



COMMONS REGISTRATION ACT 1965

Reference No. 205/D/32

In the Matter of the Village Green,  
Willaston, Ellesmere Port Borough,  
Cheshire

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 22 in the Register of Town or Village Greens maintained by the Cheshire County Council and is occasioned by Objection No. 17 made by Neston Urban District Council and noted in the Register on 23 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Chester on 4 June 1980. At the hearing Ellesmere Port and Neston Borough Council as successors of Neston Urban District Council were represented by Mr E T Davies legal executive in their Solicitor's Department; and Willaston Women's Institute (an unincorporated association) on whose application the registration was made, were represented by Mr P D Gill, solicitor of Layton & Co., Solicitors of Liverpool. At the request of Mr Davies and Mr Gill I adjourned the hearing. I held the adjourned hearing at Chester on 2 and 3 February 1982; at this hearing the Borough Council were represented by Mr J J Hodgson, barrister-at-law, their Solicitor; and the Institute were on the instructions of their president Mrs K M Greenwood, represented by Mr R James who is the Secretary of Willaston Residents' and Countryside Society (also unincorporated).

The land ("the Unit Land") in this Register Unit is approximately triangular, its south side (nearly straight) and its west side (slightly convex) being about 30 or 35 yards and its northeast side (more convex) being about 35 to 40 yards. It is grass land surrounded by roads (or made up footpaths by the roads), that on the northeast side being the much used Hadlow Road and Neston Road, B5151; and those on the other sides being used locally for car parking and for access to the Hall (on the south side), and to some dwellinghouses fronting on, or nearby on the south of, the Unit Land. On it a little to the north of the centre, is a fine tree (copper beech). The Unit Land is in relation to the rest of the Village centrally situated, a short distance from the Parish Church, and as an open space is a valuable amenity not only for those dwelling or doing business nearby, but for many others too.

The grounds of Objection are: "The land referred to was originally the site of the National School in Willaston and was conveyed to the Willaston Parish Council in February 1932, after the school had been demolished. It is contended, therefore, that the land cannot be considered to be a village green within the meaning of the Act. Note: the premises were vested in the Neston Urban District by virtue of the County of Chester Review Order, 1933."

Mr Hodgson opened the proceedings by handing in a statement (EPB/1) of agreed facts to which was annexed a copy of agreed documents as mentioned in the Schedule hereto. Mr James then explained that the application was made by Willaston Women's Institute because at the time (as now) the Village had no parish council, and the Institute was the only Village society active in this sort of matter; since then



the Willaston Residents and Countryside Society by delegation represented most of the Village organisations so active. In support of the registration and as showing the history of the land he produced the documents (WI/1 etc.) also mentioned in the Schedule hereto.

In support of the registration oral evidence was given by:- (1) Mr George Cecil Barles who has lived in Willaston on and off for 70 years (he will be 75 this May) and was a pupil of the School mentioned in the grounds of Objection; (2) Mr John Francis who has lived in Willaston all his life (74 years this May); (3) Mr Keith Butcher who has (except when he first married) lived most of his life (born 1937) in Willaston; and (4) Mr Edward Bramley Brown who has lived for 31 years in Willaston, has since 1977 represented the Village on the Ellesmere Port and Neston Borough Council and been active for over 30 years in various village activities. In support of the Objection oral evidence was given by Mr Alfred Cyril Price who was clerk of Neston Urban District Council from 1963 to 1974 when it was taken over by the Borough Council.

After the hearing I inspected the Unit Land for some of the time accompanied by the said Mr J J Hodgson, Mr R James, Mr E B Brown; present also were Mr & Mrs K Greenwood, Mrs E Williams and Mr D Davies who I understood were as local residents or otherwise interested.

Much of the history of the Unit Land can be extracted from the documents mentioned in the Schedule hereto.

The 1774 map shows the Unit Land as a part (without any distinction) of an open space approximately rectangular about 90 yards from north to south and about 70 yards from east to west. On this map can be identified buildings which are or were formerly the Old Hall (on the east), Old Red Lion (on the west, now a dwellinghouse) old farmsteads (on the north) and the Smithy (on the south). The part ("the 1774 Surrounding Area") of this 1774 open space which then surrounded what is now the Unit Land is at least 10 times the area of the Unit Land itself. The 1845 map shows the 1774 Surrounding Area as having by then been much encroached on, and the modern OS map shows more encroachments. Now the Unit Land is part of an open space which includes the above mentioned roads and footpaths, they being all that is now left of the 1774 Surrounding Area.

