



BACKGROUND

There is considerable statutory protection for village greens under two 19th Century statutes:

The Inclosure Act 1857 and the Commons Act 1876

Under **Section 12 of the Inclosure Act 1857** it is a criminal offence:

- to wilfully cause injury or damage to any fence on a green;
- wilfully take any cattle or other animals onto a green without lawful authority; However DEFRA is of the view that taking animals onto a green in order to exercise or graze is not an offence. This would cover dog-walkers and horses whilst being ridden.
- wilfully lay any manure, soil, ashes, rubbish or other material on a green;
- undertake any act which causes injury to the green (e.g. digging turf); or
- undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation (e.g. fencing a green so as to prevent access).

Under **Section 29 of the Commons Act 1876** it is a public nuisance to:

- encroach on a green (e.g. extending the boundary of an abutting property so as to exclude people from that area);
- inclose a green (i.e. by fencing it in, whether or not the effect is to exclude public access);
- erect any structure other than for the purpose of the better enjoyment of the green; or



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- disturb, occupy or interfere with the soil of the green (e.g. camping) other than for the purpose of the better enjoyment of that green.

IS PERMISSION NEEDED TO CARRY OUT WORKS ON A GREEN AND TO WHOM DO YOU NEED THE PERMISSION FROM?

If intended works do not contravene **section 12 of the Inclosure Act 1857** or **section 29 of the Commons Act 1876** (e.g. if they were for the better enjoyment of the green) then no special permission is required. In other words, no application is needed because the land is a town or village green. However, other consents may still be necessary; if works were for the better enjoyment of a green then they may not contravene the Victorian statutes, but depending on their nature may still require planning permission.

It is important to note however that it is a criminal offence to undertake any works on a green which contravenes the 1857 Act and these works in breach of the 1876 Act will be deemed to be a public nuisance, and consent cannot be given by DEFRA or any other body for the carrying out of these illegal works on a town or village green.

Some greens are regulated by a scheme of regulation made under either the **Metropolitan Commons Acts 1866–1898** or the **Commons Act 1899**.

The commons registration authority or district or borough council in your area should be able to let you know whether a green is regulated under a scheme.

Schemes may confer powers on the local authority to carry out improvements to the green, although in some cases the local authority may be required to obtain the consent of the Secretary of State before undertaking such works.

There is a requirement to inspect the terms of the scheme to see what, if any, improvements are permitted.

Under **section 38 of the Commons Act 2006** if Greens are managed under a scheme of regulation, then the Secretary of State is able to consent to other works not permitted by the scheme.

It is unclear whether a local authority may carry out works on a green managed under a scheme, where the works are either permitted by the scheme or consented to under section 38 but would contravene either the 1857 or the 1876 Act. However, in DEFRA's view, works proposed by a local authority on a green will generally be for the better enjoyment of the green, and the conflict will seldom arise. Guidance on how to make an application under section 38 can be found on the website of the Planning Inspectorate.

About Pathfinder Legal Services Ltd's Planning and Highways Team

Planning and Highways is an area of law which impacts on everyone in the community but is rarely recognised until something goes wrong. Members of the public often expect rapid response times to complaints about pot holes, planning permission which has been granted in their local area or highways closures and Pathfinder Legal Services understands the importance of providing practical and timely advice on these matters. With the benefit of extensive legal expertise combined with a keen knowledge of historical detail and a solid understanding of legal principals, our team are able to guide you through all aspects of planning and highways law, taking into account the different duties and responsibilities of our clients.

About Pathfinder Legal Services Ltd

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If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

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