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The Laing Homes Case, Buckinghamshire

Full name of case

R (on the application of Laing Homes Ltd) v Buckinghamshire County Council and the Secretary of State for the Environment, Food and Rural Affairs (High Court, 8 July 2003)

<http://www.bailii.org/ew/cases/EWHC/Admin/2003/1578.html>

Case reference

[2003] EWHC 1578, [2004] 1 P&CR 573

Summary

Laing Homes, which had bought the land in 1963 with a view to developing it for housing, applied to the court to quash Buckinghamshire County Council's decision to register the land. It did so on four grounds.

1. There was insufficient evidence of use of the whole of the land to justify its registration as a green.
2. The public inquiry inspector erred in concluding that the use of the fields for an annual hay-cut for well over half of the 20-year period was compatible with the establishment of village green rights (a farmer Mr Pennington, had taken an annual hay crop from the fields from about 1982 to the early 1990s).
3. The use was not as of right.
4. An ecclesiastical parish cannot be a 'locality'.

The judge, Mr Justice Sullivan, upheld grounds 1, 2 and 3 and rejected ground 4, quashing the decision of Buckinghamshire County Council to register as a village green three fields totalling 38 acres at Widmer Farm, Widmer End, near Hazlemere.

Issues considered

Buckinghamshire County Council had resolved to register the land as a green, on 8 April 2002, following a public inquiry in 2001 into the application from Grange Action Group. The applicant had to show that the land had been used by people from the locality for lawful sports and pastimes for at least 20 years, without interruption and without permission.

Laing Homes appealed against this decision and also sought a declaration under section 4 of the Human Rights Act 1998 that sections 13 (3) and 22 of the Commons Registration Act 1965, which provide for the registration of land as a green, were incompatible with Article 1 Protocol 1 to the European Convention on human rights.

The judge accepted that these issues were ones of fact and degree in each case. He said that 'like the inspector, I have not found this an easy question...Rough grazing is not necessarily incompatible with the use of the land for recreational purposes...I do not consider that using the three fields for recreation in such a manner as not to interfere with Mr Pennington's taking of an annual hay crop for over half of the 20 year period, should have suggested to Laings that those using the fields believed that they were exercising a public right, which it would have been reasonable to expect Laings to resist.'

The judge considered it would be inappropriate for him to resolve the human rights issue, in spite of the 'wide-ranging and important issues of principle', which were raised. He said that, as he had decided the application under domestic law in favour of the claimant, the human rights issue did not arise and he could not resolve this on a hypothetical basis. (The society believes that there is no infringement of human rights, particularly if registration is necessary for the preservation of the environment and/or is in the interests of the community, as these are principles which are applicable to article 1 protocol 1.)