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NEW TOWN AND VILLAGE GREENS
PROPOSALS FOR LAW REFORM

THE SOCIETY FOR ADVANCED LEGAL STUDIES

PLANNING AND ENVIRONMENTAL LAW REFORM WORKING GROUP

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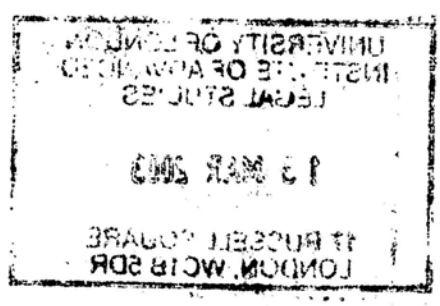

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NEW TOWN AND VILLAGE GREENS

PROPOSALS FOR LAW REFORM BY THE SOCIETY FOR ADVANCED LEGAL STUDIES PLANNING AND ENVIRONMENTAL LAW REFORM WORKING GROUP

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1. INTRODUCTION – THE CURRENT LEGISLATION

1.1. The Commons Registration Act 1965 ("CRA") initiated a procedure for and process of registering all Town and Village Greens ("TVG") during a 5 year period, which came to an end on 31st July 1970. The objective of identifying and registering existing greens was a laudable one, aiming at clarity and certainty. The 1965 Legislation is, however, incomplete. As was pointed out by Lord Denning in New Windsor Corp v Mellor [1975] Ch 380 at 391G to 392G, the effects of registration are unclear because it was anticipated that further legislation would deal with the point. He added *"another difficulty is that, once registered, these rights are established for ever without any possibility of changing them except by Act of Parliament, and this may impede needed development"*.

1.2. CRA, s.22(1) originally defined a TVG as:

> *"land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports or pastimes or in which the inhabitants of any locality*

have indulged in such sports and pastimes as of right, for not less than twenty years."

The three categories of TVG are referred to in the case law as Class (a), (b) and (c) greens. This paper is primarily concerned with Class (c) greens since, by virtue of s.1(2)(a) CRA, it is now not possible to register a new green on any other basis.

1.3. Presumably in anticipation of applications being made to register Class (c) TVGs after July 1970, the Commons Registration (New Land) Regulations were made, pursuant to s.19 CRA in 1969. They came into effect on 3rd January 1970.

1.4. S.22(1) CRA was amended by s.98 Countryside and Rights of Way Act 2000 ("CROW"). The effect is to make the relevant part of s.22 Commons Registration Act 1965 read as follows:

"(1) In this Act, unless the context otherwise requires –

'town or village green' means land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports or pastimes or which falls within subsection (1A) of this section

.....

(IA) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality; or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either –

(a) continue to do so, or
(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.

(IB) If regulations made for the purposes of paragraph (b) of subsection (1A) of this section provide for the period mentioned in that paragraph to come to an end unless prescribed steps are taken, the regulations may also require registration authorities to make available in accordance with the regulations, on payment of any prescribed fee, information relating to the taking of any such steps."

1.5. S.98 was introduced by the Government as a response to an amendment by Baroness Miller of Chilthorne Domer, highlighting the difficulties involved in the registration of greens.

1.6. The DETR Consultation Paper "Greater Protection and Better Management of Common Land in England and Wales", published in February 2000 also considered the point. At para. 2.7, it stated:

> *"The need to prove 20 years' use has also been problematic in application. Hitherto the courts have taken the view that applications to register land as a green on the basis of 20 years' use must prove that the use continued up to the date of application. This is not satisfactory because where the use of the land is suddenly challenged and the local people are excluded from the land forthwith, the subsequent time taken to prepare an acceptable case for registration and for lodging the application can amount to a significant interruption and prevent them from showing use up to the date of application."*

and proposed:

> *"Proposal 8:*

> *In future, it should be possible to apply for registration of land as a town or village green on the basis of at least 20 years' qualifying use not only if (as at present) the use is still continuing, but also up to five years after the use ceased."*

1.7. Baroness Farrington of Ribbington, for the Government, however, indicated in the debate that, subject to consultation, the Government was minded to make the prescribed period two years (Hansard extract attached at Appendix 1).

