



Department
for Environment
Food & Rural Affairs

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Town and village green consultation

Summary of responses

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Any enquiries regarding this document/publication should be sent to us at:

Commons and Access Implementation team
3B Nobel House
17 Smith Square
London
SW1P 3JR

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Introduction

The Department for the Environment, Food & Rural Affairs consulted last year on a package of reforms to the system of registering new Town and Village Greens (TVG). The Department has considered the responses to that consultation and we are now putting forward our package of reforms including through primary legislation in the Growth and Infrastructure Bill. This document sets out a summary of the consultation responses and an overview of the Government's conclusions.

The Government is fully committed to the continued protection of registered greens and to continue to allow for new greens to be registered. Local green space for recreation, sport and leisure is an important part of thriving communities, as well as for health and well-being.

The Government is, however, concerned about the substantial rise in applications for green status in recent years and that some can delay development that is needed and wanted by the wider community. There is a need to rationalise the systems that are used for deciding whether and how land should be used and to reduce costs for local authorities, developers and landowners.

Where applications affect sites with development proposals being considered through the planning system, they can undermine the decisions reached. Many applications fail but nevertheless incur long delays, uncertainty and costs to local authorities and landowners. Despite development having a green light from the democratically accountable planning process, communities can wait for years to discover whether they will get, for example, the affordable homes or new jobs they want.

The Penfold review into non-planning consents recommended reducing the impact of the TVG registration system on sites which have planning permission. These TVG reforms are part of the wider implementation of Penfold recommendations, which support efficiency, effectiveness and growth. The provisions develop proposals set out in the original consultation document and taking account of comments received.

The proposed reforms will prevent the TVG registration system being used to stop or delay planned development and protect local communities' ability to promote development through local and neighbourhood plan-making by:

- Preventing town or village green (TVG) applications where a planning permission has been granted or where a planning application has been publicised and the decision is still to be made.
- Preventing TVG applications for land 'identified for potential development' in local and neighbourhood plans, including draft plans.
- Allow landowners to make a statement and deposit a map, with the effect that their land cannot be registered as a TVG, which means that they can continue to let local people access the land without jeopardising its future use.
- Improving the flexibility we have to set fees for TVG applications and other applications under Part 1 of the Commons Act 2006.

What land will the TVG exclusion apply to?

The proposed provisions in the Growth and Infrastructure Bill will apply the exclusion to land which falls into any of the following categories ('trigger points'):

- **land in respect of which an application for planning permission has been made and publicised** including where such permission is subsequently granted;
- **land identified for potential development in a local or neighbourhood plan, or in a draft of these which has reached the stage of public consultation** (including policies made under previous legislation which have been 'saved' under the Planning and Compulsory Purchase Act 2004); and
- **land in relation to which a proposed application for development consent** (i.e. Nationally Significant Infrastructure Projects) **has been published (which triggers a temporary exclusion of a maximum of two years); or an application for such consent has subsequently been accepted and publicised**, in which case the exclusion remains in place until the application is withdrawn or has been refused and all means of challenging this decision are exhausted. Where development consent is granted, the exclusion will remain in place until it expires unimplemented.

The exclusions can be amended in secondary legislation, including adding further trigger points.

What exactly is being proposed for landowner statements?

Landowners will be able to deposit a statement and map with the commons registration authority which brings to an end any use of their land up to that point as being 'as of right'. The deposit effectively restarts the clock for use 'as of right'. The deposit of the statement and map will not prevent commencement of a new period of use as of right, but a landowner may deposit subsequent statements in order to interrupt future periods of use.. This should be positive for both landowners and local people – landowners will be able to allow people to enjoy access to land for sport and recreation while preventing a TVG application at some future date. An alternative for landowners is to prevent access with fences or notices that carry costs, which is to the detriment of all.

Results of Consultation

The Government is taking forward the main proposals which require primary legislation largely in line with the measures that were consulted on, namely the planning exclusion and landowner 'declarations' (now statements).

The key differences are that it is not now proposed to rule out TVG applications on land protected by the Local Green Space designation, and the 'character test' has been dropped.

Further work on the character test and also linking TVGs with Local Green Space Designation, taking into account responses to the consultation, led to the conclusion that these proposals should be dropped.

The consultation also proposed setting fees for applications. There are measures in the Bill to make existing fee-making powers more flexible, if we decide later that fees are appropriate. However the Bill will not set fees – that would be done later through regulations. Any fee that is set would be fair, balancing recovery of costs by registration authorities against the impact on applicants. The Government is also considering whether to develop an initial sift procedure – along the lines set out in the consultation document. Any provisions on this would be through secondary legislation.

Overview of the responses

Responses were received from a wide variety of sources: from large developers, nationwide retail chains, a variety of Parish, Town, District and County councils, legal firms, third sector organisations and individuals.

277 responses were received in total. As can be seen from the following pages, a wide variety of views were expressed and a great deal of opinion and evidence provided.

Not all the responses addressed the specific questions posed. While many responses attempted to answer the consultation questions objectively, others were more subjective complaints or concerns about specific cases involving applications for the registration of greens. All respondees made their views clear irrespective of whether they answered each individual question.

The highest response rate to any of the specific questions was 193 (70%) for question 2 and question 10 respectively. The lowest number received was the 78 (28%) responses to question 17. Despite the variable rates at which the questions were answered this document has nonetheless captured views that are not related to specific questions. All responses were thoroughly read through and their contents noted.

The responses have been broken down as follows:

- 87 local government sector
- 74 individuals (including 1 MP)
- 39 professional organisations and associations
- 23 local residents and preservation groups
- 22 housing and building sector
- 10 access and protection groups
- 8 business sector
- 8 legal sector
- 4 education sector

Question 1. Taking account of the Government's plans for the new Local Green Spaces designation, do you agree that the problems identified with the present greens registration system are sufficient to justify reform — so that the 'no change' option should be rejected?

