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# The Guthrie Case

## Full name

*The Church Commissioners for England and Hampshire County Council and Barbara Guthrie*, 10 July 2013

## Case number

CO/8047/2012

## Neutral citation number

[2013] EWHC 1933 (Admin)

## Link to judgment

http://www.bailii.org/ew/cases/EWHC/Admin/2013/1933.html

## Summary

An invalid application for a town or village green can be retrospectively corrected after the deadline for applications, provided it was initially submitted in time.

## Discussion

In June 2008 Barbara Guthrie applied to Hampshire County Council (HCC), the registration authority, to register land known as Bushfield Camp, on the southern edge of Winchester, Hampshire, as a village green. The landowner and claimant, the Church Commissioners (CC), wanted to develop the land and, although it was prepared to leave part of is as open space, this was not acceptable to the applicant. Before HCC had determined the application, CC applied to the high court for a ruling that the application was not duly made within the allotted time and should be dismissed.

The issue before the court was whether the application was made in time. Mrs Guthrie had asserted that there had been the necessary 20 years' use of the land as of right, and this was brought to an end when CC erected a fence during July 2003. Section 15(4) of the Commons Act 2006 (which applied to cases where use of the land had ceased before the commencement of the section on 6 April 2007) required any such application to be made within five years of the challenge to use of the land, ie by July 2008 in this case.

The application was made on 30 June 2008 but was not in order, and so was not 'duly made'.

Unfortunately HCC did not keep a copy when it returned the application to Mrs Guthrie requesting that it be put in order. However, its defects could be identified from a letter of 1 July 2008 sent to her by the defendants. There were two substantial deficiencies. The first was the applicant's failure to identify on the map the locality or neighbourhood to which the claimed green related. Secondly, the application contradicted separate information from Mrs Guthrie about an application for a public footpath in 2003 which stated that access to the land was prohibited in the spring of 2003 (in which case the green application would have been outside the five-year time limit for applications under section 15(4) of the 2006 act).

There was much correspondence between the applicant and HCC (which failed to give a deadline for the amendments to the application). Eventually, on 20 July 2009, 12 months after the five-year limitation period ended, HCC accepted that the application was duly made.

HCC decided to hold an inquiry, to be presided over by Mr Leslie Blohm QC. The claimant suggested that the question of whether the application complied with section 15(4) should be decided as a preliminary issue. After further delay, HCC agreed to this and instructed Mr Blohm who gave his opinion in May 2010. He concluded that the application had been correctly considered to meet the limitation provisions in section 15(4).

## Conclusion

Mr Justice Collins concluded: 'There is nothing in the wording of the regulations which requires me to decide that there could not be retrospective effect of a corrected application. It seems to me that provided that the landowner is notified that an application has been made, there is no unfairness. It must be borne in mind that many applications for town and village greens are made by interested persons acting without legal assistance and, since the rights sought will be for the benefit of the public, applications should not be defeated by technicalities'. Thus an application can be regarded as duly made on the date it was submitted, even if it subsequently is put into proper form. He dismissed the claim

CC argued that the period of time allowed by HCC was excessive and that the applicant took too long to do what was needed. However Mr Justice Collins said that if CC had pressed HCC for an earlier resolution and as a result Mrs Guthrie had been given shorter periods to act, different considerations would have applied.

CC has been granted leave to appeal and the case will be heard early next year.

## Comment

This judgment notwithstanding, it is important that applicants ensure their applications meet all the requirements, especially as they now have only one year in England (two in Wales) within which to apply after use is challenged. If this judgment is reversed it could have a detrimental impact on applicants for greens since it could leave them at the mercy of the commons registration authority to decide when the application was ‘duly made’, with loss of valuable time.