

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/03/2018

Before :

**MICHAEL KENT QC**  
**(sitting as a Deputy Judge of the High Court)**

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Between :

The Queen  
on the application of  
**NORWICH LIVESTOCK MARKET LIMITED**  
- and -  
**NORWICH CITY COUNCIL**

**Claimant**

**Defendant**

**GRAHAM DACRE**

**Interested Party**

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**John Litton QC** (instructed by **Greenwoods LLP**) for the **Claimant**  
**Jack Parker** (instructed by **nplaw**) for the **Defendant**  
The **Interested Party** did not appear and was not represented

Hearing date: 8 March 2018  
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**JUDGMENT APPROVED**

**Michael Kent QC :**

1. The Claimant has for many years carried on business as providers of a livestock market for the sale of cattle and sheep in a part of Norwich known as Harford. By this Claim for judicial review, brought with the permission of Upper Tribunal Judge Markus QC sitting as a deputy High Court judge, the Claimant seeks relief including declarations, a quashing order and a mandatory order, in relation to action taken on 30 March 2017 by the Defendant, Norwich City Council (hereafter “the Council”), when the Council entered into a deed of surrender of the head lease of premises in Hall Road, Harford where the Claimant’s business is conducted. I will refer to this as the Hall Road site. The decision under challenge is described in section 3 of the Claim Form as “*The discontinuance of a cattle market at Harford in Norwich*”. I have described the relief sought in general terms because it is agreed that, if I conclude that the Claimant’s challenge is in any respects made out, the nature and form of any relief that might be appropriate will need to be the subject of further submissions if not capable of agreement between the parties.
2. To provide more factual detail, the current owner of the freehold of the Hall Road site is the Interested Party Mr Graham Dacre who acquired it in 2010 from the Council. At the same time the Council took a leaseback of the premises for a term of 99 years under a head lease dated 14 July 2010. This land had been owned by the Council (or its municipal predecessors) since at least 1960 when the Norwich Cattle Market was moved from a town centre site where it had been established for a very long time. For present purposes it is sufficient to go back to 1860 when the Norwich Corporation Markets Act of that year referred to the existing Cattle Market as then being held on land belonging to the Mayor, Aldermen and Citizens of the City and County of the City of Norwich (“the Corporation”). The site in Harford devoted to the cattle market was originally 18 acres in extent but it has gradually been reduced in size and the Hall Road site currently extends to some 3 ½ acres of which 2 acres is devoted to car parking.
3. In 2012 the Council granted an underlease of the site to the Claimant for a term commencing on 1 October 2009 and expiring on 30 September 2014. Since the expiry of this lease the Claimant has been holding over but it has the protection of Part 2 of the Landlord and Tenant Act 1954. It appears that Mr Dacre would like to redevelop the Hall Road site for other purposes. He owns a smaller 2 acre site to the south which he is prepared to make available as an alternative site for the cattle market.
4. On 30 March 2017 the Council entered into the deed of surrender with Mr Dacre under which they surrendered the residue of their lease to him in return for a payment by him of £800,000 and the release of the Council from future performance of all tenant’s covenants under the head lease. There were also significant covenants given by Mr Dacre in relation to a possible alternative site for a cattle market to which I refer below. This surrender of the head lease does not in itself directly prejudice the right of the Claimant to remain in occupation because they have the protection of the Landlord and Tenant Act and the Claimant has continued to operate its business as livestock auctioneers at the Hall Road site without interruption. It will be seen therefore that the description of the decision under challenge as “*The discontinuance of a cattle market at Harford in Norwich*” needs explanation. The case advanced by Mr Litton QC on behalf of the Claimant is that the surrender of the head lease which involves the disposal of all property interest the Council had in the Hall Road site,

amounts to a *de facto* discontinuance of the Cattle Market at that site within the meaning of section 8 of the Norwich City Council Act 1984.

