Easter Term
[2025] UKSC 20
On appeal from: [2023] EWCA Civ 927

JUDGMENT

Darwall and another (Appellants) *v* Dartmoor National Park Authority (Respondent)

before

Lord Reed, President
Lord Sales
Lord Stephens
Lady Rose
Lady Simler

JUDGMENT GIVEN ON
21 May 2025

Heard on 8 October 2024

Appellants
Timothy Morshead KC
Tom Morris
(Instructed by Irwin Mitchell LLP (Crawley))

Respondent
Richard Honey KC
Vivienne Sedgley
(Instructed by Devon County Council Legal Services)

Intervener – The Open Spaces Society
Ned Westaway
Esther Drabkin-Reiter
Stephanie Bruce-Smith
(Instructed by Richard Buxton Solicitors, Cambridge)

LORD SALES AND LORD STEPHENS (with whom Lord Reed, Lady Rose and Lady Simler agree):

1. This case is about the extent of the public's right of access to Dartmoor under section 10(1) of the Dartmoor Commons Act 1985 ("the 1985 Act"). The question the court has to decide is whether section 10(1) confers on the public a right to pitch tents or otherwise make camp overnight on the Dartmoor Commons ("the Commons").

2. Section 10(1) of the 1985 Act ("section 10(1)") provides:

> "10. —(1) Subject to the provisions of this Act and compliance with all rules, regulations or byelaws relating to the commons and for the time being in force, the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation; and a person who enters on the commons for that purpose without breaking or damaging any wall, fence, hedge, gate or other thing, or who is on the commons for that purpose having so entered, shall not be treated as a trespasser on the commons or incur any other liability by reason only of so entering or being on the commons."

3. The appellants, Mr and Mrs Darwall, are farmers, landowners and commoners. They own land at Blachford Manor, an estate on Dartmoor. The estate includes Stall Moor, an area of open land on the Commons, where the appellants keep cattle, lambs and fallow deer. They are concerned about the potential harm of camping, especially what is known as wild camping (ie camping in areas other than designated camping sites), on the Commons near Stall Moor. The appellants have brought these proceedings against the respondent, Dartmoor National Park Authority ("DNPA"), seeking a declaration that section 10(1) does not grant the public a right to camp on the Commons. DNPA opposes the application for a declaration.

4. At first instance, Sir Julian Flaux, the Chancellor of the High Court, granted the appellants the declaration they sought: [2023] EWHC 35 (Ch); [2023] Ch 141. In his view, on its true construction, section 10(1) does not grant the public a right to camp on the Commons. DNPA appealed successfully to the Court of Appeal (Sir Geoffrey Vos MR, Underhill and Newey LJJ): [2023] EWCA Civ 927; [2024] Ch 107. Sir Geoffrey Vos MR and Underhill LJ each gave a substantive judgment and Newey LJ agreed with both judgments. According to the Court of Appeal, the words of section 10(1) are clear and unambiguous. They allow the public to engage in open-air recreation on the Commons provided they proceed on foot or on horseback. Open-air recreation includes

wild camping. The court noted that such an activity must be conducted in accordance with the applicable byelaws.

5. Mr and Mrs Darwall now appeal to this court.

Factual background

6. The Dartmoor National Park was designated in 1951 pursuant to section 5 of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act"). We discuss the relevant provisions of the 1949 Act below at paras 18-26. The Commons are areas of unenclosed moorland within the National Park which are privately owned, but on which other locals have a right to put their livestock. They comprise some 37% of the area of the National Park and 75% of the moorland in the National Park.

7. Devon County Council was originally designated as the National Park Authority for Dartmoor. The 1949 Act confers a power on the National Park Authority to make byelaws in respect of the National Park area: section 90. The first exercise of that power was by Devon County Council in making byelaws in 1989, in exercise of its power under section 90 of the 1949 Act and a parallel power under section 11 of the 1985 Act. As the byelaws post-date the 1985 Act, they do not provide direct assistance in interpreting that Act. The byelaws covered the Commons and also land within the National Park to which the public had access by virtue of the National Park Authority having an interest in it (called "access land").

8. Paragraphs 3 and 4 of the byelaws refer to restrictions of rights of access for vehicles and the parking of caravans and trailers. Paragraph 6 of the byelaws, headed "Camping", provides that no person "shall knowingly use any vehicle, including a caravan or any structure other than a tent for the purpose of camping on the access land …" and is made subject to Schedule 2, which sets out specified areas of the access land (including parts of the Commons) where camping is prohibited. The appellants' land is not specified in that Schedule.

9. The byelaws make detailed provisions restricting or regulating other activities on the access land, including lighting fires, keeping dogs under control, using firearms and metal detectors, flying model aircraft, playing music and so on.

10. In 1979 a Bill was introduced in Parliament for a statute to regulate Dartmoor. That Bill contained a provision that byelaws could be made to prohibit camping. However, it did not progress through Parliament and was not enacted into law.