- Total number of responses: 190
- Respondee who answered 'yes': 130 (68.4%)
- Respondee who answered 'no': 55 (28.5%)
- Respondee who gave no clear indication: 6 (3.1%)

The need for reform was agreed by the majority of respondents, and the 'no change option' was rejected by most. It was felt that the current system was biased in favour of applicants, and that this imbalance needed to be addressed. Many claims were felt to be spurious ones, made with the sole intention of stopping proposed developments. The desire to reduce, or eliminate, vexatious and repeated claims for TVG status was cited by many as a reason reform was necessary. A 'sifting' process was suggested by many as a means to improve the quality and validity of applications. It was also felt that, once granted, TVG designation status was too difficult to remove, and there was currently no appeals process against designation. The Commons Act 2006 had seen a large increase in TVG applications and was viewed by many as requiring urgent reform.

There was widespread concern about linking TVG applications to the new Green Spaces Designation, as detailed in the then draft National Planning Policy Framework (NPPF). This was seen by many as being too new and untested to be put forward as a proposal at this stage, and green space designation as being a separate issue to TVG designation. The consultation draft of the NPPF was viewed as favouring developers and any link between TVG designation and NPPF was strongly opposed.

Overall, reform was seen as being highly desirable; to reduce applications of limited merit or lacking in substance; to reduce the overall costs of the process; to speed up and increase the efficiency of the process; to reduce and minimise what can be significant impacts on the land owner; and to prevent or reduce the impact on the community as a whole arising from such applications frustrating desirable development.

This proposal should be read in conjunction with Question 8 – the planning option which incorporates the Local Green Space designation.

Question 2. Do you support this proposal to streamline the initial sifting of applications?

- Total number of responses: 192
- Respondee who answered 'yes': 146 (76%)

- Respondees who answered 'no': 39 (20.2%)
- Respondees who gave no clear indication: 7 (3.6%)

There was widespread support for a 'sift' system, with over three quarters of respondents favouring the introduction of a system to sift out poor applications. Evidence was seen to be the key attribute for a sift system, with applications that supplied no evidence being immediately returned to the proposer; it was, however, felt that they should have the opportunity to re-submit their application if they could supply some evidence, and that an appeals system was vital.

It was felt that an initial sifting system would lead to more detailed and sophisticated applications, and this would help deter speculative, vexatious and 'holding' applications, which were put forward simply to delay proposed development. Many saw repeat applications as a particular problem and felt that the number of times an application could be submitted should be limited.

It was suggested that there was a need for clear guidance, including a checklist and Q&A, especially on the evidence required to support an application, as well as safeguards on transparency, impartiality and fairness. A clear, well publicised, set of criteria was felt to be required so the sift process was understood by all.

There was a view that the same system as that used in Judicial Reviews should be used, where applications should only be looked at in detail and processed if they were felt to have a good chance of being successful. Others felt that introducing the sift system would lead to a greater risk of Judicial Reviews being brought by applicants whose applications had been sifted out.

Some authorities felt that the sift process would introduce a further administrative layer, that it was an additional step in an already complex process that would lead to further delays, or that there was already sufficient discretion to deliver the objectives of the proposal under the existing regulations. It was felt that a fee should be paid by the applicant to cover additional costs. Others questioned whether authorities would have enough qualified staff to deal with a sifting process. There were some legal concerns over Authorities having a judicial role; this was felt to be very difficult to implement. There were also legal concerns over how safeguards could be brought in when the Authority was the landowner in an application.

An initial consultation period with a specified time limit was favoured by some respondents. Whether authorities already carried out a 'sift' of applications was questioned by some, with some feeling that authorities already favoured landowners and introducing such a system would put them under greater pressure to favour developers.

Question 3. Do you agree that an initial determination should be made by the registration authority after inviting initial comments from the owner of the land affected by the application?

- Total number of responses: 186
- Respondee who answered 'yes': 115 (61.8%)
- Respondee who answered 'no': 64 (34.2%)
- Respondee who gave no clear indication: 7 (3.8%)

There was general support for inviting landowners to give initial comments. It was thought that landowners would be able, in many cases, to produce key information, including evidence showing how their land was used and other factors, including history of ownership. It was felt that landowner evidence would give a full picture of the application and lead to more informed initial decisions being made. Some felt that the landowner should only be informed and involved in the process if the application was deemed to be of high quality with a good chance of success.

It was thought to be beneficial for both sides to present their cases and for a 'round table' discussion to be held to discuss their respective evidence. An independent mediation service was suggested by some to try and resolve conflict.

Some felt that applications should be judged on their strength only, the land was either used by the public or it was not; it should be clear if the application was valid without involving the landowner.

It was felt that issues could arise when the owner was not known and could not easily be established.

Whether the applicant would be able to view the landowners' evidence was questioned by many, the general opinion being that they should be able to both see and comment on it.

Introducing this system was seen as bringing in a new step into the process, with additional costs being incurred by authorities and landowners, who might need to seek legal advice and have surveys carried out on their land. Some felt that this was an additional burden on the landowner and would be of little benefit.

Again, it was felt that clear advice and guidance on the system would be needed, and that the process had to be transparent, fair, timely and robust. It was felt that the criteria to be used should be fixed and enforced and that all judgements should be made on fact and not opinion. Some questioned whether this initial determination would make the registration authority 'judge and jury', and suggested that an independent organisation such as the Planning Inspectorate should carry out the screening.

Some put the case that anyone with a view, and not just the landowner, should be able to present evidence and comment at this initial stage. It was felt that some people might have additional information not included in the original application.

Question 4. Do you support this proposal to enable landowners to make a deposit of a map and a declaration to secure protection against future applications to register land as a green?

- Total number of responses: 189
- Respondees who answered 'yes': 135 (71.4%)
- Respondees who answered 'no': 41 (21.6%)
- Respondees who gave no clear indication: 13 (6.8%)

This proposal was supported by the majority of respondents. Giving landowners the option to allow use of their land without the risk of it later being registered as a village green was widely welcomed. Using the same model as for public rights of way was seen as being a good idea by many respondents, as was the possibility of a joint declaration for TVGs and public rights of way. Declarations were seen as being of great benefit to long term business planning for landowners, especially developers and farmers.

