Courts and Tribunals Judiciary

31 July 2023

DARWALL V. DARTMOOR NATIONAL PARK AUTHORITY

<u>JUDGMENT SUMMARY</u>

Important note for press and public: this summary forms no part of the court's decision. It is provided so as to assist the press and the public to understand what the court decided.

1. The central question in this case was whether section 10(1) of the Dartmoor Commons Act 1985 allows members of the public to engage in wild camping on the Dartmoor Commons without express permission from the landowners. Sir Julian Flaux, Chancellor of the High Court, held that it did not. Both The Dartmoor National Park Authority and the Open Spaces Society submitted that it did.

2. Section 10(1) actually provides that "the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation". In essence, the Court of Appeal (Sir Geoffrey Vos, Master of the Rolls, and Lord Justices Underhill and Newey) decided that the words of section 10(1) were clear and unambiguous. They allowed the public to engage in open-air recreation on the Dartmoor Commons provided they proceeded on foot or on horseback. Open-air recreation included wild camping, although such an activity had to be conducted in strict accordance with the applicable 1989 byelaws.

3. The Court of Appeal, therefore, allowed the appeal and, subject to further submissions, indicated it would be prepared to declare that section 10(1) of the Dartmoor Commons Act 1985 conferred on members of the public the right to rest or sleep on the Dartmoor Commons, whether by day or night and whether in a tent or otherwise, provided that the other provisions of the 1985 Act and schedule 2 to the 1949 Act and the Byelaws were adhered to.

4. The Court of Appeal applied well-established principles of statutory construction. It referred to the earlier statutory provisions concerning public access to land, of which Parliament should be taken to have been aware. Those included (i) section 193 of the Law of Property Act 1925 which gave the public "rights of access for air and exercise" to metropolitan common land, on the basis that those rights were expressly stated to exclude any right to camp, and (ii) sections 59-60 of the National Parks and Access to the Countryside Act 1949 which granted the public a right "to have access for open-air recreation to [certain] open country", not including the Dartmoor Commons. The rights of access granted by the 1949 Act were "for the purpose of open-air recreation" which were the same words used in section 10(1). Schedule 2 to the 1949 Act imposed restrictions on the exercise of the right of access, but without mentioning camping.

5. "Recreation" meant "an activity or pastime pursued, especially habitually, for the pleasure or interest it gives". The words of section 10(1) did not naturally limit the kind of open-air recreation to those undertaken on foot or on horseback. The critical question was whether "open-air recreation" should properly be taken to include wild camping.

6. The relevant Byelaws did not exclude wild camping. Paragraph 6 of the Byelaws allowed for pitching a tent by saying that "[n]o person shall knowingly use any vehicle,

including a caravan or any structure **other than a tent** for the purpose of camping on the access land".

7. The Master of the Rolls said that a walker who lays down for a rest without pitching a tent would be present for the purpose of open-air recreation. It was the same if that walker fell asleep. It made no difference if the walker rested or slept on a plastic sheet to prevent the damp, or in a sleeping bag to protect from the cold, or under a tarpaulin or in an open tent or in a closed tent to protect from the rain. The fact that a tent was closed rather than open could not convert the wild camping from being an open-air recreation into not being one.

8. Lord Justice Underhill said that wild camping plainly fell within the definition of "open-air recreation". He said that many people took pleasure in the experience of sleeping in a tent in open country, typically, though not invariably, as part of a wider experience of walking across country, and perhaps engaging in other open-air recreations such as birdwatching, during the day. It was "a perfectly natural use of language to describe that as a recreation, and also as occurring in the open air, notwithstanding that while the camper is actually in the tent the outside air will be to some extent excluded".