



In the Matter of The Cricket Field, Brancepeth,  
Co. Durham

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 71 in the Register of Town or Village Greens maintained by the Durham County Council and is occasioned by Objection No. 49 made by Castle Estates (Brancepeth)Ltd and noted in the Register on 22 February 1972.

I held a hearing for the purpose of inquiring into the dispute at Durham on 2 and 3 July 1980, and at Watergate House, London WC2N 6LB on 8 July 1980. The hearing was attended by Mr Adrian Kirsten, of Counsel, on behalf of the Brancepeth Parish Council, the applicant for the registration, and by Mr Spencer Maurice, of Counsel, on behalf of the Objector.

The land comprised in the Register Unit has an area of 3.29 acres. It is enclosure No. 1115 on the Modern Ordnance Survey Map, where it is described as "Cricket Ground". It first became a separate enclosure at some time after the work for the 1939 revision of the Ordnance Survey map had been done. The evidence indicated that the land was first fenced in 1936, but the precise date when this was done does not appear to be material.

Before the present enclosure No. 1115 was formed, the land comprised in the Register Unit was an undefined part of a much larger enclosure having an area of just over 12 acres. This larger enclosure was known locally as the Horse Field, and it was described on the 1939 Ordnance Survey map as "Cricket Ground". The north-western boundary of the Horse Field is a railway line. A mid-19th century map shows that the land which subsequently became the Horse Field formed the major part of three enclosures, the northern parts of two of which were severed by the construction of the railway. An estate map of 1797 shows that the land forming the immediately pre-railway enclosures as divided into five enclosures.

Mr Kirsten adduced a considerable body of evidence of the use of the Horse Field for recreational purposes before the land comprised in the Register Unit was separated from the rest, and he argued that the land comprised in the Register Unit must be subject to any rights to which the Horse Field as a whole was subject. However, the history of the Horse Field shows that it only came into existence as a unit after the construction of the railway. This precludes the existence of any customary right, for a customary right must have existed from time immemorial, i.e. before the accession of Richard I in 1189. It therefore only remains to consider whether the inhabitants of the locality had indulged in lawful sports and pastimes on enclosure No. 1115 as a right for not less than 20 years before the passing of the Commons Registration Act 1965, that being the only way in which that enclosure could fall within the definition of "town or village green" in section 22(1) of that Act.

During the whole of the 20 years before the passing of the Act of 1965 enclosure No. 1115 was occupied rent-free by the Brancepeth Cricket Club. This occupation went back to the time when enclosure No. 1115 was fenced off from the rest of the Horse Field. During this period children living in the village of Brancepeth played on the land when there was no cricket match in progress. There was oral evidence as to this, which is borne out by a letter, dated 19 November 1962, by the Hon. Secretary of the Cricket Club in reply to a letter from the Objector's agents



stating that the ground would not be available for use in 1963. In this letter the Hon. Secretary said:-

The members of the Brancepeth Cricket Club were naturally very distressed to receive the information contained in your letter to me of the 3 October last, particularly as this has been the Club's cricket ground for very many years, in addition to being a playing field for the children of the village.

Without prejudice to whatever rights they have in the matter, I am requested by my Committee to ascertain upon what terms your clients are prepared to deal with the cricket club? Would they be prepared to lease the field to them on the understanding that the cricket club continued to allow the village children to make use of the ground and if so, on what terms? Or would they prefer to sell and if so could you please let me have details.

The Club's occupation was extended beyond the end of the 20 years relevant for the purposes of the Act of 1965, but the importance of the letter lies in the statement that the Club had allowed the children to make use of the ground. This shows that the children were not making use of the ground as of right. The occupation by the Cricket Club was paramount, and the children only allowed to play on the ground when the members of the Club did not want to use it. So far as the members of the Club were concerned, although the letter was written without prejudice to whatever rights they had in the matter, there is nothing in the evidence to show that they played cricket on this ground otherwise than as the tenants or licensees of the owners, at first Viscount Boyne and later the Objector.

The specific evidence about the use of the cricket ground can only properly be understood in the context of the surrounding circumstances. Not only the cricket ground, but the whole of the village of Brancepeth belonged to Viscount Boyne until he sold the property in 1961. Not only did he own the houses in the village, but most of the people who lived in them worked on his estate. It is therefore not surprising that he raised no objection to the children of his tenants and employees playing in the Horse Field, which was not cultivated, but kept permanently under grass for the farm horses. It is equally not surprising that he was willing to let the Cricket Club have the use of the cricket ground rent-free, as he formerly allowed them to use a cricket ground near his house until he required the ground for a golf course which he was making. In my view, this was a case of a generous landowner looking after his tenants and employees, and it would be entirely wrong to say that sports and pastimes were indulged in on his land as of right.

For these reasons I refuse to confirm the registration.

Both Mr Kirsten and Mr Maurice asked that I should make an order for costs should their respective clients be successful. I can see no reason why costs should not follow the event, and I shall order that the Parish Council pay the Objector's costs on County Court Scale 4.

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

25<sup>th</sup>

day of

July

1980

  
Chief Commons Commissioner