1.8. In the absence of the anticipated regulations, the situation is that applicants for registration have to bring themselves within subsection (1A)(a) by demonstrating 20 years' user and that they continue to use the land in question (subject to any short transitional period in practice allowed by Registration Authorities or 'Inspectors'). The amendment therefore appears to have resolved a point on which there had been conflicting High Court authority in the past as to whether it was appropriate to take the 20 years immediately preceding the application or a 20 year period *"in gross"*.

1.9. This situation is regarded as *"unsatisfactory"* in the Consultation Paper and therefore regulations should be made as soon as possible.

1.10. Since 1990, applications have regularly been made to register *"new"* TVGs. We do not have statistics for such applications, but anecdotal evidence and the experience of members of the Group suggest that the numbers of such applications have increased in the last few years, particularly since the decision of the House of lords in R v Oxfordshire County Council, ex parte Sunningwell Parish Council [1999] 3 WLR 160, which has been widely publicised. Each application requires the Registration Authority (County Council or Unitary Authority) to devote officer and member time to its determination. A significant number involve the Authority in taking Counsel's opinion and in some cases, it is considered necessary to examine the issues raised at a non statutory public inquiry. Several of these cases have led to High Court litigation in recent years and, as Sunningwell amply demonstrates, it is difficult to regard any aspect of the law relating to *"new"* TVGs as settled. Typically, a TVG inquiry involves the participation of two or three advocates and an independent *"Inspector"*, usually a barrister. The Registration Authority bears the administrative costs of the Inquiry and the independent barrister and the parties have to bear their own costs. There are also other, less obvious *"costs"* which should be taken into account in any review of the legislation upon which we elaborate in the next section.

1.11. It seems to us that there are two main reasons for the difficulties and lack of certainty surrounding the law. These are firstly the

incomplete and piecemeal nature of the legislation and secondly the problems of trying to apply an antiquated form of land use control in our contemporary society. The attempt to tackle the first merely throws into clearer relief the second. In giving careful consideration to the proposed Regulations under s.98 CROW and to the system of new green registration generally, we have come to the unanimous view that there is no justification for retaining the procedure. The interests of communities in open space and recreation are adequately protected by the planning system which, being a modern, comprehensive statutory code, is better suited to achieving outcomes which are in the public interest. CROW also extends the rights of members of the public to take advantage of areas of private open space. The existing system of new green registration is at best unclear, at worst inflexible and contrary to the public interest.

2. "NEW" GREENS IN THE CONTEMPORARY CONTEXT

2.1. In many instances, applications for registration are triggered by development proposals or the commencement of development on land. Since planning permission will have been granted in the vast majority of instances, the development will have been judged, at least in the planning context, to be in the public interest. Commercial and personal financial decisions will have been made on the strength of the permission. In many cases, developers have spent time and money on achieving planning permission, perhaps

including the promotion of a site through a lengthy development plan process, and, finding nothing adverse on the Register, bought the site and commenced work. The local planning authority may be relying on the site as one of its development plan allocations to meet its housing allocation or employment needs.

2.2. An application is then made, often one which is eventually rejected by the Registration Authority, but in the meantime the developer either has to stop work or risk possible prosecution under Victorian legislation, the effect of which is unclear in the contemporary context, or injunction proceedings or certainly extremely bad publicity. In many cases, housing developers now sell *"off plan"* and worried purchasers are left facing complete uncertainty as they wait for a determination. In the experience of members of our Group, the delay can be up to a year. The costs, in terms of financial losses and stress, can be very great, with legal fees in addition. This situation is plainly unsatisfactory and, incidentally, totally at odds with the Government's stated aims for development in the Planning Green Papers. A further disadvantage of the current system is that landowners, many of whom in these cases are public or quasi-public bodies such as local authorities, health authorities or churches, may well be less inclined to allow informal use of their land, for fear of finding that they have, by toleration, allowed rights to be acquired.

