



## COMMONS REGISTRATION ACT 1965

Reference No.17/D/1

In the Matter of the Park, Kimbolton,  
St. Neots R.D., Huntingdon

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.CL.5 in the Register of Common Land maintained by the Huntingdon and Peterborough County Council and is occasioned by Objection No.3 made by his Grace the Duke of Manchester and noted in the Register on 16 February 1970.

I held a hearing for the purpose of inquiring into the dispute at Huntingdon on 11 May 1973. The hearing was attended (1) by Miss Florence Elizabeth Lilley in person, (2) by the Duke of Manchester who was represented by Mr. P. J. StB. Green solicitors of Lickfolds Wiley and Powles Solicitors of Grosvenor Square, London W.1., (3) by Mr. Green in person, and (4) by Mr. Leslie Heddon Salter who was also represented by Mr. Green.

The registration was made pursuant to an application made by Miss Lilley and dated 14 May 1967. The grounds of objection stated in the form dated 1 February 1970 are:- "The land was not common land at the date of the registration or at any time."

Miss Lilley (she is 93 years of age) gave evidence on her own behalf. Mr. Green said that he and Mr. Salter are the trustees of the settled land ("the Settled Estates") in Kimbolton now vested in the Duke and that they wished to support the Duke's objection. Evidence on behalf of the Duke was given by Lieutenant - Colonel W. E. Robinson who had on behalf of the Duke managed the Settled Estates since June 1967, by Mr. C. Banks who is chairman of Kimbolton cricket club and has lived all his life (46 years) in Kimbolton, by Mr. W. G. Stringer who is president and chairman of Kimbolton Football Club and has lived in Kimbolton for 18 years, and by Mr. Green whose firm have acted as solicitors for the Duke for many years and who has been personally concerned with the Settled Estates since 1949.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) 16.98 acres. The south east part is a cricket field, a football field and a childrens playground; the remainder (the greater part) is woodland. The description of it in the Register "known as the Park" (instead of "part of the Park") may be misleading.

The Settled Estates now comprised about 4,000 acres in and around Kimbolton. They formerly included the Castle (since 1951 owned by Kimbolton School). They have been in the ownership of the Duke's family for many years, having been conveyed to an ancestor by an indenture dated 2 July 1615 (produced) under a description "the Castle of Kimbolton ... the Park of Kimbolton with appurtenances... "

Colonel Robinson produced a copy (he said he had seen the original) of a map dated 1763 of the land in Kimbolton owned by the then Duke of Manchester. The Unit Land was shown as included in "Hollow Mead" being part of the house garden and park of Kimbolton Castle.



-2-

Part of the manorial wastes were inclosed under the Kimbolton (Stonely) Inclosure Act 1769 (8 & 9 Geo. 3. sess. 2; cap. ii) and the Kimbolton (Wornditch) Inclosure Act 1795 (35 Geo. 3. cap. xxv).

The Ordnance Survey map (1st edition 1887) shows the Unit Land as part of a large area called "Kimbolton Park", being as regards the cricket ground plot no. 344 area 1.575 acres and as regards the rest part of plot no. 346 area 68.183 acres.

Before 1951 the Park Farm together with the Unit Land was in hand; about that time Park Farm was let on an agricultural tenancy. The Cricket Club agreed a letter dated 27 April 1954 from the Estate Office stating that they held the cricket ground on a tenancy from year to year at a yearly rent of 1/-. The Football Club have since 1954 paid for their ground a yearly rent of 1/- to the Duke.

The Settled Estates are now vested in the Duke under a vesting deed dated 3 December 1954 (reciting that they were vested in him under a vesting deed dated 30 December 1933); they are therein described as including the Lordship and Manor of Kimbolton with the rights and members and appurtenances thereof, and as including among numerous other lands (plot 4) Park Farm and Park Lodge with two cottages let to Mr. G. Edwards and (plot 8) land let to the Cricket and Football Clubs.

The words "Kimbolton Park" are marked on the Ordnance Survey map (being that on which the Register map is based) below the Unit Land, apparently indicating that a large area of land including the Unit Land, is so called.

The woodlands comprised in the Settled Estates are mostly in hand, and the woodland part of the Unit Land has been included in the Estates forestry programme.

Neither Colonel Robinson nor Mr. Green had ever heard of anything being done since 1925 by the Duke or on his behalf as Lord of the Manor of Kimbolton, and they knew of no land included in the Settled Estates known as waste land of a manor. However Mr. Green mentioned a piece of land a short distance north of the Unit Land and known as the Butts, and said that because it had been registered as common land under the 1965 Act, it might be that it was waste land of the manor.

Miss Lilley, who by reason of her age had difficulty in giving oral evidence, asked me to treat a number of documents as her evidence, including a long document typed by her direction, three postcard photographs (by their postmarks apparently made before 1906) and a scheme dated 15 July 1954 and made by the Charity Commissioner for the charities of Kimbolton. Miss Lilley's documents contained much general information about Kimbolton and its history and about the law, and very little about the Unit Land. From these documents and her oral evidence, I understood her to contend that the Unit Land was common land because parish cricket and other games and sports had been played there from time immemorial, and because she as a child, and many other children since, had played there. She had considered the definition in section 22 of the 1965 Act, and contended that the Unit Land, being park land, was "waste land of a manor" within paragraph (b) of the definition.

In my opinion the description of land as "park land" is no evidence that the land is "waste land of a manor"; on the contrary, such a description implying that the land is enclosed, is some indication that it is not "waste land" within the ordinary meaning of these words, as explained in Attorney-General v Hammer (1858)



-3-

27 L.J. Ch. 837. Miss Lilley was cross-examined; her evidence as to the appearance of the Unit Land and the inferences which could be drawn from its use, was by reason of her age confused, and I do not accept it.

I accept the evidence given on behalf of the Duke as summarised above. From it I deduce that for many years Kimbolton Park has been inclosed and that the Unit Land is an inclosed part of the Park, in no relevant way distinct from other lands comprised in the Settled Estates. Following Attorney-General v Hammer supra, I conclude therefore that the Unit Land is not waste land, and is not therefore within paragraph (b) of the section 22 definition.

As the Unit Land has not been registered as a town or village green, its use for games and sports is irrelevant except so far as it indicates that it may be manorial waste. However as the point was raised by Miss Lilley and dealt with in the evidence, I record that in my view such use was not as of right; this was as regards cricket and football recognized by the rents paid; and as regards other sports and pastimes, its use was I think no more than what an ordinary owner would tolerate as of course because it did no harm.

Miss Lilley did not suggest, and there was no evidence, that the Unit Land had ever been subject to any right of common, so as to be within paragraph (a) of the section 22 definition.

For the above reasons, I conclude that the Unit Land is outside the definition, and for this reason I refuse to confirm the registration. Miss Lilley when she applied for registration honestly believed that the Unit Land was properly registered as common land; although her grounds for this belief were mistaken, her mistake was not I think such that I ought to order her to pay 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 8<sup>th</sup> day of August 1973.

a. a. Baden Fuller

Commons Commissioner