

Case Name: *Forbes v Wokingham Borough Council* 2018 EWHC 2530 (Admin) (04 October 2018)

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Commentary: This is a renewed permission application for permission to apply for judicial review following refusal on the papers by Mr David Elvin QC. The decision challenged by Ms Forbes (the Claimant) is Wokingham Borough Council (the Defendant Council)'s decision dated 28 March 2018 rejecting her application to register land in Wokingham as a new town or village green pursuant to s. 15(3) of the Commons Act 2006.

The application was dismissed on all four grounds. The judge found that the Aarhus Convention's cost capping did not apply, and the Claimant was ordered to pay the Defendant Council's costs of acknowledgement of service and the interested party's acknowledgement of service (a total of £9,458.88).

The Claimant had applied in 2015 to register the relevant land as a new town or village green, the Defendant Council rejected the application. In a previous non-statutory inquiry, an Inspector had found that the Claimant had failed to show that there had been lawful sports and pastimes on the relevant land for the requisite period of 20 years. A further Inspector's report was prepared, there was an officer's report and a public meeting where representations were held, and the Council's committee refused the application to register the land on 28 March 2018.

The judge disagreed with the first ground that the Defendant Council had erred in not holding the whole of its decision-making process in public, because there is no statutory procedure for making this kind of decision and the Council followed its own constitution adequately, lawfully and fairly.

The second ground that the Inspector had not considered the activities cumulatively and whether a substantial number of inhabitants had indulged in them was also rejected. The judge stated that the conclusions of the Inspector are her judgments to make, based on the evidence, providing she is not unlawful, which she was not. Linked to this, the judge rejected the third ground that the Inspector had excluded from her consideration certain activities as lawful sports and pastimes when she should in law have included them. The judge found that the Inspector had considered the relevant activities on the land during the relevant time. Some activities related to the land being used as a public right of way, others were use as of right on only part of the land, others use as of right but only seasonal (e.g. sledging).

Finally the Claimant's last ground asserted that the Inspector's decision did not give sufficient or intelligible reasons, particularly in relation to the Claimant's suggestion that the Defendant Council should not adopt or follow the Inspector's conclusion. The judge considered that the all submissions had been taken into account and the Council could have departed from the Inspector's conclusions but chose not to.

Case summary prepared by Town Legal LLP