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George Laurence QC

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"He has almost single-handedly made the modern law on village greens."

Legal 500 UK Bar 2021

"He is of the highest calibre. An inspiring leader and a person of great personal integrity and kindness."

Legal 500 UK Bar 2021

"Leaves no stone unturned, is collaborative, and delights in a challenge."

Legal 500 UK Bar 2020

Practice Overview

I have always tried very hard to win *"unwinnable"* cases, by which I mean cases where the law needs to be *developed* in some way (if necessary by overruling a previous case), in order to achieve victory. See my many footpath and village green cases in the Court of Appeal and Supreme Court.
I also try to be innovative - for example, in *Greenwich Healthcare v London & Quadrant Housing Trust* [1998] 1 WLR 1749, I persuaded the court to declare that if the defendant were in future to seek an injunction against the plaintiff, the court would refuse it, thus enabling, an important hospital development to proceed.
It follows that I will always give my support, provided I believe in their merits, to courageous clients who are willing to risk losing 3:2 in the Supreme Court (for a recent example, see *DCC v TRF* [2015] UKSC 18).
"He is so charming and self-effacing in the way he deals with matters. He goes through authorities with great care."
Chambers UK Bar 2017 - Chancery Traditional
"*He is more than usually determined to win a case and more than usually prepared to put in the work and to use creativity to that end*"
Chambers UK Bar 2013 - Real Estate litigation

Property

I am regarded as a leading practitioner in the country on the law as it relates to town and village greens. Of the eight cases on the subject which have reached the House of Lords or Supreme Court since 2000 (I appeared in all of them), the Supreme Court heard four in 2014 alone: *Paddico*, *Betterment*, *Barkas* and *Newhaven*.
The Court clarified many obscure and/or unresolved points relating to the prescriptive acquisition of recreational rights over land and what to do when your land is wrongly registered as a green.
I have sometimes acted in these cases for the public, at other times for landowners or the local authority, to avoid being typecast as an advocate who appears only on one particular side. This is always important, but

especially so when appearing in the higher-profile appellate courts.
Recent directory acknowledgements include:
"He's immensely impressive, intellectually rounded and someone with a huge depth ofknowledge in village green matters and property law more generally."
"He combines a great legal mind with great advocacy skills."
Chambers UK Bar 2017 - Agriculture and Rural Affairs.
"Extremely personable with huge technical knowledge"
Legal 500 2016 - Administrative and Public Law
"*He is an exceptional barrister and an exceptional person. He possesses both intellectual prowess and also extremely fine client-care skills*"
Chambers UK Bar 2015 - Agriculture and Rural Affairs.

Litigation

I have been specialising in property access issues during all my time as a Queen's Counsel (and before that as a junior). These cases give rise to very acute conflicts of interest. Typically one party is claiming, or claiming to be entitled to do something on or over, another's land very much against the latter's will. Often the issue is whether an ancient track in the countryside is in law a public highway or, if it is, whether these who would like to use it with motorbikes for recreation have had their rights taken away by legislation. Amongst the approximately 50 cases in which I have been involved in the higher courts on such issues are *Godmanchester* (2008, HL), *Dorset* (2015, SC), *Kidner* (2010), *Winchester* (2009, CA), *Powell* (2014), and *Fortune* (2012, CA).
"*He has a brilliant mind and he's absolutely outstanding at finding new legal angles for his clients*"
Chambers UK Bar 2014 Chancery Traditional (Leading Silk)

Town & Country

Major infrastructure projects in Parliament and planning.
I have appeared many times as a barrister in Parliament on private bills. These have involved projects as varied as the Channel Tunnel (acting for European Ferries), the Channel Tunnel Rail Link (acting for the Country Land Owners Association), Crossrail (acting for the Corporation of London and British Land), the Dartford Crossing Bridge (acting for Kent and Essex County Councils) and protecting public access to Lincoln's Inn Fields (acting for the Soane Museum and Royal College of Surgeons).
Much of this work is related to town and country planning in which I have a considerable interest especially on the interface between planning and highway/access issues. See for example *Hall v SoSE* (1998) JPL 1055. Cases like these are often time-sensitive, technical and affect the quality of people's lives. I am glad to be involved in them.
Further recent directory acknowledgements include:
"The doyen of rights of way law"
Legal 500 2016 - Property Litigation
"His knowledge is encyclopaedic, and his imaginative submissions contribute to the development of the law."
Legal 500 2015 - Property Litigation
"*His superlative property, planning and public law practice is highly rated by peers and clients alike*"
Chambers UK Bar 2012 - Chancery Traditional

