is a similar lack of evidence on the potential scale of problem that our proposals are intended to prevent. We are aware of one case where a village green application has impacted on a current Transport and Works Act Order application. Extending protection to these matters is proposed as a precautionary measure to prevent possible town and village green applications that might otherwise be made to try to stop or delay development that is either proposed or already permitted under these regimes.
44. Where town and village green applications would be avoided if our proposals were to be enacted, we would expect that the savings for commons registration authorities, local planning authorities, landowners and developers could be significant - including the avoidance of costly delays to development.

Question 13 – Can you provide any evidence or insights on the likely impact of the proposals outlined in this document?

ANNEX A:

Consultation questions – response form

We are seeking your views to the following questions on our proposals to amend Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006.

How to respond:

The closing date for responses is Monday 19 August 2013

A Word version of this response form is available on the consultation's webpage to enable consultees to complete the form electronically and attach it to an email.

We would prefer responses to be completed in Word and emailed to:

TVG.Consultation@communities.gsi.gov.uk

Responses can be sent by post to:

Chris Kent
Planning - Infrastructure and Environment
Department for Communities and Local Government
Zone 1/J5
Eland House
Bressenden Place
London SW1E 5DU

About you

i) Your details:

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

iii) Please put an 'x' in the box which best describes you or your organisation:

District Council

Metropolitan district council

London borough council

Unitary authority/county council/county borough council

Parish council

Community council

Non-Departmental Public Body (NDPB)

Planner

Professional trade association

Land owner

Private developer/house builder

Developer association

Voluntary sector/charity

Other

(please comment):	
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iv) What is your main area of expertise or interest in this work (please put an 'x' in one box)?

Chief Executive

Planner

Developer

Surveyor

Member of professional or trade association

Councillor

Planning policy/implementation

Environmental protection

Other

(please comment):	
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Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

v) Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question 1 – We propose to introduce a new terminating event in regard to land identified for potential development in draft local plans, being the expiry of a two year period from when the draft plan is published for consultation. Do you agree with the aim of this proposal?

Yes No

Comments

Question 2 – If ‘yes’ to question 1, do you think 2 years is appropriate? If not, what different period would you suggest and why?

Yes No

Comments

Question 3 – We propose to introduce a new terminating event in regard to land identified for potential development in draft neighbourhood plans, being the expiry of a two year period from when the draft plan is published by the local planning authority for consultation. Do you agree with the aim of this proposal?

Yes No

Comments

Question 4 – If ‘yes’ to question 3, do you think 2 years is appropriate? If not, what different period would you suggest and why?

Yes No

Comments

Question 5 – Do you agree that protection from town and village green applications should be extended to Local Development Orders?

Yes No

Comments

Question 6 – If your answer to Question 5 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Local Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Yes No

Comments

Question 7 – Do you agree that in a situation where development has been started but not completed at a time where permission under a Local Development Order is withdrawn, but permission to complete the development remains in place, then the terminating event should not to be treated as having occurred?

Yes No

Comments

Question 8 – Do you agree that protection from town and village green applications should be extended to Neighbourhood Development Orders (including Community Right to Build Orders)?

Yes No

Comments

Question 9 – If your answer to Question 8 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Neighbourhood Development Orders are appropriate? We are particularly interested in views on whether the proposed terminating event at the expiry of a two year period after a draft order has been published for consultation is appropriate.

Yes No

Comments

Question 10 – Do you agree that in a situation where development has been started but not completed where permission under a Neighbourhood Development Order is withdrawn, but permission to complete the development remains, then the terminating event should not to be treated as having occurred?

Yes No

Comments

Question 11 – Do you agree that protection from town and village green applications should be extended to Transport and Works Act Orders which include a request for deemed planning permission?

Yes No

Comments

Question 12 – If your answer to Question 11 is ‘yes’, do you agree that the proposed trigger and terminating events in regard to development proposals covered by Transport and Works Act Orders are appropriate?

Yes No

Comments

Question 13 – Can you provide any evidence or insights on the likely impact of the proposals outlined in this document?

Comments

ANNEX B: Draft Order

STATUTORY INSTRUMENTS

2013 No.

COMMONS, ENGLAND

Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2013

Laid before Parliament in draft

Made - - - - *****

Coming into force in accordance with article 1

A draft of this Order has been laid before and approved by Parliament in accordance with section 59(3A) of the Commons Act 2006(a).

Accordingly, the Secretary of State, in exercise of the powers conferred by section 15C(5)(a), (7) and 59(1) of the Commons Act 2006(b), makes the following Order:

Citation and commencement

1. This Order may be cited as the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2013 and shall come into force on the day after the day on which this Order is made.

Amendment of Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006

2.—(1) The Table set out in Schedule 1A(c) to the Commons Act 2006 is amended as follows.

(2) In the second column of the Table, in the entry corresponding to the trigger event set out in paragraph 3, after paragraph (b) insert—

“(c) The period of 2 years beginning with the day on which that document is published for consultation expires.”

(3) In the second column of the Table, in the entry corresponding to the trigger event set out in paragraph 5, after paragraph (b) insert—

(a) 2006 (c. 26). Section 59(3A) was inserted by section 16(3) of the Growth and Infrastructure Act 2013 (c. 27).
(b) 2006 (c.26). Section 15C was inserted by section 16(1) of the Growth and Infrastructure Act 2013.
(c) Schedule 1A was inserted by section 16(1) and (2) of, and Schedule 4 to, the Growth and Infrastructure Act 2013.

“(c) The period of 2 years beginning with the day on which that proposal is published for consultation expires.”

