

Woodcock Hill village green

Full name

R (on the Application of Patricia Strack on Behalf of the Woodcock Hill Village Green Committee) v Secretary of State for Environment, Food and Rural Affairs and
(1) Laing Homes Limited (T/a Taylor Wimpey)
(2) Hertsmere Borough Council

Neutral citation number

Neutral Citation Number: [2024] EWCA CIV 420

Link to judgment

www.bailii.org/ew/cases/EWCA/Civ/2024/420.html

Summary

The court of appeal has dismissed an appeal challenging the deregistration of a town and village green (TVG).

The decision is the first at court of appeal level regarding the provisions in section 16 of the Commons Act 2006, which allow for deregistration and exchange of common land and TVGs.

Background

In 2023, the high court judge, Mr Justice Lane, dismissed an application for judicial review of the decision of the Secretary of State for Environment, Food and Rural Affairs to allow the deregistration and exchange of part of Woodcock Hill village green under section 16 of the Commons Act 2006 (the 2006 act). The judge considered that the inspector had not erred in law. OSS commentary [here](#).

The principal ground for appeal was that the 'interests of the neighbourhood', to be considered when determining an application for an exchange under section 16 referred to the neighbourhood which was relied on when the green was first registered; in this case the replacement land would be serving a different neighbourhood. Also, the Woodcock Hill Village Green Committee considered that it had the right to maintain and improve the

release land for nature conservation (one of the matters to be considered when determining the suitability of an exchange), and that this had not been taken into account.

Discussion

The factors to be considered under section 16 include ‘the interests of the neighbourhood’ and ‘the public interest’ (section 16(6)(b) and (c)). The appellant argued that the inspector had overlooked that only the local inhabitants had the legal right to use the TVG (and thus the replacement land) and that he had wrongly considered the benefits of accessibility of the replacement land to other persons, who would, strictly speaking, be trespassers because they had no rights to use of the village green.

The court of appeal upheld Lane J’s judgment in the high court. The court held that the factors to which section 16(6) relate are broad. There is no necessary hierarchy between them. The Inspector had properly balanced those factors, and reached the rational conclusion that the application for deregistration should be granted (paragraphs 106 and 115). The interests to be considered under section 16(6)(b) (‘the interests of the neighbourhood’) were wider than the inhabitants of the neighbourhood within a locality whose interests fell within section 16(6)(a). The majority (Singh and Laing LJ) recognised that ‘in strict theory’ there was a distinction between the local inhabitants (who had the right to use the replacement land) and the broader public (who did not, and were ‘tolerated trespassers’), but that any error committed by the Inspector in conflating the two interests would have made no difference to his overall conclusion (paragraph 115).

The court declined to interfere with the inspector’s conclusion that the exchange would have no unacceptable effect on nature conservation, and the inspector did not need to decide the question of whether local inhabitants had a right to maintain the village green (in the teeth of opposition from the landowner). The court preferred to defer such a question to another occasion on the basis of full argument.

The judgment contains a discussion of the nature of TVG rights in paragraph 45 onwards.

Comment

It is unfortunate that the recreational right-holders of the neighbourhood or locality are not expressly recognised in section 16(6)(a) of the 2006 act, which says that regard is to be had to ‘the interests of persons having rights in relation to...the release land’, and particular regard is to be had to ‘persons exercising rights of common over’ the release land. The problem perhaps arises because section 16 and the relevant guidance are written with common land rather than TVGs in mind. The decision is quite helpful in a broader sense of embedding a requirement on inspectors to have regard to the particular rights of the local inhabitants, and that this is insufficiently clear from the Defra guidance.