



COMMONS REGISTRATION ACT 1965

Reference No.10/D/17

In the Matter of Fordington Green,
Dorchester, Dorset.

DECISION

This dispute relates to the registration at Entry No.4 in the Land Section of Register Unit No.V.G.4 in the Register of Town or Village Greens maintained by the Dorset County Council and is occasioned by Objection No.99 made by the Mayor, Aldermen and Burgesses of the Borough of Dorchester and noted in the Register on 20th August 1971.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 28th February 1973. The hearing was attended by Canon E.B. Brooks, the applicant for the registration, and by Mr. J.B. Gillam, solicitor for the Objectors.

The Objectors are the owners of the land the subject of this reference, which was conveyed to them by the Duchy of Cornwall on 22nd August 1963 to be used for public walks and pleasure grounds under section 164 of the Public Health Act 1875. Before that the Objectors held the land under a lease dated 22nd December 1925. It is hardly necessary to say that the mere fact that land is held by a local authority for public walks and pleasure grounds does not bring it within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965.

During the time that the Objectors have owned the land it has been used once a year for the St.George's Day celebration, organized by the Vicar of Fordington, the parish church being dedicated to St. George. This celebration was referred to as "traditional" in a letter written by Canon Brooks in 1964, but if it was of any antiquity there had been a break in the tradition, for it was not held during the early years of Canon Brooks's incumbency, which began in 1949.

The only reliable piece of evidence beyond the period of living memory is contained in the Fordington Tithe Apportionment, dated 3rd August 1844. In that document "Fordington Green by the Church", with an area of 0a. 2r. 16p, appears under the heading "Downs and Waste" with no owner and no occupier. The Apportionment was altered on 29th November 1877, when "Fordington Green" appears under the heading "Houses and Gardens", with the Duchy of Cornwall shown as owners and occupiers. I find as a fact that "Fordington Green" in the Apportionment is identical with the land the subject of this reference, the discrepancy in the statements of the area being due to the taking of a strip for road widening.

I infer from the name of the land in 1844 and 1877 that it was then a town or village green as the law then stood. While, generally speaking, the name of a piece of land is not a safe guide to its present legal status



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(see In the Matter of the Lord's Waste, Winterton-on-Sea (1972) 25/D/12), it is equally not a matter to be ignored. When deciding what assistance is to be derived from a name, regard must be had to the context in which it is found. For example, a name on an Ordnance Map (other than the name of a parish, etc. delivered to the surveyor by a clerk of the peace under section 4 of the Ordnance Survey Act 1841) means no more than that some unidentified person told the surveyor that that was the name of the land in question. On the other hand, those preparing a tithe apportionment were required by section 55 of the Tithe Act 1836 to state the name or description of the several lands to be comprised in the apportionment. I therefore accept the Apportionment, as altered in 1877, as evidence that the land in question was named "Fordington Green" in 1844 and 1877. There being no evidence to show that it was not correctly so named, I shall proceed on the basis that it was.

The concept of a village green was well-known to the law long before "town or village green" was defined in section 22(1) of the Commons Registration Act 1965. Its essential characteristic was that the inhabitants of a particular locality had an immemorial customary right to use it for exercise and recreation, including the playing of lawful games: See 28 Halsbury's Laws of England (3rd edn), 238. A village green in this sense falls fairly and squarely within the statutory definition of "town or village green": indeed it would appear that the draftsman of the definition had the definition in Halsbury before him.

If such a customary right existed down to 1877, it could only have been abolished by an Act of Parliament (see Hammerton v. Honey (1876), 24 W.R.603, at p.604), but no such Act has been brought to my notice. I must, however, have regard to the fact that there is no evidence that the land has been used for lawful sports and pastimes within living memory until the "traditional" St. George's Day celebration was revived by Canon Brooks. Although a customary right cannot be lost by non-user, non-user may give rise to a presumption that the right never existed. After giving what seems to me to be due weight to the absence of evidence of user during the earlier period of living memory, I have come to the conclusion that the inhabitants of Fordington have had a customary right to use the Green for lawful sports and pastimes, and that that right is still subsisting.

For these reasons I confirm the registration.

That is sufficient to dispose of this dispute, but since Canon Brooks based his case upon an argument which I am unable to accept, I ought briefly to state my reasons for rejecting it. Canon Brooks relied upon a passage in a modern history of Fordington in which it is stated that in the reign of Edward III a royal grant was made for a Tuesday Market and a fair to be held on Fordington Green. No authority for this statement is cited by the author of the book and the statement is not in itself evidence: but, if such a grant was made it should be possible to obtain a copy of it from the Public Record Office with the aid of the calendars of Charter Rolls and Patent Rolls. I did not, however, think it right to adjourn the case and put Canon Brooks to the trouble and expense of searching for and obtaining such a copy, since it does not appear to me that, even if it were proved



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that such a grant was made and acted upon, it would support Canon Brooks's case.

The way that Canon Brooks put his case was that Fordington Green was constituted a fairground by the grant and that, since lawful sports and pastimes are indulged in at fairs this must be land on which the inhabitants of the locality have a right to indulge in such sports and pastimes.

In my view, this argument fails to have regard to the legal characteristics of a fair held under a royal charter. By such a charter the grantee is given a franchise which entitles him alone to hold a concourse of buyers and sellers, to collect tolls and other charges, and to prevent any other person from infringing the monopoly so granted. It is for the grantee to provide the fairground and if he does not do so, he may incur a forfeiture, but the inhabitants of the locality will have no legal cause for complaint. The persons who resort to the fair and indulge in the sports and pastimes made available to them do not do so in the exercise of any legal right. It is to the interest of the owner of the franchise to attract as many people as possible to his fair. The provision of facilities for indulging in lawful sports and pastimes, while not strictly part of the franchise, is a way of attracting to the fairground people who may then be tempted to spend money with those who have brought goods for sale. Furthermore, the persons who attend a fair do so as members of the public at large and not as inhabitants of the locality in which the fair is held. It may be that fairs are sometimes held on town or village greens, but the mere fact that a fair with amusements is held on a piece of land is no evidence that such land is a town or village green.

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 15th day of March 1973

Chief Commons Commissioner