2.3. As Lord Denning observed in Mellor (above), if a TVG is registered, then there is no mechanism for removing or modifying it, short of an Act of Parliament. This contrasts with other forms of open space, such as commons and areas subject to statutory and private trusts, where there are procedures to allow for extinguishment or modification of rights in the public interest, and/or for the substitution of *"exchange"* land. This element of inflexibility also applies at the stage of determining whether or not land should be registered; the process consists entirely of applying law to facts, with no element of discretion – the public interest is irrelevant. It is even a point of some doubt as to whether or not an application, once duly made, can be amended and there is no scope for negotiations between applicants and objectors in order to achieve a practical outcome. All this is in stark contrast to the Government's policy on open space in the planning sphere, as set out in PPG17.

2.4. The anachronistic nature of TVG rights is highlighted when consideration is given to *"completing"* the task started by the 1965 Act and defining what the rights are (see Lord Denning in Mellor). The basis for registration is the establishment of the enjoyment of the land for *"lawful sports and pastimes"* by *"a significant number of the inhabitants within a locality"*.

2.5. It is unclear whether the sports and pastimes are fixed by the evidence upon which registration was based. If the right was

established by dog walking, does that give the local Scout group the right to pitch tents, light fires and sing loud songs at night on the land? Is the Parish Council entitled to hold a 5th November firework party annually? Can the Church hold a jumble sale, or a Pets' service? Can the Hunt chase and kill wild animals on it?

2.6. The concept of locality is also rather unclear. The only judicial authority is the judgment of Carnwath J (as he then was) in R v Suffolk County Council, ex parte Steed (1995) 70 P&CR 487 where he said:

> *"whatever its precise limits, it should connote something more than a place or geographical area – rather, a distinct and identifiable community, such as might reasonably lay claim to a town or village green as of right".*

This has led to much evidence and debate at inquiries. The newly introduced *"neighbourhood"*, while sounding more modern, is unlikely to be any easier to apply. Neither concept fits well with modern lifestyles – commuting to work and many leisure pursuits, the decline of the village/corner shop, pub, church, the centralisation of many facilities such as schools and health centres, dispersal of families and, above all, the increased mobility which underlies many of these trends.

2.7. The vague and anachronistic nature of the concept of such a localised right gives rise to difficulties when defining the rights conferred by registration. Adapting the examples from paragraph

2.4 above, while it may be obvious which is the local scout group, what about invitations to groups from neighbouring towns, counties or from abroad? Is the Parish Council obliged to keep out visitors from other parishes? Must it be the Parish Church, or could a *"gathered church"* of Methodists or Sikhs, with a building in the locality, but drawing members from far and wide, use the green for their activities? Lastly, if the local hunt straddles parish or county boundaries, does this provide a basis for fox lovers in the *"locality"* or *"neighbourhood"* to deny them access?

2.8. We have referred to uncertainty as to the scope of Victorian legislation criminalizing certain activities on TVGs. A list of provisions is appended to this paper. The issue is simply whether or not the provisions apply to *"new"* TVGs which were not in contemplation at the time of enactment and the status of which is unclear. More fundamentally, it is not clear whether land can be a TVG irrespective of registration. If, as a matter of fact, the statutory requirements have been fulfilled, but no registration has occurred, whether because no application has ever been made or because an application failed, say two years earlier, the applicants only having proved eighteen years user, is the land a green? An obvious way of resolving this issue, if the system of registering *"new"* TVGs is to be retained, would be to define TVGs for all purposes as land so registered. This would still leave uncertainty, e.g., as to the precise scope of s.29 Commons Act 1876, in terms of what activities it

covers but would resolve the difficulty about the land concerned. We submit that it is wrong in principle to allow such uncertainty to continue, especially in the field of criminal law. In any review of the legislation, the position should at least be made clear by amending the definition of TVGs. Preferably, the whole question of management of existing greens should be comprehensively addressed.

3. PROPOSALS FOR REFORM

3.1. It follows from the first two sections of this paper that our primary submission is that there is no need for the system of *"new"* TVG registration and that, as well as being unnecessary, it is also wasteful of resources and therefore harmful for the reasons we have stated. We therefore recommend that s.22(1) CRA be amended so as to define a TVG as:

> *"land which has been registered as a town or village green".*

S.13(b) CRA would also need to be amended by deleting the words *"or a town or village green"* and the Commons Registration (New Land) Regulations 1969 would require consequential amendment to delete references to greens.

