

Case Name: *TW Logistics Ltd v Essex County Council & Anor* [2018] EWCA Civ 2172 (05 October 2018)

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Commentary: This is an appeal from the Chancery division of the High Court. The appeal was made by the landowner ("TWL") against the dismissal of its challenge against the registration of an area of its working port as a town or village green ("TVG").

The area concerned had been used for the qualifying period of 20 years by a significant number of local people for walking and sports activities alongside (but to a lesser extent) commercial port activities such as loading/unloading commercial vehicles and storage.

TWL accepted that there has been co-existence of both recreational and commercial activities on the TVG throughout a 20-year period. However, it argued that registration as a TVG should not be confirmed if any of the following apply:

- i) the effect of registration would be to criminalise the landowner's continuing use of the TVG for the same commercial purposes as took place throughout the 20-year period, and for that reason the recreational use does not have the necessary quality to support the registration;
- ii) permission for recreational use can be implied from the interaction of the two uses; or
- iii) the two uses are not concurrent but are sequential.

The respondents (the Council and the applicant for registration) argued that:

- i) Potential criminalisation is not of itself a bar to registration of a TVG; and
- ii) On the facts found by the judge there was no implied permission or sequential use.

The appeal was dismissed for the following reasons:

- i) registration as a TVG does not prevent the owner from carrying out pre-existing activities as long as they do not interfere unduly with the recreational rights to which the registration gives rise;
- ii) potential criminalisation is not a bar to registration as a TVG if all the criteria for registration is met;
- iii) continuation of the pre-registration use in this case would not amount to a criminal offence because the use is compatible with the recreational use; and
- iv) there was no implied permission or sequential use instead there was sensible co-existence between the uses.

Case summary prepared by Town Legal LLP