How landowners would have to advertise and publicise their proposal to protect their land from registration was questioned by many. Notices in local media were seen as being the minimum required, with many feeling that letters should be written to local residents advising them of the landowners' intentions. Safeguards were requested to ensure local people were made aware of all proposed declarations, and were given sufficient time to respond to them.

There were widespread concerns that announcing this proposal would lead to a flood of new TVG applications, though many thought that this short term issue would be greatly outweighed by the longer term benefit. It was widely agreed that the declaration process should not be used retrospectively for land already registered.

Many authorities expressed concern over the proposed fee structure, feeling that they were set unrealistically low. They favoured cost recovery and thought that fees would exceed £100.

While some landowners felt that the process was too onerous, and would result in large legal and surveying fees, most welcomed the proposal, feeling it gave them much needed safeguards and that it brought 'fairness' to the TVG process, which they felt favoured applicants.

The issue of the length of time the designation should last for resulted in differing views, from 5 to 20 years being the most commented on period, while others felt it should only be reviewed when the land was sold.

The proposals were felt to be more difficult for large landholdings, with one declaration being made per authority suggested. However, some local authorities said that it would be burdensome to protect their own landholdings, which tended to be highly dispersed. There were a number of other calls for exemptions to be granted, specifically for schools and academic establishments, so that no declaration would be needed.

While some felt the two year period of grace for registering new greens following a declaration was too short, the majority who expressed a view felt it was too long.

Question 5. Should landowners or registration authorities be required to take additional steps to publicise a declaration, to ensure that potential users know that they have limited time to make an application to register the land as a green? If so, what steps do you propose?

- Total number of responses: 180
- Respondeees who answered 'yes': 120 (66.3%)
- Respondeees who answered 'no': 50 (27.6%)
- Respondeees who gave no clear indication: 10 (5.5%)

Most respondeees agreed that declarations should be publicised, with signs, local newspaper adverts and informing parish councils being the methods most frequently suggested. A dedicated website (with a clear name such as 'Green Space Designations') listing all applications was favoured by many. There were other suggestions, such as all residents within half a kilometre of a site being sent a letter, or notice being given to local access forums.

Some felt that there was no reason for landowners to publicise what they intended to do on their own land; the expense would not be justified. Others felt that landowners would benefit from any development on their land so they should publicise their intentions, and pay for the publicity.

It was suggested that, while notices on site might be practicable for small parcels of land (such as sites perceived to be at risk of a registration application), it would not be realistic for larger landowners and public bodies which wished to make declarations for farms or estates.

There was a general view that the publicity process should not be too onerous or expensive, and should be proportionate to the declaration being made. While many thought that parish councils were the ideal forum for this, others pointed out that not all areas, and especially urban areas, had parish councils.

There were differing opinions over whether the registration authority or landowner should publicise the application. It was broadly agreed that if the authority did publicise the application, the landowner should pay the costs. The question of costs produced differing views, with many feeling that newspaper advertising was too expensive and other means, such as a website or social media such as Facebook and Twitter should be used.

The current process for publicising listed building designations and planning applications was favoured by a number of respondents, but others felt that wider publicity would be required for local spaces which were of significant importance to communities. Informing the local community of intentions, and involving them in decisions, was viewed as being very important.

Question 6. Do you support a proposal to introduce a character test to ensure that greens accord with the popularly held traditional character of such areas?

- Total number of responses: 190
- Respondees who answered 'yes': 91 (47.8%)
- Respondees who answered 'no': 94 (49.8 %)
- Respondees who gave no clear indication: 5 (2.6%)

This proposal was opposed by almost half of all respondents. The main arguments against a character test were that it would be too subjective ('looks are in the eye of the beholder'), definitions would be too difficult to establish and such a system would be unworkable. Also, many pointed out that how the land was used (i.e. for leisure and recreation over a 20 year period) was the key aspect of a TVG application rather than the appearance of the land; they felt that custom and practice were the key factors in applications not looks.

There were fears that a character test would result in only 'classic' village greens of chocolate box appearance passing such a test and that other land, especially former industrial and agricultural land, would be excluded. This was seen as making urban applications particularly difficult; and other 'non green' land, such as beaches, would also be excluded from designation. There were fears that such a test would reduce, or remove, the diversity of TVG applications, with all future designations being for very similar areas of land. It was argued that not all recreation took place on traditional green spaces and that modern life meant many people used whatever local space they could for their recreational activities.

Introducing a character test was seen as being likely to increase costs, legal burdens and the time spent on applications. It was noted that the subjective nature of a test could lead to prolonged legal argument.

Others felt that TVG status gave such a high level of protection from development that it should be reserved for very special sites only, and that the Local Green Space Designation being introduced in the National Planning Policy Framework should be used for other areas of land used for recreational purposes. It was argued by some that a character test would deter spurious applications and applications aimed solely at stopping or delaying proposed development on land. The current situation was viewed by some as 'chaotic' and a character test allowing only traditional village greens was welcomed by them. Some sought stronger evidence of use of the land for traditional green-type activities (e.g. fêtes, community activities), as opposed to ordinary recreational use.

Some argued that land changed in appearance over time and it did not take long for land to become overgrown or return to scrub. There was also concern that landowners may deliberately change the character of their land, for example by erecting fences, to deter applications being made.

Question 7. Do you agree with the character test i.e. that land must be open and unenclosed in character? Do you support the adoption of additional criteria such as those in paragraph 5.5.11 of the consultation document?

- Total number of responses: 190
- Respondeees who answered 'yes': 75 (39.3%)
- Respondeees who answered 'no': 98 (51.3 %)
- Respondeees who gave no clear indication: 17 (8.9%)

This proposal was opposed by a (small) majority of respondeees. It was argued that people used a large variety of spaces for their leisure and recreational activities and imposing prescriptive criteria on land that could or could not be registered as a TVG would restrict the spaces available to local people. Proof of use was the only test that many people thought should apply to applications. It was argued that character and quality were very different things, and the value local people put on their local spaces would not be taken into account if such a test was used. Areas of scrub, woodland and cultivated land could be used for recreational pursuits, but all were likely to fail a character test and therefore not be deemed suitable for TVG status.

