



COMMONS REGISTRATION ACT 1965

Reference No.11/D/1

In the Matter of Elwick
Village Green, Elwick,
Stockton R.D., Durham

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. V.G.10 in the Register of Town or Village Greens maintained by the Durham County Council and is occasioned by Objection No. 1 made by Mrs. Constance May Guthrie and noted in the Register on 28 April 1970.

I held a hearing for the purpose of inquiring into the dispute at Durham on 7 and 9 November 1972. The hearing was attended by the Elwick Parish Council ("the Council") who were represented by Mr. C.M. Moreland Solicitor of Swinburne & Jackson Solicitors of Durham, and by Mr. James Kay Dobie and Mrs. Sonia Constance Claire Dobie in person.

The land was registered pursuant to an application dated 4 April 1967 and made by the Council. The grounds of Objection were stated as follows:-
"The land referred to is within the curtilage of 'MANOR COTTAGE' and for upwards of 15 years the garden ground has been tended by the Owner and likewise prior to the present ownership. It has never been part of the Village Green and has been exclusively used by the Owner. (Plan previously submitted to the County Council)."

This Unit is registered as having an area of 2.62 acres. Mr. & Mrs. Dobie contended that a small part ("the Disputed Land") should be removed from the Register. The Disputed Land is roughly rectangular 40 feet long by 20 feet wide (these figures are my rough guess; no measurements were put in evidence) and is so Mr. & Mrs. Dobie claimed part of the garden of the house known as Manor Cottage and as No. 1 St. Hilda's Terrace.

In support of the registration, evidence was given by Mr. G.E. Hall who was born in the Village in 1921 (his father was born there in 1900 and his grandfather moved there in 1870 and both were village blacksmiths). He had lived at Lane House (marked on the Register map) from 1922 to 1935 and moved to the Forge (also so marked) with his parents in 1935. From 1938 to 1953 he was in the Royal Marines, but visited the Village during his leaves. From 1953 to 1966 he lived at Dalton Piercy (a village about a mile away); since then has lived in the Village. He is a member of the Parish Council and also of the Stockton Rural District Council.

In support of the Objection evidence was given by Mr. & Mrs. Dobie who are now the owners and occupiers of Manor Cottage. Mrs. Dobie is the daughter of Mrs. Guthrie who made the Objection, the subject of this reference. Mrs. Guthrie became the owner of Manor Cottage under a conveyance dated 13 November 1953 and resided there with her husband Mr. F.K. Guthrie (Mrs. Dobie's father) until his death in 1961 and thereafter until her death in 1971. Under her intestacy Manor Cottage vested in Mrs. Dobie and it is now under a deed of gift made by

her vested in her and Mr. Dobie jointly. Mr. Dobie has lived in the Village since 1964; Mrs. Dobie was well acquainted with Manor Cottage while her parents lived there and knew something of it some years earlier because before 1953 her parents had a beach house not far away.

This Unit consists of numerous pieces of land most of which are separated from each other by roads or pathways. If the outlying pieces are neglected and the roads and pathways are added, the whole is a cigar shaped piece of land ("the Principal Area") which is (as I scale the Register Map) about 800 yards long from the south west to the north east and at its widest point about 50 yards wide. The Principal Area is situated in the centre of the Village and through its whole length runs the main road, approximately down the middle. The whole is known as "the Green" and as an amenity of the Village is of very great value.

Of the many pieces of land which make up this Unit, one piece ("the Projecting Piece") projects south east from the Principal Area. It is approximately rectangular (slightly tapering towards and rounded off at, its south east end) and is about 80 feet long and 20 feet wide (these figures are my rough guess; no measurements were put in evidence). The Disputed Land is the north west end of the Projecting Piece; perhaps on the south west boundary a little more or less. Standing in the Principal Area and looking towards the south east, the view (so far as relevant to this dispute, from left to right) is:-

- (i) the front garden of No. 3 St. Hilda's Terrace with the dwelling house behind.
- (ii) the front wall of No. 2 St. Hilda's Terrace,
- (iii) the front wall and porch of the Manor Cottage (No. 1 St. Hilda's Terrace),
- (iv) the north east end of the Disputed Land (also the north east end of the Projecting Piece),
- (v) a road ("the low level road") which leads south east to a five bar gate a short distance beyond the south east end of the projecting piece and thence to a footpath which after crossing Char Beck by a footbridge leads on to Dalton Piercy.
- (vi) the front wall of the house known as the Forge.

A feature of the ground of some importance in this case, is that the low level road is below the level of the Projecting Piece and that between them there is for the most part a stone retaining wall which is in places covered with earth so that the boundary between the Projecting Piece (on the higher part of the Projecting Piece) in places appears to be a bank rather than a wall.