Additional Information

Qualifications / Education

BA Law (University of Cape Town)
MA (Honour School of Jurisprudence, Oxford)

Awards

Rhodes Scholarship, Harmsworth Scholarship Middle Temple

Professional Appointments

A Bencher of the Middle Temple (1999)
Former Deputy High Court Judge and Recorder
A Fellow of the Institute of Advanced Legal Studies
A fellow of the Institute of Public Rights of Way Officers

Memberships

Chancery Bar Association
The Constitutional and Administrative Law Bar Association
Planning and Environment at Bar Association
Property Bar Association
Parliamentary Bar Association
Open Spaces Society

Languages

English
Afrikaans (fluent)

Cases

Court of Appeal delivers key judgment in the Blackbushe Airport case on the extent of the curtilage of a building

Reference:	R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs [2021] EWCA Civ 398
Date:	18 Mar 2021
Court:	Court of Appeal

Introduction

On 18 March 2021, the Court of Appeal provided welcome clarification of the meaning of the phrase "*the curtilage of a building*" in the Commons Act 2006. In *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2021] EWCA Civ 398, the Court of Appeal considered in detail the cases on this vexed term in a variety of statutory contexts. The Court upheld the decision of Holgate J ([2020] EWHC 959 (Admin)). The Court confirmed that the Inspector had adopted an incorrect approach in deciding whether the extensive operational area of a working airport fell within the curtilage of the terminal building and could therefore be de-registered as common land under the Commons Act 2006. The decision will be essential reading in relation to common land and also in any context in which the term "curtilage" needs to be interpreted and applied.

Background

Yateley Common in Hampshire is registered as common land on the register of common land maintained by the Claimant, Hampshire County Council (the "Council"), under the Commons Act 2006. Blackbushe Airport is a general civil airport which is operated by Blackbushe Airport Ltd ("BAL"). The major part of the operational area of the airport lies within the area of the common. BAL made an application to the Council under paragraph 6 of schedule 2 to the Commons Act 2006 to de-register the part of the airport which had been registered as common land. The application land comprised a large area (115 acres or 46.5 hectares) of operational land, including the runway, taxiways, fuel storage depot, the terminal building (including control tower), a café and car parking. The terminal building is a modest building with a footprint of about 360m^2 in the south-eastern corner of the site.<

The basis of BAL's application was that the entire operational area of the airport formed part of "the curtilage of a building" (ie. the terminal building) and that it had done at all times since the land was provisionally registered as common land back in 1967. BAL therefore contended that the whole of the operational area of the airport fell to be de-registered under paragraph 6 of schedule 2 to the 2006 Act. At a public inquiry in 2019, an Inspector appointed by the Secretary of State agreed. The Council then applied to the High Court for judicial review of this decision. The case was designated as a significant planning case and the hearing was expedited. The High Court (Holgate J) upheld the challenge ([2020] EWHC 959 (Admin)) and quashed the Inspector's decision. BAL appealed.

The judgment

Curtilage

The Court of Appeal (Lady Justice King, Lady Justice Andrews and Lord Justice Nugee) considered in detail the leading authorities on the meaning of "curtilage" in various statutory contexts. The leading judgment was given

by Andrews LJ, with whom Nugee LJ and King LJ agreed, with Nugee LJ adding some remarks of his own. The Court confirmed the "conspicuously thorough, considered and carefully reasoned judgment" of Holgate J ([18]). The Court considered in particular six key authorities: *Methuen-Campbell v Walters* [1979] QB 525; *Attorney-General ex rel Sutcliffe v Calderdale Borough Council* (1982) 46 P&CR 399; *Dyer v Dorset County Council* [1989] 1 QB 346; *Barwick and Barwick v Kent County Council* (1992) 24 HLR 341; *Skerritts of Nottingham Ltd v Secretary of State for Environment, Transport and the Regions* [2001] QB 59; and *Challenge Fencing Ltd v Secretary of State for Housing Communities and Local Government* [2019] EWHC 553 (Admin).