If a test were to be introduced it was felt that it must be flexible, taking account of local issues. The view was expressed that all definitions used must be tight and precise, and

not too prescriptive, and clear guidance would be needed. Some felt that no land would ever pass all the criteria in a test and the numbers of TVGs would decline.

There was thought to be big differences between TVGs in the North of England, where many were agricultural and the South, where more were 'traditional' village greens. There was also felt to be a rural/urban split, with urban TVGs less likely to be open and unenclosed. It was felt that diversity would be a key issue to take into account when any character test was being devised, and that local issues must be fully considered.

It was thought by some that such a test would add rigour to the current system. The more speculative applications could be sifted out of the process at an early stage, saving time and speculative and 'development-stopping' applications could also be rejected. Some called for village greens to be only 'areas of green space in a village'.

A historic view of the land was called for by both sides of the argument, fences could be vandalised by those wishing to claim the land as a TVG or erected by landowners aiming to stop registration. It was also pointed out that whether the land had historically been fenced would be the critical issue if such a test was used.

Some authorities were concerned over the cost of applying such a test, with site visits thought to be required. Those which covered large areas felt that the costs could be substantial.

Question 8. Do you support the proposal which would rule out making a greens registration application where a site was designated for development in a proposed or adopted local or neighbourhood plan?

- Total number of responses: 191
- Respondee who answered 'yes': 101 (52.8%)
- Respondee who answered 'no': 80 (41.7 %)
- Respondee who gave no clear indication: 10 (5.2%)

This proposal was supported by the majority of respondee. Many called for the TVG process to be integrated into the planning system, and to be included when local plans were being developed and consulted on. It was felt that local communities should have the right to develop without the threat of TVG applications holding up or preventing development.

A number of responses pointed out that the local plan is developed with the community, and is subject to public consultation and scrutiny – and concerns over open space can be considered as part of that process. It was also recognised that prohibiting last minute TVG applications would save developers money, and that TVG applications should not be

capable of preventing development agreed through the planning process. This proposal is in line with the Penfold review recommendation and would give developers and landowners more confidence.

Others felt that local communities were not aware of or engaged in the planning process and would only be made aware of proposed developments when they were advertised. It was thought that the TVG process could only be linked to the planning process if reforms were made to the planning process to increase local accountability and awareness; publicity in particular was seen as being an issue that needed to be addressed. There were also concerns that the planning process did not sufficiently recognise existing recreational use of potential development sites. The local referendums proposed in the localism bill were seen as a way of increasing local accountability and allowing people input into issues such as planning proposals.

There was some concern that some sites could be designated for planning but, especially in the current economic climate, not developed for a number of years. It was thought that this would deny local people access to the land but not provide whatever benefits the development would bring.

Some argued that locals needed the opportunity to protect their leisure spaces, and this proposal would deprive them of their rights to defend those spaces, giving them no voice with which to do so. Thorough consultation on all planning matters, especially those involving local green spaces was called for, and increased local involvement in the planning process.

It was felt that a balancing act between development and the protection of local recreation spaces was required, which would need to involve landowners, local and the relevant local authorities trying to reach agreement on what developments were needed, what land needed protecting, and a review process for the future.

Question 9. Do you support the proposal that a greens registration application could not be made after an application for planning permission had been submitted in respect of a site, or on which there was statutory pre-application consultation, until planning permission had itself been refused or implemented, or had expired?

- Total number of responses: 187
- Respondee who answered 'yes': 92 (49.1%)
- Respondee who answered 'no': 85 (45.2%)
- Respondee who gave no clear indication: 10 (5.3%)

Many respondents agreed with the proposal as stated. Many responses suggested that landowners and developers would have much greater confidence in development proposals in a system which prevented potentially costly TVG applications. Preventing TVG applications in accordance with the proposal would remove the primary motive for using the registration system

It was also suggested that different types of much needed development were being held up and that removing delays to building projects would be beneficial. Moreover the public could make representations as part of the planning application process.

Others feared stimulating a potential race between new greens and planning applications, and that developers would avoid prior consultation on planning applications because of fears of generating a pre-emptive registration application.

Regarding the proposed pre-application consultation, suggestions included:

- an assessment of the land to inform both the community and the local authority so they can fully understand the value of the space to the community;
- parish councils being encouraged to take an active role;
- factoring-in the pre-determination consultation process for planning applications into the new green application.

Many of those not in favour of the proposal noted that planning application is often the first indication of intended development and that the proposal would encourage speculative planning applications to prevent greens applications. Landowners could use this proposal to prevent registration to obviate the two years grace following a declaration: planning applications might be made for a trivial change of use. It was suggested that local authorities are unwilling to protect valued local open space against unwelcomed development or enclosure. It was suggested that new greens applications should be permitted within a limited time after a planning application or be made a material consideration in planning applications and development of local plans.

Question 10. Do you support this proposal to charge a fee for applications?

- Total number of responses: 192
- Respondee who answered 'yes': 121 (63%)
- Respondee who answered 'no': 63 (32.6%)
- Respondee who gave no clear indication: 8 (4.2%)

Amongst those in favour there was a variety of views as to how a fee should be introduced. It was noted that the second wave of registrations under the Commons Registration Act 1965 set a precedent for charging to register greens. Many pointed out that a fee would discourage applications particularly if it was high.

The suggested amounts ranged between £200 and £3,000, a sliding scale or full cost recovery (possibly excluding inquiry costs) because, as some said, the fee could be returned on success of the application. Alternatively, it was suggested that the fee should be set nationally or it could be calculated using the Indices of Multiple Deprivation (IMD) in order to avoid a situation whereby lower income communities would be priced out the ability to apply.