(4) After paragraph 7 insert—

“7A. A draft of a local development order under section 61A(2) of the 1990 Act which would grant permission for operational development on the land is first publicised for consultation in accordance with provision included (by virtue of paragraph 1 of Schedule 4A to that Act(a)) in a development order made under section 59 of that Act.

7B. A local development order which grants permission for operational development of the land is adopted by resolution of the local planning authority (and, accordingly, comes into effect by virtue of paragraph 3 of Schedule 4A to that Act).

7C. A draft of a neighbourhood development order which would grant permission for operational development of the land is published for consultation by a local planning authority in accordance with regulations made under paragraph 4(1) of Schedule 4B to the 1990 Act(e).

7D. A neighbourhood development order which grants permission for operational development of the land is made under section 61E(4) of that Act.

(a) The draft is withdrawn.

(b) The order is adopted by resolution of the local planning authority (and, accordingly, comes into effect by virtue of paragraph 3 of Schedule 4A to that Act) (but see paragraph 7B of this Table).

(c) The period of 2 years beginning with the day on which that draft is published for consultation expires.

(a) Where the order grants permission for a limited period, or provides that permission is withdrawn after a specified date, that period expires or date occurs.

(b) The order is revoked under section 61A(6) or 61B(8)(a) of that Act(b).

(c) The land is no longer identified for development by virtue of the adoption of a revision to the order in pursuance of paragraph 2 of Schedule 4A to that Act(c).

(d) A direction is given under provision included in the local development order by virtue of section 61C(2)(d) of that Act specifying that the permission granted by the order does not apply in relation to the land.

(a) The draft is withdrawn under paragraph 2(1) or 2(2) (such that it is no longer valid) of Schedule 4B to that Act.

(b) The order is made under section 61E(4) of the 1990 Act(f) (but see paragraph 7D of this Table).

(c) The period of 2 years beginning with the day on which that draft is published for consultation expires.

(a) Where the order grants permission for a limited period, or provides that permission is withdrawn after a specified date, that period expires or date occurs

(b) Where the order provides that development permitted by the order must begin before the end of a specified period,

(a) Schedule 4A was inserted by section 40 of, and Schedule 1 to, the 2004 Act.

(b) Section 61B was inserted by section 40 of the 2004 Act.

(c) Paragraph 2 of Schedule 4A was amended by sections 188 and 238 of, and Schedule 13 to, the 2008 Act.

(d) Section 61C was inserted by section 40 of the 2004 Act.

(e) Schedule 4B was inserted by section 116 of, and Schedule 10 to, the Localism Act.

(f) Section 61E was inserted by section 116 of, and paragraphs 1 and 2 of Schedule 9 to, the Localism Act.

that period expires without the development having been begun.

(c) The order is revoked under section 61M(1) or (2) of that Act(a).”

(5) After paragraph 9 insert—

“10. A notice that an application has been made under section 6 of the Transport and Works Act 1992(b) which contains a statement that a request for a direction for deemed planning permission in respect of the land under section 90(2A) of the 1990 Act(c) is being applied for is published in accordance with rules made under section 6 of the 1992 Act.

(a) The request is withdrawn.

(b) In circumstances where the direction is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted.

(c) In circumstances where the direction is given, the period within which the development to which the direction relates must be begun expires without the development having been begun.”

(6) In the notes to the Table, at the end insert—

“3 Paragraphs (a) to (d) of the entry in the second column corresponding to paragraph 7B do not apply in circumstances where development of the land may be completed by virtue of provision made under section 61D(1)(d) of the 1990 Act or otherwise by virtue of provision made in the Local Development Order.

4 Paragraphs (a) and (c) of the entry in the second column corresponding to paragraph 7D do not apply in circumstances where development of the land may be completed by virtue of section 61L(7) of the 1990 Act or otherwise by virtue of provision made in the Neighbourhood Development Order.”

Application of the amendments made to Schedule 1A by article 2

3. For the purposes of section 15C of the Commons Act 2006, it does not matter whether an event specified in Schedule 1A to that Act by virtue of the amendments made by this Order occurred before or on or after the day on which this Order comes into force.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Parliamentary Under Secretary of State
Department for Communities and Local Government

(a) Section 61M was inserted by section 116 of, and paragraphs 1 and 2 of Schedule 9 to, the Localism Act.
(b) C. 42. Section 6 was amended by section 105 of, paragraph 136 of Schedule 11 to, and Schedule 12 to, the Natural Environment and Rural Communities Act 2006; regulation 2 of S.I. 1998/2226; and regulation 2 of S.I. 2006/958.
(c) Section 90(2A) was inserted by section 16 of the Transport and Works Act 1992 (c.42).
(d) Section 61D was inserted by section 41 of the 2004 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1A of the Commons Act 2006 (“the 2006 Act”) which sets out events which will exclude the right to apply for the designation of a town and village green under section 15(1) of that Act (“trigger events”) and corresponding events which will cause the exclusion to subsequently lift (“terminating events”).

Article 2 inserts additional trigger and terminating events in respect of the right to apply for a designation of a town or village green into Schedule 1A of the 2006 Act. Provision is made for the exclusion of the right to apply for the designation of a town and village green from the date on which a draft development plan document or proposal for a neighbourhood development plan is published to lift 2 years from that date. Provision is made for the insertion of trigger and terminating events in respect of local development orders, neighbourhood development orders and requests for deemed planning permission under section 90(2A) of the Town and Country Planning Act 1990.

Article 3 provides that, for the purposes of the right under section 15 of the 2006 Act, it does not matter whether the events inserted into Schedule 1A of that Act by this Order occurred before or on or after the date on which this Order comes into force.

DRAFT