



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2023-000229



Darwall –v– Dartmoor National Park Association

CA-2023-000229

ORDER made by the Rt. Hon. Lady Justice Asplin

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal and an extension of time

Decision: Extension of time granted. Stay of execution granted to the extent that one is required. Permission to appeal granted in relation to grounds 1 – 4. Grounds 5 and 6 are parasitic upon grounds 1 - 4 and do not require separate permission.

Reasons

Grounds 1 and 2 have a real prospect of success and there is a compelling reason why an appeal in relation to them should be heard. They are facets of the same argument, namely that the judge misconstrued section 10(1) of the Dartmoor Commons Act 1985. It is arguable that the judge misconstrued the section because "open air recreation" should be construed to include camping and the phrase used in the section should be read and interpreted as a whole. As the issue relates to the permitted activities in a national park, there is a compelling reason why the matter should be determined by the appellate court.

Grounds 3 and 4 are further aspects of the argument that section 10(1) has been misconstrued. They too have a real prospect of success, although it is weaker than in relation to Grounds 1 and 2. They are facets of those grounds and it is appropriate that they should all be considered together.

Grounds 5 and 6 are concerned with the consequences which flow if Grounds 1 - 4 are successful. They are that the declaration should not have been granted and that the claim ought to have been dismissed. It is not necessary to grant permission in relation to these matters.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
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If yes, is there any reason not to refer to CAMS mediation under the pilot? N/A

If yes, please give reason: N/A

Non-pilot cases: Do you wish to make a recommendation for mediation? No

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment) 1 day
- b) any expedition - Yes

Signed: BY THE COURT
Date: 4 April 2023

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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