There were comments on the structure of fees. Some proposed that the fee should only apply to those applications that pass the initial sift, otherwise applicants would be heavily penalised for technical mistakes. An alternative would be to charge a small fee for the sift and a bigger fee for the post-sift phase. One suggestion was that the cost of advertising should be passed to applicant. A few proposed that there should be consistency with the approach to claiming public rights of way (where there are no charges).

Aside from the application fee it was suggested that inspectors should have the power to award costs particularly where one party has acted unfairly.

It was questioned whether charging landowners for applying under section 15(8) to voluntarily register their land would be counter-productive.

Those against the introduction of a fee thought that it would prevent worthy applications. The view was expressed that applicants should not have to pay for something which carries a benefit to the general public. Furthermore it was commented that applications were already costly enough, in terms of time and incidental costs (maps, photocopying etc).

Question 11. If you support an application fee, do you support the proposal for refunding the fee where an application is granted?

- Total number of responses: 160
- Respondee who answered 'yes': 59 (36.6%)
- Respondee who answered 'no': 90 (56.25%)
- Respondee who gave no clear indication: 11 (6.9%)

Amongst those who objected, the prevailing view was that commons registration authorities incur costs in officer time and advertising and therefore should not have to refund the fee even if an application is successful. There was also widespread recognition of potential for a perception of bias on the part of registration authorities to enable them to retain fees.

It was noted that the proposed fee is unlikely to make much difference to local authority budgets and that they should have the power to recover actual costs. It was suggested that the fee is a small price to pay for a community that can rest assured that land will be

secured for the future. It was also commented that if the intention is to discourage vexatious applications then a fee should apply regardless of the outcome of the application.

It was noted that there is no precedent of repayment of fees in this or any other context. The refunding of fees also goes against the cost recovery principle, which would apply regardless of the outcome.

Amongst those in favour, it was suggested that the fee should be returned after the application has successfully negotiated the initial sift, or that the fee should be waived for applications submitted by organisations that have a large membership.

One suggestion was to provide inspectors with a power to require the refund of meritorious applications that ultimately failed.

Alternative suggestions included requiring both parties (assumes every application receives an objection) to pay a fee but the losing party would pay, or that costs should be borne by all council tax payers in the area.

Question 12. Do you agree that the fee should be determined by the registration authority and that a ceiling should be set at £1,000?

- Total number of responses: 165
- Respondeees who answered 'yes': 78 (46.9%)
- Respondeees who answered 'no': 81 (49%)
- Respondeees who gave no clear indication: 6 (3.6%)

Many objected on the basis that the suggested ceiling of £1,000 would not cover costs (so £1,000 should be the minimum), and would be insufficient to deterrent to vexatious applications.

There was a wide variety of views on the fee amount which ranged from one penny to £500, plus advertising costs [NB: these responses are inconsistent with those to question 10]. Alternatively it was felt that the fee should be calculated on: actual costs, a sliding scale based on the weight of evidence (e.g. number of signatories to qualifying evidence), the size of the land, or be proportionate to the community's ability to pay. One response noted that a recent CIPFA benchmarking exercise put the estimated average cost of dealing with an application at £1,538. Some took the view that the authority should be able to recover actual costs. Another response compared the fee amount to that of an application to deregister land under section 16 of the Commons Act 2006 (£4,900), and noted the more intensive work involved with greens applications. It was argued that whatever the amount, there would need to be regular reviews to take account of inflation.

There was a wide variety of views expressed as to whether the authority should set the fee. Many said yes, it should have the power, whilst others said it should be done at a national level. The reasons backing the latter view comprised: it would reduce the need for registration authorities to justify their fees; asking all authorities to calculate and publish their fees would be a waste of resource (particularly since the fee would invariably be less than actual costs); and, there would be a 'postcode lottery' with quite significant differences in fee amounts.

Amongst the objectors there was a view that the registration authority was likely to charge the maximum amount. One registration authority suggested that they should publish the maximum fee they could charge but that in the event the cost of a case might be lower. Alternatively, it was also suggested that there should be no discretion to reduce the fee.

Alternative suggestions were that greens applications should follow the same process as rights of way, which if opposed are referred to the Planning Inspectorate, which can recover costs and that the initial fee should be set higher if a refund was made compulsory.

Question 13. Do you support the adoption of all of the proposals set out in chapter 5.3 to 5.7? (These are: streamline sifting of applications; declarations by landowners; character test; integration with local and neighbourhood planning; charging fees.)

- Total number of responses: 167
- Respondeees who answered 'yes': 61 (36.5%)
- Respondeees who answered 'no': 98 (58.3%)
- Respondeees who gave no clear indication: 8 (4.8%)

The minority who agreed with this question often took the view that in order to address 'vexatious' applications it would be necessary to implement all five main proposals. The concern was that implementation of individual or selective proposals would not be as effective. But the majority added some form of qualification such as that they either did not agree to the implementation of all proposals or that one or more should be amended in some way.

Amongst those against there was a view that, if enacted, the proposals would prevent new greens from being registered - which would contradict the Minister's statement that the "Government is returning the power to shape their neighbourhood to local people." Furthermore, it was felt that the enactment of all proposals would tilt that balance too far in favour of landowners and developers. Respondents raised a number of points about the wider context, including a call for recognition that inadequate protection for cherished

green spaces within the planning system has contributed to the rise in greens applications; that the implication that failed TVG sites could become Local Green Spaces is wrong because most green spaces will not be eligible for the local designation; and over time there would be a net loss in valuable green spaces for communities.

There was also a call for Government to give further consideration to the contradictory interaction of legislation promoted by the Commons Act 2006 and various Local Government Acts and the need to enable local authorities to drive economic growth by the regeneration of their own land holdings.

Question 14. “Do you support the adoption of the Character test in relation to the voluntary registration of land as a green, under section 15(8) of the 2006 Act?”