5. Before turning to this and predecessor enactments, I need to complete the account of the background facts to this Claim. The Council extracted from Mr Dacre under clause 9.1 of the deed of surrender obligations in relation to the provision of what is referred to as the “*alternative market site*”, the location of which is marked on an annexed plan and, as I have said, is just to the south of the existing market site. The specific obligations of Mr Dacre set out in schedule 3 to the deed required him to market the alternative site with a view to finding a suitable tenant to occupy this site at a full open market rent for the purpose of providing and operating a cattle market and to consider all offers made in this respect. However there is a proviso that Mr Dacre does not have to accept any offers which do not comply with certain criteria laid down in the schedule. The details of those criteria are not directly material to the issues I have to decide. The Claimant was not a party to the deed of surrender and indeed did not know of its contents until after these proceedings were started but has now expressed concern that the requirements which would need to be met by a prospective tenant of the alternative market site before Mr Dacre is obliged to accept an offer to occupy it from the Claimant or any other operator of a livestock market are so strict that the probability is that neither they nor any other operator would be able to satisfy them. The effect of the deed of surrender is thus said to be that, unless this Court intervenes with an appropriate remedy, in due course the whole site will be redeveloped including the Hall Road site and the Cattle Market in Harford will cease to exist.
6. This is disputed on the facts by the Council. However it is accepted by Mr Parker on their behalf that there would certainly be an issue as to whether the requirements to be met by a bidder wanting to occupy the alternative site are unduly onerous and he does not argue that this Claim should fail solely on the ground that, even if there has been error of law, the Court should for that reason and in its discretion decline to grant any remedy.
7. Mr Litton has however drawn attention to schedule 3 as indicative of an acknowledgement by the Council that, despite having disposed of their property interest in the Hall Road site, they have continuing obligations under the 1984 Act.
8. It is now time to turn to the details of the 1984 Act so far as relevant to this claim. The Act appears properly to be described as a public local Act: see Bennion on Statutory Construction 7<sup>th</sup> ed. at para 2.13. It is not a private Act because nowhere does it say on its face that it is a private Act: see section 3 of the Interpretation Act 1978. That is true also of the local Acts of 1860 and 1862 to which I will refer in a moment. The only significance of this is that the stricter rule of interpretation for private Acts, namely that ambiguities will be construed against the interests of the promoter, does not apply to these Acts.
9. Mr Parker submits that there has been no *de facto* discontinuance of the Cattle Market by the disposal of the Council’s property interest in the Hall Road site and if, for any reason, the alternative site in Mr Dacre’s ownership does prove unsuitable, the Council would have a statutory obligation to provide an alternative site for the market somewhere else before discontinuing the Cattle Market at the Hall Road site.

10. The reason it is said by Mr Litton that the surrender of the head lease amounts to a discontinuance of the Cattle Market at the existing site, notwithstanding the fact that the Claimant continues to operate a livestock market from that site, is that this is the effect of section 8 of the 1984 Act. This provides as follows:

*“(1) The Council may, after consultation with such associations as appear to them to represent the interests of those trading or providing entertainments at any market place, market house or place of in the ownership of the council by resolution prescribe the discontinuance of that market place, market house or place of fair.*

*(2) A resolution shall not be passed under subsection (1) above unless the Council, after such consultation as is referred to in that subsection, have previously provided another market place or market house or place of fair under section 4 (Power to maintain markets and fairs) of this Act in lieu of the one discontinued.*

*(3) Subsection (2) above shall not apply in respect of the Fish Market.”*

11. It is also necessary to look at section 4:

*“(1) subject to the provisions of this Part the Council may hold markets and fairs within the city.*

*(2) The Cattle Market, the Provision Market and the Fish Market as they exist at the commencement of this Act shall continue vested in the Council and subject to the provisions of this Part the Council shall continue to be empowered to provide, regulate, maintain and enlarge the Cattle Market, the Provision Market and the Fish Market or any alternative market required as a result of a resolution passed in accordance with section 8 (Closure of markets and fairs) of this Act, within the City.”*

12. Section 3 defines these three markets by reference to specific locations, “*The Cattle Market*” being defined as “*the market situate at Harford in the city*”.
13. Mr Litton says that reading these three sections of the 1984 Act together it is clear that what shall “*continue vested in the Council*” under section 4 (2) is not simply the right to hold the cattle market but also the actual property at Harford—i.e. the Hall Road site—which, on the date of the passing of the 1984 Act was in the freehold ownership of the Council. Thus the duty to consult and to provide an alternative market place before passing a resolution for the “*the discontinuance of*” any market place in the ownership of the Council must precede the disposal by the Council of all property interest in that market place.
14. Mr Parker for the Council accepts that section 3, in defining “*the Cattle Market*” as “*the market situate at Harford in the City*”, provides a direct reference to the existing

premises where the Cattle Market takes place as well as to the market itself. It is therefore a definition which refers to specified premises. However he says it does not follow that when section 4(2) requires “*the Cattle Market*” to “*continue vested in the Council*” that requirement means anything more than that the right to hold the market should continue so vested. He relies upon the proposition that the right to a market is a form of property (a franchise) different from an interest in land and the franchisee is entitled to hold the market in respect of which he holds a monopoly on someone else’s land. He relies on *A-G v Horner* (1884) 14 QBD 245 CA and (1885) 11 App. Cas. 66 HL. This is uncontroversial as a proposition of law: see Halsbury’s Laws 5<sup>th</sup> ed Vol 71 para 801.