11. In 1997 DNPA was established by the Secretary of State pursuant to section 63 of the Environment Act 1995 and took over the function of National Park Authority from Devon County Council.

12. In 2021 DNPA issued a public consultation on amendments it proposed to make to the byelaws. In the course of that consultation, by letter dated 1 November 2021 sent by their solicitors, the appellants asserted that the right of access granted by section 10(1) does not extend to a right for the public to camp on the Commons. DNPA replied to express its disagreement. In this way, a dispute crystallised between the appellants and DNPA.

13. On 7 March 2022 the appellants issued their claim under Part 8 of the Civil Procedure Rules to seek a declaration that section 10(1) does not grant the public a right to camp on the Commons.

The issue in the appeal

14. The present appeal turns on a short point of statutory construction regarding the meaning of section 10(1).

15. Normal principles of statutory interpretation are engaged. The courts in conducting statutory interpretation are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2025] 2 WLR 386, paras 61-63. As noted there, a leading statement of principle was given by Lord Hodge in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, with whom those in the majority agreed. He stated, at para 29:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a

> whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397: 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

16. As developed by Mr Timothy Morshead KC, the submission for the appellants is that the right of access to the Commons for the purpose of open-air recreation under section 10(1) is qualified, in that the open-air recreation in question has to be of a kind which is carried out on foot or on horseback. The right does not cover any form of recreation which involves cessation of walking or riding. On the other hand, DNPA and the Open Spaces Society (who intervened by way of written observations) submit that the right created by the provision cannot be read so narrowly. The words "on foot and on horseback" in section 10(1) state the means by which a person has to gain access to the Commons in order to enjoy the right created by that provision; they do not qualify the forms of open-air recreation which may be enjoyed having done so.

The ordinary meaning of section 10(1) and its context in the 1985 Act

(a) The language used in section 10(1)

17. The starting point is the wording of section 10(1) itself. There are several indications that wild camping by individuals who have entered the commons on foot or on horseback is made a matter of entitlement by that provision. Indeed, although we refer below to a wider range of interpretative aids, we consider that it is possible to arrive at a clear understanding of the true meaning of section 10(1) by focusing on its wording, as follows:

> (i) Section 10(1) states that "the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation". In our view, as a matter of ordinary language, camping is a form of "open-air recreation". Therefore, the provision confers on members of the public a right of access to the Commons, provided that it is exercised by going onto the Commons on foot or on horseback, for the purpose of camping there. Since a positive right to do that is conferred by section 10(1), the ordinary rights of landowners to sue persons proceeding on their land without permission for the tort of trespass are displaced.

(ii) The right in section 10(1) is expressed to be subject to the provisions of the 1985 Act and compliance with all rules, regulations or byelaws relating to the Commons which are in force. It was contemplated that these would include a range of controls in relation to activities which may be carried out on the Commons, as are now set out in the byelaws (paras 8-9 above) and in Schedule 2 to the 1949 Act (para 25 below). The legislative model is that activities carried out by the public on the Commons should be subject to forms of general public regulation, and it is implicit that it is not appropriate for landowners to enforce additional restrictions via the law of trespass. The public right of access under section 10(1) is qualified by the requirement of compliance with those forms of public regulations, so non-compliance with them triggers the possibility of landowners being able to sue in trespass. Thus the structure of section 10(1) contemplates that the primary legal regulation of the public's right of access to the land on foot or on horseback is by means of the forms of regulation which are in place and which are publicly available for scrutiny by those persons who want to be able to check on what they can and cannot do on the Commons. Such public regulation as was in place at the time of enactment of the 1985 Act (ie Schedule 2 to the 1949 Act) did not prohibit camping. It did prohibit certain activities which are associated with camping, such as lighting any fire. This again tends positively to indicate that camping is an activity which is permitted by the right created by section 10(1).

(iii) The words "on foot and on horseback" in section 10(1) describe the means by which the public are to have a right to gain access to the commons. They do not qualify the words which follow which describe what that right is given for: "for the purpose of open-air recreation". Those words state in general terms according to their ordinary meaning the purpose for which access to the Commons may be had by those means. Accordingly, we do not accept the submission of Mr Morshead for the appellants that the open-air recreation in question can only be in forms which are pursued by proceeding on foot or on horseback so that, for example, one would have no right to stop to have a picnic. Having a picnic is an obvious form of open-air recreation, as are birdwatching, sketching the landscape, flying a kite, walking a dog, having a family game of kick-the-can (examples referred to by Underhill LJ at para 65 of the Court of Appeal's decision). In our view, in line with the observations by Underhill LJ at para 65, it would be absurd to construe section 10(1) as not including a right to carry on such an activity. We agree with Underhill LJ at para 65 that Parliament cannot have intended this. The same reasoning applies in relation to the open-air recreational activity of camping.