The Court of Appeal rejected BAL's contention that the overarching principle was that land was comprised within the curtilage of a building if the land was sufficiently closely related to the building such that together the land and the building formed part and parcel of an integral whole or single unit. That approach was incorrect. Instead, the Court held (at [124]) that Holgate J was right to hold that the phrase "the curtilage of a building" in the 2006 Act requires the land in question to form part and parcel of the *building* to which it is related. The correct question is whether the land falls within the curtilage of the *building*, not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, or whether the building forms part and parcel of some unit which includes that land. The land must form part and parcel *of* the building, not part and parcel *with* the building ([7] and [127]). The Court therefore confirmed that Holgate J had correctly concluded that the Inspector's decision had been fatally flawed by material errors of law, and that Holgate J was right to have quashed the decision.

The Court confirmed that there is only one meaning of the word "curtilage". Andrews LJ observed at [25] that, "The curtilage of a building is a single concept, and … does not have different meanings in different statutory contexts. There is in truth only one test, and that is the test articulated by Buckley LJ in *Methuen-Campbell*". This test is that "for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter" (*Methuen-Campbell* at pp. 543F–544G). This is "as good an expression of the concept of curtilage as one is likely to find" ([62]). In applying this definition to the facts of individual cases, it remains important to take account of the different statutory contexts in which the question may arise (*per* Nugee LJ at [135]).

Ancillariness

Furthermore, and independently of the above points, the Court of Appeal confirmed (as Holgate J had held at first instance) that the Inspector had also erred in relation to his treatment of ancillariness. As Andrews LJ observed at [118], the word "ancillary" means something which is subservient to, or subordinate to, or which provides essential support to the functioning of, something else. It was common ground that, even though this is not an essential requirement, nevertheless whether the land is indeed ancillary to the building is a relevant (and may be a highly relevant) consideration. If that factor is to be taken into account, it is important that the decision-maker should understand the concept correctly (*per* Andrews LJ at [118]). The Inspector had plainly fallen into error in treating the land and the terminal building as ancillary to each other (*per* Andrews LJ at [119]). If the correct question had been asked (namely, whether the Application Land was ancillary to the terminal *building*) the answer was plainly no; on the contrary the terminal building was ancillary to the functioning of the Application Land *(per* Andrews LJ at [119]).

Judge: Holgate J
Practice Area: Property

High Court delivers landmark judgment in the Blackbushe Airport case on the extent of the curtilage of a building

Reference:
Date: 23 Apr 2020
Court:
Judge:
Practice Area:

High Court delivers ground-breaking judgment on the extent of a highway and the meaning of "road to

which the public has access"

Reference:
Date: 03 Apr 2020
Court:
Judge:
Practice Area:

Supreme Court rules that NHS "public purposes" are no longer stymied by village green registration

Reference:
Date: 11 Dec 2019
Court:

Supreme Court rules that NHS "public purposes" are no longer stymied by village green registration

Introduction

On 11 December 2019, the Supreme Court ruled that use of land held for "good public purposes" cannot be "stymied" by registration as a town or village green. The Court ruled that the relevant land could not be registered.

The Supreme Court so held in the long-awaited conjoined appeals of *R (Lancashire CC) v Secretary of State for Environment, Food and Rural Affairs* and *R (NHS Property Services Ltd) v Surrey County Council and Jones* [2019] UKSC 58.

The issues which are now being raised include questions as to the other public bodies and statutory purposes to which this broad principle will apply, and whether other potentially valuable land owned by public authorities that has previously been registered as a town or village green can now be removed from the register and reinstated and held for its original public purposes.