3.2. As well as removing what we suggest is an anachronistic and anomalous body of law, this reform would also remove much of the uncertainty surrounding the Victorian Legislation. As we have suggested, however, the opportunity should be taken to rationalise

all the statutory provisions relating to the management of greens in any event.

3.3. Irrespective of whether or not our primary submission is accepted, we recommend:

(i) that legislation define the rights flowing from registrations which have already been made; this exercise could usefully be linked to the review of management suggested in the last paragraph;

(ii) that there be a statutory mechanism for deregistering greens, akin to that which applies to common land, which gives the opportunity for public involvement and the consideration of exchange land and enables the Secretary of State to decide what is appropriate in the public interest.

3.4. If the system of registering *"new"* TVGs is kept, we suggest:

(i) that it be made clear by statute that applications can be amended or modified; this could be done by a simple amendment to Regulation 7 of the New Land Regulations;

(ii) that consideration be given to allowing Registration Authorities the power to reject an application which is

obviously hopeless or misconceived without going through the process of advertisement and consultation required by the New Land Regulations; the power in Regulation 5(7) is confined to instances where an application is not *"duly made"*, that is, procedurally defective;

(iii) that in response to the s.93 CROW amendment, there be a wider reform of the primary legislation, rather than simply new regulations, as set out in the following paragraphs.

3.5. The *"mischief"* to which subsection (1A) is directed is lack of time to collect evidence in order to make a realistic application. As we have said, typically, applications are triggered by development proposals or the commencement of development on land. Since planning permission will have been granted in the vast majority of instances, the development will have been judged, at least in the planning context, to be in the public interest and commercial or personal financial decisions will have been made on the strength of the permission. The object of the Regulations should, therefore, be to do procedural justice to the competing interests as far as possible. It seems to us that a five or even a two year period for the collection of evidence would be excessive in such circumstances. The factual material required is not complicated and the Open Spaces Society has produced a useful model questionnaire to assist prospective applicants. The determination of applications

can take up to a year when an Inquiry is held and the practical bar on development for up to 3 years seems disproportionate.

3.6. The aim should be to enable a local person or group by formal notice to the Registration Authority and all persons with an interest in the land to *"hold the ring"* in the face of a material change in circumstances on the ground. There should then be a relatively short period of time to enable that person or group to gather evidence and take advice with a view to making an application.

3.7. If the New Greens jurisdiction is to remain, we think it essential to devise a means whereby a developer can flush out such an issue early. We suggest a notice provision similar to the procedure under s.31(3), (6) Highways Act 1980 for public rights of way. It would enable landowners/developers to deal with and apportion risk on this issue. If it is regarded as acceptable in policy terms for a landowner to prevent the dedication of a public right of way being imputed to him, we see no reason why the same should not hold good for greens.

> *"The period referred to in s.22(1)(a) CRA 1965 shall be:*
>
> *(i) In a case where a notice or notices conforming to the requirements of s.X of the Act is or are erected on the land:*
> *(a) if no notice is served on the Registration Authority under s.Y of the Act, 28 days*
> *(b) if a notice is served on the Registration Authority under s.Y of the Act, 3 months*

from the date of service of such a notice provided that if an application to register the land as a new green is made, the period shall be extended until the determination of that application.

(ii) In any other case, 12 months."

3.8. There would need to be substantive changes in the law. The effect of an unchallenged notice would be to bar any future application to register land as a new green. This will necessitate amendment of the 1965 Act. In addition, the terms of the notice should be set out in primary or secondary legislation. We suggest:

"(1) The land described and shown on the map below is not a town or village green.

(2) No person other than the owner or owners of this land has any right to enter any part of it for any purpose."

Then either:

"The owner(s) is/are willing for the time being to permit use of this land for recreation [subject to the following conditions, if any]."

OR:

"This is private land. Keep out".

The notice should contain a site plan with the land clearly marked on it and it should state that it is a notice under s.X of CRA 1965 (as amended).

"Owner" would be defined to include freehold owner, tenant, mortgagee in possession. The notice would be compulsorily registrable in the Commons Register, provisionally until the issue be resolved, either 28 days hence or with a determination. If an application to register were ultimately rejected, then the notice would remain effective and become finally registered. If a TVG were registered, then the s.X notice would cease to be of any effect and its removal would be required. Arguably, there should be a requirement for the erection and provisional registration of the notice to be published for 4 weeks in a local newspaper. Provision should be made to ensure that several notices are erected on large sites and in prominent places.

