



# Legal surgery

NALC solicitor, Gary Barker, looks at the implications of drones for local councils

One of the many technological inventions of recent years has been the small drone, which can now be bought in high street shops for relatively small amounts. The use of drones flying over village greens or recreation grounds has caused some consternation among local councils and residents.

## What are drones?

Drones are also known as unmanned aerial vehicles or unmanned aircraft systems. They can be flown by remote control by a 'pilot' from the ground or autonomously following a pre-programmed flight path.

Drones are a relatively new thing and the law in relation to them is still developing. Flying within the UK is regulated by the Civil Aviation Authority (CAA) and in general terms there is nothing to stop a drone being flown over property owned by someone other than the drone pilot unless the drone weighs more than 20kg or is used for commercial purposes, in which case specific permission must be obtained from the CAA.

However, non-commercial drone flying is not completely unregulated and rules apply to drone flying as a recreation. Recreational

drones must not be flown within 150m of a congested area or a crowd. Also they must not be flown within 50m of an individual person or structure such as a building. The drone must be flown 'within sight', which means that it cannot go above 400ft or be further than 500m away from the pilot. If

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these rules cannot be complied with, the pilot must get prior and specific permission from the CAA for the flight.

Many drones include a camera that will film all the people and activities that it flies over. The filming of people in a public place is not, in itself, a breach of privacy or data protection law although the use (if any) made of the film could be an invasion of privacy. A particular concern is the filming of children who may be playing in

playgrounds on local council land. Filming children is not in itself unlawful. It is if the pictures of children are indecent. This would be highly unlikely if they are playing in a public place.

## Options

What can a local council do if drones are being flown over land owned by the council? If the drones are being flown in contravention of the CAA rules then a local council could report the offender to the CAA for enforcement action to be taken. However, an offender has to be caught first and even then the CAA may not be inclined to prosecute where there is no significant danger from the flying.

Alternatively, a local council could pass a bylaw prohibiting the flying of drones under section 15 of the Open Spaces Act 1906 because the drone flying constitutes a nuisance. Such decisions could be open to challenge by those affected by such a prohibition.

In summary, a local council can pass bylaws banning drones or report offenders to the CAA but there is little general law in this developing field to restrain non-commercial drone flying in open spaces. ■