

Case Name: *Day, R (On the Application Of) v Shrewsbury Town Council & Anor* [2019] EWHC 3539 (Admin) (19 December 2019)

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Commentary: In the High Court the Claimant, Mr Day, challenged Shropshire Council's decision to grant planning permission in 2018 for a development of 15 dwellings in Shrewsbury, on land that the Council had sold to the developer in 2017. Mr Day's main grounds were that the Council had failed to enquire sufficiently into the land's status as potential public open space for recreational use, and to have regard to material considerations including its own holding of the land in trust for public use.

The Court found that Mr Day succeeded on these grounds. The Judge held that the Council had failed to take reasonable steps to acquaint itself with the land's history and legal status as open space potentially since 1926 – it was likely that the Council had that year purchased the land for public recreational use as open space under the Public Health Act 1875 or the Open Spaces Act 1906, then held the land on a statutory trust for the benefit of local residents, but in selling the land to the developer in 2017 had failed to appropriate lawfully the land for uses other than public recreation. The Judge held that the Council had failed to comply with the appropriation process under section 123 of the Local Government Act 1972, whereby a local authority may not dispose of open space land without both giving public notice in a local newspaper and considering objections to the proposed disposal.

Despite Mr Day's success on these grounds, the Court refused to grant him a remedy. In accordance with section 31 of the Senior Courts Act 1981, the Judge considered it "highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred". Under sections 128 and 131 of the Local Government Act 1972, any beneficiary rights under the trust in which the Council held the land were unenforceable after the Council had sold the land to the developer – sections 128 and 131 protect the validity of a such a land transaction where a local authority fails to comply with the appropriation process under section 123.

Mr Day had a third ground of challenge that the Council had failed in its duty to give adequate reasons for its decision to grant planning permission. However, this ground did not succeed. The Court held that the Council planning committee's following of its Officer's Report (recommending grant of permission) did not amount to a procedural failure to give adequate grounds.

The Court, therefore, did not quash the planning permission. The Judge granted Mr Day permission to appeal to the Court of Appeal.