(iv) Section 10(1) comprises a single sentence. The words after the semicolon ("and a person who enters [etc]") describe the effect of the right conferred by the first part of the provision. Those words address two cases: (i) they state that a person who enters on the commons for the purpose of open-air recreation (assuming they have done so by the means described in the first part of section 10(1) and they have complied with the rules referred to there) without causing the harms described "shall not be treated as a trespasser … or incur any other liability

by reason only of so entering …"; (ii) they state that a person "who is on the commons for that purpose having so entered" shall likewise not be treated as a trespasser "or incur any other liability by reason only of … being on the commons". In both cases, in this part of the provision the immunity from a claim in trespass or otherwise is conferred by reference to the purpose for which the person has entered or is on the Commons, not by reference to the means by which they have gained access to them (on foot or on horseback), which is a separate limitation on the right conferred by the first part of section 10(1). Again, the way in which the section is drafted shows that the purpose in question ("the purpose of open-air recreation") does not require the person exercising the right to be on foot or on horseback at all times while they are on the Commons. As we have explained, those are just the means which a person has to use to have access to the Commons. Having gained access by those means, one can stop to pursue any kind of "open-air recreation" which falls fairly within the meaning of that phrase, which would include having a picnic, camping and other activities such as rock climbing.

(v) The Chancellor rightly accepted that rock climbing is a form of open-air recreation which is protected by section 10(1), even though it is not an activity which is engaged in by proceeding on foot or on horseback; but he distinguished rock-climbing from wild camping and held that camping could not be regarded as an open-air recreation: para 80. We note that the Chancellor rightly did not adopt the extreme interpretation of section 10(1) contended for by Mr Morshead at the hearing before us (see sub-paragraph (iii) above). However, we respectfully consider that when applying section 10(1) it is not possible to draw a distinction between those two forms of open-air recreation.

(b) The 1949 Act context

18. The 1985 Act is a statute embedded in the regime established by the 1949 Act. Dartmoor was established as a National Park under the 1949 Act and the 1985 Act implements in practical terms what follows from such designation. Also, as explained further below, the 1985 Act refers to the 1949 Act and was drafted to operate in conjunction with it. Accordingly, the 1949 Act provides part of the relevant context for the interpretation of section 10(1). When considering the context in which section 10(1) was enacted and the context of the overall legislative regime of which it forms part it is appropriate to begin with the 1949 Act.

19. The long title of the 1949 Act states that it is an Act to "make provision for National Parks" and "to make further provision for the … improvement of public paths and for securing access to open country". The language regarding securing access to open country is general, which tends to support a wide interpretation of the notion of recreation in the countryside.

20. Part II of the 1949 Act is headed "National Parks". It includes section 5, which in its current form (as amended in 1991) provides as follows:

> "Section 5 – National Parks.
>
> (1) The provisions of this Part of this Act shall have effect for the purpose
>
> > (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
> >
> > (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.
>
> (2) The said areas are those extensive tracts of country in England ... as to which it appears to Natural England that by reason of —
>
> > (a) their natural beauty, and
> >
> > (b) the opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population,
>
> it is especially desirable that the necessary measures shall be taken for the purposes mentioned in the last foregoing subsection."

The changes from the original version of section 5 as it stood at the time of the enactment of the 1985 Act are not material: subsection (1) stated that the 1949 Act provisions should have effect "for the purpose of preserving and enhancing the natural beauty of the areas specified in the next following subsection, and for the purpose of promoting their enjoyment by the public", and subsection (2) was formatted slightly differently and referred to the predecessor body to Natural England. The statement of the purpose of the regime for National Parks in section 5(1) as it stood in 1985, in terms of promoting enjoyment by the public of areas designated as National Parks, was open-ended and again supports a wide conception of the notion of recreation to be engaged in there by the public

(this remains the case by reference to section 5(1)(b) in the amended version of section 5). Similarly, the reference to "opportunities … for open-air recreation" in section 5(2)(b) is open-ended and unqualified. It naturally includes camping.

21. Part V of the 1949 Act is headed "Access to Open Country". The heading indicates that what is being provided for is access in a general sense, for a wide range of activities. It includes sections 59 and 60, which refer to the public being able to have access to land "for open-air recreation", the phrase used in section 10(1). Sections 59 and 60 provide:

> "59 – Provision for public access to open country.
>
> (1) The provisions of this Part of this Act shall have effect for enabling the public to have access for open-air recreation to open country—
>
> > (a) to which the provisions of the next following section are applied by an agreement under this Part of this Act (hereinafter referred to as an 'access agreement') or by an order under this Part of this Act (hereinafter referred to as an 'access order'),
> >
> > (b) acquired under this Part of this Act for the purpose of giving to the public access thereto.
>
> (2) In this Part of this Act the expression 'open country' means any area appearing to the authority with whom an access agreement is made or to the authority by whom an access order is made or by whom the area is acquired, as the case may be, to consist wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore).
>
> 60 – Rights of public where access agreement, order in force.
>
> (1) Subject to the following provisions of this Part of this Act, where an access agreement or order is in force as respects any land a person who enters upon land comprised in the agreement or order for the purpose of open-air recreation without breaking or damaging any wall, fence, hedge or gate, or who is on such land for that purpose after having so entered thereon, shall not

be treated as a trespasser on that land or incur any other liability by reason only of so entering or being on the land:

Provided that this subsection shall not apply to land which for the time being is excepted land as hereinafter defined.

