



COMMONS REGISTRATION ACT 1965

Reference No. 204/D/32

In the Matter of The Green, Barrington
South Cambridgeshire D.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG.26 in the Register of Town or Village Greens maintained by the Cambridgeshire and Isle of Ely County Council and is occasioned by Objection No. 3 made by C H Chapman and noted in the Register on 25 September 1969.

I held a hearing for the purpose of inquiring into the dispute at Cambridgeshire on 27 June 1978. The hearing was attended by Mr A Auld Q.C., instructed by Messrs. Wild Hewitson and Shaw on behalf of Mr Chapman and by Mr K Sawyers assistant secretary to the Cambridgeshire County Council.

Mr Chapman's objection is confined to a part of unit land which he contends never has been part of Barrington Green and is not subject to any customary right for the inhabitants of Barrington to indulge in sports and pastimes. This disputed land is a strip leading from the High Street to the Moor ^{by} ~~river~~ Bulbeck Mill and the uncontradicted evidence was that until a few years ago it was fenced on both sides and that these fences gradually fell into disrepair.

In the Ownership Section of the Register the Barrington Parish Council claims ownership of the whole of the unit land as Trustees of the Charity known as The Green in the Parish of Barrington. By an order dated 8 June 1917 The Board of Charity Commissioners for England and Wales approved and established a scheme affecting the piece of land specified in the First Schedule thereto namely 22 acres 1 rood and 6 perches vested in the Parish Council by an earlier scheme dated 11 October 1912.

The Unit land is I am told in excess of 30 acres and I am satisfied that the parish council were under the mistaken impression that the whole of the unit land was owned by the council and subject to the Charitable Trusts provided for by the Scheme. I am satisfied that this is not the case and that only the 22 acres is subject to the Scheme and that the disputed piece of land detached from the main green is not subject to the Scheme and was not vested in the Parish Council in 1912. It follows therefore that the Scheme has no relevance to the question which I have to decide namely whether the disputed land is or is not a village green as defined by the Act of 1965.

Mr Sawyer submitted that even if the Parish Council were under the mistaken impression that the whole of the unit land was one village green subject to the Scheme it was open to him to prove that the disputed land is a village green and this submission I accept.



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Mr Sawyers conceded that the disputed land was not the subject of an allotment for recreational purposes and that the inhabitants of Barrington had not indulged in lawful sports and pastimes on the land during the relevant twenty year period and he therefore took the only course open to him seeking to prove a customary right for the inhabitants to indulge in lawful sports and pastimes.

Mr W Warren described the disputed land and said that during his school days it was an area for children to play. He said people did fish and there would be trouble if a ball went into Mr Lofts garden. The land had become overgrown but during the last war one could get down quite easily.

Mr J E Neaves also gave evidence that he had lived at Barrington almost all his life he is aged 65 and he worked for Lofts then the owner of the adjoining land. Boys and grown men went on the disputed land and did what they liked and he fished from the disputed land.

I considered without objection five statements all of which stated that children used to play on the disputed land and some of these children fished. Mr R J Coote in his statement mentioned a Mr Hartley fishing because he required to fish for research purposes.

In my view this evidence is inadequate to be the foundation of any customary right. It is the nature of children to play on any available open space but I cannot accept that by so doing they can establish a custom or "local law" that all the inhabitants have a right to indulge in sports or pastimes.

The activities of children are usually tolerated so long as they do no damage and in my view in the instant case the childrens activities were attributable to tolerance and ^{not} to a customary right, there is the further point that mere play of children cannot in my view be classified as indulging in sports or pastimes.

I accept that fishing is a pastime or sport but the evidence as to fishing was confined to two adults and there was no evidence that Mr Hartley was an inhabitant.

For these reasons I am satisfied that the disputed land is not a village green, and there being no objection to the remainder of the unit land I confirm the Entry No. 1 in the Land Section modified so as to exclude the land identified on the plan annexed to objection No.3.

In the absence of any objection to the Entry in the ownership section that Entry is final as applicable to the modified Entry in the Land Section.

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

20th

day of

July

1978

Commons Commissioner