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The Paddico case

Full name of case

Jonathan Adamson v Paddico (267) Limited, Kirklees Metropolitan Borough Council, William Magee, Thomas Hardy [Court of Appeal (civil division) on appeal from the High Court Chancery Division 6 – 9 February 2012]

Case No

A3/2011/1893

Neutral Citation No

[2012] EWCA civ 262

Link to judgment <http://tinyurl.com/8jod4zf>

Summary

The Court of Appeal allowed an appeal against the High Court's decision, in June 2011, to reverse the registration of land as a town or village green. The Court of Appeal held that land should not have been registered because the inhabitants did not come from a single locality and confirmed that there was no alternative locality on which the application could have been based. However, it held that rectification of the register was not just and fair because the landowner had taken nearly 13 years to apply for rectification.

Issues

The 6½ acres of land at Clayton Fields, Huddersfield was registered as a village green under section 13 of the Commons Registration Act 1965 on 14 April 1997 by Kirklees Metropolitan Borough Council, the registration authority. The evidence showed use of the land for lawful sports and pastimes in excess of 20 years. The original owners of the land, at the time of the village green application, applied for rectification of the register under section 14 of the Commons Registration Act 1965 in May 1997. In April 2000 those proceedings were automatically stayed because the court application had not been pursued. In October 2004 the land was transferred to Paddico Ltd and, in December 2008, Paddico applied for the stay of the section 14 application to be lifted.

Locality

The Court of Appeal considered whether the two suburban areas of Huddersfield known as Edgerton and Birkby could qualify as a locality. The court also examined whether there were any other areas which would have qualified as a locality. It was accepted on behalf of the landowner that, if the original registration could be justified by reference to some other locality then the locality relied on when the original decision to register was made, it would not be just and fair to rectify the register.

The village green applicants put forward the argument that locality should be interpreted as a place or places with a clear identity whose extent could be corroborated by local people. The High Court judge had defined locality as an administrative area or an area within legally significant boundaries.

The Court of Appeal held that a conservation area could not be a locality, as it was not designated until part way through the 20 year period, and was not an identifiable community.

The 'fit and spread' argument

Objectors frequently try to show that there should be an equal distribution of those who use the land throughout the whole of the locality, rather than by people in only a part of the locality. In the High Court, this 'fit and spread' argument was rejected. In the Court of Appeal Carnworth L J concluded that registration could be granted where there was a predominant use from within the locality, seeming to disagree with the High Court decision. However this did not form a material part of the judgment.

Predominance Test

The Court of Appeal held that users of land for registration purposes should come predominantly from the claimed locality. This was in relation to the test in section 22 of the Commons Registration Act 1965, before the 2001 amendment in the Countryside and Rights of Way Act 2000. There was no discussion of what percentage of users must come from the locality to satisfy the predominance test.

Delay

The court held that, as more than 12 years had elapsed since the original registration in 1997 and the issuing of proceedings, it was just and fair to refuse to rectify the register. The landowner had bought the land after it had been registered as a green. The majority view was that this negated the owner's ability to argue that it would be just to amend the register.

Conclusion

The Court of Appeal held it was not just and fair to rectify the register because of the 12 year delay, but that the locality element of the statutory criteria had not been satisfied.

Further reading

High Court decision [2011] EWHC 1606 9(Ch).

Link to judgment <http://www.bailii.org/ew/cases/EWHC/Ch/2011/1606.html>

Leave has been given to appeal to the Supreme Court on the issue of delay and whether it was just and fair to rectify the register.