(2) Nothing in the provisions of the last foregoing subsection shall entitle a person to enter or be on any land, or to do anything thereon, in contravention of any prohibition contained in or having effect under any enactment.

(3) An access agreement or order may specify or provide for imposing restrictions subject to which persons may enter or be upon land by virtue of subsection (1) of this section, including in particular, but without prejudice to the generality of this subsection, restrictions excluding the land or any part thereof at particular times from the operation of the said subsection (1); and that subsection shall not apply to any person entering or being on the land in contravention of any such restriction or failing to comply therewith while he is on the land.

(4) Without prejudice to the provisions of the last foregoing subsection, subsection (1) of this section shall have effect subject to the provisions of the Second Schedule to this Act as to the general restrictions to be observed by persons having access to land by virtue of the said subsection (1).

(5) [definition of excepted land]."

22. Section 60(1) of the 1949 Act uses for the first time the formula later employed in section 10(1) regarding the effect of an entitlement to have access to land comprising open country. Read in combination with section 59, the effect is to protect a person from any claim in trespass or otherwise who is having access to the relevant land "for open-air recreation" in the wide sense which that phrase has as a matter of ordinary language. Since, as we explain below, the 1985 Act regulates the equivalent right of public access in so far as it applies to the Commons, there is good reason to treat section 60 of the 1949 Act as relevant background when construing section 10(1) and to interpret the phrase in the same way in section 10(1) and to give the right referred to the same effect as in the earlier provision.

23. Section 114 of the 1949 Act provides that "open-air recreation" does not include organised games. The fact that the drafters thought it necessary to exclude such activities by express provision indicates that they were using the phrase with its ordinary wide natural meaning, which would naturally be understood to cover organised games. Similarly, in our view, it would cover camping.

24. Section 90 of the 1949 Act conferred a power on a local planning authority in respect of land in a National Park to make byelaws "for securing that persons resorting thereto will so behave themselves as to avoid undue interference with the enjoyment of the land … by other persons". Section 90(3) made it clear that such byelaws could restrict traffic, prohibit litter and regulate fires.

25. Schedule 2 to the 1949 Act is headed "General restrictions to be observed by persons having access to open country or waterways by virtue of Part V of Act". It states:

> "[Section 60(1)] shall not apply to a person who, in or upon the land in question, —
>
> (a) drives or rides any vehicle;
>
> (b) lights any fire …;
>
> (c) takes, or allows to enter or remain, any dog not under proper control;
>
> (d) wilfully kills … or disturbs any animal … or takes … any eggs …;
>
> (e) bathes in any non-tidal water in contravention of a notice …;
>
> (f) engages in any operations of … hunting, shooting, fishing, …;
>
> (g) wilfully damages the land or anything thereon or therein;

(h) wilfully injures, removes or destroys any plant, shrub, tree …;

(i) obstructs the flow of any drain or watercourse …;

(j) affixes or writes any advertisement, bill, placard or notice;

(k) deposits any rubbish or leaves any litter;

(l) engages in riotous, disorderly or indecent conduct;

(m) wantonly disturbs, annoys or obstructs any person engaged in any lawful occupation;

(n) holds any political meeting or delivers any political address; or

(o) hinders or obstructs any person interested in the land, or any person acting under his authority, in the exercise of any right or power vested in him."

This is of significance, because certain of the activities are things which, if not excluded by listing them in Schedule 2, would otherwise fall within the natural meaning of open-air recreation: see sub-paragraphs (b), (c), (d) (taking eggs), and (e). Accordingly, the point made at para 23 above is applicable.

26. The structure of the regime in the 1949 Act, including a power to make byelaws and the express prohibition of certain activities in Schedule 2, indicates that the concept of "open-air recreation" has its wide natural meaning. The intention is that the public should be able to look at the scheme of public regulation to know what they are and are not entitled to do by way of engaging in such recreation, rather than being vulnerable to claims in trespass by the private owners of land which comprises the open countryside to which the right of access is given: see para 17(ii) above.

(c) The 1985 Act context

27. Consideration of a range of interpretative indicators in the 1985 Act apart from section 10(1) reinforces the conclusion we have reached by reference to the wording of section 10(1). The long title of the 1985 Act states that it is an Act, among other things, "to regulate public access to the commons". The reference to public access is unqualified, which tends to indicate that what is being regulated is public access for a wide range of activities. This language also indicates that what is being regulated is the right of public access already referred to in the 1949 Act to enjoy a wide range of activities in the countryside, as explained above.