3.9. The erection of the notice should trigger action on the part of aggrieved locals. The point of a s.Y notice would be to provoke such action quickly, followed by a 3 month period of grace in which to prepare an application for registration. The time periods are, of course, ultimately a policy question. While much tighter than those hitherto mentioned by the Government, we think that they are justifiable in a development context.

3.10. In any other case – likely to exclude the case where there are development proposals – a longer period, say 12 months, to allow for seasonal fluctuations seems appropriate.

4. CONCLUSION

4.1. We hope that these submissions prove useful to those who have responsibility for this area of law reform. We should very much welcome the opportunity to discuss any aspects.

APPENDICES

(1) Extract from Hansard

(2) Inclosure Act 1857, s.12

(3) Commons Act 1876, s.29

Baroness Farrington of Ribbleton moved Amendment No. 258A:

After Clause 87, insert the following new clause--

("Town and village greens

REGISTRATION OF TOWN AND VILLAGE GREENS

.--(1) Section 22 of the **Commons** Registration Act 1965 (interpretation) is amended as follows.
(2) In subsection (1), in the definition of "town or **village** green" for the words after "lawful sports and pastimes" there is substituted "or which falls within subsection (1A) of this section.
(3) After that subsection there is inserted--
"(1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either--
(a) continue to do so, or
(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.
(1B) If regulations made for the purposes of paragraph (b) of subsection (1A) of this section provide for the period mentioned in that paragraph to come to an end unless prescribed steps are taken, the regulations may also require registration authorities to make available in accordance with the regulations, on payment of any prescribed fee, information relating to the taking of any such steps.".").

The noble Baroness said: My Lords, the amendment honours the commitment that the Government gave in Committee to bring forward proposals on the registration of town and village greens. We understand the difficulties in registering land as a town or village green, mentioned by the noble Baroness, Lady Miller. We share her wish to clarify and update the definitions in the Commons Registration Act 1965.

The amendment directly addresses two of the noble Baroness's concerns. It makes it clear that qualifying use must be by a significant number of people from a particular locality or neighbourhood. That removes the need for applicants to demonstrate that use is predominantly by people from the locality and means

that use by people from outside that locality will no longer have to be taken into account by registration authorities. It will be sufficient for a significant number of local people to use the site as of right for lawful recreation and pastimes.

Secondly, the amendment addresses the problem of applications being accepted only where it can be demonstrated that users come from a discrete area, such as a village or parish. That is not easy in large built-up areas. The amendment introduces the concept of neighbourhood and provides that users should come either from a locality or from a neighbourhood within a locality.

The final part of the equation has proved a little more difficult to resolve. The Government have difficulties with the proposal that land should remain subject to registration as a green many years after its use for lawful sports and pastimes has ceased. That would have been the effect of the amendment tabled in Committee by the noble Baroness, Lady Miller of Chilthorne Domer. That amendment provided that qualifying use had only to end after 31st July 1990. That is already 10 years ago. Such a provision could significantly interfere with planned development.

However, the Government accept that the current interpretation of the law, which is that qualifying use must have taken place virtually up to the date of the application for registration, is onerous. It makes it difficult for applicants to bring together in time all the necessary evidence of use over a 20-year period. Therefore, our amendment gives the Secretary of State the power to make regulations to establish an appropriate time limit within which an application to register must be lodged. At present, we are minded to make that two years. We believe that it is an appropriate period within which it is reasonable to expect an applicant to be able to draw up the evidence necessary to support an application. If no application is lodged within that two-year period, the owner or developer will be able to take whatever steps are necessary to develop the land in the certainty that an application for registration as a green cannot be entertained.

The Government will of course consult widely on the content of the regulations proposed under this amendment, which I hope the House will be able to accept. I beg to move.

Baroness Miller of Chilthorne Domer: My Lords, I thank the Government for bringing forward this amendment in the short time they had available to resolve these difficult issues. In particular, I thank the Minister for explaining subsection (3)(b), which was quite difficult to interpret. There is no doubt that these smaller open spaces are important to people, and I believe that this provision will be valuable.

