JUDICIARY OF
ENGLAND AND WALES

Press Summary

R (Friends of Finsbury Park) v Haringey London Borough Council [2017] EWCA Civ 1831 (16 November 2017)

(on appeal from the Order of Mr Justice Supperstone in the Planning Court [2016] EWHC 1454 (Admin))

Judges: Lord Justices Treacy, Hickinbottom and Singh

Background

This appeal concerns the powers of London boroughs to hire out public parks for music festivals. It does not concern Royal Parks.

The Wireless Festival is an annual music festival held in Finsbury Park. The Friends of Finsbury Park sought to challenge the decision of Haringey London Borough Council (who are responsible for the Park) to hire part of the Park to Festival Republic, the company which organised the festival in 2016. This decision involved closing approximately a quarter of the park for just over two weeks. The Friends challenged the decision by way of judicial review, which was heard by Mr Justice Supperstone on 9 June 2016. He refused the substantive claim in a judgment on 22 June 2016, shortly before the relevant part of the Park was closed to prepare for Wireless Festival on 30 June 2016. The Festival went ahead; but the Friends were granted permission to appeal to resolve the issue for future festivals.

The companies which run the Wireless Festival appeared as Interested Parties at the appeal, and the Open Spaces Society appeared as an Intervener.

Arguments

The Friends, with the support of the Open Spaces Society, submitted that the Council did not have the power to enclose such a large portion of the Park for such a long time and exclude members of the public who had not purchased tickets. The key issue was whether Section 145 of the Local Government Act 1972 provided the Council with the necessary power.

The Friends argued that section 145 did not, because it only allows the Council to 'set apart or enclose' an area of the Park and does not explicitly state that the public may be excluded. The Open Spaces Society took a slightly different approach. They accepted that section 145 gave the Council the right to exclude the public; but argued that that section did not apply here because an earlier statute (Article 7 of the Schedule to the Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967), which specifically concerned London local authorities, applies and effectively excludes section 145, which consequently only applies outside London. The 1967 Act permits no more than 10% of any park to be enclosed, compared with the quarter of the Park which had been hired out for Wireless Festival.

Judgment

The Court of Appeal upheld the judgment of Mr Justice Supperstone.

The 1967 Act was held to be an alternative to section 145 available to London local authorities, such that it did not restrict section 145 from applying to London as well as the rest of the country. Given the stark difference in their terms, if Parliament had intended the 1967 Act to exclude the operation of section 145 in London it would have made this clear. The power to enclose part of the Park in section 145 was held to include the power to exclude non-paying members of the public. That accords with the ordinary meaning of the word 'enclose', and is necessary to give effect to the intention of Parliament, because without the power to exclude the public the power to enclose a portion of the Park would be empty.

The judgment deals only with the narrow issue of statutory construction as to whether a London borough has power to hire out part of a park in its area without the restrictions in the 1967 Act. In this case, the merits were not in issue: it was not contended that, if the Council had the power to hire out the part of the park for the Wireless Festival, then it acted unlawfully in exercising that power in the particular circumstances of this case.

NOTE This summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment of the Court of Appeal is the only authoritative document.

16 November 2017