



COMMONS REGISTRATION ACT 1965

Reference No 3/D/7

In the Matter of the Green  
(eastern part), Woughton-on-the-Green,  
Milton Keynes Borough,  
Buckinghamshire

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DECISION

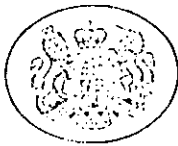
This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No VG. 11 in the Register of Town or Village Greens maintained by the Buckinghamshire County Council and is occasioned by Objection No 62 made by Mr Walter Frederick Clarkson and noted in the Register on 20 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Aylesbury on 6 October 1977. At the hearing (1) Woughton-on-the-Green Parish Council, on whose application the registration was made, were represented by Mr P D Hall their chairman, (2) Mr W F Clarkson (the Objector) was represented by Mr A J Smeath solicitor of E T Ray & Co, Solicitors of Bletchley, and (3) Milton Keynes Development Corporation were represented by Mr H M Collett, legal executive in their employ.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) 6.6 acres, and is approximately rectangular. Its east side (about 150 yards long) is a hedge (with a gate near the northeast corner) which is the east boundary of the north-south road (B488) through the Village; on the opposite side of the road is Woughton House and the → Church (St Mary's). Its south side (about 230 yards long) is a hedge (with a gate a short distance from the southwest corner) which is the north boundary of a side road which leads off the B488 road by the Old Swan Inn. The greater part of the west side (about 115 yards long) is an iron fence ("the Iron Fence"), now somewhat dilapidated, made of vertical iron strips with horizontal iron bars (about 1 inch in diameter) between them; the Iron Fence includes a gate near the middle.

The ground of Objection is:—"That the land was not a town or village green at the date of registration".

Evidence was given: (1) by Mr J D Rose (affidavit of 6 October 1977 and at the end of the hearing orally), (2) by Mrs B O'Reilly (signed statement), (3) by Mrs K Beckett (signed statement), (4) by Mr Hall (orally), (5) by Mr W F Clarkson (the Objector, affidavit of 5 October 1977), (6) by Mr Smeath (orally by reference to his affidavit of 6 October 1977), (7) by Mr R R Arnold (affidavit of 6 October 1977), and (8) by Mrs S F L Taylor (orally). In the course of their evidence Mr Hall produced (a) a photograph of the Unit Land taken from the Church Tower and (b) Woughton Village Plan dated 23 February 1972 giving a general introduction to the planning and design objectives of Milton Keynes Development Corporation for the Village; and Mr Smeath produced (c) a copy of a conveyance dated 6 December 1920 by which Mr W Clarkson (the Objector's grandfather) and W Clarkson & Sons conveyed to W Clarkson & Sons Ltd pieces of land and buildings containing 139 acres 1 rood and 39 perches including the Unit Land, in the



Schedule called "99 (no on 1909 conveyance plan below mentioned) Pasture (description) 6.2.22 (area)", and (d) a copy (not very legible) of part of a conveyance dated 25 January 1909 by which Mr C H E Prescott-Westcar conveyed to Mr W Clarkson (the Objector's grandfather) the said pieces of land and buildings with a copy of part of the plan annexed (in the conveyance said to be based on the OS map of 1899 for the parish of Woughton-on-the-Green). On the day after the hearing, I inspected the Unit Land and some of its surroundings.

The registration was consequent on an application dated 8 January 1967 for the registration not only of the Unit Land but also of land ("the West Land"), being an area approximately rectangular adjoining to and west of the Unit Land. The West Land is about 240 yards long (from east to west) and about 150 and 200 wide on its east and west sides respectively. The road by the south side of the Unit Land continues across the West Land and then across the hump-back bridge (Peartree Bridge) over the Grand Junction Canal. On the OS map (1/10,560) attached to the application and on the OS map (1/2500) on which the Register map is based, the Unit Land and the West Land are together called "The Green", being on the larger map marked as containing 6.848 and 8.175 acres respectively.

The West Land is comprised in a separate Register Unit and its registration under the 1965 Act as a town or village green being undisputed, has become final.

Mr W F Clarkson (the Objector) in his affidavit says he is 75 years of age, has known Green Farm (being the pieces of land and buildings comprised in the 1920 conveyance) all his life; he refers to the West Land as "the Green in front of Pear Tree Farm" and to the Unit Land as "the field comprising No 99..." and concludes his affidavit with these words: "...neither have the Parish Council or any person or persons ever suggested that the said field ever formed part of the area generally known as The Green at Woughton-on-the-Green. The fact that the said field has been fenced along its western boundary to the Green during my lifetime acquaintance with it supports this fact". Contra, Mr Rose who was born in 1893 and has lived in the Village all his life (apart from the 1914-18 war) refers to the West Land and the Unit Land as parts of the Green; clearly to him "the Green" means both the West Land and the Unit Land.

