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Meadow Triangle, Cambridge case

Full name

R (St John's College) v Cambridgeshire County Council and Davies
12 July 2017

Neutral citation number

[2017] EWHC 1753 (Admin)

Link to judgment

www.bailii.org/ew/cases/EWHC/Admin/2017/1753.html

Summary

The initial role of the commons registration authority on a s15 application to register a town or village green is to decide whether the application is duly made and therefore procedurally compliant with the regulatory requirements, and not to consider the detailed merits of the application. It may afford one or more opportunities to the applicant to put right any defects, but must act quickly to secure a duly-made application and enable it to be publicised. The government's guidance on these aspects was criticised (and redrafted in the judgment).

Background

The interested party, David Davies, had applied to the defendant commons registration authority, Cambridgeshire County Council ('the authority'), under s15 of the Commons Act 2006 ('the 2006 Act') for registration of Meadow Triangle as a town green. He applied nearly 11 months after the owner of Meadow Triangle, St John's College, had deposited a statement under s15A bringing use of the land 'as of right' to an end. His application omitted several requirements. He was given several opportunities to put right the defects (not least because the council failed to spell out to him, on its first response, all the defects). By the time those requirements were corrected, it was more than 12 months after the deposit of the s15A statement (s15 allows a maximum one-year period of grace between challenge to use and an application).

The college challenged the further opportunities afforded to Mr Davies to put right his application, and the authority's decision to treat the corrected application as duly made.

Discussion

The case thoroughly reviews the requirements of the so-called Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, which set out the procedure for registering new greens outside the pioneer areas, modelled on those in force prior to commencement of s15 of the 2006 Act, but which have proved to be anything but 'interim'. The judgment (paras10 and 40) usefully distinguishes the 'preliminary considerations' the authority must take into account in deciding whether a s15 application is duly made, and the 'merits', which are for later on. For example, an unsigned form, or a map of insufficient scale, would not be in accordance with the 2007 Regulations, and would not be duly made—but the authority must give the applicant an opportunity to put right the matter. But an insufficiency of evidence of use is a matter of merits, which should not in itself prevent the authority treating the application as duly made. The judge, Sir Ross Cranston, was critical of the government's guidance in this respect, and the annexe to the judgment contains counsels' joint efforts at redrafting the guidance (and until the case is reflected in amended government guidance, it would be sensible to refer to the annexe).

The college cited r5(4) of the 2007 Regulations, which provides that if the application requires further action to render it duly made 'the authority must not reject the application…without first giving the applicant a reasonable opportunity of taking that action.' It said the authority was entitled to afford Mr Davies only one chance to make corrections. The judge disagreed. He noted that Lord Hoffmann had said 'that the procedure for registration was intended to be relatively simple and informal.'[1] He concluded that: 'There is nothing in the language to suggest that the applicant can be afforded only one opportunity to remedy a not duly made application.' The overly-restrictive approach advocated by the college 'cannot be right when applications for registration are often being made by laypeople.' However, the judge agreed with the decision of the court in *Church Commissioners for England v Hampshire County Council* that 'applicants may be given only relatively short periods under regulation 5(4) within which to remedy defects', and thought the month allowed in the present case appropriate, so that there was no undue delay in the authority proceeding to publicise the application. The judge was critical of the authority's delay in scrutinising the application, and said that: 'a registration authority should without delay properly scrutinise every application it receives in order to determine whether the requirements of regulations 3 and 10 have been complied with, if necessary taking legal advice.'

[1] In the *Trap Grounds* case, at para 61.

The college had also challenged as inadequate Mr Davies' specification of the locality or neighbourhood within a locality in which users of the claimed green lived. However, the judge decided that Mr Davies had got it sufficiently right first time, and to the extent that he provided clarification, it was no more than that, and not an amendment to the application (which would have raised new issues of unilateral amendment, which the judge declined fully to explore).

Comment

The case is unusual in that the claim was brought before the council had determined the s15 application—indeed, before it had seriously begun to deliberate on it. The claim relied, not on s14(b) of the Commons Registration Act 1965 (which applies to granted s.15 applications outside the pioneer areas in England), but on judicial review of the commons registration authority's decision to treat the application as duly made and therefore capable of being granted. The college could have waited for the application to be determined—and could have challenged the determination if it were granted—but presumably thought that mounting a comprehensive objection to the application would itself have been costly and time consuming (and so better to try to knock it out first thing).

It is far from clear that the judgment is justified in drawing a simple division between preliminary considerations and merits, so that the authority need concern itself only with the former when deciding whether an application is duly made. It seems that preliminary consideration includes such questions as whether the application form is signed, whether the map of the green is at a sufficient scale, and whether the locality is correctly identified. Yet in the annexe to the judgment, which sets out amended guidance (endorsed by the court) on the application process, it is made clear that an application may be excluded at preliminary consideration because a prior application for planning permission has acted as a trigger event for the purposes of s15C. But what if there is uncertainty whether the planning application relates to the same land comprised in the s15 application, or the exact date of the trigger event is disputed? Must the authority resolve this uncertainty as part of preliminary consideration, even though it feels like a merits issue on which both parties should be invited to make representations? Perhaps the case should be seen as a reminder that such matters are, in practice, seldom quite as open-and-shut as they can seem.

It is useful to have confirmation that the r.5(4) opportunity for the applicant to put right defects in an application so that it is duly made need not be one time only. The college argued that this was a one-off opportunity—but as it was the authority's fault that it had not identified to Mr Davies all the flaws in his application, this probably wasn't a promising set of circumstances on which to promote the argument that there was no second chance.