28. Section 10(3) of the 1985 Act refers to section 60 of the 1949 Act (paras 21-22 above). The two provisions have to be read together. So far as relevant, section 10(3) provides:

> "(a) The provisions of … [certain identified sections of the 1949 Act] and Schedule 2 to that Act (which relate to land excepted from any access agreement or access order, the effect of such an agreement or order on rights and liabilities of owners and maps) shall apply and have effect with respect to subsection (1) above and the exercise of the right afforded under that subsection, as those provisions apply and have effect with respect to section 60(1) of that Act and any access agreement or order. …"

The cross-reference to section 60 of the 1949 Act, in relation to the right of the public to have access to land subject to an access agreement or an access order made pursuant to section 59 of that Act, shows that the drafters of section 10(1) had the model of the formula used in section 60(1) directly in mind. It is clear that "the purpose of open-air recreation" referred to in section 60(1) is not qualified by reference to the means by which access to the land is achieved. There is no good reason to suppose that the drafter intended that the same formula should have any different meaning when used in section 10(1).

29. Section 10(4) of the 1985 Act provides in relevant part as follows:

> "… the Park Authority may by notices posted in such places on the commons as they think fit regulate or prohibit for such period as may be reasonably necessary access by all, or any part of, the public to any part of the commons (including any footpath or bridleway thereon) —

…

(b) after consultation with the Commoners' Council—

(i) for the protection and restoration of the natural beauty of the commons and their suitability for … recreation;

…."

30. The word "recreation" is used here without qualification as to the form which it should take. It is not confined to recreation taken by means of walking or riding. The word should be given the same meaning throughout section 10, there being no indication that it is being used with different meanings in different parts of the provision. Further, the object of the power under section 10(4)(b) is to keep people off part of the Commons for a period in order to keep the land suitable for "recreation" in the general sense which the word has there. This would make no sense if the right of recreation conferred by section 10(1) was limited in the manner contended for by the appellants. The point of temporary protection of land pursuant to section 10(4)(b) to keep it suitable for "recreation" is to keep it in a state in which it is suitable for recreation by the public pursuant to their right of access under section 10(1).

31. Section 10(11) provides that, subject to certain exceptions, before exercising any of the powers conferred under section 10(4) the Park Authority "shall consult with the Central Council of Physical Recreation" (now called the Sport and Recreation Alliance). This body has a remit to represent the interests of organisations promoting a wide range of physical recreational activities, not limited to those taking the form of proceeding on foot or on horseback. The object of the obligation to consult the Central Council pursuant to section 10(11) is to ensure that before notices are posted the views of the body which wishes to promote physical recreation are taken into account so that the right to open-air recreation on the Commons under section 10(1) may be enhanced (for instance, by allowing land to recover where it has become worn through use) and is interfered with as little as possible by the exercise of the power of closure under section 10(4). The inclusion of this obligation in the statutory regime is a further indication that the concept of "open-air recreation" in section 10(1) is wide.

32. Section 11 of the 1985 Act provides that the powers of the Park Authority to make byelaws and to appoint wardens under sections 90 and 92 of the 1949 Act shall apply to the whole area of the Commons to which the right of access under section 10(1) is given. Section 11(2) states that the power to make byelaws shall include power to make byelaws for the prevention of nuisances: see the point made in paras 17(ii) and 26 above. Section 11(3) provides that before making byelaws the Park Authority shall consult a range of

bodies, including the Central Council of Physical Recreation. In light of the width of the remit of the Central Council regarding recreation, this is a further indication that the concept of "open-air recreation" in section 10(1) is wide: see para 31 above.

33. Section 13(1) of the 1985 Act provides that the Park Authority "may take such steps, whether by civil process or otherwise, for the protection of the commons against unlawful interference as could be taken by an owner in possession thereof …". This reinforces our view that what qualifies as unlawful interference (in relation to which an action in trespass could be brought) is defined by public regulations in the manner described: see paras 17(ii) and 26 above. It is difficult to see why a public body like DNPA should be given any wider role in relation to the enforcement of rights arising in private law.

34. Section 14 of the 1985 Act provides:

> "Where a member of the public enters upon the commons for the purpose of open air recreation on foot or on horseback and causes damage to the commons or any thing therein, the Park Authority may make good that damage."

35. This is a provision to extend the powers of the Park Authority to use its resources to take action to protect the Commons by making good any damage caused by the public in exercise of their rights under section 10(1). Although the order of the wording is different from that in section 10(1), section 14 is clearly intended to mirror the right in section 10(1). Accordingly, the words "on foot or on horseback" refer to the means of having access to the Commons, and do not qualify what counts as "open air recreation" which may be enjoyed having gained access in that way. Given the general purpose of establishing National Parks, that is to preserve and enhance their natural beauty, it is appropriate to read the power in section 14 widely so that the Park Authority is empowered to take steps to repair damage caused by any form of open air recreation carried out on the Commons. This requires that the words "open air recreation" are to be read widely, and not as qualified by the words "on foot and on horseback" (section 10(1)) or "on foot or on horseback" (section 14). To read the phrase "open air recreation" narrowly or as qualified in that way would create an unjustified and unrealistic limit on the Park Authority's powers to repair damage on the Commons.

