COMMONS REGISTRATION ACT 1965

Reference No.9/D/8

In the Matter of Riverside, South Zeal,
Tawton, Devon.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.59 in the Register of Town or Village Greens maintained by the Devon County Council and is occasioned by Objection No.23 made by Lt.Cmdr. H.C. Farmer and noted in the Register on 11th June 1969.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 19th July 1972. The hearing was attended by Mrs. E.B. Wonnacott, the applicant for the registration, and by Mr. K.B. Dyer, solicitor for the Objector.

The land the subject of this dispute is a strip about 62 feet long and about 18 feet wide lying between the roadway and the fronts of the houses on the north side of the High Street at South Zeal. Between the land and the roadway is a mill leat about 3 feet wide, formerly open, but now covered with paving stones, which form a foot-path. There is also a watercourse about 18 inches wide running through the strip of land. Part of this strip lies in front of the Objector's house.

The Objector bought his house (then consisting of two cottages) in 1963. In the parcels of the conveyance dated 5th March 1963 from Mrs. Elizabeth Mary Bowden it is described as "All those two cottages and premises with the plot of land at the rear thereof" (the italics are mine), and the plan annexed to the conveyance does not include the strip of land between the cottages and the roadway.

In 1963 the land had a surface of rough cobbles and there was a seat on it. The Objector asked the South Tawton Parish Council to remove the seat and, on being informed that it did not belong to the Parish Council, he moved it himself to the back of his house, where it still remains, waiting to be collected by its owner. The Objector then obtained planning permission to erect a wall 4 feet high round the land in front of his house. This wall has now been erected. Similar strips of land in front of other houses in the street were already enclosed when the Objector built his wall.

Mrs. Wonnacott, whose memory goes back for more than 80 years, said that the land in question had always been unenclosed. She said that children used to play on it and sail boats on the watercourse running through it. Until about 20 years ago two fairs were held in South Zeal each year. At these fairs animals were sold on the land in question, and afterwards there was a pleasure fair with roundabouts, stalls and boxing booths, some of which were placed on the land in question. Since the fairs ceased there have been carnivals run by a carnival committee. Mr. Eric Michael Bowden, the husband of the Objector's predecessor in title, said that his wife or her father, who owned the property before her, used to give permission to the carnival committee to erect stalls.

Mrs. Wonnacott was, I think, right when she said that this land was manorial waste, for both its physical characteristics and the way in which it was formerly used give the impression that is what it was. The Ordnance Survey Map shows the typical lay-out of a medieval market town, with the houses in a row along the market street and the long narrow burgage plots at the rear. Unfortunately for Mrs. Wonnacott, however, she chose to register this land, not as common land, which would have been appropriate for manorial waste, but as a town or village green. It became apparent as she conducted her case (which she did with considerable ability) that Mrs. Wonnacott had never seen the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 until I directed her attention to it. The only evidence in any way relevant to that definition was that relating to children's playing on the land and sailing boats in the watercourse. There was nothing to indicate that they did this as of right. The holding of the fair was the exercise of a franchise (Mrs. Wonnacott alleged that the franchise was granted by a charter of Edward I, and she may well be correct in so stating), but such a franchise confers rights on the owner of the franchise (probably in this case the lord of the manor) and not on the inhabitants of the locality. As for the activities of the carnival committee, such evidence as there is clearly negatives any question of their being as of right. Had Mrs. Wonnacott been better advised, she might well have succeeded in a contention that the land was manorial waste, but such a contention is not open in these proceedings. In my view, the registration as a town or village green must fail.

For these reasons I refuse to confirm the registration.

In order that there may be no misconception about the matter, it seems right that I should add that it was suggested that the Objector's predecessors in title might have acquired some sort of squatter's rights over the land in question, and a supporting statutory declaration by Mrs. Bowden, the Objector's immediate predecessor in title, was tendered to me. This declaration was not admissible in evidence because not only is Mrs. Bowden alive and well, but Mr. Bowden said that she was present at the hearing and was unwilling to give evidence. I did not think it necessary to suggest to Mr. Dyer that he should apply for a witness summons under regulation 23 of the Commons Commissioners Regulations 1971, because the declaration related only to the use made of the land in question by various tenants of the adjoining cottages, whereas what I was concerned with was the use made of the land by the inhabitants of the locality.

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 28th day of July 1972

Chief Commons Commissioner