



5 February 2014

PRESS SUMMARY

Adamson and others (Respondents) v Paddico (267) Limited (Appellant)
Mrs Gill Taylor (on behalf of the Society for the Protection of Markham and Little Francis)
(Appellant) v Betterment Properties (Weymouth) Limited (Respondent) [2014] UKSC 7
On appeal from [2012] EWCA Civ 262; [2012] EWCA Civ 250

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Sumption, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

Land that has been used by the inhabitants of a locality for sports and pastimes as of right for at least 20 years may be registered as a town or village green, pursuant to the Commons Registration Act 1965 ('the Act'). If the registration is wrongly made, an application can be made under section 14(b) for the register to be rectified. The issue in these appeals is the effect of a lapse of time on an application for rectification.

The first appeal concerns land known as Clayton Fields in Huddersfield. Planning permissions dating back to the 1960s had been granted for housing development on the land, and it remained designated for such development in local plans. No building had however occurred by 1996, when an application by the Clayton Fields Action Group ('the Action Group') was successfully made to register the land as a village green. The then landowners sold the land to the respondent ('Paddico') in 2005, and in 2010 Paddico applied for rectification of the register. The application was granted by Vos J in the High Court, who held that the land had been wrongly registered as it had not been used by inhabitants from a single locality, and it was just to rectify the register, notwithstanding the long delay, as little prejudice (harm or detriment) had been demonstrated by the residents. The Court of Appeal agreed with the judge that the land had been wrongly registered but, by a majority, allowed the Action Group's appeal on the ground that the delay in seeking rectification made it unjust to rectify.

In the second appeal, the Society for the Protection of Markham and Little Francis ('the Society') successfully applied to register an area of 46 acres of open land in Weymouth as a village green in June 2001. The land was sold to the respondent ('Betterment') in May 2005, who applied to rectify the register in December 2005. The application was granted in the High Court. Morgan J found that the registration should not have been made, as the use of the land had not been as of right, and that it was just to rectify the register as the inhabitants had been enjoying rights which they should never have had. His order was upheld by the Court of Appeal.

Paddico and the Society appealed to the Supreme Court on the sole issue of the relevance of the lapse of time before making an application to the question of whether it was just to rectify the register.

JUDGMENT

The Supreme Court unanimously allows Paddico's appeal, and dismisses that of the Society. It holds that a lapse of time is not immaterial to the justice of applications for rectification but that in these

cases there was no evidence before the court to show that significant detriment to others had occurred as a result. Lady Hale gives the only judgment.

REASONS FOR THE JUDGMENT

Where an application for rectification in respect of land wrongly registered as a village green is made there are many private and public interests in play: those of the landowners who have been severely restricted in the use to which the land can be put; those of the local inhabitants who have been enjoying the amenity of the green; and those of the wider public, which include the protection of the accuracy of public registers, the preservation of public open spaces and the securing of the use of land earmarked for development for that purpose [1]. If there has been a lapse of time before making the application the court must adopt a principled approach to its relevance in circumstances where there is no precise analogy with public law claims (which are subject to short time limits), private law claims subject to limitation periods, or private property claims subject to the equitable doctrine of laches (unconscionable delay) [20].

The starting point is the Act itself, which lays down no limitation period for s 14 applications. S 14 has no bias either for or against rectification. The principles of good administration require not only a conclusive register but that the register is accurate and has been lawfully compiled. The focus is primarily on justice as between the applicant and the local inhabitants [33]. Where the applicant is the owner of the land, his rights have been severely curtailed when they should not have been and the inhabitants have acquired rights which they should not have. The lapse of time is not however immaterial. The best analogy is with the doctrine of laches which generally requires (a) knowledge of the facts, and (b) acquiescence, or (c) detriment or prejudice, if it is to bar the remedy [34].

Knowledge of the facts is unlikely to be a problem as landowners have an opportunity to object to the registration before it is made and subsequent purchasers are able to consult the register before deciding to buy. The fact that a purchaser bought the land with notice of the registration is unlikely to make much difference as he still suffers harm from the curtailment of his rights [35]. The crux of the matter is usually the question of detriment or prejudice, of which there are at least four relevant kinds: (i) detriment to the local inhabitants, although this may not be weighty given that this is a right they should never have had [38]; (ii) detriment to other individuals who may have made decisions to purchase property near the land based on the register [39]; (iii) detriment to public authorities and those they serve in, for example, the allocation of land for residential development [40]; and (iv) detriment to the fair hearing of the case after the lapse of time. Even after a long delay there must be some material from which to infer that public or private decisions have been taken on the basis of the existing register which have operated to the respondent's significant detriment [42].

Applying these principles, the courts below had reached the right decision in the Betterment application, where there was no evidence of detriment [43]. In the Paddico application, the trial judge had correctly found that, although the lapse of time was over 12 years, there was no evidence of specific detriment to the local inhabitants, but injustice to the landowner by being deprived of the right to seek to develop the land, and to the public in the unavailability of the land for such development. The judge's order for rectification would be restored [44].

References in square brackets are to paragraphs in the judgment

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.uk/decided-cases/index.html