Nobody who gave evidence has known the Village as long as Mr Clarkson and Mr Rose; it is therefore unfortunate that I have to say which of them I prefer without having seen Mr Clarkson or having heard what he might have said if Mr Rose's evidence had been put to him.

Woughton-on-the-Green is or will be within the area enclosed by V8 and V9 and B7 and H8 of the Milton Keynes Development. There has been some new building in and around the Village in accordance, I suppose, with the 1972 Village Plan. Mr Hall contended (rightly I think) that I should disregard this new building and development contemplated. He said he had lived in the Village since 1954 and he estimated that in and before 1965 there were only about 20 houses in the Village and only about 100 persons on the electoral roll. There was no suggestion that the Village has during living memory ever been larger, and I conclude that the Village has at all material times always been as small as it was in 1965 and possibly smaller. It was said that the Village was a shrunken mediaeval village extending down to the River Ouzel, but I had no evidence of this and I need not I think go back so far.



In considering what land is and was known as "The Green", the circumstance that the Village is known as "Woughton-on-the-Green" makes it important that I should determine what is the Green which Woughton is on. Clearly the makers of the OS maps concluded that it was both the West Land and the Unit Land; a consideration of the layout of the Village as shown on these maps (Woughton House and the Church to the east and the Old Rectory to the west and the buildings on the north and the south) → supports this conclusion. When I stood on the Unit Land, I saw: (a) that the Unit Land has no fence between it and the land to the north, and (b) that the Unit Land was separated from the West Land by the Iron Fence. As to (a), a boundary is shown on the maps, and I could see a slight depression and some trees which may have been the remains of a hedge; no mention of this lack of boundary was made at the hearing, and I conclude that at all material times in the past there was a hedge there. As to (b), the Iron Fence is in the surroundings unusual; Mr Rose's description of it as "a type of fence common in Victorian times" is I think apt to convey the impression it gives visually; such hedge vegetation by it, as there is, appears to be a consequence of the Iron Fence having been there. Taking into account what I had seen when walking over the West Land and when standing on Peartree Bridge, I find myself unable to imagine how "the Green" on which Woughton is "on", could possibly be anything but the West Land and the Unit Land regarded as one piece of land; the Iron Fence seems to me not to mark the boundary of a distinct piece of land but rather to divide what must obviously be "the Green" into two parts. I do not accept that Woughton-on-the-Green means the Village which is on the West Land without being in any sense on the Unit Land as well.

So the above quoted words from the affidavit of Mr Clarkson are contradicted by any person who thoughtfully uses the name Woughton-on-the-Green. Further they are contradicted by the 1909 and 1920 conveyances to which his grandfather was a party, for both adopt the 1899 OS map on which the West Land and the Unit Land are together described as "The Green".

Mrs Taylor who is Mr Clarkson's daughter and who has some knowledge of Green Farm it having been occupied by her widowed great-aunt until 1945, and then by her grandparents (she died in 1952 or 1953 and he died in 1963), said she regarded "the field" mentioned by her father as part of the Farm and took the Village Green to be in front of Mr Shirley's farm (Peartree Farm is on the north side of the Unit Land); it was there that any "event on the Green" took place. But she would not have been so well acquainted with the Village as Mr Rose who from 1905 to 1907 worked for the tenant farmer of Green Farm, who then for 7 years while working for a baker in the adjoining Village delivered bread to customers in Woughton-on-the-Green, who has been Parish Clerk and/or Parish Councillor for over 50 years and who was tenant of the Swan Inn from 1940 to about 1972. I am not persuaded that in any discussion she had in which the words "the Green" were used, the question whether the "field" was part of it ever came in issue.

It was agreed at the hearing that Mr Arnold had not lived in the Village; although his affidavit was useful as setting out the considerations which led him to advise Mr Clarkson to make the Objection, I do not regard it as having any significance on any question relating to what was locally said or done in the Village.



Mr Rose during his oral evidence qualified his affidavit in some respects (as he knew little if anything about the Village being an ancient monument, as a one time shrunken mediaeval village; nevertheless I consider his evidence generally reliable as to what was done on and what was locally said about the Unit Land during his lifetime, and I prefer his evidence to any other given before me.

For the above reasons I reject the words above quoted from the affidavit of Mr Clarkson and find that the Unit Land is now and has at all material times been part of the single piece of land (divided into two parts by the Iron Fence) locally known as The Green. This conclusion receives some confirmation from Lipscomb History of Buckingham (1847) to which I was referred in another case and whose author treats The Green as being both the West Land and the Unit Land, see volume 4 page 426; further the name Woughton-on-the-Green is used in the Inclosure Act of 1767 (8 Geo 3 c. xxv).

