

TOWN AND VILLAGE GREENS -

IMPORTANT RECENT CASE LAW
APRIL 2013.

SASHA WHITE

INTRODUCTION – IMPORTANT RECENT CASE
LAW.



- THE PURPOSE OF THIS LECTURE IS TO GIVE A SUMMARY OF THE IMPORTANT CASES IN THIS AREA OVER THE PAST YEAR.
- I HAVE FOCUSED ON **SEVEN KEY DECISIONS**:
 1. NEWHAVEN – COURT OF APPEAL – 27/3/2013.
 2. BARKAS – COURT OF APPEAL -23/10/2012.
 3. PIPER – HIGH COURT – 8/10/2012.
 4. MALPASS – HIGH COURT – 25/7/2012.
 5. BARNSELY – HIGH COURT – 24/5/2012.
 6. BETTERMENT – COURT OF APPEAL – 7/3/2012.
 7. PADDICO – COURT OF APPEAL – 7/3/2012.

CASE NO 1 – NEWHAVEN – COURT OF APPEAL
27/3/2013 – 2013 EWCA CIV 276



- **SUMMARY** – A TIDAL BEACH COULD BE REGISTERED AS A VILLAGE GREEN UNDER SECTION 15 OF THE COMMONS ACT 2006.
- **KEY FACTS:**
 - Newhaven is a port town.
 - County Council as registration authority registered land as village green after finding the requirements of section 15 had been met.
 - Judge at first instance held that beach forming part of the operational land of Newhaven Port could not be registered as village green where it was reasonably foreseeable that registration would conflict with port authority’s statutory rights and powers and the land was held by Newhaven Port in exercise of its statutory powers.

**CASE NO 1 – NEWHAVEN – COURT OF APPEAL
27/3/2013**



- DECISION:
 - The appeal allowed by Court of Appeal.
 - The consequences of registering the beach might have for the future discharge of N's statutory functions was not a proper ground for holding that it was not capable of registration. The Judge's reasoning on this ground was *seriously flawed*.
- KEY ISSUE
 - Consequences of registration for the landowner was not part of statutory test.
 - Not open to landowner to resist registration on that basis.
 - Not relevant either that registration was incompatible with exercise of public body's powers and duties.
 - It was right that a tidal beach could be registered.



**CASE 2 – BARKAS – COURT OF APPEAL –
23/10/2012.**



- SUMMARY – WHERE LAND IS HELD BY A COUNCIL UNDER SECTION 12 OF THE HOUSING ACT WHICH GIVES THE COUNCIL EXPRESS POWER TO PROVIDE A RECREATION GROUND IN CONNECTION WITH HOUSING, THE USE OF THAT LAND BY LOCAL INHABITANTS DOES NOT MEET SECTION 15 STATUTORY TESTS BECAUSE USE IS BY RIGHT, NOT AS OF RIGHT, AND THEREFORE LAND IS NOT ELIGIBLE TO BE SO REGISTERED.
- KEY FACTS
 - LAND IS 4 ACRE RECREATION GROUND IN WHITBY, YORKSHIRE AND WAS A GRASSED RECREATIONAL GROUND AMONG HOUSING ESTATES.
 - REGISTRATION AUTHORITY REJECTED REGISTRATION ON ADVICE OF INSPECTOR, MR VIVIAN CHAPMAN, WHO RULED THAT USE HAD BEEN BY RIGHT, NOT AS OF RIGHT.
 - LAND ACQUIRED BY WHITBY UDC IN 1951.



**CASE 2 – BARKAS – COURT OF APPEAL –
23/10/2012.**



- DECISION: THE LAND WAS APPROPRIATED ORIGINALLY FOR THE PURPOSE OF PUBLIC RECREATION AND THEREFORE IT WAS ACQUIRED BY AN EXPRESS STATUTORY POWER TO PROVIDE AND MAINTAIN IT AS A RECREATION GROUND. THEREFORE USE WAS BY RIGHT AND NOT AS OF RIGHT.
- KEY ISSUE:
 - LORD JUSTICE SULLIVAN DECIDED THAT LAND COULD NOT BE REGISTERED BECAUSE USE NOT AS OF RIGHT.
 - SO IF USE IS BY RIGHT GRANTED BY STATUTORY POWERS NOT WITHIN SECTION 15.
 - IT IS RELEVANT TO CONSIDER THE ACQUISITION OF THE LAND IN CERTAIN CIRCUMSTANCES RELATING TO BY RIGHT.
 - APPELLANT SEEKING LEAVE TO THE SUPREME COURT.



CASE 3 – PIPER – HIGH COURT – 8/10/2012.