(d) Context from the earlier legislative background

36. The relevant statutory history in relation to the regulation of public access to common land commences with section 193 of the Law of Property Act 1925 ("the 1925 Act"), headed "Rights of the public over commons and waste lands". Subsection (1) provided that members of the public "shall … have rights of access for air and exercise

to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts 1866 to 1898", provided that "(c) such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon …".

37. The subject matter of section 193 of the 1925 Act is similar to that governed by the provisions of the 1949 Act and the 1985 Act reviewed above, including section 10(1). The notion of access to land "for air and exercise" is similar to the concept of access for "open-air recreation". Section 193 can therefore be regarded as being "in pari materia" (to use the traditional Latin phrase) with section 10(1), in the sense that it can be inferred that the drafters had it in mind as part of their research when drafting section 10(1).

38. The express exclusion in section 193 of a right to camp indicates that, according to its ordinary meaning and without such exclusion, access to land "for air and exercise" includes camping: cf para 23 above. In our view the word "recreation" denotes a wider range of activities than those covered by use of open land "for air and exercise", but certainly includes those so covered. The express exclusion of camping in the context of section 193 of the 1925 Act indicates that, according to the register of language used by Parliament in relation to this topic, camping is naturally taken to be included within the concept of "open-air recreation". Reference to section 193 of the 1925 Act therefore tends to confirm our view regarding the correct interpretation of section 10(1).

Other aids to interpretation of section 10

(a) Hansard material as an external aid to the construction of section 10(1)

39. The appellants sought to rely on statements in Hansard to inform the interpretive exercise by using them to identify the purpose of the legislation and argued that the statements were admissible on two separate bases: first, pursuant to the rule in *Pepper v Hart* [1993] AC 593 at 640, and second, on the basis that it is legitimate to refer to such statements to identify the context of the legislation and its purpose or the mischief which it aims to put right.

40. The rule in *Pepper v Hart* provides that a statement in Hansard is admissible as an aid to interpretation only if (a) the statutory provision is ambiguous or obscure, or leads to an absurdity, (b) the statement as to the meaning of the provision is made by or on behalf of a minister or other promoter of the Bill, and (c) the statement is clear. We have concluded based on an analysis of the language used by Parliament that there is no ambiguity in the 1985 Act. Therefore, the rule in *Pepper v Hart* does not assist the appellants.

41. As for the alternative basis of admissibility for which the appellants contend, they cited *Bennion, Bailey and Norbury on Statutory Interpretation,* 8th ed (2020), para 24.12 in support of their submission. In fact, in that passage the authors express scepticism about whether reference to Hansard in this way is legitimate. The authors state:

> "As mentioned in Code [section] 24.3 (purpose for which external aids may be used), where the aim is to resolve ambiguity it seems open to question whether the distinction between referring to legislative debates for the general background, or the mischief at which an Act is aimed, and referring to legislative debates as an aid to the construction of particular words is sustainable. It may also be queried whether it is consistent with the decision in *Pepper v Hart* itself."

42. This scepticism appears to us to be justified. In *Pepper v Hart* the argument for use of Hansard material was directed to identifying both the purpose of the legislation and the specific meaning to be given to individual words and phrases (see [1993] AC 593, 600C) and in his leading speech in the case Lord Browne-Wilkinson made it clear that the guidance given in relation to relaxation of the rule forbidding any reference to Hansard was intended to cover both matters: [1993] AC 593, 634D ("references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words"). As Lord Browne-Wilkinson pointed out at p 635B-E the distinction between the two types of case (use of material to identify the mischief aimed at by, ie the purpose of, the legislation and the specific intention of Parliament in using the words set out in the legislation) "is highly artificial … Given the purposive approach to construction now adopted by the courts in order to give effect to the true intentions of the legislature, the fine distinctions between looking for the mischief and looking for the intention in using words to provide the remedy are technical and inappropriate". On a purposive approach to interpretation of a statute, identification of the purpose or mischief is capable of directly affecting the meaning given to the words used by Parliament. Therefore, in both cases, the point of making reference to Hansard is to contend that it affects the proper interpretation of the statute, and there are no good grounds to distinguish between them as regards the relevance of the guidance given in *Pepper v Hart*.

43. Accordingly, in *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816, para 60, Lord Nicholls of Birkenhead referred to "the use by courts of ministerial and other promoters' statements as part of the background of legislation" as being "pursuant to *Pepper v Hart*", not something distinct from the rule in that case; see also para 58, where in discussing the practical safeguards laid down in *Pepper v Hart* Lord Nicholls said that "a clear and unambiguous ministerial statement is part of the background to the legislation". Lord Nicholls contrasted this with use of statements in Parliament to identify the aim of legislation for the purposes of assessing its compatibility with the Convention rights set out in the Human Rights Act 1998: paras 60-67; he emphasised (para 65) that

this is a consequence flowing from, that is mandated by, that Act. See also *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26; [2022] AC 223, para 175.

