



Application Decision

On papers on file

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs pursuant to Regulation 4 of the Commons (England) Regulations 2008 to determine the application

Decision date: 13 July 2021

Application Ref: COM 493

Land at Moorside Fields, Lancaster

- The application was made by Ms Janine Bebbington and is dated 9 February 2010.
 - The application was made under section 15 (2) of the Commons Act 2006 ('the 2006 Act').
 - The application is to register land adjacent to Moorside Primary School, Lancaster as a town or village green.
-

Decision

1. The application is refused.

Procedural Matters

2. The application was made on 9 February 2010 and was determined by following a public inquiry held in 2014 and 2015. Following that inquiry, the Inspector's decision of 22 September 2015 was that most of the land subject to the application should be registered as a town or village green, but that part should not be so registered.
3. Lancashire County Council (as the owner of the land at issue) challenged the Inspector's decision by way of Judicial Review ([2016] EWHC 1238 (Admin)); the High Court upheld the Inspector's decision. Lancashire County Council appealed that judgement to the Court of Appeal ([2018] EWCA Civ 271); the Court of Appeal upheld the decision of the lower court and the Inspector.
4. In July 2019 the case was heard by the Supreme Court ([2019] UKSC 58) where the majority judgement overturned the decisions of the lower Courts. The key element to Lancashire County Council's case was that the land for which registration had been sought had been acquired and had remained appropriated for educational purposes under the Council's statutory powers as an education authority and that public use for informal sports and pastimes was incompatible with the educational purposes for which the land was held.
5. The Supreme Court considered that the central issue was the interpretation and application of the question of statutory incompatibility as identified in the majority judgement of the Supreme Court in *R (Newhaven Port and Properties) v East Sussex County Council* [2015] UKSC 9 ('*Newhaven*').
6. The judgement of the majority in the Supreme Court is that *Newhaven* authoritatively interpreted the Commons Act 2006 to mean that where land is acquired and held for defined statutory purposes by a public authority, the

2006 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 purposes.

7. The Supreme Court held that in the case of Moorside Fields there was an incompatibility between the statutory purposes for which the land is held and its use by the public as a town or village green and therefore the provisions of the 2006 Act are not applicable. The Supreme Court held that Lancashire County Council did not have to demonstrate that the land was being used for playing fields or the construction of new school buildings, only that the land had to be held for such statutory purposes.
8. The Supreme Court has quashed the Inspector's decision of 22 September 2015. The Order of the Supreme Court did not include a mandatory order to refuse the application upon re-determination as the Supreme Court assumes that a government body will obey the law and be bound by the judgement.

Reasons

9. In the light of the majority judgement in the Supreme Court, I issued a letter dated 19 May 2021 which set out the procedural history of the case, and which also set out my view that there would be little point in a further public inquiry or hearing into the application being held when the only permissible conclusion was that the application should be refused on the grounds of statutory incompatibility. The letter of 19 May 2021 invited comment from the parties prior to a decision on the application being made.
10. A response was received from the Commons Registration Authority which had no further comment to make on the matter unless other representations were made. No other representations were received.
11. The land at Moorside Fields subject to the application is held by Lancashire County Council for statutory educational purposes and was so held and appropriated for those purposes throughout the relevant 20-year period prior to the application being made. Although there is sufficient evidence of use of the land for lawful sports and pastimes by the inhabitants of a locality, or of a neighbourhood within a locality to support a claim that the land is a town or village green, the use of the land by the public during that period was incompatible with the statutory purposes for which the land was held.
12. In such circumstances, the provisions of section 15 of the 2006 Act are inapplicable to the land subject to the application. It follows that the land cannot be registered as a town or village green and that the application must be refused.

Alan Beckett

Inspector