

**Case Name:** *Bellway Homes Ltd, R (On the Application Of) v Kent County Council* [2022] EWHC 2593 (Admin) (14 October 2022)

**Full case:** [Click Here](#)

**Commentary:**

This case was a challenge by way of judicial review to a finding by Kent County Council (KCC) that a ‘trigger event’ had not occurred so as to prevent an application to register land as a ‘town or village green’ (TVG) for the purposes of The Commons Act 2006.

The statutory protection afforded to TVGs is such that most forms of development are precluded but the right to register land as a TVG is disapplied where certain ‘trigger events’ occur. One such event is where “a development plan document which identifies the land for potential development is adopted”. In this case, the central issue was whether land included in a “Green Gap” to which Policy OS6 of the Canterbury District Local Plan (CDLP) applies was correctly treated as having been identified by that plan for potential development and so immune from registration as a TVG. Policy OS6 allows development within the “Green Gaps” identified on the Proposals Map, subject to the satisfaction of various criteria.

In his judgment, Holgate J referred to the one authority to date on the meaning and application of the ‘trigger event’ in which a development plan identifies land for potential development, namely *R (Cooper Estates Strategic Land Limited) v Wiltshire Council* [2019] PTSR 1980 (Cooper). In Cooper, Lewison LJ accepted that the development plan itself must achieve the identification of a defined area for potential development but that identification can be achieved in a number of ways. The mere fact that land is shown as being included within a settlement boundary is insufficient to suspend the right to apply to register a TVG and this depends on the consequences, as set out in the development plan, of the land being included in that area. As for being identified for “potential” development, this is a very broad concept and can include, but need not amount to, a site-specific allocation. It would also be possible for the prima facie identification of land for potential development by one policy to be contradicted by countervailing policies elsewhere in the plan.

The advice which KCC accepted in reaching a view that a ‘trigger event’ had not occurred found that, taken by itself, Policy OS6 could be understood as permitting development in “Green Gaps” meeting certain criteria and as identifying land in those Gaps for some limited forms of development. But, per Cooper, it was incorrect to look at the policy in isolation and it was necessary to consider the plan as a whole. The land in question was subject to multiple policies and, to the extent that these allow some types of development subject to compliance with certain criteria, they do so by way of general application to the whole of the broad area of the District. Rather than identifying areas of land for potential development, they simply allow development to come forward in unidentified locations anywhere within extensive areas of the District if certain

conditions are met.

Holgate J analysed Policy OS6 in some detail, noting that its object is to protect “Green Gaps” and that the CDLP does not suggest that there is any need for development in the “Green Gaps” identified. On any view, he found that Policy OS6 imposes a relatively strict form of development control and does not assume or imply, let alone identify, each and every part of all of the “Green Gaps” as having the potential for development. The reference in the policy to “development will be permitted” is only engaged where the various criteria are satisfied. By drawing a comparison with the Council’s policies concerning AONBs (which also allow development in certain circumstances), Holgate J found that the application of the claimant’s arguments would result in a finding that all land within AONBs had been identified for potential development which could not be correct. He found that Policy OS6 was similar to other policies applicable to rural areas of the District which, in essence, “provide criteria applicable generally throughout the relevant area for assessing the acceptability or otherwise of proposals which must come forward. They do not themselves identify land for potential development. There is no relevant nexus between those policies and any specific land.”

He noted that policies of this nature are plainly different to a site-specific allocation which would, generally, be identifying land for potential development, even if the site-specific policy requires a number of criteria to be satisfied for permission to be granted.

Accordingly, the claim for judicial review was dismissed, there had been no ‘trigger event’ and KCC had jurisdiction to determine the application to register the land as a TVG.

*Case summary prepared by Victoria McKeegan*