- Total number of responses: 168
- Respondees who answered ‘yes’: 61 (36.3%)
- Respondees who answered ‘no’: 104 (61.5%)
- Respondees who gave no clear indication: 3 (1.7%)

The majority of respondents disagreed with the proposal to extend the character test to voluntary registrations under section 15(8) and offered a range of reasons. The most common was that it would be wrong to prevent a generous landowner who wishes to dedicate land for public benefit because the land did not meet a specific character test. It was asserted that none of the problems identified as the justification for the changes have any bearing on voluntary registrations and there are very few applications and no abuse of the system. It was also noted that there are no such requirements where a landowner makes a similar type of dedication under section 16 of the Countryside and Rights of Way Act 2000.

Others suggested that voluntarily registered greens would differ little from those registered under the first wave of registrations under the Commons Registration Act 1965; that the character test is not a clearly defined concept and would end up being argued in the courts - which is the opposite of the intention of the Government’s reforms. A few also noted that this proposal would be imposing more red tape in an era of deregulation. It was commented that the fact that open spaces may not be particularly attractive (not “chocolate box”) makes no difference to their value to communities. It was felt to be unfair for communities to lose valued recreational spaces because they do not fit the subjective value judgments of someone else. It was also noted that the House of Lords in Traps Grounds, declined to rule that land could be registered as a green only if it passed some test of character.

An alternative approach suggested was a referendum-style vote by local residents, in a pre-determined vicinity to the application land, as to whether they deem the site important enough to become a village green.

The consensus amongst those in favour of the proposal was that there must be consistency to avoid a two-tier system.

It was also suggested that the character test could easily be bypassed by user groups who purchase the land for the sole purpose of registering it as a village green which would prevent future development of the land.

Question 15. “Do you have other proposals for reform to the greens system which would help deliver the objectives set out in paragraph 1.3.5 (reproduced in the box below)? It would be helpful if your response sets out how the proposal would work, your assessment of the impact on all parties to an affected application (including the applicant, landowner and registration authority), and so far as is possible, the costs and benefits. Please note that the Government has no plans to relax the criteria for registration of new greens.”

1.3.5 The objectives of the proposed reforms are to:

- strike a better balance between protecting high quality green space, valued by local communities, and enabling legitimate development to occur where it is most appropriate, and
- ensure that when land is registered as a green, because of the exceptional protection afforded to new greens, the land concerned really does deserve the level of protection it will get.

A wide range of suggestions were put forward which have been listed below according to themes (in no particular order).

A number of respondents were concerned about the transparency of the registration process and suggested that an independent body (e.g. PINS, Land Tribunal) should deal with applications to ensure an impartial and consistent approach in reaching decisions. There was a call to bring in controls on registration authority committees (often responsible for deciding applications within the authority) where they are comprised of landowners in order to prevent bias. It was also suggested, with respect to the areas which pioneered implementation of Part 1 of the 2006 Act, that the requirement to refer cases to the Planning Inspectorate where the authority has ‘an interest in the outcome of an application’ should be extended to include land owned by any local authority. Another suggested

approach was to make detailed provision for the process in statute, including a requirement for inquiry where a commons registration authority has interest in the land (not just in the pioneer areas, as is presently the case).

Unsurprisingly there was much discussion about the complex legalities and a few called for a definitive ruling on whether land where there is 'use by right' is exempt from registration. Clarification was sought on whether it is legal to eject non-local people from publicly-owned greens; on the basis that, strictly speaking, greens are for local people only. There was a call to end the longstanding confusion over the definition of 'locality' or 'neighbourhood within a locality' by simplifying it to 'neighbourhood or neighbourhoods'. It was also suggested that owners of greens should be protected from liability.

With respect to vexatious applications, many respondents called for a power to award costs for unreasonable behaviour (whether at inquiry or not), and there was also a suggestion for a power for registration authorities to sue. It was suggested that the law should proscribe the registration of certain types of land, e.g. publicly owned or educational land.

There were a few planning related suggestions:

- Impose a maximum number of greens within each settlement;
- Require proper interaction between both the registration and planning authorities; identify greens in the Local Plan rather than through the registration system;
- Provide that 'user' (as of right) is a material consideration in planning applications.
- It was suggested that the planning system could require developers to provide a percentage of a site as quality green space to help reduce the number of vexatious applications.
- It was suggested that planning authorities should be prevented from giving planning permission on registered greens.

On maintenance and protection, it was commented that local authorities should be placed under a duty to enforce breaches of section 29 of the Commons Act 1876 and section 12 of the Inclosure Act 1857. It was also suggested that the protective powers should be simplified and the modernised to clarify the meaning. Other views were that management should be a material consideration of the greens registration process and that applicants should maintain greens.

Several suggestions related the statutory criteria including use 'as of right'. These were:

- disqualify dog walking;
- disqualify all use of land through lease or licence;
- permit consideration of local authority power under Article 7 of the Greater London Parks and Open Spaces Order 1967 to exclude the public from any area designated for a specific purpose.
- reduce the two year period of grace under s.15(3) to one year.

Many suggestions related to improving the process:

- requiring consultation between all the parties at the initial stage (prior to application?);

- prescribing evidence forms for applicants and objectors to improve the quality of evidence and reduce time/costs (ACRA is considering making a new evidence form available);
- requiring evidential forms to include declarations of truth;
- making statutory provision for negotiation to amend the application land;
- conferring an express power for registration authorities to refuse repeat applications;
- abolish the requirement for advertising applications in local newspapers;
- introducing timescales for each stage of the process;
- enable applicant and landowner to agree partial registration of claimed area, so as to effect a final determination in relation to the balance of that area;
- making greater use of informal hearings and written reps to reduce costs of the process;
- compelling the attendance of witnesses known to possess relevant evidence (these rules already apply to proceedings under section 14 of the 1965 Act);
- expanding the statutory declaration to include an obligation that relevant evidence is made available whether for or against the application.
- limiting the number of applications made in area over a defined time period.

