



COMMONS REGISTRATION ACT 1965

Reference Nos. 8/D/12
8/D/13

In the Matter of land fronting on Holmesfield
Road described in the Holmesfield Inclosure
Award as Allotment 36 Hall Green and now known
as Coronation Garden, in Holmesfield, Chesterfield
R.D., Derbyshire

DECISION

These disputes relate to (i) the registration at Entry No.1 in the Land Section of Register Unit No. CL.11 in the Register of Common Land maintained by the Derbyshire County Council (8/D/12) and (ii) the registration at Entry No.1 in the Land Section of Register Unit No. VG.17 in the Register of Town and Village Greens maintained by the said Council (8/D/13), and are occasioned by the said Entries being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Chesterfield on 16 October 1973. At the hearing Mrs. B. Bunker on whose application registration CL.11 was made, attended in person, and Holmesfield Parish Council, on whose application registration VG.17 was made, were represented by Mr. A. C. Cotton, their clerk. At the hearing Mr. Cotton and Mrs. Bunker gave oral evidence and she produced the Holmesfield Inclosure Award dated 10 November 1820 and the map referred to in it. After the hearing I inspected the land.

Notwithstanding that on my copy of the Village Green Register map the land comprised in Register Unit VG.17 is shown slightly smaller than the land comprised in Register Unit CL.12 as shown on my copy of the Common Land Register map (the maps appeared to be based on different editions of the Ordnance Survey map), it was agreed before me that I should determine this dispute on the basis that both registrations relate to the same land ("the Unit Land") being that now known as "Coronation Garden".

The Unit Land is roughly rectangular, being bounded on its south side (about 15 yards long) by the Main Road (formerly called "Holmesfield Road") through the Village and being separated from the public footpath by a low stone wall. It is for the most part a level piece of grass land; there is a hedge on the north side; in the middle there are four attractive trees shading two seats; on the south part there are rose beds. Access is obtained from the east side through a gap in a wall which separates the Unit Land from the south end of a road known as Park Avenue, leading to a public footpath to Woodthorpe Hall and Totley. The Angel Public House with a large car park in front of it, is on the other side of Park Avenue, and beyond on the east is the wall of the Churchyard. On the west part of the Unit Land there is a narrow strip sloping down to a stone wall which separates the Unit Land from the adjoining forecourt or front yard of Hall Farm; immediately next to this wall on the west side is a small pond. There is now no pond on the Unit Land. The Unit Land is well kept and its general appearance is attractive.



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Mr. Cotton, who has resided in the Parish for 18 years and been clerk of the Parish Council for the last 5 years, said (in effect):- The Parish Council cut the grass. The rose beds are kept up by the Womens Institute. The wall on the east side of the Unit Land was built about 3 years ago; before then the Unit Land was open to Park Avenue. He had never seen organised games played on the Unit Land, it is not large enough; it is not generally used except by persons going to the seats in Summer. He understood the Unit Land was put in its present state to commemorate the Coronation of Her Majesty (there is an iron sign on the Unit Land "1953: HOLMESLEIGH", surmounted by a Crown): the trees (about 20/30 years old) were given by a resident.

Mrs. Bunker relied on the 1820 Award which so far as relevant is as follows:- "PUBLIC WATERING PLACES". We do allot and award one parcel on Holmesfield Common No.22 ... ONE other parcel on Hall Green No.36 containing nine perches bounded eastwardly by Hall Green road southwardly by Holmesfield and Stoney Middleton Turnpike Road and westwardly and northwardly by an allotment No.35 made to George Bustard Greaves Esquire and others which said parcels (meaning I think Nos.22 and 36) so set off by us as public watering places as aforesaid we do hereby declare to be forever hereafter used exercised and enjoyed as such by all persons whomsoever and shall be maintained by the surveyors of the Highways and his successors in the Hamlet of Holmesfield". The Award map shows a pond which is much larger than anything now there and which apparently then covered the whole of the Unit Land, part of the adjoining land on the west (a much larger area than the pond which is now there) and part (a narrow strip) of which is now the Main Road.

Mrs. Bunker who lived in the Village when she was a girl (she remembered it before the 1914-18 war) produced a book published in 1973 written by herself and entitled "All Their Yesterdays" (being a history of the Village). At page 92 there is a photograph of the Church as seen from the forecourt of Hall Farm looking over the Unit Land; this photograph (although taken about 40 years ago) shows the Unit Land as it appeared when Mrs. Bunker first knew it. The pond in the forecourt of Hall Farm was then much larger than now; on the other side of the wall, on the Unit Land there was thick vegetation (probably reeds or rushes); Mrs. Bunker remembered a pond there too; the Unit Land was then open to Park Avenue (Mrs. Bunker remembered her ponies going from Park Avenue on to the Unit Land for water); what is now a made up car park in front of the Angel Public House was grass land with some low buildings against the Churchyard wall.

