

Town and Village Greens: Contentious and Commercial Uses Do Not Defeat a TVG

The *TW Logistics Ltd. v. (1) Essex County Council (2) Ian James Tucker (2017)* case concerned land which was used as a working quayside by the corporate landowner, despite having been formerly registered as a town/village green (TVG). The local authority had previously registered the land as a TVG as it was recognised, in line with the familiar test for a TVG, that it was used by the local residents for lawful sports and pastimes, which had been enjoyed for a 20-year period. This use and enjoyment of the land had only been interrupted when the company landowner was required (by the Health and Safety Executive) to erect a fence on the quayside to prevent the risk of employees or passers-by falling in to the water.

The landowner sought to require that the local authority rectified the register under s.14 of the Commons Registration Act 1965 to amend the status of the land so that it was no longer registered as a TVG.

By this time, the local residents were using the land for jumping/diving into the water to swim, crabbing, mooring, embarking/disembarking from pleasure vessels, informal walking and wandering, swan feeding, painting and drawing. The landowner believed that the use of the land by the local residents was contentious due to the fact there were various signs in place, which notified the recreational user that their use of the land was not “as of right” and that certain uses were not lawful. The landowner also considered that the use of the local residents of the land was not compatible with the commercial vehicular use of the land and that the two uses could not co-exist.

In its justifications for applying for rectification, the company landowner attempted to pursue the following arguments:

- a. As the use of the land by the residents was contentious, it was not “as of right” which was the standard required for land to be considered a TVG
- b. The use of the land for such activities was permissive and so, again, could not be considered to be “as of right”
- c. As the land was used for commercial purposes, it could not also be considered to be a TVG
- d. The land was not used for “lawful sports and pastimes” but instead was used as a public highway
- e. The registration of the TVG was incompatible with the statutory regime of the port
- f. Any recreational use on the land would be considered to be trespassing on the railway and so could not be considered to be “lawful”

Judgment

The rectification of the register was not upheld and the land’s status as a TVG would remain due to the following reasons:

- a. The meaning “as of right” could include a contentious use
- b. The two uses of land (commercial and TVG) could co-exist

- c. Recreational walking could constitute a “lawful sport and pastime” and from the evidence provided, it was not considered that the land was used purely as a public right of way
- d. The railway line had not been used since 1986 and so there would have been no chance of a criminal prosecution arising from anyone walking on the lines or nearby land

Practical Implications

Any landowners who could be subject to an application for a TVG, or who are considering making a rectification claim, should take note of the findings in this case and ensure that they take appropriate steps to protect their own interests. Some examples of these steps are set out below.

- **Signs** – The location, size and number of warning signs must be adequate to ensure that a reasonable person would know what area of land that they apply to. In practical terms, a landowner must ensure that there is no confusion or element of doubt as to whether the signs apply to a specific piece of land or the land in its entirety.
- **Usage** – It is not enough for a landowner to claim that a TVG cannot be registered or upheld because of a commercial presence as the two can co-exist. The landowner will not be able to rely on this to oppose an application or attempt to rectify a registration and so they must ensure that their rights are protected using other methods.
- **Pastimes** – The court interpreted “lawful sports and pastimes” widely and so landowners would find it difficult to oppose an application on the basis that the activities enjoyed by residents do not fall within this category.

If you would like to further discuss any TVG issues, or otherwise, please do not hesitate to contact our Real Estate Litigation team.

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