NOTE

1. The Inspector's Report proceeded on the basis that land had been laid out under section 93 (1) of the Housing Act 1957, namely a power

   To provide and maintain…in connection with any housing accommodation [provided under Part V of the Act] …any recreation grounds, or other..land which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.

2. From *HE Green and Sons v Minister of Health (No 2)*[1] it is clear that it is not a limitation on this power that such land may also serve a beneficial purpose for others apart from those from those for whom the housing accommodation is provided.[2]

3. This position is reflected in the provisions of Schedule 14 of the Housing Act 1985 and Schedule 4 of the Local Government and Housing Act 1989: where there are benefits or amenities arising from the provision of housing land which are shared by the community as a whole, the local authority may make a contribution from its general account to the housing revenue account to reflect those benefits.

4. In this case such a contribution of 37% was latterly being made to reflect the fact that 37% of the houses in the District had been sold off. In fact in the neighbourhood identified by the Inspector, some 12% of the houses had been sold off.[3]

5. The Inspector was unaware of the facts set out in paragraph 4. It is pretty clear that he adopted a broad brush approach, and considered that all those members of the public who used the land did so by virtue of an entitlement under section 93.

6. It is evident that it is arguable that a narrower view is appropriate: to say that the local authority's tenants did not use the land as of right because of their entitlement under section 93, but that the public had no such entitlement, and that therefore their use **was** *as of right.* This does not mean that the land **would be** registrable (was the use sufficient?) but on this basis it **could be** because there was qualifying use (ie use that was *as of right*).

7. It seems to me to be highly artificial to say that the use by the council house tenants **was not** *as of right*, but that the use members of the public other than council house tenants – who were, in practice, Council tax payers in the district, and whose use was envisaged by the section and subject to a contribution by the local authority to the hosing revenue account – **was** *as of right*.[4] It is my view that the use of both categories of users was not *as of right*.

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[1] [1948] 1 KB 34.

[2] See p41.

[3] These are, I think, the broad facts: I may not have captured all the complications of the position.

[4] As a matter of policy, it seems to me a bit unfair that the effect of selling off the Council houses is that the burden of maintaining a proportionate part of the housing act land was imposed on Council tax payers generally rather than those who had bought their council houses. There may not have been any mechanism to impose it on the council house buyers; and it would have been unfair to impose the burden on those who

8. In my Advice dated 6 February 2008, I explained that this was not a straightforward area of law. There is a respectable argument that land made available under section 93 (1)[5] and used by council house tenants is use which is *as of right.* It seems to me that the better argument for registration does not proceed on the basis of the use by non-council house owners (a minority, albeit not insignificant, of all users) being *as of right* but on the basis of all the use (by council house owners and non-council house owners) being *as of right.* For my part, however, I do not regard this argument as correct because I think that the use of both categories of user is by virtue of an entitlement under the Housing Act and not *as of* right.

PNP
3 September 2010

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continued to rent council houses. It seems to me that at the time that council house sales got under way, the Secretary of State should have given some guidance about this. If he did, it has not come to light.

[5] There is a further complication in that the use may have been under section 107 of the Housing Act 1957, by reference to which it is more arguable that use was *as of right.*