From some time before 1882 until about 1932 there stood a building, throughout this period used as the Village School. The site of this building ("the Unit Land School Part") extended over about one quarter of the Unit Land. It is not relevant that a very small part of the School building may have stood south of and outside the Unit Land. The Unit Land School Part was by the 1882 conveyance conveyed to the then Vicar and Church Wardens of Willaston; such conveyance was expressed to be under the School Sites Act 1841, and its parcels are: "ALL that School and buildings now and many years past used as the National School at Willaston with the premises thereunto belonging and situated at Willaston aforesaid TOGETHER with all easements appurtenances and hereditaments corporeal and incorporeal belonging thereto or connected therewith". By the 1932 conveyance the Unit Land School Part was conveyed to the Parish Council; the parcels of this conveyance are: "ALL THAT piece of land situate at Willaston county of Chester being the site of the School and buildings formerly used as the National School for the Parish of Willaston aforesaid which said piece of land contains two hundred and forty square yards or thereabouts and is more particularly delineated on the plan hereto annexed



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and thereon edged red"; the land so edged red appears to be the site of the buildings of what then had been the School. The 1932 conveyance contains a covenant by the purchasers with the vendors that the said land "shall not be used otherwise than for an open space within the meaning of the Open Spaces Act 1906".

The Parish Council minutes (EPB/1 No. 5) show that the demolition of the Old School Building was in November 1931 "going on very slowly", and that in October 1932 Mr Merritt offered to level and do what was necessary to put the open space in order at his own expense; so I conclude that from about March 1933 the Unit Land School Part was in order as a grass open space with kerbs and with posts and chains much as now. The copper beech was planted soon after, and this tree is now wired so as to display at Christmas time and other appropriate occasions coloured lights, the necessary current coming from the street lights supply.

As to the use before 1932 of the part ("the Unit Land Outer Part") of the remainder of the Unit Land, I had oral and written evidence that on it the inhabitants of Willaston indulged in sports and pastimes and I infer such indulgence must often extend to the said surrounding roads and footpaths and any other part of the 1774 Surrounding Area as had not at the time been encroached on. I also had much oral and written evidence that since the 1932 conveyance on the whole of the Unit Land there had been similar indulgence which I again infer often extended to the surrounding open space. The sports and pastimes included not only playing by the children at the School (before 1932) but also such things as the activities of the Shepherd Club (an agricultural benevolent society), a group which played there with violins and concertinas, gatherings to enjoy hobby horses and other entertainments provided by travelling showmen, carol and other open air church services, entertainments by a Boys Silver Band, entertainments provided by or in conjunction with the British Legion, Maypole and other folk dancing, church festivals and stalls selling things for the Church, and so forth. I need not specify these sports and pastimes in detail because Mr Hodgson indicated that he did not dispute that there had been such indulgence and that he wished to support the Objection primarily (a) because the 1888 and 1932 conveyances showed that the Unit Land was subject to the statutory powers conferred by the Open Spaces Acts in a way inconsistent with there being any customary right for sports and pastimes and (b) because the existence of the School for at least 70 years on the Unit Land School Part was inconsistent with any such customary right.

I should here record the happy circumstance that some doubt was expressed at the hearing as to whether my decision for or against the registration could be of any practical consequence to anybody. Mr Hodgson indicated that as far as he knew his Council had no present intention of preventing the continued use of the Unit Land by the inhabitants of Willaston as above described, and nobody else suggested that in the foreseeable future, the Council would wish otherwise. Nevertheless in accordance with the 1965 Act I must give a decision.

Under the above quoted words from the 1882 conveyance the Unit Land Outer Part could have passed under it if (and I think only if) it was "belonging" or "connected" with the School Building. I infer that it was used for play by the pupils of the School, but this is not enough to negative a customary right for the inhabitants to indulge in sports or pastimes on it, because the pupils were inhabitants. The Unit Land Outer Part was never fenced so as to be apparently part of the School; Mr Barles in the course of his evidence said that while he was a pupil the Unit Land Outer Part was surrounded by a "bamboo cane fence";



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however later he explained that such a fence was wholly in the minds of the pupils brought about by an order by the Master that no boy should play on the roads or pathways and by their understanding (perhaps mistaken) that any disobedience to this order might result in the application of such a cane. The circumstances of the 1882 conveyance contains words capable of passing any land which was "belonging" or was "connected" is no evidence that there was at the time such land, see *Baring v Abingdon* 1892 2 Ch 374 at page 388. The area 244 square yards mentioned in the 1932 conveyance is correct if the land thereby conveyed was limited to the Unit Land School Part; so this conveyance is some evidence in favour of the view that the Unit Land Outer Part was never belonging or connected. So I conclude that it was never subject to the Open Spaces Act 1906 as claimed by Mr Hodgson.

The evidence above summarised that the inhabitants of Willaston have as far as living memory goes back on the Unit Land Outer Part indulged in sports and pastimes does not raise the presumption that on it they had customary right of recreation. That presumption is not affected by the circumstance that historically the Unit Land Outer Part is or may be part of a much larger open space including said surrounding roads and footpaths and the 1774 Surrounding Area over which no such recreational right is now claimed; see *Copstake v West Sussex* 1911 2 Ch 331, applied in *Attorney General v Beynon* 1970 1 Ch 1.

