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Supreme Court provides comfort to public authorities facing village green applications

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The decision in R (on the application of Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs and another [2019] UKSC 58 and its joined appeal will provide reassurance to public authorities that land held by them for statutory purposes which may be as yet unused cannot now be the subject of a successful village green application.

In Lancashire, two appeals were brought about decisions to register public authority held land as village greens (meaning that land would have commons rights over it). Central to both appeals was the interpretation of the statutory incompatibility ground of an earlier Supreme Court decision on the issue, Newhaven.

Allowing the appeals and overturning decisions of both the Court of Appeal and High Court, the majority found a purely legal test should be applied: if the statutory purpose for which the land is acquired and held is incompatible with its use as a town or village green, then it cannot be registered as a town or village green. Such incompatibility existed in the appeals before the court.

In strong dissenting opinions, Lord Wilson and Lady Arden advocated that the proper test should include a factual assessment of the current use and reasonably likely use of the land in question.

This case may come as a surprise to some observers, but will likely be welcome news to public authorities. That said the repeated revisiting of this issue by the courts and the strong dissenting judgments suggest this may not be the last time that the problem is considered.

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