

McAlpine, Staffordshire Case

Full name of case

R on the application of Alfred McAlpine Homes Ltd v Staffordshire County Council,
(High Court, 17 January 2002)

Case reference

QBD CO/2653/2001

Summary

In the High Court Mr Justice Sullivan rejected the argument by the claimant that 'significant number', in the context of section 22 (1) of the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000, means 'a considerable or a substantial number'. He said that the number of people using the land has to be *sufficient to indicate that it is in general used by the local community for informal recreation*. Oral evidence was given by 16 witnesses at the inquiry about their own use of the land over the 20-year period and what they saw others doing. This was corroborated by numerous written statements.

In summary, Mr Justice Sullivan ruled that a registration authority could register a part of the land for which an application was made, and that 'significant' is a matter of impression after analysing the evidence. What matters is that the number of people using the land is sufficient to indicate that it is in general used by the inhabitants of any locality or neighbourhood within a locality.

Issues considered

Alfred McAlpine Homes Ltd sought judicial review of Staffordshire County Council's decision of 23 May 2001 to accept an application for the registration of land at Ladydale Meadow in Leek as a village green.

There were two issues:

1. that there was no evidence to support the inspector's conclusion that the number of inhabitants using the land was 'significant' as defined in section 98 of the Countryside and Rights of Way (CROW) Act 2000,
2. that there was no power to accept an application for registration in relation to part only of the land applied for.

On 27 October 1999, an application was made to register Ladydale Meadow as a village green. This is rough, unimproved grassland, once parkland of Pickwood Hall. The meadow was allocated as part of a proposed housing site in the Staffordshire Moorlands local plan, adopted in 1998.

In 1999 Alfred McAlpine Homes Ltd applied for planning permission to build 24 houses there. This was granted after a public inquiry in June 2000 so, clearly, the outcome of the green application was of great importance to McAlpine.

A non-statutory inquiry into the green registration was held in February 2001 with Mr Vivian Chapman QC as inspector. He recommended that the registration authority should accede to the application, but he advocated a boundary within the application area which identified land which was both the subject of the application and was proved to have been used for recreation by local people for more than 20 years.

The judge said the inspector was entitled to have regard to the fact that the meadow was within easy walking distance from the centre of Leek, that the Carriage Drive gate was rarely locked and that there were no signs forbidding entry.

In respect of the second issue the council proposed to register a smaller area than had been applied for. There is no express power in either the act or regulations to register a smaller area of land. The regulations require the land to be identified but the judge recognised that most applicants are not expert cartographers.

He considered that the reason for identification was so that the registration authority can give notice to owners, lessees, tenants, occupiers and others who might wish to object.

The judge concluded: 'provided the boundary is not altered in such a way as to defeat the purpose of defining the land in the application form, there can be no sensible objection to the registration authority cutting down the extent of land to be registered'.

He also stressed that the only consequence of him quashing the council's decision to register a lesser area would be that a fresh application would be submitted and the same conclusion, to register the land, would be reached.

The claimants were ordered to pay the council's costs and given leave to appeal.

Commentary

This is the only case to date which considers a definition of 'significant number'.