In my opinion the circumstance by the 1932 conveyance the Unit Land School Part was subjected to a covenant under the Open Spaces Act 1906 is not by itself evidence that it was not then subject to a customary right of recreation or could not subsequently have been used by the inhabitants for recreation "as of right". Section 8 of the Commons Registration Act 1965 contemplates that the 1906 Act may be applicable to land registered under the 1965 Act.

I incline to the view that having regard to *Copstake v West Sussex* supra, the circumstance that the Unit Land School Part was for 70 years and upwards used as a Village School provides no good reason for my not presuming from evidence of its use for recreational purposes since 1932 that it has always been subject to a customary right of recreation. However this may be, Section 22 of the 1965 Act expressly provides that 20 years use for recreational purposes as of right shall as regards registrations under the Act be equivalent to a customary right.

For these reasons I confirm the registration without any modification.

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.

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SCHEDULE  
(Documents produced)

EPB/1, No. 1	1774	Copy of Estate map.
WI/1	31.1.82	Letter from Mrs K M Greenwood authorising Mr R James to present case of the Willaston in Wirral Womens' Institute.
WI/2 (also extract from this map is EPB/1, No. 2)	1848	Copy, map of the township of Willaston in the parish of Neston; formerly annexed to Tithe Apportionment but in September 1964 separated for better preservation; from Cheshire Record Office. Also copy of said map.
WI/3	June 1970	Cheshire Life: vol. xxxvi; no. 6: photograph at page 54 of the Green (illustrating "Wake up, Willaston" by Alan Brack).
WI/4 (EPB/1 page 3)	March 1972	Extract from Stage 2 of Report of Cheshire County Council Planning Department.
WI/5	1951	Willaston (Wirral) Womens' Institute Scrap Book (printed octavo, 76 pages): see particularly page 58 under heading "Duncan Graham Esq and the Lydiate", <del>at</del> $\frac{1}{2}$ photographic copy of this Book.
WI/6 (also EPB/1, No. 3)	9 May 1882	Grant by Duncan Gray of School and buildings 'how and for many years used as the National School'.
WI/7	Said to be about 1930	Photograph of School: 8 $\frac{1}{2}$ " x 5".
WI/8	—	Photograph (being page 48 of said scrap book WI/5) of "Old School and Village Green".



EPB/1, No. 3a

22 August 1930

Order by Cheshire County Council investing Willaston Parish Council with the powers conferred on the County by the Open Spaces Act 1906 to undertake the care management and control of certain land in Willaston.

WI/9 (copy in  
EPB/1, No. 4)

22 February 1932

Conveyance by Vicar and Churchwardens to Willaston Parish Council for £200 of site of school and buildings containing about 240 square yards with a covenant not to be used otherwise than for an Open Space under the Open Spaces Act 1906.

WI/10

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Description of Village Green and of Maypole Festival (being page 53 of the said Scrap Book WI/5).

WI/11

1955

History of Willaston CE School being two pages of Christchurch, Willaston in Wirral Centenary (1855-1955), printed quarto (6 sheets bound as 12 unnumbered 2 sided pages).

WI/12

1945

Page 11 of All About Willaston (printed pamphlet 7" x 4½", 36 pages published by British Legion) relating to copper beech tree planted to commemorate Jubilee of King George V.

WI/13

24 November 1952  
10 April 1953  
28 April 1953  
2 June 1953  
25 September 1953

Minutes of meeting of Coronation Committee (foolscap book 24 pages of minute) starting and ending with meetings held 24 November 1952 and 15 September 1953.

WI/14

31 May -  
2 June 1953

Programme of Coronation Celebrations.

WI/14

2 February 1971  
(approved by S of S  
1 July 1971)

Byelaws made by Neston UDC under Sections 12 and 15 of Open Spaces Act 1906 and Section 164 of the Public Health Act 1975.



WI/15	1980	Pages 133 from that part of Chapter 7 of Urbanised Villages headed Willaston from The Wirral by Alan Brack (printed octavo, B T Batsford, 208 pages).
WI/15 bis WI/16	22 April 1936	Two photographs (8" x 6") showing Pony Club meeting at a divine service on the Green.
WI/16	28 May 1968	Letter from County Archivist to Mrs Atfield (Clerk of Parish Council time of application for registration, 1 August 1968). Mr Hodgson objected to this letter being read.
EPB/1, No. 5	8 April 1931 to 3 March 1933	Extracts from minutes of Willaston Parish Council.
EPB/1, Nos. 6 & 8	—	OS map and enlarged OS map showing area registered, land originally school and car parking outside the land registered.
Referred to by Mr Hodgson	February 1968	Association of Municipal Corporation: collection of opinions. Volume 20 No. 1, see particularly page 38.

Dated this

1st —

day of

July —

1982

A. A. Baden Fuller

Commons Commissioner