



COMMONS REGISTRATION ACT 1965

Reference No.17/D/2

In the Matter of the Green,  
Sawtry, Huntingdon R.D.,  
Huntingdon

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No.VG.20 in the Register of Town or Village Greens maintained by the Huntingdon and Peterborough County Council and is occasioned by Objection No.2 made by Mrs. C. E. Hammond and noted in the Register on 27 October 1969.

I held a hearing for the purpose of inquiring into the dispute at Huntingdon on 10 May 1973. The hearing was attended by Mrs. Coleen Elsie Rogers (formerly Mrs. C. E. Hammond) who was represented by Mr. E. C. Sutton solicitor of Francis & Co., Solicitors of Cambridge and by Sawtry Parish Council who were represented by Mr. E. S. Mitchley their chairman.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) about 0.042 of an acre and is except near an adjoining building ("the Building") all grass land. The Building has a frontage of about 80 feet on the High Street; it consists of a shop, dwelling house at the back and above, and three unoccupied cottages, all known as Nos.2, 4, 6 and 8. The Unit Land and the Building together form a triangular area (the Building being at the south west corner) centrally situated in this somewhat sprawling Village and bounded by three metalled roads, that on the west side being the High Street.

The registration dated 24 April 1968 was made pursuant to an application made by the Parish Council. The grounds of objection as set out in the Objection Form were:- "That the part of the land coloured red on the attached plan did not form part of the Green, Sawtry at the date of registration". The land so coloured ("Disputed Area") consists of a strip about 16 feet wide adjoining and running the whole length of the back of the Building and a strip about 4 feet wide adjoining and running the whole length of the north end of the Building.

On behalf of the Parish Council evidence was given by Mr. Mitchley (he has lived in the Village on and off for 20 years, was clerk of the Parish Council for 18 months and has been chairman since May 1972), by Mr. A. Jackson (he is 82 years of age and has lived in the Village for the last 66 years), by Mr. C. H. Marshall, (he is 50 years of age, has lived in the Village since about 1931 except for a period of 5 1/4 years and has been a member of the Parish Council for 7 years), by Mr. B. L. Hughes (he is 52 years of age and has lived all his life in the Village) and by Mr. W. G. Hall (he lived in the Village from 1952 to 1969). Mrs. Rogers gave evidence (she first came to the Village in 1957), as also on her behalf did her son Mr. P. C. Hammond (he came to the Village in 1957 when he was 4 years old), and Mrs. F. R. Warren (she is aged 75 years and has lived in the Village all her life). After the hearing I inspected the land, it having been agreed that I might do so unattended.

Before I heard any evidence Mr. Sutton when outlining his case went outside the above quoted grounds of objection saying in effect:- (i) the Sawtry Inclosure Award shows that the Unit Land could not be subject to any customary right for the



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inhabitants of Sawtry to indulge in sports and pastimes such as is specified in the second part of the definition in section 22 of the 1965 Act, and (ii) the evidence would show not only that the Disputed Area, but also the whole of the Unit Land has never been subject to any such indulgence as of right within the third part of the definition. I allowed evidence on both (i) and (ii), leaving over any question under regulation 26 of the Commons Commissioners Regulations 1971 until the conclusion of the evidence or until Mr. Mitchley complained that the Parish Council were being taken by surprise. I now record that under the regulation I would allow the grounds of objection to be amended by including (i) above, because this ground depends on the terms of Award and no evidence was or could be given about it, and by including (ii) above, because the evidence given by and on behalf of Mrs. Rogers in support of this ground did not go beyond the scope of the evidence given on behalf of the Parish Council.

The history of the Unit Land (in this paragraph I disregard any difference there maybe in respect of the Disputed Area) as far back as living memory extends is as follows:- It is known as "the Green". It has always been grass land but not always so well kept and free from other vegetation as now. Until the year 1968 there was a wood white painted railing (each post being between 2 and 3 feet high and each rail having a square cross section) running from the south east corner of the Building round the south east, north east and west side of the Unit Land up to the north-west corner of the Building. The railing was as appeared in five postcard photographs(produced):- (i) about 1912 showing at the north corner a "Penny on the Mat" tower with a roundabout, swings, caravans and other temporary erections of a fun fair crowded in behind; (ii) 1919 showing "Peace Day Celebration (iii) 1935 (?) showing "the Green" (the north end viewed from the west); (iv) 1940 (?) showing "Manor House Corner" (the south east corner); (v) 1949 (?) showing "High Street" including the shop named above the entrance "K. M. & B. CLAYSON" and a very small piece (just the edge) of the Unit Land near the north end of the Building; in all five photographs some part of the railing is plainly visible. In 1968 nearly all the railing, being then rotten, was taken away by the Parish Council but vestiges which I examined remain. Until 1965 a fun fair was held annually in June on the Unit Land.