Perhaps I may ask the Minister whether the Government anticipate that regulations will be made

within a fairly short time. She mentioned a timescale of two years for paragraph (b). Presumably, that is the same time that would be required for regulations to be made. I am slightly nervous about that issue because we know that greens are being lost to developers who exploit the loopholes. I wish to establish that the timescale will be adequate in order to cover that issue.

I also appreciate the Minister's definition of what the Government have in mind in relation to the term "neighbourhood". As I understand it, the intention is to widen the definition of "locality" so that there can be no argument if people from an area generally use a green. Whether it is a locality or a neighbourhood, that is an adequate test. I thank the Government for that.

Baroness Farrington of Ribbleton: My Lords, with regard to the noble Baroness's second question, the intention when introducing the phrase was to clarify that the area from which the users come does not have to follow an administrative boundary. I understand that the timescale is approximately the same. Therefore, I am sure that the noble Baroness will find it acceptable. Should I find that I am in error, I shall of course write to her.

On Question, amendment agreed to.

Inclosure Act, 1857

1857 (20 & 21 Vict.) C A P. XXXI.

Protecting from Nuisances Town and Village Greens and Allotments for Exercise and Recreation.

XII. 'And whereas it is expedient to provide summary Means of preventing Nuisances in Town Greens and Village Greens, and on Land allotted and awarded upon any Inclosure under the said Acts as a Place for Exercise and Recreation:' If any Person wilfully cause any Injury or Damage to any Fence of any such Town or Village Green or Land, or wilfully and without lawful Authority lead or drive any Cattle or Animal thereon, or wilfully, lay any Manure, Soil, Ashes, or Rubbish or other Hatter or Thing thereon, or do any other Act whatsoever to the Injury of such Town or Village Green or Land, or to the Interruption of the Use or Enjoyment thereof as a Place for Exercise and Recreation, such Person shall for every such Offence, upon a summary Conviction thereof before Two Justices, upon the information of any Churchwarden or Overseer of the Parish in which such Town or Village Green or Land is situate, or of the Person in whom the Soil of such Town or Village Green or Land may be vested, forfeit and pay, in any of the Cases aforesaid, and for each and every such Offence, over and above the Damages occasioned thereby, any Sum not exceeding Forty Shillings; and it shall be lawful for any such Churchwarden or Overseer or other Person as aforesaid to sell and dispose of any such Manure, Soil, Ashes, and Rubbish, or other Matter or Thing as aforesaid; and the Proceeds arising from the Sale thereof, and every such Penalty as aforesaid, shall, as regards any such Town or Village Green not awarded under the said Acts or any of them to be used as a Place for Exercise and Recreation, be applied in aid of the Rates for the Repair of the public Highways in the Parish, and shall, as regards the Land so awarded, be applied by the Persons or Person in whom the Soil thereof may be vested in the due Maintenance of such Land as a Place for Exercise and Recreation; and if any Manure, Soil, Ashes, or Rubbish be not of sufficient Value to defray the Expense of removing the same, the Person who laid or deposited such Manure, Soil, Ashes, or Rubbish shall repay to such Churchwarden or Overseer or other Person as aforesaid the Money necessarily expended in the Removal thereof; and every such Penalty as aforesaid shall be recovered in manner provided by the Act of the Session holden in the Eleventh and Twelfth Years of Her Majesty, Chapter Forty-three; and the Amount of Damage occasioned by any such Offence as aforesaid shall, in case of Dispute, be determined by the Justices by whom the Offender is convicted; and the Payment of the Amount of such Damage, and the Repayments of the Money necessarily expended in the Removal of any Manure, Soil, Ashes, or Rubbish, shall be enforced in like Manner as any such Penalty.

Commons Act, 1876.

1876 (39 & 40 Vict.) CHAPTER 56.

PART II

AMENDMENT OF THE INCLOSURE ACTS.

Amendment of law as to town and village greens.

29. Whereas by the Inclosure Act, 1857, provision is made for the protection of town and village greens, and recreation grounds, and it is expedient to amend such provision: Be it enacted as follows, that is to say, an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the said Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

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