



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/112  
209/D/113

In the Matter of The Cross Tree,  
South Tawton, West Devon District,  
Devon

---

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No VG. 62 in the Register of Town or Village Greens maintained by the Devon County Council and are occasioned by Objection Nos 708 and 854 made by the Clerk and the County Surveyor of Devon County Council and noted in the Register on 3 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 17 November 1977. At the hearing South Tawton Parish Council were represented by Mr F J Woodward of Burd Pearse & Co, Solicitors of Okehampton, and Devon County Council were represented by Mr P A J Browne solicitor of the County Secretary's Department.

Mr Browne explained that although the grounds stated in Objection No 854 are general ("the land was not a Village Green at the date of registration"), and stated in Objection No 708 are "the land coloured pink on the attached plan was not part of the Village Green at the date of registration but formed part of the County highway", both Objections should be read as meaning that all the land ("the Unit Land") comprised in this Register Unit except that coloured pink on the Objection plan, is highway.

Mrs E B Wonnacott on whose application the registration was made in her answer to the Objections dated 17 May 1971 and sent to the County Council says: "...It is described in Mr Crossby's Guide as the Playstow (a self-explanatory term) used by the parishioners at such times as "Church Ales", revels for feasting and games and activities; stalls were erected for refreshments etc (the Lord of the Manor in 1865 installed a water supply and in 1953 a public granite seat was provided)."

At the hearing in support of the registration oral evidence was given by Mr W G Cann, who has lived in South Zeal all his life (born in 1945), and has been a member of the Parish Council for 10 years and chairman for 5 years, and by Mr J Newcombe who was born in 1905 in Sticklepath (part of the Parish of South Tawton) and who has all his life lived somewhere in South Tawton. In support of the Objections Mr J M Draisey who is Assistant County Archivist produced the South Tawton Parish Tithe Award dated 13 September 1847 and Mr F J Doughty who is and has been since 1957 the Divisional Surveyor (for the Okehampton District) of the County Council's County Engineers Department gave oral evidence. Two days after the hearing I inspected the Unit Land in the presence of Mr Cann and Mrs W J Redstone of Moorlands, South Zeal.



Mr Cann in the course of his evidence produced a newspaper cutting (the property of Mr Newcombe; he dated it as about 1937), being a picture of South Tawton's Church of St Andrew and the "almost adjoining church house", and Mr Browne put to him a coloured picture postcard (SZ.5) showing nearly all the Unit Land and the front wall of the Seven Stars PH on the east.

The Unit Land is bounded on the east by (but does not include any part of) the Class 3 County road ("the Main Road") which runs north-south through the Village. Into and across the Unit Land runs Sticklepath Lane coming from the west; this lane a short distance from the Village is marked as "Unsuitable for motor vehicles".

For the purposes of exposition it is convenient to divide the Unit Land into five areas: (1) the "Tree Area", being an area approximately square bounded by a high Dartmoor granite wall enclosing a tree of great age (locally reputed to have been planted in the reign of Queen Elizabeth I); (2) the "Private Garden Area", being an area approximately triangular at the southwest corner of the Unit Land separated from the remainder of it by a low stone wall, and containing a garden (the soil of which is about level with the top of the wall) and apparently enjoyed and occupied with the cottage southwest of the Unit Land; (3) the "Southwest Open Area" being an area approximately triangular open to the Main Road which is bounded on the southwest by the Private Garden Area and on the north by a line (more precisely defined below) being the south side of the part of the Lane running north of the Tree Area; (4) the "Lane (north fork) Area", being the strip made up for the purpose of carrying vehicles coming from the west along the Lane to go north of the Tree Area to the Main Road; and (5) the "Church Area" (the remainder of the Unit Land being the area east of the steps leading up to the Church Hall (illustrated in the press cutting) lying between the churchyard wall and the Lane (north fork) Area.

On the Objection plan the Tree Area, the southwest part of the Southwest Open Area and the Church Area are coloured pink, so the dispute between the Parish Council and the County Council as presented at the hearing relates only to the part of the Southwest Open Area nearest to the Tree Area and to the Lane (north fork) Area. Most of the evidence was about the Southwest Open Area.

Mr Cann described the use made of the Southwest Open Area for the Bell Ringers Festivals held every year; about 8 or 10 teams came to ring the Church bells, and during the Festival refreshments and "various other things" were provided for ringers and others on the Southwest Open Area.

Mr Newcombe carried further back into the past the evidence of Mr Cann. He said (in effect):- The Southwest Open Area before it was tarred was cobbles. For the last 50 years he had parked his car on it when going to Church. The Bell Ringers Festivals were held every year and the teams competed for a shield given about 20 years ago by Colonel Lethbridge. There have been nothing which could be called "Fairs" there, but there had been various "fund raising events" on the Southwest Open Area in the 1920's and the 1930's; he remembered about a dozen of such events; there was no other area in South Tawton where such events could take place; the advantage was that if it rained those participating could go to the Church House or to the Seven Stars (at the back of which there was a skittle alley). During the Bell Ringers Festival the Lane (north fork) Area was available for vehicles coming from or going to Sticklepath Lane.

