

In the Court of Appeal (Civil Division)

## International Gay and Lesbian Alliance Co. Ltd

-v-

## Bigotshire County Council

The county council of Bigotshire, an English county, owns and manages Little Bigot Heath, an area of open land which is often used for meetings and gatherings of various kinds. A large majority of the county councillors hold far-right 'moral majority' views, and one of their principal manifesto commitments was the withdrawal of all forms of council support for gay and lesbian groups. Judging from newspaper reports and public opinion surveys, it is clear that there is widespread approval of this policy throughout the county.

The council recently turned down an application by the International Gay and Lesbian Alliance Co. Ltd. to hold a week-long festival of cultural and social events on Little Bigot Heath, stating as its reason that 'given the clearly expressed feelings of disgust that many people in the county have towards homosexual activities it would not be for the benefit of the county or its people that a festival of this kind should be permitted on publicly-owned land'.

The International Gay and Lesbian Alliance Co. Ltd. sought judicial review of the council's decision. Shallow J. held, with regret, that the council's decision was lawful. He felt bound to follow, albeit to a different conclusion, the reasoning of Sir Thomas Bingham M.R. in *R. v. Somerset County Council ex parte Fewings* [1995] 3 All ER 20 (CA) that the land had been acquired under, and therefore had to be managed by reference to, section 120 (1) (b) of the Local Government Act 1972, and that since the council had clearly adverted to the question of whether the ban was for local benefit it could not be said that the ban was ultra vires. He also held that since the statute was unambiguous, following *R. v. Secretary of State for the Home Department ex part Brind* [1991] 1 AC 696 (HL), he could see no basis on which the International Gay and Lesbian Alliance Co. Ltd. could seek to argue that their legally recognised fundamental human rights had been violated.

The International Gay and Lesbian Alliance Co. Ltd. now appeal to the Court of Appeal on the following grounds:

1. That the judge misunderstood the impact of *ex parte Fewings*; that there was an unreasonable exercise of discretion by the council, and that the judge therefore erred in holding that the ban was not ultra vires; and
2. That the judge erred in holding that their legally recognised fundamental rights, as expressed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, had not been violated.

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*This problem is taken from the third round of the Observer-ESU-Lovell White Durrant Mooting Competition 1997-98, and was provided courtesy of the English Speaking Union.*