The history of the Building as far back as living memory extends is as follows:- At the south west end there was a shop owned and managed as a grocery and general provision merchant by the Claysons. After "old" Mr. Clayson died his widow Mrs. Clayson (she died at a guess about 1910) and his two daughters Miss B. Clayson (she died 17 September 1943) and Mrs. K. M. Clayson (she predeceased her sister) continued the business and resided in the Building. After the death of Miss B. Clayson, the property passed under her will and an assent dated 13 May 1943 to her brother Mr. H. Clayson who continued the business. By a conveyance dated 7 February 1957 he conveyed to Mr. E. Hammond "ALL THAT messuage or tenement with the grocers and drapers shop stables and outbuildings thereto belonging .. in a place called The Green as now in the occupation of the Vendor together with the three cottages thereto adjoining .. All which said premises are delineated for the purpose of identification only on the plan drawn hereon and edged pink". The plan shows so edged the Building and the Disputed Area; the north and east boundaries of the Disputed Area being straight lines, the longer marked as "88 ft." Mr. E. Hammond died on 10 June 1967 and his widow Mrs. Rogers (then Mrs. Hammond)



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became entitled to the whole of his estate; by an assent dated 20 June 1968 she vested the Building in herself.

With Mrs. Rogers' documents of title are two statutory declarations made on 2 February 1957 by Mr. H. Clayson ("the Vendor", then aged 75 years) and by Mr. P. J. Slater (then aged 78 years; he had for upwards of 65 years been well acquainted with the property). Both declarations were to the same effect; Miss B. Clayson from 26 May 1924 to her death and Mr. H. Clayson thereafter had been "in full free and undisturbed possession and enjoyment or receipt of the rents and profits (of the said property) as owners without giving any acknowledgement of the title of any other person thereto"; the said property was defined by reference to a plan, being similar to that drawn on the conveyance.

Within living memory there has never been any fence along the north and east boundaries of the Disputed Area.

This dispute is a substantial matter because Mr. E. Hammond was and Mrs. Rogers is minded to improve the property he acquired under the 1957 conveyance. So improvements have already been done that particularly mentioned being an extension of the Building at the back of the shop; this extension is on the site (a little more perhaps) of a porch illustrated in the 1919 postcard. The improvement now under consideration is much more substantial: demolition of the three cottages, extension of the shop, and the building of three new shops with flats over. An architect's drawing dated 1966 showing this was produced. Mr. E. Hammond in 1960 had been advised by a solicitor (in a letter dated 30 March 1960) that there was no reason why he should not erect a hedge or fence along his rear boundary (the east side of the Disputed Area) without permission from anyone; the advice was based on the two 1957 declarations. But an application for planning permission was on 5 June 1967 refused on two grounds, one of which was:- "Part of the land to which the application relates forms part of the Village Green and the proposal would therefore involve an encroachment on to land outside the applicant's control" Mrs. Rogers (see her letter dated 6.7.72 to the Clerk of the Commons Commissioners) says:- "The cottages are now in a very bad state and I fear that at any time the Council will put a demolition order on them ..."

I am concerned, not with the expediency of this proposed improvement but, with the applicability of the definition in section 22 of the 1965 Act.

As to whether the Unit Land (considered as a whole whether or not the Disputed Area be included) is subject to a customary right such as is mentioned in the definition:-

In favour of such a right existing:- The land is known as "the Green"; on the plans drawn on the 1957 conveyance and annexed to the two declarations, it is called "THE VILLAGE GREEN". The annual fun fair above mentioned was a substantial business; there were swing boats, and the rest, as illustrated in the 1912 postcard, this and other associated festivities were sometimes called "Sawtry Feast Week". The Unit Land was used for Peace Day Celebrations as shown in the 1919 postcard. The Unit Land has been open to and used by children generally for recreation. The wood railing obstructed the vehicular access (except when one or more of the hinged padlocked bars was left open as they were during Feast Week). Geese strayed onto the Green.



