

Copy of John J's legal  
opinion to us

The Old Reading Room,  
Selside  
North Yorkshire.

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14 May 1996

Councillor Wilfred Fenten.  
The Shaws.

Re The Village Green, Selside.

Dear Wilf,

I have read the opinion of G. Ryan QC which you were kind enough to show me and comment as follows.

Counsel in his opinion gives some weight to the case of R v Suffolk CC, ex parte Steed (70 P & CR 487) feeling that the decision on the facts of that case, (which we must presume are similar) go against us. Whilst this case is not the predominant factor in his opinion, it is nevertheless obviously an important factor.

Counsel has indicated that R v Suffolk CC is currently under appeal, therefore it is my opinion, that should all other argument fail, reasonable grounds exist for a deferment of any adverse final decision until such time as the appeal on this point of our submission is finally heard.

I also take your point that the decision in the case of R v Suffolk CC. even if on appeal remains against us, does not preclude the argument that new common user rights have been created within the last twenty years and within the twenty seven years since the enactment of The Commons Registration (New Land) Regulations 1969. Indeed the creation of such new rights seems to be the underlying principle behind the "late" registration procedure, and I would not have thought that R v Suffolk CC would have in any way prevented us from submitting this point.

However, my main point of disagreement with counsel's opinion, is focused on his apparent conviction that rights of "*{lawful} sports and pastimes as of right for not less than twenty years*" can only be exercised by adults. Although in making this point, even if counsel should be right in his opinion; on the facts of our submission, I do not feel that we have failed to demonstrate adult exercise of the user rights in the relevant period. I feel that this point should be strongly made to the Council, with the request that it be tested in court if necessary.

Regards

John Davies