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The Sunningwell Case

Full name of case

R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council
(House of Lords, 1999)

Case reference

UKHL 28; [2000] 1 AC 335; [1999] 3 ALL ER 385; [1999] 3 WLR 160

Summary

The judgment significantly changes the criteria by which registration authorities are required to determine applications to register town or village greens and defines 'lawful sports and pastimes' and 'as of right'.

Issues considered

Lawful sports and pastimes

These activities do not need to be either organised sports or have a communal element. Activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration as long as there is an established pattern of use and it is not 'trivial and sporadic'.

As of right (Section 22(2) Commons Registration Act 1965)

The law prior to the Sunningwell judgment was based on the case of Steed which stated that it required 'an honest belief in a legal right to use'

Lord Hoffmann, in the Sunningwell judgment, states that 'the actual state of mind of the user is plainly irrelevant'. The subjective element has therefore been removed. It is now only necessary to provide evidence that the green has been used for lawful sports and pastimes

- without force
- without secrecy
- without permission.

The judgment also states that, if the use of the land was subject to 'neighbourly toleration' by the landowner, this will not defeat an application unless there is strong evidence to show that the use as of right was not consistent with any toleration.

The inhabitants of any locality

The use of the land must be 'predominantly' by the local inhabitants and use of the land by some members of the general public will not be sufficient to defeat an application. In Sunningwell people from outside the village used a public footpath on the glebe but the evidence showed that it was mainly the villagers who used the land for 'sports and pastimes'.

However the issue of locality was not discussed by Lord Hoffmann and remains a complex evidential issue. The key locality tests are:

- is there a particular and recognisable community or neighbourhood where most of the recreational users of the land live or work?
- can the boundaries of this locality be clearly shown on a map?
- locality cannot be defined only by reference to persons; it must be defined by reference to geography.

Commentary

The decision means that a successful application to register a village green will result in the inhabitants being able to continue to enjoy activities on the land in perpetuity and will almost certainly have the protection of section 29 of the Commons Act 1876 which will prevent any encroachment or enclosure.