

Case Name: *Wiltshire Council v Cooper Estates Strategic Land Ltd* 2019 EWCA Civ 840 (16 May 2019)

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Commentary: The Court of Appeal dismissed Wiltshire Council's appeal, upholding a High Court decision that the Council's Core Strategy sufficiently identified land for potential development, disapplying the statutory right for that land to be registered as a town or village green (TVG).

Under section 15C of the Commons Act 2006, the right under the Act to register land as TVG ceases to apply if certain trigger events occur. The Act specifies these trigger events, which include an adopted development plan document identifying the land for "potential development". The policy reason behind the Act's provision to exempt land from TVG registration is to allow the planning system to approve development of land that otherwise might be registered as TVG, thereby 'sterilising' the land for development.

In 2016, the Council had decided to register as TVG an area of land on the edge of the market town of Royal Wootton Bassett. Cooper Estates Strategic Land Limited challenged this decision in the High Court on the grounds that an adopted development plan document – the Council's Core Strategy, adopted in 2015 – sufficiently identified the land for potential development in its Core Policies 1 and 2, thereby triggering the disapplication of the right under the Commons Act 2006 to register the land as TVG. The High Court found that Core Policies 1 and 2, with their map, identify the land as within the settlement boundary of Wootton Bassett, and therefore as having the necessary potential for development to disapply the right for the land to be registered as TVG.

In upholding the High Court's decision, the Court of Appeal rejected the Council's argument that "potential" for development means "there would ultimately be a form of development on the land that would be acceptable [and the land] had to be the subject of an allocation [in a development plan document] or something of essentially the same nature." The Court of Appeal held that properly to construe "potential development" for the purposes of section 15C of the Commons Act 2006, "potential" has as wide, ordinary meaning, not a narrow one to indicate likely or probable development as a result of allocation for particular development.

In dismissing the appeal, the Court of Appeal emphasised that its decision was in accordance with the policy underlying section 15C of the Commons Act 2006: "that whether or not to protect a piece of recreational land with identified development potential should be achieved through the planning system and not by means of registration of a TVG".

Case summary prepared by George Morton Jack