

We have been asked to advise on an issue regarding the street naming and numbering on a new development adjacent to South Street, Torrington.

## **BACKGROUND**

The developer of a new development adjacent to South Street, Torrington, has applied to Great Torrington Town Council (GTTC) to name a street as "Market Garden". GTTC has suggested the names "Queens View", "Royal View" and "Royal Square". Both parties cannot come to an agreement on the name and as per the Procedure for New Developments outlined in Torridge District Council's (TDC) Street Naming and Numbering Policy and Procedure, dated March 2022, enclosed at Annex A, the members of Torridge District Council's Policy Community and Resources Committee will give final approval of street names.

All the names that have been suggested by both the applicant and GTTC, are compliant with TDC policy.

Further consultation will be made with Councillors Hicks, Bright, Brown and Cottle-Hunkin, prior to the committee meeting.

## **SECTION 18 PUBLIC HEALTH ACT 1925 (PHA 1925)**

Section 18 of the Public Health Act 1925 (PHA 1925) provides the following:

- (1) The urban authority by order may alter the name of any street, or part of a street, or may assign a name to any street, or part of a street, to which a name has not been given.
- (2) Not less than one month before making an order under this section, the urban authority shall cause notice of the intended order to be posted at each end of the street, or part of the street, or in some conspicuous position in the street or part affected.
- (3) Every such notice shall contain a statement that the intended order may be made by the urban authority on or at any time after the day named in the notice, and that an appeal will lie under this Act to a petty sessional court against the intended order at the instance of any person aggrieved.

- (4) Any person aggrieved by the intended order of the local authority may, within twenty-one days after the posting of the notice, appeal to a petty sessional court.

There is an unrestricted right of appeal under section 8 of the PHA 1925 against a decision to rename a street. Section 8(2) provides that the court may make such order as they consider reasonable and may award costs to be recovered as a civil debt.

**BASILDON BOROUGH COUNCIL v JAMES [2015] EWHC 3365 (Admin)**

The following has been extracted from Practical Law and outline the matter and judgement.

“Following substantial redevelopment of an estate in Essex, Basildon Borough Council (council) decided to rename a number of streets on the estate. More than four hundred residents, representing about 50% of the population of the estate sent letters of objection. Three of the residents appealed against the council's decision to the magistrate's court.

The district judge hearing the appeal began with a consideration of the test that should be applied in the case, having noted that there was no previous reported authority on either section 8 or 18 of the PHA 1925. He considered that the approach adopted by the courts in licensing appeals was appropriate in this matter. Therefore, he approached the case by observing the following principles:

- Both the complainants and the defendants were entitled to give evidence; therefore, he made his decision on the full materials before him, which included evidence coming into existence after the council had made its decision.
- The burden of proof, which is the civil standard, was on the complainants.
- He had paid careful attention to the reasons given by the council for making the decision that it had, bearing in mind that Parliament had placed the responsibility for making such decisions on the local authority. The weight to be attached to those reasons was a matter for the district judge, bearing in mind the nature of the issues and the evidence before him.

The decision that he had to make was whether the council's decision was wrong, based on all the evidence before him.

To determine whether the council's decision was wrong, he considered that its decision to rename and renumber homes must have been made with a view to promoting reasonable and identifiable objectives. In seeking to promote these objectives, he stated that the council should have considered alternative and opposing objectives.

Therefore, he determined that he should approach the appeal by considering seven objectives: **logic, clarity, utility, attractiveness, public safety, history and the wishes and feelings of the estate's residents.**

Based on the evidence and submissions that were made, and considering the seven objectives, the district judge concluded that the perceived advantages of the council's scheme were limited. The council's observations about logic, clarity and utility were imperfect and the limited advantages in renaming the estate did not outweigh the negative response of those directly affected by the changes or historical considerations. The wishes and feelings of the residents were an important objective that should be promoted and considered when the council was considering changing a street name. In his judgment, the council's submissions as to the advantage of the scheme did not outweigh the residents' negative response to the estate's name change. The wishes and feelings of residents was "hugely important" and a fact of which the council was either unaware or did not take proper notice. Therefore, he concluded that the order of the council was wrong and should be overturned.

The council appealed his decision to the High Court.

