



Press Summary

1 March 2023

R (on the application of Day) (Appellant) v Shropshire Council (Respondent)

[2023] UKSC 8

On appeal from: [2020] EWCA Civ 1751

Justices: Lord Reed (President), Lord Kitchin, Lord Hamblen, Lord Stephens, Lady Rose

Background to the Appeal

Land which is subject to a statutory trust in favour of the public is held by a local authority for the purpose of the public's enjoyment. In order for local authorities to dispose of this type of land they must comply with statutory consultation requirements. The issue raised by this appeal is what happens to the public's rights to use this type of land when the local authority disposes of the land but fails to comply with the statutory requirements.

This issue arises in the context of a challenge to the grant of planning permission by the Respondent, Shropshire Council to CSE Development (Shropshire) Limited ("**CSE**"). The land to be developed lies in Shrewsbury which is the county town of Shropshire. For many years the land was owned by Shrewsbury Town Council ("**Shrewsbury TC**") but in October 2017, Shrewsbury TC sold the land which was subject to a statutory trust to CSE. At the time Shrewsbury TC did not realise the land was subject to a statutory trust and so did not comply with the necessary consultation procedure under s. 123(2A) of the Local Government Act 1972 ("**LGA 1972**"). CSE then applied for planning permission to build houses on the land and Shropshire Council, which is the relevant planning authority, granted this.

The Appellant, Dr Day, is a local resident who opposes the development. Dr Day brought judicial review proceedings challenging the grant of planning permission. He argues that because Shrewsbury TC did not comply with the statutory requirements, the public trust continues to bind the land that CSE now owns. Accordingly, the grant of planning permission must be quashed because the existence of the trust was a material factor which Shropshire Council should have considered when deciding whether to grant planning permission.

The High Court dismissed Dr Day's application for judicial review. The judge held that even if the public's rights under the statutory trust had survived the sale, those rights were now unenforceable against CSE. The Court of Appeal dismissed Dr Day's appeal though their reasoning differed from that of the High Court. They held that the statutory trust was extinguished on the sale of the land. Dr Day now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lady Rose gives the judgment with which Lord Reed, Lord Kitchin, Lord Hamblen and Lord Stephens agree.

Reasons for the Judgment

The local authority's powers to dispose of statutory trust land under the LGA 1972

Sections 123(2A) and (2B) LGA 1972 provide that before disposing of land which is subject to a statutory trust, the relevant council must advertise their intention to do so in the local newspaper for two consecutive weeks. They must then consider any objections to the proposed disposal that they receive. If the council disposes of land having complied with that procedure, then the land is freed from any public trust [3].

Separately, s. 128(2)(a) provides that a disposal of land which was subject to the consultation requirement "shall not be invalid by reason that" the requirement has not been complied with. Section 128(2)(b) goes on to say that the purchaser of the land "shall not be concerned to see or enquire" whether any such requirement has been complied with [7].

Shropshire Council argued that s. 128(2) extinguishes the rights enjoyed by the public under the statutory trust, or at least that the rights of the public to access the land did not survive in a form that gave rise to a material consideration that the planning committee needed to consider when deciding whether to grant planning permission [8].

The proper construction of s. 123(2A) and (2B) and 128(2) LGA 1972

Considering the history of the provisions, the Supreme Court holds that s. 128(2) does not extinguish the rights enjoyed by the public under the statutory trust. Those rights are only extinguished if the local authority complies with the bespoke consultation requirements set out in s. 123 LGA 1972 [91].

If Shropshire Council were correct that as soon as the land comes into private ownership, the trust must be extinguished, then it would be easy to get around the restrictions and conditions attached to the sale of statutory trust land. Furthermore, if this was the case, there would hardly be any need for the protection of the purchaser provided for under s. 123(2B) or s. 128(2)(b) [57].

Parliament used very clear words in s. 123(3) when setting out what the council needed to do in order to dispose of land in a way which extinguishes the public's rights under the statutory trust. The elaborate provisions of s. 123 were evidently designed to ensure that members of the public should have the opportunity to learn about and object to a proposed sale of statutory trust land [101-102].

The Supreme Court holds that in light of the clear and specific wording in s. 123, the generally applicable provision in s. 128(2) cannot be used to override the statutory trust [103]. Section 128(2) confers a useful protection for people dealing in land with the authority. However, s.

128(2) is not designed to free land from the public trust when that land is sold [105-106]. Furthermore, in so far as the public's rights in the land continue to exist, s. 128(2) does not have the effect of making these rights unenforceable against the purchaser [113].

The continuing existence of the statutory trust over the land is an important factor when considering a planning application. Thus, as this was not considered, the Supreme Court concludes that the grant of planning permission must be quashed [115].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)