

Wiltshire Council and Cooper Estates (Court of Appeal)

Full name

Wiltshire Council and Cooper Estates Strategic Land Ltd and Richard Gosnell and Royal Wootton Bassett Town Council

Neutral citation number

[2019] EWCA Civ 840

Link to judgment

<https://www.bailii.org/ew/cases/EWCA/Civ/2019/840.html>

Summary

The court of appeal upheld the high court's decision (2018), <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1704.html> that key policies in an adopted core strategy identified land for 'potential development', meaning a trigger event had occurred which precluded registration as a town or village green (TVG). The land was on the edge of a settlement boundary.

Background

In April 2016 local resident, Richard Gosnell applied to Wiltshire Council, the registration authority, for 380 square metres of a triangular-shaped piece of land adjacent to Vowley View and Highfold at Royal Wootton Bassett in Wiltshire to be registered as a TVG. This was on the grounds that local people had used the land for recreation for 20 years or more and had established a right to do so.

In December 2017 Wiltshire Council granted the application and registered the land. Cooper Estates, the landowner, sought judicial review of the registration on the basis that the land had been identified for 'potential development' by policies in the council's core strategy. The Wiltshire core strategy was adopted in 2015, and therefore was in force when the application to register the land was made.

The strategy identified a series of important sites where a presumption of sustainable development would apply. It also set out indicative housing targets for community areas.

Judge David Elvin QC, sitting as a deputy judge in the high court, ruled that the policies within the core strategy 'provide a trigger event' in terms of the legislation. This was despite the fact that the disputed land was 'only part of the land so identified' and the physical boundaries of the land were not shown in the development plan. Wiltshire Council appealed against this decision and the matter was heard before three judges in the court of appeal, who unanimously upheld the high court's decision.

Discussion

The issue here is: what does it take in a development plan document to identify land for potential development?

If land is identified, the right to apply for the registration of land as a TVG is prohibited because a trigger event has occurred. This particular trigger event, which prevents land from being registered as a TVG, is that the land is included in an adopted 'development plan document which identifies the land for potential development'. The wording is from section 15C (in England) of the Commons Act 2006, as amended by section 16 of the Growth and Infrastructure Act 2013 which inserted a list of trigger events to prevent registration of land as TVG when that land was threatened with development.

The reference to the 'development plan' in the triggers now includes development plan documents, and neighbourhood plans as defined in the Planning and Compulsory Purchase Act 2004 section 38(3). The importance of a development plan is set out in the National Planning Policy Framework and the crucial parts of the development plan are the policies themselves. A development plan must be interpreted as a whole, but within it, wider policy statements may go in different directions.

The court of appeal ruled that it is not a requirement of a trigger event that only the land in question is identified, it may be part of a bigger area.

The court of appeal said that the land could be identified for potential development in a number of different ways. For instance, it could be identified by a line on a map, and the line on the map need not just be the land itself but could be a larger area. It could also be described in words or by reference to prescribed criteria. However, 'potential' and 'development' are both very wide terms. 'Potential' may not imply that it is suitable for development while 'development' may not just mean any new buildings.

Comment

This case, which is the first to analyse trigger events, is deeply worrying. It means that land which is eligible for registration as a TVG may have become ineligible merely because it was included in a development plan in a wider area for potential development—and that development could be something as vague as agricultural intensification. Local people may not even have been aware of this before it is too late to register the land.

Reference in the court of appeal was made to an alternative means of protecting land by designating it as a local green space (LGS). However, this is only a planning designation and does not provide any new permanent protection or access rights. There are few opportunities to designate land as a LGS because the opportunity is only available when a local plan is being reviewed or when a neighbourhood plan is being prepared. In addition, many people find the local plan process impenetrable. In contrast registration of land as a TVG provides permanent protection.

It is essential that anyone who is considering making an application checks the development and its core strategies to ascertain whether the land has been identified for 'potential development'.