



This note is intended to update advisers working alongside developers and funders on how insurance can be used as one way of dealing with the exposure created by Section 15 Commons Act 2006. Buying insurance is not without risk: this note does not cover regulatory matters concerning the advice and sale of insurance.

The Mechanics of Registration of Land as a Village Green

The Act has served to increase the perception of risk in the minds of landowners and developers. Until recently this perception had been compounded by the limited number of adjudications and legal proceedings in relation to applications based on the Act. However, recent decisions could be said to have given an insight into how a balance will be struck between the strict interpretation of the Act and the manner in which the Act has been employed by interested parties to control local regeneration.

Recent Legal Decisions – a Clearer Direction?

R (on application of Lewis) v Redcar and Cleveland Borough Council [2010] UKSC 11

Although unsettling previous views that an applicant's deference to the land owner will weaken the merits of an application, this was the first case we came across in which the Courts openly (albeit obiter) noted the conflict between a land owner's right to use their land freely and the rights of others to preserve rights to do so. At the time, we were hopeful that the Court's attempt to ground a principle of "give and take" would be reflected in subsequent rulings – we think this is beginning to be the case.

Betterment Properties (Weymouth) Limited v Dorset County Council and Ors [2010] EWHC 3045 (Ch)

A discussion of the lengths to which an owner must go to defeat an applicant's claim. The case included consideration of the effect of an injunction obtained by the owner of a site before accrual of 20 years public use, concluding that an injunction could be granted and was an effective bar to continued accrual of rights.

BDW Trading Limited (t/a Barratt Homes) v Spooner and Ors [2011] EWHC B7 (QB)

A discussion of the effect that appropriation of land by a local authority had on the activities relied upon by the applicants in their village green application. In our view, an important case which highlights the need for a balance between the government's ability to organise redevelopment and regeneration centrally and a community's private rights. We think this is an important theme and one we expect to see continued in future adjudications.

Village Greens – underwriting considerations

Typical considerations in the underwriting process are set out below:

- (i) investigations of the site and surrounding area (nature and extent of usage by the public (historic and current)) to establish likelihood of an application and ability of local residents to gather sufficient evidence in support of an application;
- (ii) investigation of local reaction to the proposed development of the site through a review of the Design and Access Statements (and other supporting documentation provided by the developer in support of its application for planning consent) and all representations made during the public consultation stage of the planning application for the site (and, where possible, other similar development sites in the local area);
- (iii) a review of the planning process to establish relevant local planning policies e.g. formal allocation of recreation space in local area and Section 106 provisions in relation to recreation facilities in the area.
- (iv) a full review of title history of site to establish whether the land was dedicated (expressly or impliedly) for public use and/or controlled as such by previous owners of the site;
- (v) a review of action taken by the owner of the site to date which might amount to a defence to an application to register the land as village green by a third party under the Act.
- (vi) an assessment of the viability of mitigating factors e.g. potential transfer of registered rights to substitute land.
- (vii) Legal and practical assessment: there have been several important and detailed decisions which have assisted in confirming qualifying acquisitive activity (for an applicant) and qualifying defensive activity (for the respondent i.e. land owner).

Please contact Jean-Claude Domaingue, Senior Underwriter, at CLS for further information or to discuss a village green or any other title-related matter on jcdomaingue@clsl.co.uk or call 01732 897 530.

All insurance policies issued by CLS are underwritten by Great Lakes Reinsurance (UK) PLC, a wholly-owned subsidiary of Munich Re. Munich Re has been awarded robust ratings by the leading rating organisations. Please see http://www.munichre.com/en/ir/ratings/ratings_01.aspx for current ratings.

April 2011

Call 01732 897 530

Visit www.clsl.co.uk

Email underwriters@clsl.co.uk

Trust Innovation Expertise – Think CLS

Conveyancing Liability Solutions Ltd is authorised and regulated by the Financial Services Authority