Background

The NHS case concerned an area of undeveloped land owned by the NHS, adjoining Leatherhead Hospital in Surrey. After a public inquiry lasting 8 days, the land had been registered as a town or village green by Surrey County Council, rejecting the NHS's arguments that registration was not permitted because the land was held for future statutory clinical and healthcare purposes which were inconsistent with use of the land as a village green. The NHS successfully challenged the registration in the High Court but this was overturned by the Court of Appeal on an application by a local resident, Mr Jones, and the NHS appealed to the Supreme Court.

The Judgment

By a 3:2 majority (*per* Lord Carnwath, Lord Sales and Lady Black) the Supreme Court held that where there is "… incompatibility between the statutory purposes for which the land is held and use of that land as a town or village green … the provisions of the [Commons Act] 2006 are, as a matter of the construction of that Act, not applicable in relation to it" (para. 55).

This judgment substantially extends the principle of statutory incompatibility, initially identified by the Supreme Court in *R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] UKSC 7, to any situation in which the use by local inhabitants would conflict with the statutory purposes for which the land is held.

The Supreme Court (at para. 56) held that the test for statutory incompatibility is expressed in general terms: the test is not whether the land has been allocated by statute itself for particular statutory purposes, but whether it has been acquired for such purposes (compulsorily or by agreement) and is for the time being so held.

The majority did not find this surprising, saying (at para. 61) that, "It would be a strong thing to find that Parliament intended to allow use of land held by a public authority for good public purposes defined in statute to be stymied by the operation of a subsequent general statute such as the 2006 Act", and that "There is no indication in that Act, or its predecessor (the Commons Registration Act 1965) that it was intended to have such

an effect".

There was statutory incompatibility in each of the appeals before the Court: the village green rights would conflict with the statutory healthcare purposes for which the land was held by the NHS (in the NHS case) or the statutory education purposes (in the Lancashire case). The land could therefore not be registered as a village green.

Crucially, the majority held that it did not make any difference how the land actually happens to be used at any particular point in time. What matters is the general statutory purpose for which the land is held. On that key issue the minority strongly disagreed, with both Lady Arden and Lord Wilson giving reasoned dissenting judgments.

The majority did not however disturb the observation of Lord Neuberger PSC in Newhaven at para. 101. Accordingly, it remains the case that the doctrine of statutory incompatibility will not apply where "… a public body might have statutory purposes to which it could in future appropriate the land (but has not yet done so) …" (para. 70).

George Laurence QC (New Square Chambers), Jonathan Clay (Cornerstone Barristers) and Simon Adamyk (New Square Chambers) appeared for the successful Appellant, NHS Property Services Ltd (instructed by Womble Bond Dickinson LLP).

Dr Ashley Bowes (Cornerstone Barristers) appeared for the Second Respondent, Mr Jones (instructed by Richard Buxton Solicitors).

Judge:
Practice Area:

R. (on the application of Roxlena Ltd.) v Cumbria County Council

Reference: [2019] EWCA Civ 1639
Date: 09 Oct 2019
Court: Court of Appeal

The Court of Appeal was prepared to entertain a landowner's claim for an injunction restraining the Council from acting on its resolution to make a modification order adding numerous new footpaths to the Definitive Map and Statement ('DMS'), on the basis that, if it did so, the Council would make errors of law.

The Court of Appeal held among other things (1) that when a Council is deciding whether to *make* a map modification order, it need not ask itself whether the supporting evidence, if accepted, is strong enough to justify confirmation; and (2) that a Council presented with user evidence in support of an application under section 53(5) of the Wildlife and Countryside Act 1981 to add paths to the DMS must continue to consider the claim even if it has rejected the application itself for non-compliance with procedural requirements.

Judge: Lord Justice Simon, Lord Justice Lindblom, Lord Justice Irwin
Practice Area: Property

Dr. Preeti Pereira v London Borough of Southwark

Reference: 2180438775
Date: 23 Jul 2019
Court: London Tribunal Centre

George Laurence QC and Claire Staddon appeared for the applicant.