The 1841 Award map showed the Main Road and all the Unit Land other than the Private Garden Area as one piece coloured orange; the Private Garden Area is shown as part of plot 48 with a building on it.



Mr Doughty said (in effect):- Sticklepath Lane forked at the Tree Area, traffic for the north going north of it and traffic for the south going south of it; he regarded the Southwest Open Area so far as it was not highway as private forecourt (belonging to the buildings adjoining on the south and west). As he first knew it in 1957, the Southwest Open Area had a tarred surface; in the course of the hearing it had been described as tarmacadamed, but he thought it was a spray of tar over a surface of dry stone. He knew nothing of the use of the Southwest Open Area for festivals and other Village activities as described by Mr Newcombe.

Any decision of mine that any part of the Unit Land was properly registered as town or village green does not absolutely preclude the County Council or anyone else afterwards contending that it is highway, because in law land may at the same time be both subject to a customary right by the inhabitants of the locality to indulge in sports and pastimes on it and also subject to a right for the public to pass and repass over it for highway purposes; the circumstances in which one of these rights has priority over another must be determined on considerations which are outside the scope of the 1965 Act and which are not within my jurisdiction. However I realise that the County Council as highway authority may prefer that highway land should not also be town or village green, and I accept that as a general rule, evidence which shows that land has been used for highway purposes is also some evidence that the land is not subject to any customary right.

As regards the Lane (north fork) Area Mr Cann and Mr Newcombe made it clear that this during festivals and fund raising activities was left open for vehicles. This area appears to be highway and a necessary continuation of Sticklepath Lane, and in the absence of any evidence that it has ever been used for recreational activities, I conclude that to this extent the Unit Land should not have been registered and the County Council's Objections succeed.

As regards the Southwest Open Area, its appearance is indecisive; although drivers of vehicles coming from or going to the south along the Main Road to or from Sticklepath Land would naturally take the shorter route across the Southwest Open Area, none would suffer any appreciable practical inconvenience by having to go on the other side of the Tree Area over the Lane (north fork) Area. Further the present appearance of Sticklepath Lane is such that I infer that vehicular traffic along it has always been small, and that accordingly drivers would accept the necessity during festivals and fund raising activities of going the slightly longer way round. Although parts of the Southwest Open Area in appearance could perhaps be forecourts belonging to the adjoining buildings, no claim from anyone having any interest in such buildings was made at the hearing. Balancing the conflicting considerations summarised above, my conclusion is that all the Southwest Open Area is subject to a customary right for the inhabitants of South Tawton to indulge in lawful sports and pastimes on it, and accordingly its registration is proper; I express no opinion as to whether subject to such right or equally with such right the public have any right to use the whole of any part of it as a highway.

At the hearing I had no evidence about the Private Garden Area. During my inspection it was clear that the registration of it must be a mistake, and Mr Cann on behalf of the Parish Council then and there agreed. I conclude therefore that it should not have been registered.



The Tree Area notwithstanding its unusual and extraordinary nature and the Church Area appear to be part of the public open space by the Church made up of the Unit Land and the Main Road. In 1955 the Parish Council arranged for the walls surrounding the tree and the nearby seat to be rebuilt, and there is an inscription that this was done to commemorate the Coronation of Her Majesty in 1953. No one contended that either the Tree Area or the Church Area were not part of so much of the Unit Land as could properly be regarded as village green, and I conclude therefore that they are properly included in this registration.

For the above reasons I confirm the registration with the modification that there be removed from the Register the Lane (north fork) Area and the Private Garden Area, and in the notice which I am by section 6 of the 1965 Act required to give to the registration authority as to the way in which my decision should on the Register be implemented, I shall define the areas to be removed from the Register as

(1) the part of the land comprised in this Register Unit which is situate at its southwest corner, which is enclosed by a low stone wall, which is apparently garden land almost level with the top of the wall, which apparently belongs to and is occupied with adjoining buildings and which on the Register map appears to be part of OS plot No 2110 having an area of 1.535 acres; and (2) the strip of land being the made up carriageway which is apparently used by vehicles going from Sticklepath Lane ~~to~~ north of the aged tree and thence northwards out of the Village, which is bounded on the south by a line

being the north side of the granite wall enclosing the tree, and thence from the northwest corner of the wall to the northeast corner (near a GPO box) of the building on the south side of Sticklepath Lane, and which is bounded on the north by the north edge of the part of the carriageway made up for use for vehicular traffic.

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 19<sup>th</sup> day of January 1978

a. a. Baden Fuller

Commons Commissioner