



3 March 2010

## PRESS SUMMARY

### **R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) [2010] UKSC 11; on appeal from [2009] EWCA Civ 3**

**JUSTICES:** Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lord Brown, Lord Kerr

#### **BACKGROUND TO THE APPEAL:**

The Appellant was one of five local residents who applied under Section 15 of the Commons Act 2006 ('the 2006 Act') to have a piece of land in the town of Redcar registered as a town or village green. When land is successfully registered as a town or village green under the 2006 Act, the inhabitants of the locality concerned are entitled to exercise 'lawful sports and pastimes' over the land, such as walking, or playing informal games. Registration typically prevents development on the land taking place. In order to register land for such use, however, the inhabitants are required to demonstrate under s.15, broadly, that a significant number of them have indulged, 'as of right', in lawful sports and pastimes over the land for a period of 20 years.

This appeal concerned the meaning of 'as of right' in the 2006 Act. The land in question had been used, until 2002, as a golf course by the tenants of the land. The inspector who conducted a public inquiry into registration recommended to the relevant registration authority - the Respondent - that the land should not be registered. He found that although the local inhabitants had indulged in lawful sports and pastimes on the land for 20 years, they had 'overwhelmingly deferred' to the landowner's use of the land by, amongst other things, waiting for the golfers to play their shots before they walked across the course. Such use, he concluded, was not 'as of right'. On the inspector's recommendation, the council decided not to register the land. On an application for judicial review by the Appellant, the High Court and the Court of Appeal both upheld the council's decision. The Appellant appealed.

#### **JUDGMENT**

*The Supreme Court unanimously allows the appeal and directs that the Respondent should register the land as a village green under the 2006 Act. The leading judgment is given by Lord Walker, the other Justices agreeing with him that the land should be registered.*

#### **REASONS FOR THE JUDGMENT**

- In order to be 'as of right', use must not be by force, nor stealth, nor by permission of the landowner [20, 67, 87 107, 115]. The law in this area was also concerned with how the matter would have appeared to the reasonable landowner [36]. There was great difficulty in seeing how a reasonable landowner would have concluded that the residents were not asserting a right to take recreation on the disputed land simply because they showed civility towards members of the golf club [36]. The inspector misdirected himself as to the significance of perfectly

natural behaviour by the residents [38, 96]. The appeal would be allowed and the council should register the land [49, 78, 97 108, 116].

- The Respondent had argued that the rights of the residents after registration of a village green afforded them unqualified use of the land whatever the landowner wished to do with it. There would be a mismatch between what the residents would have done to gain the rights and what they would be in a position to do after the green had been registered.
- However, Lords Walker and Rodger considered that there was little danger in normal circumstances of registration leading to a sudden diversification or intensification of use by residents [47, 84]; the parties could co-exist. Lords Hope and Kerr considered that there was a broad equivalence between the use relied on to establish the right and what the land might be used for after registration, although there may be some asymmetry as to the manner of its use pre- and post-registration [72, 115]. Lord Brown considered that the locals could increase their use of the land but only in so far as it would not be incompatible with the owner continuing with his previous use [101].
- Lord Hope suggested that the forthcoming review of village greens by the Government should look at the consequences of registration as revealed by the developing case law as well as how the registration system itself is working [56].

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)