15. Although it is the Claimant and not the Council conducting the Cattle Market at the Hall Road site Mr Parker’s analysis must be that the Claimant has been permitted by the Council to exercise this right on its behalf and for the benefit of the local community. He therefore says that there is no need to read section 4 (2) as requiring the land where the Cattle Market is held to continue vested in the Council, only the right to hold a market. The definition of the Cattle Market by reference to its location is simply for purposes of identification so that it is clear which cattle market is then being referred to in other sections of the Act.
16. On this first issue I have been invited to look at the two 19<sup>th</sup>-century Acts to which I have already made indirect reference both of which were repealed by the 1984 Act. The first is the Norwich Corporation Markets Act 1860 whose long title is as follows:

*“An Act for authorising the Corporation of Norwich to enlarge the existing Cattle Market and other Markets in Norwich, and to establish and regulate Markets and Fairs and make new Streets in Norwich; and for other purposes.”*

17. There is then a preamble which refers to the then Corporation of Norwich being “by various Royal Charters, Grants, Prescriptions or otherwise, entitled to hold all Markets and Fairs (except a Corn Market)...for the sale of Cattle, Vegetables, Provisions, Hay, Straw and other marketable Commodities”. The preamble goes on:

*“And whereas the existing Cattle Market, Provision and Vegetable Market, and Hay and Straw Market, are respectively held on Lands and vacant Spaces belonging to the Corporation, and vested in them as Part of their Corporate Estates but the Sites or Places for the holding of those Markets respectively are insufficient...”*

18. This Act then confers compulsory purchase powers on the Corporation in relation to land identified in plans deposited with the Clerk of the Peace, exercisable within five years, as well as to acquire land by agreement for the purpose of improving those markets (sections VIII, XI and XII) with the consequence that “... *all Lands, Easements, Powers, and Interests from Time to Time purchased, taken on Lease, or otherwise acquired by the Corporation under this Act, shall be vested in them as Part of their Corporate Estates and Borough Fund.*” (section XIII). There was also power to appropriate land already owned by the Corporation for the same purpose (Section XX) and to “*provide and establish within the City such other Market Houses and Market Places ... as the Corporation from time to time think fit*” who “*may appoint to*

*be Market Places and Places for fairs any Waste Lands or vacant spaces within the City from Time to Time belonging to the Corporation, and may, after any such Appointment, discontinue, when and so often as the Corporation think fit, the holding of any Market or Fair on any of their Waste Lands or vacant spaces so appointed as Market Places or Places for Fairs.”* (section XXII)

19. The compulsory purchase powers in the 1860 Act for the acquisition of land to improve the Cattle Market proved insufficient for that purpose as was recited in the preamble to the Norwich Corporation Markets Act 1862, section 5 of which conferred on the Corporation power to acquire additional land as shown in plans that had been deposited “*as they think requisite for the Purpose of enlarging or improving the Cattle Market*”. This power was to be exercised within four years (section 8).
20. Section 13 provided:

*“The Corporation from Time to Time may discontinue the User of any present or future Market House or Market Place, or Place for a Fair, belonging to them or under their management, but such Discontinuance shall not be made until the Corporation have provided or established and opened for public Use another Market House or Market Place, or Place for a Fair, in lieu of the Market House or Market Place, or Place for a Fair, the User whereof is so discontinued.”*
21. As can be seen section 8 of the 1984 Act follows this wording closely.
22. Against this statutory background Mr Litton submits that by 1860 at the latest the various markets which the Corporation were entitled to hold in Norwich—or at any rate those specifically mentioned—were conducted on land belonging to and vested in the Corporation and any enlargement or replacement of such market sites between then and 1984 has also been on land so vested.
23. The 1984 Act is therefore to be interpreted, he submits, in light of the fact that for 124 years at least but probably a very great deal longer the Council or its statutory predecessor not only had vested in them certain rights to markets or fairs but also owned the land on which such markets or fairs were held. As the 19<sup>th</sup>-century Acts remained in force right up to the passing of the 1984 Act and would have provided the statutory authority under which the Council had, over the intervening decades, acquired additional land for such markets or moved them to different sites which would also be owned by the Council or its predecessor, the requirement in section 4(2) of the 1984 Act that “*the Cattle Market, the Provision Market and the Fish Market as they exist at the commencement of this act shall continue vested in the Council*” must be a reference to the property interests in the land then belonging to the Council on which the Cattle Market and the other markets mentioned were then being held.
24. Mr Parker submits that the definition in section 3 is simply for purposes of identification, so that the requirement that the Cattle Market shall continue vested in the Council is capable of referring only to the right to hold a market rather than to the land on which it is held.