Against there being any customary right:- The Award dated 23 May 1809 was produced to me; the plan attached showed the triangular area now formed by the Unit Land and the Building and the surrounding roads as all included without any difference among the roads in the centre of the Village; on the plan in the middle of the triangular area is written "Streets 12.0.20". Mrs. Warren said the fairs were bigger years ago than they were in recent years; caravans used the south east and south end and the stalls roundabout and so forth were more on the north.

The Award was made under the Saltree otherwise Sawtry All Saints and Saltree otherwise Sawtry Saint Andrews Inclosure Act 44 Geo. 3 cap. xiii which authorises the division of 2,700 acres. This Act was explained and amended by a further Act 47. Geo.3 cap 42 xlii. Neither Act contains any reference to the Unit Land or to any Green. Although new roads were allotted by the Award no part of the Unit Land was comprised in any such allotment. I reject the argument that the Award plan shows that the Unit Land was in 1809 highway and that it could not therefore at that time been subject to any customary right of recreation. The word "streets" was used to describe 12 acres of land including all the roads in the Village; I regard such description not as being intended to indicate the legal status of the land described, but as being for the purpose of identifying that which was delineated. In 1809, there was no legal reason (any more than there is now, see the section 22 definition) why land shall not at the same time be subject to a right for the public to use it as a highway and to a customary right for the inhabitants to use it for recreation. The plan by showing the said triangular area and the now surrounding roads as being in 1809 one inclosure, if it does not favour, is at least consistent with the Unit Land then being a village green.

The evidence outlined above in favour of the Unit Land being subject to a customary right is I think cogent and I find that such a right does exist. The circumstances that in recent years there has been no fun fair and the inhabitants (including the children) of the Village (having better places to go to) use the Unit Land little, does not negative the right, nor provide any argument against my finding such a right has been proved; the object of the 1965 Act is not to preserve customs which have become obsolete but to record customary rights so that land subject to them can be put to some use advantageous to present and future inhabitants of the Village.

As to whether the Disputed Area is part of the land which is (as I have found) subject to a customary right:-

In favour of the Disputed Area being part:- The land when enclosed by the wood railing and the north and west walls of the Building must have appeared to be all one piece of land; there is nothing on the land to indicate a boundary between the Disputed Area and the rest of the Unit Land along or anywhere near two straight lines delineated on the 1957 plans. In the earlier years the activities of the fun fair went right up to the walls of the Building as was made clear by the evidence of Mr. Jackson (whose evidence I accept) and as was to be expected from the crowded nature of the fair as illustrated in the 1912 postcard. The vestiges of the wood rail now visible showed that there were bars situate near the south east and north west corner of the Building which could be secured by padlock or left open. A minute of a meeting of the Parish Council held 17 February 1899 recorded that permission had been granted to Mrs. Clayson to use the gate of the corner of her house on payment of a nominal sum of 2/6 per year; a minute of a meeting held on 24 February 1899 recorded with reference to a communication from Mrs. Clayson



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respecting the Village Green a reply be sent to her informing her that the Council will carry out their proposition and cannot undertake to keep the road in repair as they consider it a great privilege to allow her to make a road; a minute date of a meeting held on 8 April 1901 recorded with reference to the improper use of the Green by Mrs. Clayson and her tenant, that she be requested to refrain from using the Green as a drying ground for clothes and also not to deposit thereon any boxes tubs or other articles. The accounts of the Parish Council show receipts as follows:- (i) in 1941, L. E. Wilmott and others: Green fees: 4/7; (ii) in 1944, Gate rent and clothes post: 2/7; and (iii) in 1946: Wilmott & Brown: Green rents 2/7. In the 1944 assent L. E. Wilmott and M. Brown are said to be in occupation of the shop and one of the cottages.- There were in other years receipts from the Green, but being in the Accounts collectively described it was not suggested that they necessarily came from an occupier of the Building.