(b) The principle of legality

44. The appellants sought to support their submission as to the correct interpretation of section 10(1) by relying on the principle of legality on the basis that their right to protect their private property by pursing an action in trespass against individuals who wild camp on their property could only be restricted by clear statutory words showing that Parliament has squarely confronted what it was doing and accepted the political cost. In *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 131, Lord Hoffmann described the relationship between parliamentary sovereignty and the principle of legality in these terms:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights … The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. *Fundamental rights cannot be overridden by general or ambiguous words.* This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual." (Emphasis added.)

45. The first question in relation to the principle of legality is whether the language used in section 10(1) expressly or by necessary implication restricts the appellants' right to protect their private property by pursing an action in trespass against individuals who wild camp on their property. Before considering that question in this section of the judgment we would observe that, whilst the 1985 Act restricts the rights of property owners, it did not do so without granting advantages in return. For instance, by virtue of section 11(1) of the 1985 Act the powers of DNPA to make byelaws under section 90 of the 1949 Act applies to the whole area of the Commons to which under section 10(1) a right of access is given. Another instance is that by virtue of section 11(1) of the 1985 Act the powers of DNPA to appoint wardens under section 92 of the 1949 Act applies to the whole area of the Commons to which under section 10(1) a right of access is given. Furthermore, under section 10(4) of the 1985 Act landowners obtain the support of DNPA by virtue of its ability by notices to regulate access by all, or any part of, the public to any part of the Commons. Whilst there are restrictions on the landowners' property rights, there is in return DNPA's power to prevent, and enforce against, problematic camping by

virtue of its ability to make and enforce byelaws and to publish notices. Furthermore, there is in return the involvement of DNPA in controlling and managing the access of the public by engaging wardens to help prevent breaches of the byelaws and support enforcement. Accordingly, the legislation puts in place the means for public regulation of use of the Commons which is in practice likely to be more effective in protecting the land than attempts by private persons to challenge such use through themselves having to confront people on their land and then bring a claim in private law.

46. However, the first matter to consider in relation to the principle of legality is whether the language used in section 10(1) expressly or by necessary implication restricts the appellants' right to protect their private property by pursing an action in trespass against individuals who wild camp on their property. Sir Geoffrey Vos dealt with this issue at para 59 of his judgment. We agree with what he said, namely:

> "… since the words of the 1985 Act have a clear meaning, that meaning cannot be altered by the fact that the landowners' property rights are to some extent infringed by that meaning. A statute may limit the rights of property owners and that is what has happened by granting the rights of access to the public under the 1985 Act. As Millett LJ said in *Cadogan v McGirk* [1996] 4 All ER 643, 648:
>
> > 'It would, in my opinion, be wrong to disregard the fact that, while the [Leasehold Reform, Housing and Urban Development Act 1993] may to some extent be regarded as expropriatory of the landlord's interest, nevertheless it was passed for the benefit of tenants. It is the duty of the court to construe the 1993 Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy'"

47. We have concluded based on an analysis of the language used by Parliament that there is no ambiguity. Therefore, the principle of legality does not assist the appellants.

(c) The Hobhouse reports as an external aid to the construction of section 10(1)

48. In so far as the 1985 Act is a statute embedded in the regime established by the 1949 Act this court was referred to two reports of committees under the chairmanship of Sir Arthur Hobhouse which led to the 1949 Act. The first report was that of the National Parks Committee of July 1947 (Cmd 7121). The second report was the Report of the

Special Committee on Footpaths and Access to the Countryside of September 1947 (Cmd 7207).

49. The first report makes frequent reference to camping but does not address the question of wild camping in any way that informs the 1949 Act or section 10(1).

50. The appellants submit that whilst the second report advocated conferring on the public a general right of access to open land nowhere does the report suggest that this right, if conferred, would include a right to camp. We agree. The second report does not address one way or the other whether the general right of access to open land does or does not include a right to camp. Quite simply the second report does not address the issue and therefore it cannot assist as an external aid to the proper construction of the 1949 Act, let alone to the proper construction of section 10(1).

51. Quite apart from the fact that the 1985 Act was not implementing either of the Hobhouse reports, neither report assists with the true construction of section 10(1).

(d) The byelaws as an external aid to the construction of section 10(1)

52. DNPA, for its part, seeks to rely on the byelaws made by Devon County Council in 1989 as an aid to the construction of section 10(1) of the 1985 Act. The byelaws were made in exercise of powers under section 90 of the 1949 Act and a parallel power under section 11 of the 1985 Act. DNPA submits that the byelaws assume that the recreational activity of camping is permissible on the Commons within section 10(1) as they regulate rather than prohibit camping. DNPA contends that the byelaws provide "a reliable guide" to the meaning of section 10(1).

