

The Environment Agency will often need to access private land as part of its projects, including in relation to flood alleviation schemes. In line with other utilities companies, such as water companies, the Environment Agency has wide-ranging powers to do so in order to exercise or perform its various statutory powers and duties, which sit alongside its statutory powers to compulsorily acquire land or interests in/rights over land to carry out its functions. However, to what extent does the Environment Agency get to choose which of its powers it relies on when carrying out works?

The Court of Appeal in *R (on the application of Sharp) v North Essex Magistrates' Court* [2017] EWCA Civ 1143 recently held that it is entirely in the Environment Agency's discretion which of its powers under the Water Resources Act 1991 (the Act) (whether general power of entry or compulsory purchase powers) it chooses to rely on to carry out works.

The question arose as a result of the Environment Agency's exercise of its general power of entry "for other purposes" under section 172 of the Act to carry out flood defence works on the claimant's land following the landowner's refusal to consent to the works. The Environment Agency successfully applied for warrants to secure entry under section 172, as the magistrates' court was satisfied that there were reasonable grounds to exercise this power, but the landowner applied for judicial review of that decision.

The question for the Court of Appeal to address was whether, in the case of entry onto land without landowner consent, the Environment Agency was confined to its compulsory purchase powers under section 154 or 168 of the Act or was it entitled to exercise its general power of entry under section 172.

Given that a right to compensation flowed from the use of either power, the central argument of the landowner was that the use of section 172 limited it to challenging the legality of the process (i.e. through judicial review only), whereas, the compulsory purchase route would allow the proposal's merits to be challenged via a full inquiry process.

The Court of Appeal analysed the issue on the basis of statutory construction. The permissive language of "powers" rather than "duties" used in section 154 and 168 of the Act led the judge to conclude that the Environment Agency was entitled but not obliged to use its compulsory purchase powers. Likewise, section 172 conferred an independent and general power of entry without restriction. The differing rights of challenge were found to simply be the balance struck by the legislature and the Environment Agency was, therefore, entitled to choose which of its powers to invoke on a case-by-case basis.

It is clear, therefore, that the Environment Agency holds the ultimate choice in relation to how it elects to implement its flood defence projects, and the options available to affected landowners to challenge the Environment Agency's intended works are now conclusiveness restricted by the Environment Agency's choice of power.

Contacts



David Holland

Partner, Leeds
T +44 113 284 7014
E david.holland@squirepb.com



Natalie Ingram

Associate, Leeds
T +44 113 284 7295
E natalie.ingram@squirepb.com