

Report of the Head of Legal and Democratic Services and Procurement

Rights of Way and Commons Sub-Committee – 13 August 2014

IMPLICATIONS OF THE CASE OF R (ON THE APPLICATION OF BARKAS) (APPELLANT) –v- NORTH YORKSHIRE COUNTY COUNCIL AND ANOTHER (RESPONDENTS) [2014] UKSC31 ON APPLICATIONS TO REGISTER COUNCIL OWNED LAND AS A TOWN OR VILLAGE GREEN

Purpose: To provide an up-date on the recent decision of the Supreme Court in the above case and its implications on village green applications relating to Council owned land.

Policy Framework: The Council in its capacity as Commons Registration Authority is required by statute to determine applications for land to be designated as a town or village green.

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FOR INFORMATION

1. Introduction

- 1.1 The Council in its role as Commons Registration Authority (CRA) has a statutory duty pursuant to Section 15 of the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 to determine applications for land to be registered as a town or village green.
- 1.2 The effect of registration of land as a town or village green is that it is protected from development for ever and preserved for use by local people.
- 1.3 Under the terms of the Council's constitution the Rights of Way and Commons Sub-Committee of the Planning Committee discharges the functions of the Council with regard to village greens.

2. General issues

- 2.1 Applications can raise difficult issues of both fact and law. Additional difficulty is involved in circumstances where the land in question is owned by the Local Authority in that a conflict arises as the Council is both the CRA and the objecting owner of the land. These roles have to remain separate as far as is possible so as to minimise challenge by way of judicial review. The Council, in its role as CRA must consider the application purely on the merits of the case by applying the relevant law and in accordance with the principles of natural justice.
- 2.2 A case recently heard by the Supreme Court has implications for the determination of applications where the land subject to the application is owned by a local authority.

3. Implications of Recent Case Law

- 3.1 To register land as a town or village green applicants must be able to provide evidence that there has been recreational use of the land by a significant number of inhabitants of any locality or neighbourhood within a locality for a 20 year period and that the recreational use has been **as of right, ie without force, without secrecy and without permission having been granted**. The recreational use must be for lawful sports and pastimes.
- 3.2 In the case of R (on the application of Barkas) (Appellant) -v- North Yorkshire County Council and Another (Respondents) [2014] UKSC31 (referred to as “the Barkas case) the land was provided and maintained by the local authority as “recreation grounds” under what is now section 12(1) of the Housing Act 1985.
- 3.3 The Supreme Court has determined that whilst the applicant was able to meet the requirements regarding the recreational use of the land by the required users for the required time period, they could not show that they used the land “as of right”. In these circumstances the Court determined that the land is used “**by right**” by the powers of the Housing Acts. Consequently, such land is not registerable as a town or village green on the basis of such use.
- 3.4 The decision has implications for applications for the registration of land as a village green in circumstances where the land is held by a local authority for public recreational purposes pursuant to any statutory power at any time during the relevant 20 year period for the purposes of section 15 of the Commons Act 2006.
- 3.5 This position does not apply to land owned by a private individual or company where there is no legal duty and no statutory power to allocate land for public use and would be expected to protect their own legal rights.

4. Equality and Engagement Implications

4.1 There are no equality and engagement implications.

5. Financial Implications

5.1 There are no financial implications.

6. Legal Implications

6.1 The legal implications are set out in the body of the report.

FOR INFORMATION

Background papers: None

Appendices: None