Press Summary

21 May 2025

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

[2025] UKSC 20

On appeal from [2023] EWCA Civ 927

Justices: Lord Reed (President), Lord Sales, Lord Stephens, Lady Rose and Lady Simler

Background to the Appeal

This appeal concerns 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**"). Section 10(1) of the 1985 Act ("**section 10(1)**") provides "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…".

The Dartmoor National Park was designated as a national park in 1951 under the National Parks and Access to the Countryside Act 1949 ("**the 1949 Act**"). Within Dartmoor National Park, there are areas of moorland which are privately owned but on which other locals have the right to put their livestock. The Appellants are farmers, landowners and commoners who have owned and lived at Blachford Manor on Dartmoor since 2013. The Appellants' land includes a section of land called "Stall Moor", which is part of the Commons.

In Autumn 2021, Dartmoor National Park Authority ("**DNPA**") consulted the public on amendments it proposed to make to the byelaws relating to Dartmoor. The Appellants had become concerned about the potential harm arising from camping on the Commons near Stall Moor. They claimed that the right of access established by section 10(1) does not extend to a right for the public to camp, but DNPA disagreed.

The Appellants brought a claim, seeking a declaration that section 10(1) does not grant the public a right to camp on the Commons. The High Court held that section 10(1) did not grant such a right. The Court of Appeal disagreed and held that section 10(1) confers a right to engage in camping on the Commons. The Appellants now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. The clear wording of section 10(1) shows that it confers a right of public access which includes wild camping. This is supported by a wide range of interpretive aids, including other provisions in the 1985 Act and the legislative background. Lord Sales and Lord Stephens give the judgment, with which the other members of the Court agree.

Reasons for the Judgment

The issue in the appeal

The appeal turns on a short point of statutory interpretation regarding the meaning of section 10(1). The court therefore sets out the well-established approach to statutory interpretation: the court ascertains the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision **[14]-[15]**.

The Appellants submit 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 and therefore does not include camping. DNPA and the Open Spaces Society (as intervener) submit that 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 **[16]**.

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

The starting point is the wording of section 10(1) itself. It is possible to arrive at a clear understanding of the true meaning of section 10(1) by focusing on this without the need to refer to other aids to interpretation. There are several indications in section 10(1) that camping by individuals who have entered the Commons on foot or on horseback is covered by the right in section 10(1). First, as a matter of ordinary language, camping is a form of "open-air recreation". Second, the structure of section 10(1) contemplates that the primary restriction of the right of access is by forms of regulation, which at the time the 1985 Act was passed did not prohibit camping. Third, the words "on foot and on horseback" describe the means by which the public are to have a right to gain access to the Commons. Fourth, the second part of section 10(1) confers an immunity from a claim in trespass by reference to the purpose for which a person has entered the Commons, not by reference to the means by which they have gained access. Fifth, the distinction drawn by the High Court between different forms of open-air recreation is unsustainable **[17]**.

This interpretation is also supported by the legislative context of the 1985 Act. The 1985 Act is embedded within the regime created by the 1949 Act: Dartmoor was established as a national park under the 1949 Act and the 1985 Act refers to it. Section 60(1) of the 1949 Act first used the formula "for the purpose of open-air recreation". Provisions in the 1949 Act, such as section 114 and provisions in Schedule 2, indicate that that "open-air recreation" was used with its wide ordinary meaning, which would cover camping **[18]**-**[26]**.

Other provisions in the 1985 Act reinforce the court's conclusion **[27]-[35]**. For example, the long title of the 1985 Act states that it is an Act to, among other things, "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 **[27]**.

The interpretation is further supported by section 193(1) of the Law of Property Act 1925, an early statute regulating public access to common land, which provides that members of the public "shall … have rights of access for air and exercise to any land which is a metropolitan

common…", but camping is specifically excluded by subsection (1)(c). The express exclusion 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 **[36]-[38]**.

Other aids to interpretation

The Appellants sought to rely on statements in Hansard as an aid to the interpretation of section 10(1), arguing that they were admissible on two separate bases. First, pursuant to the rule in *Pepper v Hart* [1993] AC 593, which provides that a statement in Hansard is admissible as an aid to interpretation if (a) the statutory provision is ambiguous or obscure, or leads to 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. However, there is no ambiguity in the language used in the 1985 Act, so *Pepper v Hart* does not assist the Appellants **[40]**. Second, the Appellants argued that it was legitimate to rely on Hansard in order to identify the purpose of the legislation or the mischief which it aims to rectify. The Court is sceptical as to whether this is truly distinct from *Pepper v Hart* since in both cases, the point of referring to Hansard is to argue that it affects the proper interpretation of the statute; in any event, this does not assist the Appellants because the wording of section 10(1) is clear **[42]**.

The Appellants also sought to rely on the principle of legality, according to which courts should be slow to impute to the legislature an intention to override fundamental rights where that is not clearly spelt out. The Appellants argued that their right to protect their private property by pursuing an action in trespass against individuals who camp on their property could only be restricted by clear statutory wording. However, the wording of the 1985 Act is clear so the principle of legality does not assist. A statute may limit the rights of property owners and that is what has happened here **[46]-[47]**.

For its part, DNPA sought to rely on byelaws made by Devon County Council in 1989, under a power in the 1985 Act. In certain limited circumstances, subordinate legislation made pursuant to powers in a statute can be an aid to interpretation of the statute. However, in this case the byelaws are not an aid to the interpretation of section 10(1). First, they were not made at a similar time to the 1985 Act and so cannot fairly be regarded as part of the same legislative exercise. Second, the byelaws were made by Devon County Council and so were not drafted by or on the instructions of the government department which was responsible for introducing the 1985 Act **[53]**.

The nature of the relief sought and the procedure used

The Appellants sought a declaration that section 10(1) did not grant the public a right to camp on the Commons. Yet, the public was not represented. Typically, the public is represented by the Attorney General. Except in special circumstances, all interested persons should be made parties before a declaration affecting their rights is made **[54]-[55]**. Therefore, a declaration binding the public should not have been made unless the Attorney General was joined as a defendant in these proceedings **[56]**, **[59]**.

References in square brackets are to paragraphs in the judgment.