

Moorside Fields and Leach Grove case (Supreme Court)

Full name

R (on the application of Lancashire County Council) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs and another (Respondents)

R (on the application of NHS Property Services Ltd (Appellant) v Surrey County Council and another (Respondents)

Neutral citation number

[2019] UKSC 58

Link to judgment

<https://www.supremecourt.uk/cases/uksc-2018-0094.html>

Summary

The issue in the two cases is the circumstances in which statutory incompatibility will defeat an application to register land as a town or village green (TVG) under the Commons Act 2006 where the land is held by a public authority for statutory purposes. [The Newhaven case](#) gave judgment on the interpretation and application of the statutory incompatibility ground. The majority decision on 11 December 2019 is that Newhaven authoritatively interpreted the Act to mean that where land is acquired and held for defined statutory purposes by a public authority, the Act does not enable the public to acquire rights over that land by registering it as a green where such registration would be incompatible with those statutory powers. Here there is incompatibility between the statutory purposes for which the land is held and the use of that land as a green and therefore the Act is not applicable.

Background

Two TVG cases were heard together on appeal from the court of appeal. One was an appeal from Lancashire County Council, as the local education authority, against a decision to register as TVG 13 hectares of land known as Moorside Fields in Lancaster. The respondent was the Secretary of State for Environment, Food and Rural affairs whose inspector, Alison Lea, had approved the application following a public inquiry.

The second case concerned an application to register 2.9 hectares at Leach Grove Wood at Leatherhead in Surrey. Against the recommendation of the public inquiry inspector, William Webster, Surrey County Council decided to register the land. The NHS, as landowner, appealed.

Discussion

By a majority decision the Supreme Court allowed the appeals in both cases. Lord Carnwath and Lord Sales gave the majority judgment, with which Lady Black agreed. Lady Arden partly dissented and Lord Wilson gave a dissenting judgment.

The inspector's finding in the Lancaster case, that the land was not acquired and held pursuant to statutory education purposes, was held to be inconsistent with the evidence and irrational. Therefore, the central issue in both cases was the interpretation and application of the statutory incompatibility ground identified in the Newhaven case. The Lords found that LCC and NHS showed that there is statutory incompatibility in each case. In the Lancaster case, the rights claimed for registration as TVG were incompatible with the use of the area for education purposes. LCC did not need to show that the land was currently being used for such purposes, only that it was held for such statutory purposes. Similar points were held to apply in the Surrey case: the issue of incompatibility has to be decided by reference to the statutory purposes for which the land is *held*, not by reference to how the land happens to be *used* at a particular point.

Lady Arden disagreed and would have allowed the appeals. In her view it must be shown that the land is in fact being held, or that it is reasonably foreseeable that it will be used, pursuant to those powers in a manner inconsistent with the public's rights on registration as a green.



Lord Wilson dissented from the majority and would have dismissed both appeals. He said that the Act's reach is substantially reduced if land held by public authorities for specified statutory purposes is to be immune from registration as a green that could theoretically be incompatible with those purposes. He said that the Newhaven case was concerned with statutes that conferred specific duties in relation to particular land whereas here the statutory provisions that confer general powers to acquire and hold unspecified land for education and health purposes could not be said to be incompatible with the provision in the Act.

Comment

A worrying extension of the interpretation of the Newhaven judgment which will further restrict the ability of local people to protect land by registering it as a TVG, particularly where the land is held by a public authority for purposes which are incompatible with recreational use even if it is not being used for those incompatible purposes.