Other suggestions included:

- requiring a parish council to support a registration application;
- adopting a cut-off date for applications;
- reduce the two-year period of grace for applications;
- adopt a presumption that land held by local authority is held for purposes of allowing recreation, and therefore not used as of right;
- abolish section 15 except in relation to unclaimed land;
- confer a power on registration authorities to register greens, instead of a duty
- require a minimum number of persons to join in a registration application.

Question 16. Do you wish to see any of the reforms set out in paragraph 5.11.1 (reproduced in the box below) addressed in new legislation on greens?

5.11.1 If the Government were minded to legislate to enact reforms relating to the greens registration system, it could also look at reforms to the management of greens. In the *Common Land Policy Statement 2002*, the Government and the National Assembly for Wales set out a package of reforms relating to common land and greens. Most of these reforms were given effect by the Commons Act 2006, but the management options for greens in section 4 of the white paper were not adopted owing to lack of Parliamentary time. The proposed reforms (other than those addressed in the 2006 Act) dealt with:

- reassigning title to greens wrongly vested in the local authority;
- enabling facilities to be built on a green which would add comfort or convenience to public enjoyment;
- enabling the managers of greens to grant consent for temporary parking;
- resolving questions of vehicular access over greens (including the regularisation of driving over existing access ways, and regulating the grant of new vehicular easements).

- Total number of responses: 104
- Respondee who answered 'yes': 65 (62.5%)
- Respondee who answered 'no': 13 (12.5%)
- Respondee who gave no clear indication: 26 (25%)

Amongst those in favour many took the view that they would be helpful in improving the public enjoyment of village greens. There was much comment around clarifying, through legislation or guidance or both, what the 19th century laws mean today, e.g. what are modern sports and pastimes and what is legal and illegal. It was commented that works done 'with a view to the better enjoyment' is arguably a particularly subjective area, which could be argued either way.

The most frequently experienced management issues — parking and vehicular access — were thought to be attributable to a lack of enforcement as much as anything else. Local authorities regularly deal with enquiries on management issues and find it increasingly difficult to provide useful advice. It is particularly an issue for statutory undertakers seeking to access or maintain equipment situated on or under a registered TVG. One suggestion was to introduce a regime similar to that of section 38 for works on commons but in a more restrictive way.

Those who opposed this proposal offered a number of reasons. Many said there is no need to deal with reassigning title to greens vested in local authorities; that section 29 Commons Act 1876 and section 12 Inclosure Act 1857 provide sufficient powers regards

the need for facilities; and that temporary parking could be considered with very strict conditions.

There was also a call for repeal of Section 14 of the Commons Registration Act 1965 and consequent commencement of Part 1 of the Commons Act 2006 because it is prejudicial to people who have registered land as greens and are outside the current seven pioneer areas where section 14 has been repealed.

One respondent suggested that the Redcar decision has added a further layer of complexity to the management of greens and called for codification to resolve the issue for communities and developers. The court decided that two categories of users could use land without conflict but did not determine what would occur in the event of a conflict. It was suggested that if each user is equally entitled to the rights over land it would be impossible to determine where one right ends and the other begins, making management of the land impossible.

Question 17. If so, which of these reforms are a priority for action, and what outcome do you seek to achieve?

- Total number of responses: 78

There was a mixture of views in response to this question. A minority suggested that there is no need to make any changes, whether to the management issues discussed in question 16, or to the proposed reforms of the registration process itself. But there was support, many with qualifications, for some or all of the issues.

Vehicular access was the issue most respondents expressed a need to address (27 in favour), with one respondent noting that many easements from the past are undocumented ('gentlemen's agreements') which makes the issue very difficult to resolve today. One respondent said there was an urgent need for clarification on vehicular access (and parking) so that decisions can be made at a local level, in line with indisputable national regulations. It was asserted that the limits of the authority of local decision makers must be clearly established and their decisions must then be enforced.

The provision of facilities was considered the second most important issue (21 in favour). There were a few suggestions for greater clarity what the 19th century laws mean for the modern day: what is legal and illegal, and what can be done in reality about illegal development or actions. Greens without known owners give rise to management problems because no one knows who can or should be managing the land.

Assigning title and temporary parking each received 12, and 5 were in favour of better overall management or maintenance. Other suggestions included:

- confer recreational rights on the public generally (as opposed to local inhabitants)
- management of ownerless greens

- registering title of parish council to unclaimed greens (and concern about the difficulty for a parish council to show adverse possession)
- provision to allow works by utility companies
- enable use of greens in a modern way
- deregistration of unused greens
- updating the nineteenth century statutes which protect greens
- surfacing of paths etc.
- enabling provision of equipment stores and refuges

List of respondees to the consultation

Organisations	Individuals
ACRE	Adrian Clifford
Asda	Alan Telford
Alwoodley Parish Council	Andrew Bodman
Amber Valley Borough Council	Barbara Roberts
Annington Property Ltd	Bill White
Arun District Council	Brian G Elias
Ashford Borough Council	Catriona Cook
Association of Commons Registration Authorities	Charles George QC
Association of Directors of Environment, Economy, Planning & Transport (ADEPT)	Charlotte Appleby
Avon Wildlife Trust	Chris Harvey
Aylesbury Vale District Council	Chris Hobson
Barrett Developments	Chris Murden
Birmingham City Council	Chris Stanford
Bloor Homes	Christine Kay
Blue Coat Church of England School and Music College	Christopher Whitmey
Borough of Broxbourne	Cynthia Flittner & Edna Hodgkins
Borough of Poole	David Liddle
Bracknell Town Council	David Redfern
Bradwell Parish Council	Dr Mark Perkins
Brandon & Byshottles Parish Council	Duncan Brittain
Breckland Council	Edgar Powell
Bristol City Council (x 2)	Fiona O'Donnell MP