Against the Disputed Area being part:- Much of the Disputed Area is distinct from the rest of the Unit Land, being a flower bed, a place for a water butt, or a concrete or hardcore path or track or a gravel hard standing for a cart or motor car.

Although there are indications both ways, on balance, I conclude that the Disputed Area is and always has been part of the Green.

From the present state of the hardcore concrete and gravel on the Disputed Area and the lay out of the doors into the Building at the back and on the north side and of the Jitty leading from the Disputed Area to some of such doors, I have no difficulty in concluding that rights of way over part of the Disputed Area are appurtenant to the Building. That there are some such rights was not disputed and I am not concerned to define their exact extent. But the irregular north and east boundaries of the hard core, concrete and gravel, although always within, nowhere (except for short lengths and there only approximately) correspond with the straight line north and east boundaries of the Disputed Area. Such straight line boundaries have I find never had any reality. They have no reality now because the grass is the same on either side. They had no reality in relation to the annual Sawtry Feas when in the less recent years, the fairs were bigger and everyone went right up to the walls of the Building as is illustrated in the 1912 and 1919 postcards and as was described by Mr. Jackson, Mr. Marshall and Mr. Hughes in their evidence. The straight line boundaries had no reality in 1809; the Award map shows a building approximately the same size and shape as that in this Decision called the Building, but it shows no line enclosing it from the rest of the Unit Land. The line of the white wood railing is inconsistent with the straight line boundaries of the Disputed Area marking the edge of the Green, as also are the above mentioned entries in the Parish Council minute books.

The two 1957 declarations are in a form usually adopted on a sale when the documents of title contain no description of the land sold; their primary purpose must have been to show title to the Building; and as regards this they are in order. If either of the declarants or the draftsman ever thought about the matters discussed at the hearing before me, it is unlikely that the declarations would have taken the form they did. The above mentioned receipts shown in the accounts of the Parish Council show that rent was paid in respect of the Disputed Area, and that on this point the declarations were (although the declarants may not have known) incorrect. Without any intention of reflecting on the integrity of the declarants, I record that in my view, each would if he had given evidence before me, have qualified in



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some important respect the declaration he made and accordingly in relation to the matters in dispute before me, his declaration is I think of no value.

I accept (as the Parish Council do) that Mr. E. Hammond and Mrs. Rogers saw the plan or a copy of the plan on the 1957 conveyance and believing that they were the owners of the Disputed Area in good faith proposed the improvements above described. But although they and their son may have cut and tidied the grass in the Disputed Area, they did not I think do anything from which I can infer (as against the contrary indications above mentioned) that the straight line north and east boundaries of the Disputed Area ever had any reality before 1957.

I reject the suggestion that the showmen and others coming to the Sawtry feast who went up to the east and north walls of the Building must, because the Feast was good for the Clayson's business, he presumed to have gone so far with the permission of the Claysons and not as of right. Although the Feast was good for the business of the Claysons, if they had ever thought that access to the Disputed Area required their permission, this would I think have appeared in the Parish Council Minute Books or been known to some of those who gave evidence before me.

In my opinion the circumstances that the Parish Council did not after 1946 get the 2/6 mentioned in the 1899 minute, does not advantage Mrs. Rogers in this dispute. Neither she nor Mr. E. Hammond nor any of the Claysons were I think ever in possession of the Disputed Area and the Limitation Act 1939 has no application.

My decision would be the same even if I treated the objection as relating only to the part of the Disputed Area covered by concrete, hard core or gravel. The differences between such part and the rest do no more than suggest that over this part there may be a right of way or some other right with which I am not concerned. I express no opinion as to whether the site of the flower bed and the water butt now or at one time north of the Building is included in the Unit Land: such site is very small and cannot matter much. But I do record that as I construe the Register map the extension (above described as an improvement which has already been done) is not included in the Unit Land.

For the above reasons I confirm the registration without modification.

It was agreed that my order for costs should follow the event and it was suggested that Scale 3 was appropriate. Accordingly, I shall order Mrs. Rogers to pay the costs incurred by the Parish Council in respect of these proceedings to be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended.

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

18<sup>th</sup>

day of

July

1973.

*a. a. Baden Fuller*

Commons Commissioner