Click here to view judgment

Judge: Environment & Traffic Adjudicator Timothy Thorne
Practice Area: Property

George Laurence QC and Simon Adamyk appear in the Supreme Court

Reference:
Date: 18 Jul 2019
Court:
Judge:
Practice Area:

R. (on the application of Roxlena Ltd) v Cumbria County Council

Reference: [2017] EWHC 2651 (Admin)
Date: 30 Nov 2017
Court: Queen's Bench Division

The Court was prepared to entertain a landowner's claim for an injunction restraining the Council from acting on its resolution to make a modification order adding 44 new footpaths to the Definitive Map and Statement ('DMS'), on the basis that, if it did so, the Council would make errors of law.

The Court held among other things (1)that when a Council is deciding whether to *make* an order, it need not ask itself whether the supporting evidence, if accepted, is strong enough to justify confirmation; (2) that in considering whether there has been 20 years uninterrupted enjoyment of a claimed route, as of right, for the purposes of section 31 Highways Act 1980, a cessation of use as a result of the foot and mouth outbreak in 2001 will stop time running; and (3) that a Council presented with user evidence in support of an application under section 53(5) Wildlife and Countryside Act 1981 to add paths to the DMS must continue to consider the claim even if the application itself is rejected for non-compliance with procedural requirements.

The case is proceeding to appeal on that last point, and other grounds, in the Court of Appeal.

Judge: Kerr J
Practice Area: Property

R(St John's College, Cambridge) v Cambridgeshire County Council and David Davies

Reference: [2017] EWHC 1753 (Admin)
Date: 12 Jul 2017
Court: Planning Court

Acting for the Claimant in proceedings for judicial review concerning the extent of the jurisdiction of Commons Registration Authorities to allow applicants to correct defective village green applications. In a move which will assist Commons Registration Authorities and applicants alike, the Judge accepted the parties' criticisms of aspects of Defra's October 2013 publication 'Section 15 of the Commons Act 2006 *Guidance Notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas*' and annexed the parties' redrafted paragraphs to the judgment as more accurately representing the law.

Judge: Sir Ross Cranston (sitting as a Judge of the High Court)
Practice Area: Property

Whitstable Beach Campaign v Whitstable Oyster Fishery Co

Reference: The case is ongoing
Date: 13 Oct 2016
Court: Town & Village Green Public Local Inquiry

Assisting the Whitstable Beach Campaign (with George Laurence QC) in relation to the public local inquiry into their application for registration of beach at Whitstable as a town or village green

Judge: The Inspector for the Registration Authority is Ross Crail
Practice Area: Property

High Speed Rail (London-West Midlands) Bill

Reference:

Date: 07 Jul 2016

Court: House of Lords Select Committee

With George Laurence QC appearing before the House of Lords Select Committee on behalf of Hillingdon London Borough Council in respect of its petition against the HS2 Bill seeking to be heard on its case for a tunnel through the Colne Valley instead of the viaduct proposed by the Bill

Judge:

Practice Area: Property

Wright & Villiers-Smith v Secretary of State for Environment, Food & Rural Affairs

Reference: [2016] EWHC 1053 (Admin)

Date: 06 May 2016

Court: Administrative Court

Challenge to the decision, made following a public local inquiry, of an Inspector appointed by the Secretary of State for the Environment, Food and Rural Affairs, to confirm pursuant to paragraph 7 of Schedule 15 to the Wildlife and Countryside Act 1981 a Definitive Map Modification Order made by Cumbria County Council adding public footpaths through private woods

Judge: Ouseley J

Practice Area: Property

R (on the application of Trail Riders Fellowship and another) (Respondents) v Dorset County Council (Appellant)

Reference: [2015] UKSC 18

Date: 18 Mar 2015

Court: Supreme Court

Judge:

Practice Area: Property

Sally Jones v Kier Ventures Ltd & Rubery Owen Holdings Ltd

Reference:

Date: 18 Mar 2015

Court: Commons Registration Authority

Judge:

Practice Area: Property

R (on the application of Segar) v Wychavon DC

Reference: [2015] EWHC 1417 (Admin)

Date: 05 Mar 2015

Court: Administrative Court

Judge:

Practice Area: Property

Publications

Date	Title	Contributors
20 May 2020	Diversion of public footpaths made easier (R (Open Spaces Society) v Secretary of State for Environment, Food and Rural Affairs)	George Laurence QC, Simon Adamyk

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