Mr. and Mrs. Dobie did not dispute either that the Council properly registered the Principal Area (less the roads and path) under the Act as a town or village green or that the things described generally by Mr. Hall as having been done by the Council in relation to the Principal Area showed that the Council were owners. They did however dispute the claim of the Council that the Disputed Land (whether regarded in isolation or as part of the Projecting Piece) was in any relevant sense part of the Principal Area.

Mrs. Dobie produced a modern copy of an old photograph (taken in 1916 so she was told by the owner when he gave her the copy) of the building Nos 1, 2 and 3 St. Hilda's Terrace. Mr. Hall said that this correctly showed the land as it was when he as a boy first remembered it (say 1930). The said buildings fronting on the Principal Area structurally appeared then much as they do now (but much less well kept); the low level road and the stone retaining wall

were then (except possibly at the south east end of the Projecting Piece) much as they are now. But the Projecting Piece and the buildings behind Manor Cottage fronting on it were when Mr. Hall was a boy very different; there was then a wheelwright's shop set a little way back and then a hut (used by the postman as a rest hut) nearer to the low level road and beyond that the Projecting Piece provided level access to the fields beyond. When Mr. Hall was a boy his father's forge was opposite the wheelwright's shop and there was some co-operation between the two businesses. On the Projecting Piece in front of the wheelwright shop, young men of the Village were accustomed to play quoits; two patches of clay for this purpose had been constructed; the quoits were kept in the postman's hut. The point between the wheelwright's shop and the Forge was a focal point for informal Village discussions, those concerned sitting on the stone wall above mentioned.

Sometime between 1930 and 1938 perhaps in 1935 or 1936 (Mr. Hall could not be more precise) the wheelwright's shop and the postman's hut were demolished and replaced by a bungalow at first occupied by Mr. Spence and now occupied by Mr. Smithson. Mr. Hall said that while he was a boy and afterwards at least up to about 1950 the Projecting Piece was open land and that in his view, it was all public land.

Mr. Hall's description of what he saw as a boy was confirmed by an abstract of a mortgage dated 23 June 1926, produced by Mrs. Dobie in which under the heading "SECONDLY" Nos. 1 and 2 St. Hilda's Terrace with the land behind were described as "the land with the buildings comprising a dwelling house, Joiners Shop and Stable (formerly described as two dwelling houses) as the same were formerly in the occupation of one Adam Hall part of the dwelling house being then used as a Post Office and the said Joiners Shop as a blacksmith shop." Mr. Hall identified the said Adam Hall as his grandfather who kept a Post Office at No. 1 St. Hilda's Terrace. In an abstract of a Conveyance dated 9 June 1931 from the said Barbara Hunter to Thomas Spence and Jane Spence, the description in the "SECONDLY" above quoted was repeated.

Mr. Dobie suggested that the words "Yards and Vacant ground" in the description in the said mortgage under the heading "AND ALSO ALL" refer to part of the Projecting Piece, and provides some evidence that it was then being treated as in private ownership, although open land as described by Mr. Hall. In my view these words refer to other land quite different from any land with which I am in any way concerned.

Mrs. Dobie produced a conveyance dated 20 April 1948 by which after reciting that Jane Spence died on 2 May 1945, it was witnessed that Thomas Spence conveyed to M.J. Morris two houses in St. Hilda's Terrace (identifiable as being Nos 1 and 2) "more particularly delineated and described as the plan drawn hereon and thereon coloured red"; The Disputed Land is included in that so delineated and coloured, there being also marked as crossing the Disputed Land a concrete path next to the house leading from the Principal Area round the house to Mr. Spence's bungalow. She also produced a conveyance dated 13 November 1953 made by M.J. Morris to Mrs. C.M. Guthrie (Mrs. Dobie's mother) of Manor Cottage, St. Hilda's Terrace (but not including No. 2 St. Hilda's Terrace) by reference to a plan which so far as now relevant was the same as that drawn on the conveyance of 20 April 1948.

Apart from a small gate opposite the concrete path, the front (north-west boundary) of the Disputed Land is now a rustic fence, the south-west boundary is now the stone wall or the earth banked up on it or the nearby bushes which edge the Manor House garden and the south-east boundary is now garden land occupied with Mr. Smithson's bungalow. The rustic fence was put there by Mrs. Guthrie. When she bought and at least a year or two previously there had been a wire fence. I find that from sometime before 1952 until now the Disputed Land has been part of the garden of Manor Cottage and in no sense open for any kind of public use and that throughout this period as far as Mr. and Mrs. Dobie are aware nobody has claimed that the Disputed Land was in any sense public land. Now access to the field at the back can be obtained from a track passing by the other side of the field and shown on the Register Map as leading to a sewage works and access to Mr. Smithson's cottage and to a dwelling house (built between 1950 and 1960) to the south-east can be obtained from the low level road, the bank having been cut into to enable vehicles to get up higher.

