

The Nettlebed Reverter case

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This Guidance is provided for clients to set out our understanding of the reasons for the judgment given on April 23rd 2021 by the Supreme Court in this case, to explain the limited scope of the judgment and to offer guidance as to the effects of the judgment on past, current and future reverters under the Schools Sites Act 1841.

THE JUDGMENT

1. The court found that “as applied to the facts [*of this case*] the correct interpretation of [*sections 2 and 14 of the Schools Sites Act 1841*] permitted the sale of the [*vacated school site*] and the use of the proceeds without triggering reverter.”
2. This judgment was given in the context of the removal of the school by the Local Authority to a new nearby site and the sale by the Local Authority (as trustee) of the vacated site of the school after the site had been vacated by the school.
3. Until this case the understanding of the interaction between ss 2 and 14 of the SSA 1841 had been as set out in the Law Commission Report of 1981: that any sale must take place before the school left the site, since for the school to cease to occupy the site would be likely to be held to immediately trigger the reverter. The Court explicitly rejected the Law Commission’s interpretation and reached its decision in full knowledge that it thereby changed the understanding of the law in this matter as it had been believed to apply by practitioners in this field until this point.

SPECIAL FEATURES OF THIS CASE

4. Nettlebed is not a church school but one of the small number of voluntary schools not designated as having a religious character.
5. The Local Authority is itself the trustee of the school.
6. The school was being moved to a new site and the Local Authority had intended throughout that the vacated site would be sold to meet some of the costs of the new site and buildings and it was able to provide written evidence of that intention. The Court did not examine the possible distinction between the LA's role of acting in its own right and that of acting as trustee nor did it consider the balance between the liability of the public purse in providing a new site and buildings for this VC school and the liability of the trustees to meet any of the costs in the light of the provisions of schedule 3 to the School Standards and Framework Act 1998.

THE REASONS FOR THE JUDGMENT

7. The Court took the view that ss 2 and 14 of the SSA 1841 must be considered as "forming part of a coherent legislative scheme".
8. In order to achieve coherence, the Court took a "broad and practical approach" to the legislation and "a purposive approach to statutory interpretation". It asked itself what the intention of Parliament might reasonably be thought to have been and what the intention of donors of sites might also have been.
9. It is likely of course that a donor might not have wanted the reverter to be triggered merely by the removal of the school to a nearby more convenient site (as distinct from its closure). However, the original donor would have had a simple remedy: to give the site or its proceeds of sale back to the trustees for the purposes of their trust.

THE LIMITED SCOPE OF THE JUDGEMENT

10. The judgement relates only to situations where the school has moved to a new site by a decision of the trustees, or at least by a joint decision of the trustees and the Local Authority or (we presume) the Secretary of State, and where there is written trustee evidence prior to the pupils leaving the site of their intention for the site to be sold and the proceeds of sale used for the acquisition of the new site and buildings.
11. It does not address the interaction of the SSA 1841 with the provisions of the Schools Standards and Framework Act 1998 (or other relevant parts of the Education Acts) and provides no basis for changing the interpretation of the effects of the current respective duties and financial obligations of Local Authority, Governing Body

and trustees in respect of voluntary maintained schools. It does not affirm that the Local Authority could use the charitable proceeds of sale to relieve the public purse (as is perhaps the LA's intention in this case). It merely says that the late sale did not on the facts of this case trigger the reverter.

12. The judgment does not cover situations where the school has been closed, even if it is replaced by some other school. Nor does it address the issue of the reverter of part of the site – whether as the result of intentional acts of the trustees (or of other parties) or otherwise. Nor does it claim that the trustees may hold on to a vacant site (or some unused part of a site) for possible but as yet unplanned future purposes (which would have to be compatible with the requirements of s14) without triggering reverter. There must be a present, evidenced plan to sell and use the proceeds of sale for a removal to a new site which has been agreed or put in train or has actually taken place. It would not in our view be safe for trustees in general to take the view that they might, once the move had been made, simply avoid the actual sale and still not trigger reverter.

THE EFFECT OF THE JUDGMENT

13. As set out above, in our view the effect of the judgement is limited. It is of course conceivable that the effect of the judgment will be widened in due course following further cases.
14. Only the Courts can decide whether a subsequent refusal of the trustees to sell would trigger the reverter, but our provisional view is that reverter would be triggered, as the requirements of s14 would not in fact be being fulfilled. We also wonder what the status might be held to be of any proceeds of sale not passed to the Local Authority or not otherwise used towards the costs of the new premises. The trustees are not empowered by this judgement automatically to hold on to any surplus proceeds of sale, no more than they could have done if the sale of revertible land had been concluded prior to the old site being vacated and the sum raised had been in excess of the land value of the new site. With a late sale as now envisaged it seems to us that the position in respect of surplus funds of revertible land has not changed. The trustees might use them as part of the overall plan for the purchase of additional land (such as the playing fields) or (again as part of the overall plan) could perhaps retain them solely for the purposes of funding future 10% contributions in a VA school. If not used for s14 purposes, the s14 power is not available and the proceeds of sale revert. We do not consider that the details of the current judgment enable such

funds to be retained by the trustees (even for s14 purposes) if the site is not sold until after it is vacated unless that intention is clearly set out in the decisions of the trustees at the project planning stage.

15. We advise as follows in respect of past, current and future reverters or potential reverters:

- a. Erstwhile trustees may be considering legal action in respect of funds paid to reversioners previously, however for the reasons set out above the judgment is likely only to be applicable in limited circumstances. Also, it should be noted that all parties will have acted in accordance with the previous understanding of the law as it was until this judgement was made, and the difficulty of recovering funds from multiple reversioners is manifest. Specialist legal advice should be sought before any proceedings for recovery of sums paid are brought.
- b. In respect of reversions in process we advise that clients should review all its current cases and take advice thereon to determine whether reversion could now be halted if the only reason for the reversion is that the site was not sold in time. Clients would need to be sure that they could meet the conditions for applicability of this judgement as set out above – especially evidence of prior intent to rely on s14 on the part of the trustees. Clients should also note the stringent conditions for use of the proceeds of sale and if they believe that there might be surplus proceeds of sale they should take specific advice.
- c. In respect of future cases, while we accept that some delay in the sale may be advantageous in some circumstances and accept that a failure to complete the sale in advance will not itself now automatically trigger the reverter, we advise that the intention to sell and to comply with the requirements of schedule 3 (or other relevant legislation) should be minuted by the trustees (and copied to or recorded by the DBE and the LA) at project planning stage and that it would still be advisable to sell the land (subject to the necessary agreements) prior to its being vacated, if possible, to avoid disputes.
- d. We further recommend that if the project appears to be viable and the trustees are seriously contemplating a disposal, the trustees record that they have taken a decision under the power in s14 SSA to dispose of property (potentially with vacant possession) with the intention of applying the net proceeds in accordance with that power. This is a trustee decision, not a governing body, LA or DBE decision.

IN SUMMARY

This judgment, in the light of the reasons given for it, makes only a very precise and limited change to the previous understanding of the law. It relates only to a school which will continue on an alternative local site, and not where a school is closed. It enables a sale to be completed after the site is vacated but does not otherwise change the effects of reverter, the factors that trigger reverter or the purposes for which the proceeds of sale can be used. Clients should make no assumptions otherwise without specialist legal advice.

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