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## Betterment and Paddico, Supreme Court, February 2014

### Full name of case

*Adamson and others v Paddico (267) Ltd and Mrs Gill Taylor (on behalf of the Society for the Protection of Markham and Little Frances) v Betterment Properties (Weymouth) Ltd*, Supreme Court. 5 February 2014

### Neutral citation no

[2014] UKSC 7

### Link to judgment

[http://supremecourt.uk/decided-cases/docs/UKSC\\_2012\\_0089\\_Judgment.pdf](http://supremecourt.uk/decided-cases/docs/UKSC_2012_0089_Judgment.pdf)

### Summary

Two cases concerning greens in Weymouth, Dorset (Betterment) and Huddersfield, Kirklees (Paddico), were heard together on appeal from the Court of Appeal. The Supreme Court ruled that developers' delays of four years (Betterment) and 12 years (Paddico) in challenging the registration of land as a green, under section 14(b) of the Commons Registration Act 1965, were not prejudicial to any party and should be permitted, and that the registers in both cases should be rectified to remove the entries for the land. The judgment was given by Lady Hale, and Lord Neuberger, Lord Sumption, Lord Toulson and Lord Hodge agreed with her.

### Issues

#### Betterment

This concerned 46 acres known as Curtis Fields in Weymouth, Dorset. In 1994 Mrs Joan Horne on behalf of the Society for the Protection of Markham and Little Frances (SPMLF) applied to Dorset County Council, the registration authority, to register the land as a green. The application was declined. She reapplied in 1997. The council held an oral hearing in 2000 and decided to register the land in June 2001.

In August 2001, Mr Barry Curtis applied, on behalf of the landowners, for judicial review of the decision and was advised that he should apply under section 14 of the Commons Registration Act 1965 (the 1965 act) which provided for rectification of the register. The Curtis family sold the land to Betterment Properties (Weymouth) Ltd for a price which was much less than the land would have been worth had it not been registered as a green but rather more than it was worth as a registered green. The sale was secured in May 2005.

In December 2005 Betterment began proceedings under section 14 of the 1965 Act, first in the High Court, where Morgan J gave judgment allowing the application to rectify the register in November 2010. Mrs Gill Taylor, who had replaced Mrs Horne as the representative of SPMLF, appealed to the Court of Appeal and lost.

The two issues, on which the appellants lost, were whether the public's use had been 'as of right' (ie without being stopped, using force or being given permission) and whether there had been too great a delay before Betterment challenged the registration.

### Paddico

In December 1996 an application was made on behalf of the Clayton Fields Action Group for the registration of 6.5 acres of grassland between Edgerton and Birkby in north-west Huddersfield. The land was designated for housing. Kirklees Metropolitan Council registered the land in April 1997. The next month Geo H Haigh and Co Ltd, the landowner, began proceedings to rectify the register, under section 14 of the 1965 act, but these were delayed pending other court cases on greens.

In 2005 Haigh sold the land to Paddico (267) Ltd, for a lower price than it would have been worth without the green designation. In 2011 Paddico's application to rectify the register was heard in the High Court. The judge ruled for various reasons that the land should be deregistered. The action group appealed. Most of the Court of Appeal hearing was devoted to the issue of 'locality' on which the judges were unanimous in upholding the registration. However, on the question of whether there had been undue delay on the part of the developers in bringing the appeal, the judges were divided. Sullivan LJ and Carnwath LJ felt that the time was too long to justify rectification of the register while Patten LJ disagreed.

### **Supreme Court**

In the Supreme Court the issues were reduced to the question of delay. The court considered three separate approaches: public law, statutory limitation periods and the doctrine of laches (unreasonable delay in pursuing a claim). The court noted that there was no time limit for applications under section 14 of the 1965 act. It considered that detriment or prejudice was the crux of the matter. There were at least four categories of prejudice which might be relevant: prejudice to local inhabitants, prejudice to other individuals, prejudice to public authorities and the public they serve, and prejudice to the fair hearing of the case. Moreover, the lapse of time was not immaterial to the justice of the case.

### **Conclusion**

For **Betterment** the lapse of time between the registration and the application was from June 2001 to December 2005. During that time the possibility of an application under section 14 was known to the registration authority and could have been discovered by others if they had asked. There was no evidence of prejudice.

In **Paddico** the lapse of time was from April 1997 to January 2010, much longer than in Betterment. During much of that time the law was in a considerable state of flux with a series of cases going through the courts. The same small group of lawyers were involved in most of the cases and were thoroughly aware of what was going on. There was no evidence of any specific prejudice to local inhabitants other than the loss of the right to use the land for recreation.

Mrs Taylor's appeal was dismissed and Paddico's appeal was allowed.

## **Comment**

The society is deeply concerned that delays of four and 12 years in challenging a registration have been held to be acceptable. It seems that this judgment will encourage landowners to appeal under section 14 of the 1965 for rectification of the register where land has been registered as a green. Vulnerable greens will be those which were registered since 1990.\* In the seven English pioneer areas where part 1 of the Commons Act 2006 has taken effect, section 14 of the 1965 act was revoked on 1 October 2008, but elsewhere in England and throughout Wales it is preserved.

\* This is because on 1 August 1970 it ceased to be possible to register greens under the 1965 act and any that were unchallenged became final and conclusive and are not at risk of challenge under section 14 of the 1965 act. By 1 August 1990, local people could claim 20 years use of any land which had not been registered under the 1965 act and that land became registrable.