25. While the rival interpretations of section 4 (2) are both consistent with the wording used, in my view Mr Litton's proposed interpretation is to be preferred. It can be seen from these three Acts that, while there is reference to existing and no doubt ancient rights of market (in the sense of franchise), the focus is on the acquisition of land by the Council and the preamble to the 1860 Act refer to these various markets, including the Cattle Market, being held on "*Lands and vacant Spaces belonging to the Corporation, and vested in them as Part of their Corporate Estates*". Section 8 of the 1984 Act is itself concerned with physical premises namely the possible discontinuance of "*that market place, market house or place of fair as a place for either a market or a fair.*" Again I accept that this could refer simply to the discontinuance of the exercise of the right to hold a market but as it is also a requirement under section 8 (2) that before such discontinuance the Council provides an alternative site, again the focus is on the premises where such a market might be held. Indeed the tenor of these three Acts is that the Council, having the franchises to various markets, is required to use them for the benefit of the people of Norwich and to do so by providing and maintaining spaces where they may be held. The 1984 Act appears to make an exception to this for the Fish Market because under section 8 that may be discontinued (after consultation) without the Council having to provide an alternative site. This exception if anything supports Mr Litton's interpretation of section 4 (2).
26. Section 4 (2) of the 1984 Act must in my view be read as doing more than simply requiring the right to hold these markets (the franchise) to remain vested in the Council. Those rights are not derived from the 1860 or 1862 Acts and there was thus no need for a statutory provision in 1984 confirming that they remained the property of the Council. On the other hand the repeal of the older Acts arguably did require (if only for the avoidance of doubt) a confirmation that the lands acquired under them remained vested in the Council. In my view it is clear that what was to remain vested in the Council was the land on which the various markets referred to were, at the date of passing of the 1984 Act, held.
27. As to the alternative question raised by Mr Parker whether, even if that is right, section 4(2) requires such lands to be held continuously thereafter (thus denying the right the Council would otherwise have under section 123 of the Local Government Act 1972 to dispose of land in its ownership) in my view it is also clear that, construing the Act as a whole, section 4 must be interpreted as requiring such lands to remain vested in the Council unless and until the procedures provided for by section 8 for discontinuing a particular market place are initiated and completed, which of course includes not only the obligation to consult but also the requirement to provide an alternative market place (save for the Fish Market). Indeed section 4 (2) cross-refers to section 8. If the Council could immediately after the passing of the 1984 Act dispose of land in its ownership used for the Cattle Market the apparent intention of that Act to provide safeguards for its continuation would apparently be subverted.
28. Though I do accept Mr Parker's argument that there has not been any *de facto* discontinuance of the Cattle Market and that the Claim Form is aiming at the wrong target in identifying the decision of the Council under challenge as "*The discontinuance of a cattle market at Harford in Norwich*", there has been a purported disposal of all property interest in the Hall Road site contrary to section 4 (2) of the 1984 Act. It has not been argued by Mr Parker that the deed of surrender with its

detailed obligations imposed on Mr Dacre in relation to an Alternative Market Site amounts to the retention of a property interest which would be sufficient. As things stand it is perfectly possible that Mr Dacre may be able to obtain possession of the Hall Road site for redevelopment without the alternative site referred to in schedule 3 of the Deed becoming used as a new venue for the Cattle Market. It is notable that paragraph 5.2 of schedule 3 contemplates that “*no Suitable Tenant*” may be found in which case the Council undertakes to make “*application to the relevant Secretary of State to use his or her powers to rescind or disapply the [Council’s] obligation to provide an alternative market site*”. Mr Parker was unable explain what powers the Secretary of State might have in that respect beyond the possibility of introducing a Bill in Parliament to amend the 1984 Act. Whatever it means it is clear that there is the prospect of the Cattle Market ceasing to exist altogether in Norwich regardless now of the Council’s wishes and in circumstances where no consultation process as required by section 8 will have been undertaken and no alternative site provided. It seems to me that the Council have effectively anticipated the outcome of such a consultation which would also address the suitability of any alternative site to be provided by the Council before the discontinuance of the Cattle Market at the Hall Road site. The detailed provisions in schedule 3 of the deed of surrender were no doubt negotiated in good faith with the intention of safeguarding the future of the Cattle Market and may in practice do so if the concerns expressed by the Claimant as to the stringency of the conditions imposed and the inadequacy of the size of the alternative site are unfounded. But it is certainly not what, in my view, the 1984 Act, requires.

29. I have already said that the form of relief, if any, which should follow from acceptance of the Claimant’s case as to the correct interpretation of 1984 Act will need to be the subject of further submissions if there cannot be agreement. This will be influenced by the fact that there is no immediate threat to the existence of the Cattle Market at Hall Road and that Mr Dacre will potentially be significantly prejudiced by any declaration that the Council acted beyond its powers in executing the deed of surrender. I would however allow the Claim Form to be amended so that section 3 refers to the disposal of the Council’s property interest in the premises on which the Cattle Market at Norwich is held. There is no prejudice to the Council in allowing such an amendment because Mr Litton put forward as his primary ground, without objection, the contention that the Council had no power to dispose of this property in the absence of a resolution complying with section 8 and this issue has been fully argued before me.