But to be properly registrable under the 1965 Act, it is not enough that the Unit Land is part of what is known as The Green; it must also be within the definition of a town or village green in section 22 of the Act, of which the only now relevant words are: "Land...on which the inhabitants of any locality have a customary right to indulge in lawful sports or pastimes..."

Mr Rose described how The Green had been used for cricket regularly until 1924 and only occasionally afterwards, the last cricket game (Village cricket) being there (on the West Land) in 1956. Mr Hall relying on *New Windsor v Mellor* 1975 1 Ch 381, contended that because a customary right can never be lost by disuse or abandonment, the 20 years use up to 1924 established the right. I think *New Windsor v Mellor* must be read in the light of the judgment in *Hammerton v Honey* (1876) 24 WR 603; this shows that the existence of a customary right must be determined having regard to its user up to the date when the right is questioned in proceedings (in this case the Objection is dated 1970), and that if there has been any interruption or disturbance of the usage acquiesced in by persons who are alleged to be entitled to exercise the right and the disturbance has not been for a short time but for many years there is a strong presumption that there is no such right.

As to the non-use since 1924, this was explained by Mr Rose as a consequence of the alternative arrangements made by Captain Hudson, the owner of Woughton House and a great cricketer who provided a better cricket pitch in the grounds of Woughton House.

It was conceded that the West Land was subject to the customary right claimed, and indeed having regard to section 10 of the 1965 Act, this concession was unavoidable. Having concluded that the Unit Land and the West Land are locally one piece of land known as The Green, the existence of a customary right over part is I think strong evidence that it exists over the whole. It is I think irrelevant that a 15 acre recreation ground might at all times before 1970 have been an unreasonably large provision for so small a village; the Village was built and is "on" the Green; its reasonableness for this Village is established by the layout of the Village, which I infer has existed from time immemorial. The only substantial question is I think whether the hedges on the east and south sides of the Unit Land together with the Iron Fence are "an interruption or disturbance in the usage" within the meaning of *Hammerton v Honey* supra.



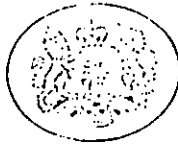
As to the hedges:- They have gates as above mentioned, which are now wired up. However Mrs Taylor said that her grandfather (? her father) insisted that the gates should be kept shut from which I infer that during the period of which she was speaking they could easily be opened. Mr Clarkson in his affidavit said: "Although there is a public footpath shown on the Ordnance Survey map (1935 edition) as crossing the said field, the general public have never been given access to the said field as opposed to the said footpath by myself, my father or my late grandfather at any time of my life"; the map shows a number (not one) of ~~the~~ footpaths; if by "given access" Mr Clarkson means "having access", I do not accept his statement because the footpaths being unfenced any person on any of them would have access to the whole of the Unit Land; it was not suggested that the customary right existed because Mr Clarkson or his father or his grandfather had ever "given access"; because I do not understand it I am unable to give any effect to this part of his affidavit. In the absence of any evidence as to when these gates were wired up, I conclude that they were originally put in their present position with the intention that they would be and that at all material times they could, be easily opened. My finding is that neither of these hedges was an interruption or disturbance in any relevant sense.

As to the Iron Fence:- Upon similar considerations I conclude that the gate in it could at all material times be easily opened. As I have already stated the Iron Fence is in the surroundings unusual. Mr Rose said that it in fact did not interrupt the cricket activities because there were two cricket pitches, one on the West Land and one on the Unit Land (the latter being much less used). I cannot infer that the Iron Fence marks a fixed division of The Green which has existed from time immemorial; relative to such a time the Iron Fence is modern. The Unit Land and the West Land being in separate ownership, the most obvious purpose of the Iron Fence was to facilitate grazing, and thus make the recreational use of The Green possible. The Iron Fence is unlike a thorn or other hedge which by its density seems to assert the private nature of the land protected by it; its openness suggests that it was put there by someone who intended that it should not be considered as a division of The Green into two parts for all purposes; the younger inhabitants could easily climb over it anywhere; the older could easily go through the gate; what went on one side was visible to those on the other side. Having regard to the above considerations, my finding is that the Iron Fence was never at any material time an interruption or disturbance in any now relevant sense.

It follows that I have no reason for not giving full effect to the evidence of Mr Rose as to the use of The Green for cricket, particularly during his early years before 1924, and as to The Green being one piece of land; and for not concluding (as I do) that the customary right which indisputably exists over part of The Green (the West Land) extends to each and every part of the same piece of land. Accordingly my decision is that the Objection fails.

For the above reasons I confirm the registration without any modification.

It was agreed that I make no order as to costs.



I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 11<sup>th</sup> day of November — 1977

a. a. Baden Fuller

Commons Commissioner