53. In certain circumstances, subordinate legislation made pursuant to powers in a statute can be an aid to interpretation of the statute: see *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594, ("*PACCAR*") at para 44. However, we reject the submission that the byelaws are an aid to the construction of section 10(1) for two fundamental reasons. First, the byelaws were not made at a time roughly contemporaneous with the 1985 Act, so they cannot fairly be regarded as being, in combination with the 1985 Act, part of the same legislative exercise: see *PACCAR* at para 45. Secondly, the byelaws were made by Devon County Council so that the primary legislation, the 1985 Act, and the byelaws were not drafted by or on the instructions of the same government department: see *PACCAR* at para 45.

The nature of the relief sought and the procedure used

54. The proceedings were brought by the appellants against DNPA seeking a declaration that section 10(1) did not grant "the public" a right to camp on the Commons. It is a striking feature of the proceedings that the public was not represented. In *London Passenger Transport Board v Moscrop* [1942] AC 332, 345, Viscount Maugham said:

> "[T]he courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made."

55. This statement by Viscount Maugham was applied in the subsequent decision of the House of Lords in *Gouriet v Union of Post Office Workers* [1978] AC 435 ("*Gouriet*"). *Gouriet* involved proceedings in which a private individual, who had not suffered special damage by the infringement of public rights, brought proceedings as a member of the public, against the Union of Post Office Workers, despite the Attorney General declining to allow the proceedings to be brought in his name: relator proceedings. The House of Lords held that the proceedings were misconceived as Mr Gouriet lacked any title to represent the public interest and the proceedings should have been struck out. Lord Diplock stated, at p 501G, that:

> "Relief in the form of a declaration of right is generally superfluous for a plaintiff who has a subsisting cause of action. It is when an infringement of the plaintiff's rights in the future is threatened or when, unaccompanied by threats, there is a dispute between parties as to what their respective rights will be if something happens in the future, that the jurisdiction to make declarations of right can be most usefully invoked. But the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else."

In the present proceedings there was a contest as to the subsisting and future legal rights of the public but the public, by their representative the Attorney General, was not a party to the proceedings.

56. The Attorney General represents the Crown in the courts in all matters in which rights of a public character come into question (unless an authorised government department can sue in its own name and unless an authorised government department is clearly the appropriate defendant). As the appellants were seeking to restrict the interests of the public then the Attorney General ought to have been joined as defendant in the proceedings in addition to DNPA given that no authorised government department is identified clearly as the appropriate defendant: see section 17 of the Crown Proceedings Act 1947. When joined as a party, it would have been a matter for the Attorney General to decide what part to play in the proceedings. For instance, the Attorney General may have decided to leave the defence of the proceedings to DNPA. However, even if the Attorney General decided to take no active role in the proceedings the Attorney General would still have remained a party to the proceedings. It was only if the Attorney General was a party to the proceedings that a declaration could be made binding the public.

57. The joinder of the Attorney General as a party to represent the public is illustrated by the proceedings in *Seaport Investments Ltd v Cameron* [1999] NIQB 1943. In that case, three individuals (Cameron, Bailey and Crooks) purported to exercise a public right of way over land owned by Seaport Investments Ltd. An action was commenced in trespass against those individuals. However, by reason of the principle in para 56 above the Attorney General was joined as a defendant in the action. The joinder of the Attorney General was not only a requirement, but it also had a practical benefit for Seaport Investments Ltd as it wished to obtain relief not only against the three individuals. It also wished to establish that any other member of the public would be trespassing on its lands in the future unless they got consent. It could only obtain such relief if the Attorney General was joined as a defendant so that a declaration could be made which would bind the public. In the event McCollum LJ held that there was no public right of way and a declaration was granted which bound not only the three individuals who had trespassed but also bound the public at large so that in future no member of the public could rely on any public right of way over the land of Seaport Investments Ltd.

58. The problems that arise if the Attorney General is not a party to the proceedings can be illustrated by the question as to what relief to grant if, as the Chancellor held, section 10(1), on its true construction, does not grant the public a right to camp on the Commons. The Chancellor addressed this problem at para 94 of his judgment. Counsel on behalf of DNPA had submitted that a declaration was not necessary. Rather, the appellants could in effect be left to pursue a case in trespass against a backpacker wild camping on their land without permission. The Chancellor rejected this submission stating that:

> "Quite apart from the impracticality of pursuing a claim in trespass after someone has left the land, in my judgment it would be quite wrong to impose a burden on an individual backpacker in that way. It is far better that a declaration is

> granted so that DNPA and all walkers and riders on the Commons know where they stand and what rights they have."

Thereafter, the Chancellor, at para 96, granted the appellants a declaration that:

> "[O]n its true construction, section 10(1) of the 1985 Act does not confer on *the public* any right to pitch tents or otherwise make camp overnight on Dartmoor Commons. Any such camping requires the consent of the landowner." (Emphasis added.)

59. DNPA does not represent the public. A declaration in those terms purporting to bind the public ought not to have been granted when the Attorney General was not a party to the proceedings to represent the public. Even at that late stage of the proceedings before the Chancellor, consideration should have been given to the joinder of the Attorney General.

Conclusion

60. For the reasons set out above, we would dismiss the appeal.