

Case Name: *Day, R (On the Application Of) v Shropshire Council* [2020] EWCA Civ 1751 (23 December 2020)

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Commentary:

In November 2018 the Respondent Local Authority granted conditional planning permission for 15 dwellings on land that was the subject of a statutory trust for public recreational purposes and subsequently sold the freehold of the relevant land to the Second Interested Party. This sale was carried out without compliance with the mandatory statutory requirement for advertising such a disposal. Mrs Justice Lang at first instance refused permission for judicial review.

On Appeal, the Court of Appeal held that where a local authority disposes of land subject to a trust under Section 10 of the Open Spaces Act 1906 without the statutory requirement for such a disposal having been met, the purchaser of that land obtains title of the land without the burden of the trust, unless the purchaser had actual knowledge of the failure. In the circumstances of this appeal the purchaser had no knowledge of the fact that the land was held under trust and therefore was not aware of the Council failing to meet the statutory requirements in respect of the sale. Therefore, the Court of Appeal found that following disposal of the land the trust, and the rights of public recreation over that land (and any associated obligations) did not subsist. Following this finding the Claimant's appeal was refused on all grounds as was the Respondent's cross-appeal on costs.

Case summary prepared by Juliet Munn