- SUMMARY: DEALT WITH RELATIONSHIP BETWEEN VILLAGE GREEN APPLICATION AND A PLANNING APPLICATION AND THE USE OF JUDICIAL REVIEW
- KEY FACTS:
 - APPLICANT OBTAINED PLANNING PERMISSION IN 2008 FOR DEVELOPMENT.
 - SAME LAND REGISTERED AS VILLAGE GREEN IN 2009.
 - PROCEEDINGS IN CHANCERY DIVISION BY APPLICANT TO RECTIFY THE REGISTRATION ON THE GROUNDS IT SHOULD NOT HAVE BEEN REGISTERED.
 - PLANNING PERMISSION EXPIRED IN 2011 AND OBJECTOR SOUGHT JUDICIAL REVIEW TO STOP THE RENEWAL OF THE PERMISSION.
 - PROCEEDINGS TAKEN TO STOP THE HEARING INTO RECTIFICATION UNTIL JUDICIAL REVIEW PROCEEDINGS HAD CONCLUDED



CASE 3 – PIPER – HIGH COURT – 8/10/2010.



- DECISION – APPLICATION REFUSED – THE DETERMINATION OF WHETHER THE VILLAGE GREEN WAS CORRECT WOULD PLAY A PART IN THE JUDICIAL REVIEW PROCEEDINGS. UNDESIRABLE TO DELAY A TRIAL THAT NEEDED TO CONSIDER EVIDENCE FROM 1987.
- KEY ISSUE:
 - RELATIONSHIP BETWEEN RECTIFICATION PROCEEDINGS AND PLANNING PERMISSIONS.
 - CLEARLY THE RECTIFICATION PROCEEDINGS MUST BE THE FRONT RUNNER BECAUSE ANY JUDICIAL REVIEW INTO THE RENEWAL OR GRANT OF A PLANNING PERMISSION WILL NOT BE KEY UNLESS STATUS OF THE LAND IS DETERMINED.



CASE 4 – MALPASS – HIGH COURT – 25/7/2012



- SUMMARY – IF LAND IS NOT REGISTERED AFTER A FLAWED REPORT BY AN INSPECTOR THEN THE LOCAL AUTHORITY IS REQUIRED TO CONSIDER THE MATTER AFRESH.
- KEY FACTS
 - LOCAL AUTHORITY INTENDED TO USE LAND TO FORM PART OF A NEW SCHOOL AND THEY PROPOSED TO FENCE OFF THE LAND.
 - M APPLIED FOR VG REGISTRATION FOR THE LAND.
 - LOCAL AUTHORITY REFUSED APPLICATION BECAUSE USE OF THE LAND HAD BEEN WITH PERMISSION.
 - INSPECTOR CONCLUDED THAT WERE LAND HAD BEEN APPROPRIATED FOR THE PURPOSE OF PUBLIC RECREATION THEN IT WAS BY RIGHT, NOT AS OF RIGHT



CASE 4 – MALPASS – HIGH COURT – 25/7/2012



- DECISION –THE REGISTRATION HAD TO BE RECONSIDERED BY THE AUTHORITY FOR THE PURPOSES OF THE ACT
- KEY ISSUE –
 - DECISION CONTRARY TO BARKAS AND HAS TO BE VIEWED IN THAT CONTEXT.

CASE 5 – BARNSELY – HIGH COURT – 25/5/2012.



- SUMMARY:
 - CAN VILLAGE GREENS BE THE SUBJECT OF COMPULSORY PURCHASE?
- KEY FACTS:
 - LOCAL AUTHORITY PURPORTED TO USE POWERS IN SECTION 121 OF THE LOCAL GOVERNMENT ACT 1972 AND SECTION 2 OF THE LOCAL GOVERNMENT ACT 2000 TO MAKE A COMPULSORY PURCHASE ORDER
 - SECRETARY OF STATE REFUSED TO CONFIRM THE CPO ON THE BASIS THAT THE STATUTORY POWERS USED DID NOT GIVE THE NECESSARY POWERS TO MAKE THE ORDER SOUGHT.
 - SECTION 121(2)(a) only allowed such acquisition for the benefit, improvement and development of their area to be done by agreement.

CASE 5 – BARNSELY- HIGH COURT – 24/5/2012.



- DECISION – LAND COULD NOT BE ACQUIRED FOR COMPULSORY PURCHASE WHERE IT WAS A VILLAGE GREEN.
- KEY ISSUE –
 - THE SECRETARY OF STATE DECLINED TO CONFIRM A CPO WHICH RELATED TO LAND REGISTERED AS A VILLAGE GREEN.
 - THE SECRETARY OF STATE DECIDED THAT SECTION 120(1)(A) OF THE LOCAL GOVERNMENT ACT AND SECTION 2 OF THE LOCAL GOVERNMENT ACT 2000 DID NOT ALLOW THE ACQUISITION OF LAND BY CPO.
 - IF SUCH POWERS WERE USED THEN IT MUST BE BY AGREEMENT ONLY.