The Council produced copies of the minutes of meetings of the Council held on 18 July 1949 and 21 March 1951 which it was said showed persons who occupied land south-east of the Projecting Piece were complaining about "digging up the Green" and "digging on common land" meaning the Projecting Piece and that (in 1949) a letter was to be written on behalf of the Council and (in 1951) the digging "had apparently stopped...and the ground would be restored".

My conclusion on the evidence is that the Disputed Land is not part of the Principal Area. I have no evidence as to the use ~~it was~~ at any relevant time made of the Principal Area, by the inhabitants; I cannot therefore conclude that the playing of quoits was incidental to such use, and indeed I accept the suggestion which was made to me that the quoit playing was an independent activity on the Projecting Piece because the quoit playing on the Principal Area might have been dangerous to passersby. The evidence of Mr. Hall of the use made of the Projecting Piece when there was a wheelwright's shop near it, amounts I think to no more than the sort of use that the occupier would have found convenient for the purposes of his business or have tolerated as of course without considering that he was submitting to any public right. Whatever may have been the digging mentioned in 1949 and 1951 minutes, as an act indicating that the Disputed Land was not part of the Principal Area, it is much less cogent than Mrs. Guthrie's treatment from 1952 onwards of the whole of the Disputed Land as part of her garden is an indication the other way; of this there was I understand in the minutes of the Council no mention until the dispute arose. In the conveyances above mentioned the Disputed Land was treated as part of the land enjoyed with and belonging to Manor Cottage free from any public rights, and in my view so it was.

I reject the alternative submission made by the Council that I should conclude from the evidence of Mr. Hall that the Projecting Piece considered in isolation and separate from the Principal area came within the definition of the 1965 Act of the town or village green; Mr. Hall's evidence did not show that quoits had been played there for "not less than twenty years". The playing ceased some time before 1938 when the wheelwright shop was demolished. The activities of children there were I think no more than the owners and occupiers of the nearby forge and wheelwright's shop would have tolerated as of course and cannot I think be regarded as being "as of right".

In the absence of any evidence as to measurements I am unable to say whether the south-west boundary of the Disputed Land as delineated on the plans drawn on the conveyances exactly corresponds with the south-west boundary of this Unit as delineated on the Register map; there may be a narrow strip of land between them. It would not I think be sensible to exclude the Disputed Land from the Register and leave this narrow strip included and I shall therefore refuse to confirm the registration so far as it relates to this narrow strip. I record however that by doing this I am not giving any decision as to the exact position of the boundary of the land owned by Mr. and Mrs. Dobie where it abuts on the low level road and in particular whether their boundary is at the top or at the bottom of the stone wall or bank there.

At the conclusion of the hearing on behalf of the Council it was submitted that if I decided that the Disputed Land was not properly registerable, I should nevertheless allow the remaining (south-eastern) part of the Projecting Piece to remain on the Register; access to it could be obtained from the low level road and it could notwithstanding the evidence given on this reference properly be regarded as part of the Principal Area in the same way as other outlying pieces of land.- Although in the course of this reference, in order properly to consider the Disputed Land it was necessary for me to have evidence about this remaining part of the Projecting Piece, such remaining part is not the subject of the dispute with which I am concerned. Although it seemed likely that Mr. Smithson would welcome the removal of this remaining part of the Projecting Piece from the Register, he has made no objection to the registration of it; I cannot I think in these proceedings draw any conclusion adverse to the Council in relation to it from the evidence given before me incidentally in relation to other land. My confirmation of the registration of the Principal Area and the other land in this Unit will therefore include this remaining part of the Projecting Piece.

For the above reasons I confirm the registration with the following modification, the land described in the appendix hereto to be removed from the Register. To the notice which I am required to give to the Registration Authority in pursuance of section 6(2) of the Act I shall annex copy of the conveyance dated 13 November 1953 so that there can be no doubt about the plan referred to in the appendix.

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.

APPENDIX

First, so much of the land comprised in the land section of this Register Unit as is part of the land delineated on a plan endorsed on a conveyance dated 13 November 1953 and made between Mary Jane Morris and Constance May Guthrie and thereon coloured round with red (the said plan is said to be the same plan as that referred to in Objection No. 1 and noted on the Register on 28 April 1970).

AND SECONDLY, so much of the land comprised in the land section of this Register Unit, if any, as lies between the south-west boundary of the land first described

in this Appendix and the road or track shown on the Register map as running from the land on such map called "The Green" between the buildings called "St. Hildas Terrace" and "The Forge" towards the path leading south-east to a bridge across Char Beck.

Dated this 4th day of January 1973.

a. a. Baden Fuller

Commons Commissioner