



12 February 2021

## PRESS SUMMARY

**T W Logistics Ltd (Appellant) v Essex County Council and another (Respondents)**  
**[2021] UKSC 4**  
*On appeal from [2018] EWCA Civ 2172*

**JUSTICES:** Lady Black, Lady Arden, Lord Sales, Lord Burrows, Lord Stephens

### BACKGROUND TO THE APPEAL

This case concerns the registration of land as a town and village green. The use of the phrase “town or village green” (“**TVG**”) conjures up a bucolic image of an area of grass where local inhabitants can walk and play. However, the land in this case is an area of concrete (the “**Land**”) in a working commercial port. The question for the Supreme Court is, has the Land been validly registered as a TVG?

The Land lies along the quayside in Mistley port in Essex. T W Logistics (“**TWL**”) owns and operates Mistley port. It has been using the Land for the passage of port vehicles, including heavy goods vehicles, and the temporary storage of cargo on the quayside. Concurrently with these commercial activities, the Land has also been used by local inhabitants to walk dogs, to stop and chat on the quayside, and for general recreation. These two sets of activities have co-existed for many years.

In September 2008, following concerns about people falling into the water and a threat by the Health and Safety Executive of enforcement action, TWL erected a 1.8 metre high chain link metal fence along the quayside. On 18 August 2010, a local inhabitant, Ian Tucker, applied to Essex County Council (the “**Council**”) to register a large part of the quay as a TVG pursuant to section 15(3) of the Commons Act 2006. In 2013, the Council appointed an Inspector to hold a non-statutory public inquiry. While the Inspector excluded several other parts of the quay from the application, he found that the Land satisfied the statutory criteria: it had been used “as of right” for lawful sports and pastimes by significant numbers of local inhabitants for the preceding 20 years. The Council duly registered the Land as a TVG.

TWL challenged that registration in the High Court on a number of grounds, all of which were dismissed. The Court of Appeal upheld the High Court’s decision. TWL has appealed to the Supreme Court.

### JUDGMENT

The Supreme Court dismisses TWL’s appeal and upholds the registration of the Land as a TVG. Lord Sales and Lord Burrows give the sole judgment, with which the other members of the Court agree.

### REASONS FOR THE JUDGMENT

Six legislative provisions are relevant to this appeal. Section 15 of the Commons Act 2006 provides that land may be registered as a TVG where a significant number of local inhabitants indulged as of right in lawful sports and pastimes on that land for at least 20 years [6]. Section 12 of the Inclosure Act 1857

and section 29 of the Commons Act 1876 (the “**Victorian statutes**”) make it a criminal offence to interfere with a TVG in a number of different ways, including by interrupting local inhabitants from using it as a place for exercise and recreation [8-10]. Section 34 of the Road Traffic Act 1988 (the “**RTA 1988**”) makes it an offence to drive a vehicle on a TVG without lawful authority [11]. Two health and safety provisions (the “**health and safety legislation**”) require an employer to protect members of the public from risks to their health and safety [12-14].

TWL advanced three grounds of appeal: (1) land should not be registered as a TVG if that would criminalise the landowner’s existing commercial activities; (2) on the facts of this case, TWL’s commercial activities would be criminalised after registration; and (3) the use of the Land by the local inhabitants was not “as of right” [40]. The Supreme Court considers Ground 2 first [41].

*Ground 2 – Are TWL’s commercial activities criminalised after registration?*

The Court first sets out the rights of the public and the landowner over the land following TVG registration [44]. Local inhabitants have to exercise their rights over a TVG in a fair and reasonable way, so as to respect the concurrent reasonable and established use by the landowner [48]. This has become known as the principle of “give and take” [50]. By registration, the public acquire the general right to use the land for any lawful sport or pastime, whether or not corresponding to the particular recreational uses to which it was put in the preceding 20 years [65]. However, the landowner can continue to undertake activities of the same general quality and at the same general level as before. The landowner may also undertake new and different activities provided that these do not interfere with the right of the public to use the land for lawful sports and pastimes [66].

TVG registration does not criminalise the landowner continuing its pre-existing activities on the land [72]. The Victorian statutes treat certain acts as public nuisances and so, in accordance with the definition of the offence of public nuisance in *R v Rimmington* [2005] UKHL 63, TWL’s activities are not criminalised where those activities are “warranted by law” [80]. Here, as TWL has the legal right after registration to carry on its existing commercial activities, those activities are “warranted by law” [81]. Similarly, TWL’s right to carry on with what it has been doing means that it does so with “lawful authority” for the purposes of section 34 of the RTA 1988 [88]. As for the health and safety legislation, this has always applied irrespective of registration as a TVG. If TWL is lawfully required by the HSE to take some particular action, that would constitute lawful authority for doing so [90]. The appeal on Ground 2 is dismissed [91].

*Ground 1 – Is registration barred if it would criminalise the landowner’s continuing activities?*

In light of the conclusion on Ground 2, it is not necessary or appropriate to decide Ground 1 [92].

*Ground 3 – Was the local inhabitants’ use of the Land “as of right”?*

The concept of use “as of right” involves use of land by the local inhabitants in a way which would suggest to a reasonable landowner that they believed that they were exercising a public right in doing so. The landowner’s concerns at their use do not affect the quality of that use. This ground of appeal is also rejected [95].

*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:**

<http://supremecourt.uk/decided-cases/index.html>