

Can a tidal beach be registered as a village green?

Cases on village greens come thick and fast and the majority of them go through the full court process to the Supreme Court.

Anyone can make an application to register land as a village green where a significant number of local inhabitants have used the land as of right for lawful sports and pastimes for at least 20 years and where certain circumstances apply. Recently there has been litigation on the meaning of 'as of right'.

The Supreme Court has handed down a decision as to whether a beach within a harbour should be registered as a village green, in the case of *R (Newhaven Port and Properties Ltd) -v- East Sussex County Council and another* [2015] UKSC 7.

Background

The case originated in the town of Newhaven which is a port town where a breakwater, built as part of the port development, caused an area of sand to build up, and this became a beach. The beach is reached by stone steps leading down from a promenade; it is a tidal beach and fully covered by the sea for 42% of the day. The harbour including the beach is owned by the harbour company Newhaven Port and Properties Ltd; the beach is part of its operational land and is subject to byelaws made in 1931 under an act of 1847.

An application was made to East Sussex County Council to register the beach as a village green, and the County Council registered it, despite the owner of the beach saying that registration was incompatible with, and would conflict with, their statutory duties and powers as part of the port development.

The owners of the beach challenged the decision by way of judicial review, and the High Court quashed the decision to register the beach as a village green.

This decision was appealed to the Court of Appeal which allowed the appeal and said that the beach could be registered as a village green.

What did the Supreme Court say?

An appeal against this judgment was made to the Supreme Court, which held that the beach should not be registered as a village green. This was because the public had implied permission to use the beach under the harbour byelaws, and also registration as a village green was incompatible with the statutory powers and duties of the owners of the beach.

The Supreme Court noted that the harbour byelaws impliedly permitted the public to use the beach for leisure activities because they prohibited bathing in a specific area and also prohibited sports and games that might impede use of the harbour. This implied that bathing could take place elsewhere and that recreational activities could also take place if they did not impede use of the harbour. Consequently the byelaws operated as an effective licence that rendered the use of the beach by members of the public 'by right' rather than 'as of right'.

Is this the final word on beaches as village greens?

This decision turns on the fact that registration as a village green could not take place where it would be incompatible with the statutory duties and powers of the harbour company. It is therefore possible in other circumstances, such as where there is no harbour authority, that it may be possible for a beach used by members of the public to be registered as a village green, even if it is covered by water for parts of the day.

This would be particularly significant if the beach was privately owned and not a public beach.

The message is a clear one. It is essential for an owner of land to monitor their land ownership and to ensure no trespass takes place.



Can a tidal beach be registered as a village green?

If you would like to discuss any of the issues raised in this update, please contact:



Andrew Piatt
Partner
Planning
dt: +44 (0) 161 836 7724
m: +44 (0) 7802 663 593
Andrew.Piatt@gateleyplc.com