The council submitted in its appeal to the High Court that the district judge had adopted the wrong legal test and was wrong to treat the position under the Licensing Act 2003 as similar with the position under the PHA 1925. The primary judgment on the question of renaming roads was one for the council; Parliament cannot have intended local authorities to be subject to challenge unless their decisions fell outside the range of reasonable responses.

The High Court agreed. Allowing the appeal, the High Court held that the nature of the section 18 power demanded a subjective judgment by the council. It empowers the council by order to alter the name of any street. Other than the giving of notice, the power:

- Imposes no preconditions on how it is exercised.
  
- Gives no direction as to factors that the council is required to have regard to in making such a decision.

There was no basis for the court to read into the exercise of the statutory power any requirements that had to be met, or matters to be considered, before the power was exercised, beyond those required by familiar principles of public law, namely, to have regard to all that was relevant and to disregard all that was not. **Parliament has given the council the right to choose a name.** There was no doubt that the **council makes the primary decision** and the **right of aggrieved individuals to appeal under section 8 of the PHA 1925 does not change the identity of the primary decision-maker.** The section does provide an unrestricted right of appeal for individuals aggrieved by the making of a renaming order, but a **district judge is obliged to pay great attention to the opinion of the council as the duly constituted and elected local authority.** Therefore, the district judge should not lightly reverse its conclusion. His function was to exercise the section 8 powers only if he were satisfied that the council's judgment could be shown to be wrong, not merely because he was not satisfied that the judgment was right. He could only substitute his opinion for that of the council if he were first satisfied that the council was wrong.

In the High Court's view, the district judge was right to say that the council's opinion on the issue was a matter to which careful attention was required. He was also right to say that the burden of proof was on the residents. However, he fell into error when he applied those principles to the facts before him; in the High Court's judgment, **the district judge appears to have paid little attention to the council's opinion and he appears to have regarded the burden of proof as falling on the council.** Further, he **failed clearly to identify where the council had gone wrong.** He proceeded on the basis that he was not satisfied that the council's judgment was right, whereas it was only if the council's decision were shown to be wrong that he could go on to substitute his opinion for the council's.

As he was not entitled to make the decision that he did, the High Court remitted the matter to the district judge for him to reconsider his decision in the light of the High Court's judgment.”

### **OTHER RELEVANT DECISIONS**

A relevant case in this matter is R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court [2011] EWCA Civ 31. This case outlined that when dealing with an appeal against a decision of a local licensing authority, the magistrates' court had to pay careful attention to the licensing committee's reasons and exercise its own judgment as to how much weight to accord to them; the fuller and clearer the reasons, the more force they were likely to carry. The appellant had the burden of persuading the court that the committee should have exercised its discretion differently.

## CONCLUSION

In conclusion, Torridge District Council have the right to choose a name. However, it should do so in a manner that is clear, concise and has provided a platform for suggestions and objections, to mitigate the possibility of legal challenge. Once a name has been selected, the reasoning for the committee selecting that name should be presented in a clear and concise manner.

The Council's Constitution also outlines the statutory function under the Head of Communities and Place, to carry out the duty as outlined in the PHA 1925.

It is also advised that you continue to follow the Procedure for New Developments outlined in Torridge District Council's Street Naming and Numbering Policy and Procedure, dated March 2022, which we have enclosed at Annex A.

You should also consider the following points:

- (1) TDC's Policy outlines that there should be more than one name suggested. Whilst GTTC has suggested three, only one has been suggested by the developer. Is it possible that there were more suggestions that were eliminated by their own internal policy? If so, those names should be provided to the committee, for clarity.
- (2) Has any consideration been made as to what connection with the area, the proposed names have? This is again outlined within TDC's Policy.
- (3) Have the parties outlined clear and concise reasons as to why they reject each other's proposals? This could potentially be cited as a lack of clarity.
- (4) The use of "Royal" or "Queen" in the naming of the streets could only be done with approval from the Lord Chamberlain's Office, as outlined in the Guidance on the use of Royal Arms, Names and Images attached at Annex B. This is information that the committee **must** be made aware of. This could also potentially rule out the names provided by GTTC, in which case, you could make a determination to go back to GTTC and outline the issue with the names suggested. Upon the possibility of GTTC selecting new names, there may be agreement between the developer and GTTC, negating the need for this matter to go to committee.