Mrs. Bunker contended that the Award had had effect as an Act of Parliament, that under it the Unit Land is now Common Land being a public watering place "for ever" and that it could not therefore now be a village green.

The Award was made under the Holmesfield Inclosure Act 1816 (56 Geo. 3 cap xix) this Act recites the Inclosure Act 1801. Neither Act expressly authorises an allotment in the exact terms of that above quoted. But even assuming that the allotment is within one of the Acts, it does not say that the land allotted shall never be used for anything other than a public watering place. Under the general law land may be a public watering place, a village green and common land at the same time. The 1965 Act, under which the registrations were made and by which I



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am. bound, expressly provides that "common land ... does not include a town or village green ...", see section 22(1); so I must determine first whether the Unit Land is a village green; if I find it is, I need not consider whether apart from the Act it might also be a public watering place and common land.

The Award map shows that the land awarded ^{also} included land west of the Unit Land between what is now Hall Farm and the Main Road, and also the southern end of Park Avenue and a small piece of land being a corner of what is now the car park in front of the Angel Public House. The Unit Land is described in the Award as "on Hall Green". Although in the Award the south end of Park Avenue is called "Hall Green road", on the Award map it is called "Hall Green" and is shown as leading to Craggy Lane. The general layout of the land and its appearance as shown in the Award map and as it now appears is consistent with a substantial area in front of Hall Farm and extending towards the Churchyard wall being then a Green, and I conclude that in 1820 both the Unit Land and the land described on the Award map as "Hall Green" were part of a piece of land then so called.

Mrs. Bunker said that the Unit Land is at a central place in the Village, and mentioned that it is and was treated as central not only by those residing nearby but also by those residing in the adjoining hamlets of Horsleygate, Lidgate, Fanshawe Gate, Millthorpe and Cowley. The whole area comprising what is now the Unit Land, the car park of the Angel Public House the car park of the George & Dragon Public House (all being near to the Parish Church) must in the past have been (and may be still is) a place in which the inhabitants of the Village congregate. The Parish Council would not have been able to convert the Unit Land into a Coronation Garden unless it was generally recognized that the land was (as Mr. Cotton put it) dedicated to the Village.

Mrs. Bunker, although she had never seen the Unit Land or the area surrounding it being used for sports and pastimes before it was converted into a Coronation Garden, candidly explained that she would not have noticed if it had been so used; she did not suggest that it had not been so used; but for her application to register the Unit Land as Common Land, its registration as a town or village green would have become final. Mr. Cotton could not say how the Unit Land had been used before he first resided in the Parish.

Notwithstanding that I have no direct evidence that the inhabitants of the Village ever indulged in sports and pastimes on the Unit Land, it seems to me obvious that over the years before the Unit Land was converted into a Garden as it now is they must have so indulged on the Unit Land and on the area which in 1820 was known as Hall Green. I am not concerned to determine whether they did so ^(or as) right on any lands now surrounding the Unit Land because such lands are not registered; but as regards the Unit Land I infer from its history as set out above and its present appearance that such indulgence was in pursuance of a customary right.

For the above reasons, I am satisfied that the Unit Land is a town or village green within the definition in the 1965 Act, and I accordingly confirm the registration of the said Entry in the Register of Town or Village Greens. As already explained, it necessarily follows from section 22(1) of the 1965 Act that I must refuse and I accordingly do refuse to confirm the registration of



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the said Entry in the Register of Common Land. I record that in my view, I am not by so refusing avoiding the allotment above quoted or prejudicially affecting the right any person may now have to use the Unit Land as a public watering place. However obviously, nobody could now so use the Unit Land unless it is in some way dug out, because there is now no water; and I am not encouraging any person to attempt to exercise a right which those who in 1953 set out the garden, may have considered perhaps correctly, obsolete, and therefore no longer exercisable.

In the Register the Unit Land has two descriptions: first "The piece of land known as Coronation Garden ..." and secondly "as marked with a green verge line ... on ... the register map ...". The first includes the whole of the land known as Coronation Garden as described above in detail; the second description may comprise less. I record that in my view so far as the two descriptions were inconsistent, the second should be rejected under the rule of law usually referred to under the maxim "falsa demonstratio non nocet"; and that accordingly the County Council can properly if they think fit amend the Register map under regulation 36 of the Commons Registration (General) Regulations 1966 so as to correct the second description so far as it is or may be inconsistent with the first description; if they did this, they would not I think be thereby be increasing the area of any land registered under the Act.

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

9th

day of

November

1973.

a. a. Baden Fuller

Commons Commissioner