

## Briefing from the Open Spaces Society

### English Devolution and Community Empowerment Bill, Lords Grand Committee, amendment 222C

- 1 The effect of the amendment by Lords Banner and Grabiner is to enable the legitimisation of the unlawful disposal of open space to developers, and to release such land of any public rights.
- 2 Where a local authority disposes of land which is open space (regardless of the purpose for which the land is held, such as education or development), it must (under [s.123\(2A\)](#) and (2B) of the Local Government Act 1972) advertise its intention and allow for public objection. It must then consider the objections before deciding whether to proceed with the disposal. Yet under (existing) [s.128\(2\)](#) of the 1972 Act, the purchaser takes the land free of any restriction whether or not there is compliance with [s.123\(2A\)](#) and (2B).
- 3 In the *Day*<sup>1</sup> case, Shrewsbury Town Council disposed of open space which it held under either the Public Health Act 1875<sup>2</sup> or the [Open Spaces Act 1906](#). That meant that the land was held in statutory trust for public enjoyment. The council failed to comply with the requirement to advertise its intention to dispose of the land.<sup>3</sup> The supreme court decided that if the authority fails to follow the advertising procedure, for whatever reason, the land remains subject to the public trust and cannot be developed. This is notwithstanding [s.128\(2\)](#), which otherwise would free the purchaser from any responsibility for ensuring compliance with the disposal procedure.
- 4 The amendment would enable the ruling in *Day* to be overridden in particular cases, and would mean that, for land which is subject to a statutory trust for public enjoyment, once the land was sold or appropriated, the landowner could apply for an order of the Secretary of State for Housing, Communities and Local Government to release the land of its statutory trusts.

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<sup>1</sup> [R \(on the application of Day\) v Shropshire Council](#) [2023] AC 955.

<sup>2</sup> [S.164](#)

<sup>3</sup> [S.123\(2A\)](#) of the 1972 Act applied by [s.127\(3\)](#).

- 5 When an amendment related to the disposal of open spaces to the Planning and Infrastructure Bill was debated in the House of Lords on 3 November, the minister, Baroness Taylor, gave an assurance that there would be a review of the law affecting the disposal and appropriation of public open spaces. She announced ‘a wider review of existing protections ... to bring coherence to the legal framework, making protections more transparent and accessible, so that communities can protect their most valued open spaces’. This review has not yet been commenced; it is the appropriate way to deal with this matter, with public consultation and the consideration of evidence. This amendment is therefore premature although it could feed into the review.
  - 6 The minister should be asked to clarify the terms, process, and timetable of the review.
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