Bristol City Football Club	Geoff Collard
Bristol Parks Forum (OSS)	Gill Taylor
British Horse Society	Graham Bathe
British Mountaineering Council	Jane Driscoll
British Property Federation	Jean Macdonald
BS10 Parks & Planning Group	Jill Sanders
Buckinghamshire County Council	Jo Talbot
Bucks Rural Housing Partnership	John Button
Burton Leonard Parish Council	John Holland
Cambridgeshire County Council	John Smith
Campaign for Planning Sanity	June Perry
Campaign to Protect Rural England	Karl Lantree
Campaign to Protect Rural England - Surrey	Lance Povah
Canterbury City Councillor	Len Wyatt
Carlton Parish Council	Leonard Carter
Central Association of Agricultural Valuers	Linda Tuff
City of Bradford Metropolitan District Council	Liz Akenhead
City of York	M C Bull
Clayton Fields Action Group	Mary Citrine
Colchester Borough Council	Mike Hartley
Cold Aston Parish Council	Mr & Mrs G A Whent
Committee of Friends of Stoke Lodge	Mr & Mrs R Robson
Co-operative Estates	Mr A C James
Cornwall Countryside Access Forum	Mr A Hartles
Cornwall County Council	Mr A Marley

Country Land & Business Association	Mr I M Witham
Crown Estates	Mrs A Wilks
Cumbria Association of Local Councils	N C Friswell
Cumbria County Council	Nick Flittner
Daventry District Council	Norman Jones
Derby City Council	Paul Hare
Derbyshire County Council	Peter Blissett
Devon County Council	Peter Checketts
Dogmersfield Parish Council	Piers Blewitt
Dore Village Society	Prof David Hunt
Dorset County Council	Richard Adam
Durham County Council	Richard Evans
DWF Business Law	Rob Telford
Edenbridge Town Council	Robert Cambell
Eggington Parish Council	Roger Genge
Emerson Group Company	Roger Quigley
Environmental Law Foundation	Sarah Gatica-lara
Essex Bridleways Association	Simon Westmacott
Essex County Council	Stephen Newcombe
Exeter City Council	Tim Baker
Fairford Environmental Society	Yvonne Miller
Federation of City Farms & Community Gardens	
Federation of Master Builders	One respondent requested that their details are withheld
Fields in Trust	
Friends of Basildon Golf Club	

Friends of Elderberry Open Space	
Friends of Pine Meadows	
Friends of the Lake District	
Friends of the Nothe Gardens	
Friends of Warneford Meadow	
Gateshead Council	
Gleeson Strategic Land	
Gloucester Diocesan Board	
Greater Haven Gateway's Housing Group	
Green Spaces	
Hampshire County Council	
Hartley Parish Council	
Hastoe Housing Association	
Herbrand Walk Beach Preservation Society	
Hertfordshire County Council	
High Peak Borough Council	
Home Builders Federation	
Honiton Town Council	
Hornchurch Residents Association	
Hurstmeadows Organisation	
Integrated Education - Bradford	
Isle of Wight Council	
Karen Wallis Solicitors	
Keep Britain Tidy	
Kensington Society	

<p>Kent County Council</p> <p>Kitewood Estates Ltd</p> <p>Lacey Simmons Group</p> <p>Lancashire County Council</p> <p>Leeds City Council (x 2)</p> <p>Leicestershire Local Access Forum</p> <p>Lewis Silken LLP</p> <p>Local Govenment Association & Planning Officers' Society</p> <p>London Borough of Bexley</p> <p>London Borough of Croydon</p> <p>London Borough of Ealing</p> <p>Loughton Residents Association</p> <p>Loughton Town Council</p> <p>Malvern St James School</p> <p>Manchester City Council</p> <p>Melksham without Parish Council</p> <p>Middlesbrough Council</p> <p>Minster-on-Sea Parish Council</p> <p>Moat Homes Ltd</p> <p>Mount-Walker Chartered Surveyors</p> <p>National Farmers' Union</p> <p>National Housing Federation</p> <p>Network Rail</p> <p>New Forest Access Forum</p> <p>New Haven Town Council</p>	
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New Square Chambers	
Newhaven Port & Properties Ltd	
Norfolk County Council	
North Somerset Council	
Northamptonshire County Council	
Northumberland County Council	
Nottinghamshire County Council	
NW London RSPB	
Open Spaces Society	
Orwell Housing Association	
Our Green Space Project	
Oxford City Council	
Oxford County Council	
Paignton Preservation & Local History Society	
Peak District Rural Housing Association	
Peak District National Park Authority	
Planning Inspectorate	
Property Litigation Association	
Public Law Solicitors	
Radley Parish Council	
Railfuture - Thames Valley Branch	
Ramblers' Association	
Redcar & Cleveland Borough Council	
Redrow Homes Ltd	
Renewable UK	

Residents Association of Port Solent	
Royal Borough of Windsor & Maidenhead	
Ruislip Residents Association	
RWE Npower	
Save King's Stairs Gardens Action Group	
Scarborough Borough Council (x 2)	
School of Law University of Guildford	
Shepherd & Wederburn LLP	
Skipton Properties Ltd	
Somerset County Council	
Somerset Local Access Forum	
Somerset Playing Fields Association	
South Gloucestershire Council	
South Northamptonshire Council	
South West Commercial Finance Ltd	
Southampton City Council	
Sovereign Housing Group Ltd	
St Issey Parish Council	
Staffordshire Moorlands District Council	
Stephen Scown Law Firm	
Stevenage Borough Council	
Suffolk County Council	
Suffolk Preservation Society	
Surrey Community Action & Surrey Rural Housing Group	
Surrey Countryside Access Forum	

Surrey County Council	
Tarmac	
Taunton Deane Borough Council	
Taylor Wimpey	
Tesco	
Test Valley Borough Council	
The Campaign for Real Village Greens	
The Horsham Society	
The Land Trust	
The Law Society	
The Woodland Trust	
Thomas Eggar Law	
Torbay Friends of the Earth	
University of Reading	
Upminster & Cranham Residents' Association	
War Memorials Trust	
Waverley Borough Council	
Welwyn Parish Council	
West Berkshire District Council	
West Sussex County Council	
Wickhambreaux Parish Council	
Wiltshire County Council	
Wokingham Borough Council	
Wolston Parish Council	