**CASE 6 – BETTERMENT – COURT OF APPEAL
7/3/2012.**



SUMMARY :

THE COURT HAD BEEN RIGHT TO ACCEPT THE CASE FOR RECTIFICATION NOTWITHSTANDING THE DELAY IN APPLYING FOR SUCH RECTIFICATION OF THE REGISTER.

KEY FACTS:

- DORSET COUNTY COUNCIL REGISTERED 46 ACRES OF GRAZING LAND AS VILLAGE GREEN IN 2001.
- IN 2004 THE CURTIS FAMILY WHO HAD OWNED LAND FOR DECADES SOLD THE LAND TO B, AND IN 2005 B APPLIED TO REMOVE THE LAND FROM THE REGISTER BY WAY OF RECTIFICATION.
- B CONTENDED THAT THE LAND SHOULD NEVER HAVE BEEN SO REGISTERED BECAUSE OF A FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE ACT.



**CASE 6 – BETTERMENT – COURT OF APPEAL
7/3/2012.**



DECISION:

- THE DELAY OF 4 YEARS FROM REGISTRATION TO RECTIFICATION DID NOT PRECLUDE THE REGISTER BEING RECTIFIED.

KEY ISSUE:

- IT WAS IN THE PUBLIC INTEREST TO ENSURE THE REGISTER WAS ACCURATE.
- A DELAY IN APPLYING FOR RECTIFICATION IS A RELEVANT FACTOR BUT IN THIS PARTICULAR CASE NOT A SIGNIFICANT ONE.
- HOWEVER IT MAY PRECLUDE RECTIFICATION IF IT RESULTS IN SUBSTANTIAL PREJUDICE TO LOCAL INHABITANTS OR IT BRINGS IN ISSUES OF MORE GENERAL CONSIDERATION OF PUBLIC INTEREST.



**CASE 6 – PADDICO – COURT OF APPEAL
7/3/2012.**



SUMMARY- ACCEPTED THAT LAND SHOULD NOT HAVE BEEN REGISTERED AS VILLAGE GREEN AS THE LAND HAD NOT BEEN USED BY INHABITANTS OF A SINGLE LOCALITY BUT THE DELAY OF 12 YEARS WAS BY THE STANDARDS OF ANY LEGAL PROCESS EXCESSIVE AS TO MAKE IT RECTIFY THE REGISTER.

KEY FACTS:

- LAND REGISTERED IN APRIL 1997.
- LANDOWNER COMMENCED RECTIFICATION PROCEEDINGS IN MAY 1997 BUT IN APRIL 2000 PROCEEDINGS WERE STAYED FOR WANT OF PROSECUTION.
- NEW APPLICANT APPLIED FOR STAY TO BE LIFTED AND REFUSED BY JUDGE IN MARCH 2010
- NEW RECTIFICATION APPLICATION MADE IN JANUARY 2010 AND ALLOWED BY VOS J BE DELETING THE ENTRY OF LAND.



**CASE 6 – PADDICO – COURT OF APPEAL
7/3/2012.**



- DECISION –
 - THAT THE APPEAL BE ALLOWED AND RECTIFICATION OF REGISTER BE REFUSED BECAUSE OF THE DELAY IN THE PROCEEDINGS [SULLIVAN J AND CARNWATH J]
- KEY ISSUES –
 - APPLICATIONS FOR AMENDMENT OF REGISTER WOULD REQUIRE VERY CLEAR JUSTIFICATION IF BEYOND THE NORMAL LIMITATION PERIOD OF SIX YEARS.

SUMMARY AND CONCLUSION



- RECENT CASES AFFECT:
 - TIDAL BEACH CAN BE REGISTERED – NEWHAVEN.
 - ISSUES OF AS OF RIGHT RELEVANT – BARKAS
 - RECTIFICATION BEFORE PLANNING PERMISSION – PIPER
 - IF INSPECTOR REACHES A CONCLUSION WHICH IS NOT CORRECT IN LAW THEN RA MUST RECONSIDER ISSUE – MALPASS.
 - ACQUISITION OF VILLAGE GREENS HAVE TO BE CONSIDERED VERY CAREFULLY IN THE CONTEXT OF CPO - BARNSELY.
 - RECTIFICATION MUST BE PURSUED GENERALLY WITHIN NORMAL STATUTORY TIME FRAMES – PADDICO AND BETTERTMENT.
