



25A Bell Street, Henley-on-Thames, Oxon RG9 2BA
tel: 01491 573535 fax 01491 573051 e-mail: hq@oss.org.uk website: www.oss.org.uk
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The Betterment Case

Full name of case

Mrs G Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Ltd (1) Dorset County Council (2) (Court of Appeal Civil Division on Appeal from the High Court Chancery Division 6 – 9 February 2012)

Case No:

A3/2010/2971

Neutral Citation No:

[2012] EWCA Civ 250

Link to judgment <http://www.bailii.org/ew/cases/EWCA/Civ/2012/250.html>

Summary

The Court of Appeal held that the 46 acres of land at Markham and Little Francis, Weymouth in Dorset, should not have been registered as a village green under s22(1) of the Commons Registration Act 1965 and that it was just to rectify the register under s14 of that Act. The court considered whether use of the land was 'as of right' and whether it was just to rectify the register. The court held that delay between the registration of the land and the application to rectify the register (9 years) could be a factor but it was not held to be here, and it was just to remove the land from the register.

Issues

The land was registered as a town/village green by Dorset County Council, the registration authority, in June 2001. The evidence showed use for lawful sports and pastimes since 1977.

Many people had entered the land using a public footpath, but some people had entered through gaps in fencing and hedging on the boundary of the land. Betterment Ltd sought rectification of the town and village green register under s14 of the Commons Registration Act 1965.

As of right use: fencing, signs, challenges to use.

Fencing had been erected along the boundary of the land, and until 1984 had been maintained when parts of it had been broken down.

The Court of Appeal held that as many people had come onto the land using the public rights of way the fences did not affect their use being 'as of right'.

Challenges had been made by the Curtis family and their employees, but those were sporadic and many people had used the land and had not been challenged. The court held that the challenges were not sufficiently frequent to negate use being 'as of right'.

Signs were erected, but were often removed. An owner needs to demonstrate his opposition to use, which would be regarded as clear to a reasonable user. The court held that the landowner had done all that is required to make use of the land contentious, and not 'as of right', and that it was the signs that were the crucial factor in showing that the use by local people was not 'as of right'.

Construction works on part of the land :-

Drainage works were carried out on the site between 1979 and 1982, including a tunnel across the land. One of the footpaths was diverted during the works. For four months the whole of the works site was fenced off, and was not available for use by local people. The court held the required period of 20 years could not have been satisfied because of the four month interruption of use.

Justice

The court considered whether it was reasonable to rectify the register after a four-year delay. Lord Justice Patten considered that 'delay will not, in my view, be a barrier to rectification unless there is material before the court to show that other public and private decisions are likely to have been taken on the basis of the existing register which have operated to the significant prejudice of the respondents or other relevant interests'. He did not consider this to be the case. Sullivan LJ said that 'there is, in my view, a strong public interest in upholding the register in the absence of a prompt challenge to its contents'. Carnwath LJ concurred.

Conclusion

The court upheld the previous High Court decision, [2010] 3045 (Ch), <http://tinyurl.com/7umnbkb> that the land should be removed from the register of town and village greens and that it was just to rectify the register.

Leave has been given to appeal to the Supreme Court.