

Trap Grounds, Oxfordshire

Full name of the case

Oxfordshire County Council (Respondents) v Oxford City Council (Appellants) and another (Respondent) (2005) and others (House of Lords, 24 May 2006)

Case reference

[2006] UKHL 25, [2006] 2 AC 674

Summary

- The Court of Appeal was wrong to conclude that action taken by an owner on land after an application to register it as a green can prevent its registration;
- recreational use by local people ‘as of right’ must continue until the date of the application, in order to justify registration under the law as it currently stands;
- the nineteenth-century protective statutes (section 12 of Inclosure Act 1857 and section 29 of Commons Act 1876) apply to new greens once registered;
- such land becomes a green on registration, with legal rights for local inhabitants to indulge in lawful sports and pastimes there;
- human rights law is not infringed by registration of land as a green; and
- registration authorities can exercise discretion in accepting amended application.

Issues considered

The key issues in this case were whether registration of land as a green, based on 20 years lawful sports and pastimes, gives the relevant inhabitants *rights* to indulge in lawful sports and pastimes on the land, and whether registration brings the land within the scope of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876, which protect the land from encroachment. A further issue was whether a claim may be founded on qualifying user for any period of 20 years, or whether the lawful sports and pastimes must continue up to the date of the application to register, the date of registration or some other date.

We set out the rulings and guidance which were sought. We have summarised in italics after each what the Lords’ findings were.

Rulings

a) *Substantive effect of ‘class c’ registration*

- 1 Whether the relevant inhabitants have rights to indulge in lawful sports and pastimes on land which has become (within the meaning of section 13 of the 1965 Act) a class c green.

Land can be registered as a ‘class c’ green under the Commons Registration Act 1965, (as amended by section 98 of the Countryside and Rights of Way Act 2000) where there has been significant use of the land for not less than 20 years, by the inhabitants of any locality, or of any neighbourhood within a locality, for lawful sports and pastimes, as of right.

Registration of land as a ‘class c’ green does confer rights on the part of local inhabitants (however defined) to indulge in sports and pastimes on that land.

- 2 Whether land which has become (within the meaning of section 13 of the 1965 Act) a ‘class c’ green falls within the scope of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876.

Such registration is conclusive that the land is a town or village green within the scope of (inter alia) section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876.

b) *The effect of the amendment in section 98 of the Countryside and Rights of Way Act 2000*

- 3 The meaning of the words ‘*continue to do so*’ in the amended definition, for which purpose the court was asked to rule whether (in the absence of regulations made under section 22(1A)(b) of the 1965 Act) the lawful sports and pastimes must continue up to (a) the date of the application to register or (b) the date of registration or (c) some other (and if so what) date.

The words ‘continue to do so’ in the amended definition mean that the lawful sports and pastimes must continue to the date of application.

- 4 Whether all applications for registration of land as a class c green made on or after 30 January 2001 automatically engage (and engage only) the amended definition.

Any application for registration of land as a class c green made on or after 30 January 2001 automatically engages (and engages only) the amended definition.

c) *‘Free-standing’ periods of use*

- 5 Whether the application could as a matter of law (if supported by appropriate facts) succeed on the basis stated by Miss Robinson in Part 4 of her application, namely that the land became a green on 1 August 1990, or whether (subject to (6) below) an application which specifies in Part 4 a date earlier than the date immediately preceding the date of the application must fail.

The application could not as a matter of law succeed on the basis that the land became a green on 1 August 1990.

d) *Amendments to the application*

- 6 Whether Oxfordshire County Council has the power (the city council not objecting) to treat the application as if a different date (namely a date immediately preceding the date of the application) had been specified in Part 4, and to determine the application on that basis.

The county council has power to treat the application as if a different date had been specified in Part 4, and to determine the application on that basis.

- 7 Whether as a matter of law it is open to the county council to permit the application to be amended so as to refer to some lesser area (such as by excluding the part known as ‘the reed beds’ and/or a ten-metre strip along the western boundary of the part known as ‘the scrubland’), and if so, according to what criteria.

As a matter of law, it would be open to the county council on proper consideration to permit Miss Robinson’s application to be amended to refer to a lesser area, as proposed by her.

- 8 Whether as a matter of law it is open to the county council (without any such amendment being made) to accept the application in respect of, and to register as a green, part only of the land included in the application, such as the part known as ‘the scrubland’, and if so, according to what criteria.

As a matter of law, it would be open to the county council on proper consideration to register as a green part only of the land included in the application.

e) Evaluation of evidence

- 9 How the county council should approach the application in the light of the evidence reported by the Inspector in relation to user of the main track and subsidiary tracks and his estimate that only about 25% (or less) of ‘the scrubland’ is reasonably accessible; and
- 10 the relevance of the existence or potential for the existence of public rights of way.

Issues 9 and 10 are matters of fact and degree for evaluation by the authority.

Commentary

Trap Grounds, open space in north Oxford, has now been registered as a green.

On 24 May 2006 the Law Lords reversed the court of appeal decision, which had required evidence of lawful sports and pastimes to continue right up until registration of land as a village green. Now it is only necessary to provide evidence of 20 years’ use to the date of application.

(Subsequently, section 15 of the Commons Act 2006 amended the legislation to take account of the rulings in this case.)

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