



COMMONS REGISTRATION ACT 1965

Reference Nos.37/D/23-24

In the Matter of Mason's Field and
Adjoining Land, Rye, East Sussex.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.VG 56 in the Register of Town or Village Greens maintained by the former East Sussex County Council and are occasioned by Objection No.158 made by the East Sussex Education Committee and noted in the Register on 19th April 1971 and Objection No.169 made by the former Rye Borough Council and noted in the Register on 7th October 1971.

I held a hearing for the purpose of inquiring into the dispute at Lewes on 9th April 1975. The hearing was attended by Mr B.P.M.Bayliss, the applicant for the registration, Mr Clements, solicitor, on behalf of the East Sussex Education Committee, Mr J.G.Milward, solicitor, on behalf of the Rother District Council, and Mr J.P.A.Simpson, solicitor, on behalf of the Rye Town Council.

The land comprised in the Register Unit is crossed by a road running from north to south and consists of three portions. The portion to the west of the road consists of the site of a school and its playing fields, and Mr Bayliss did not contend that that portion ought to remain in the Register Unit. Of the land lying to the east of the road, the major portion consists of Mason's Field property so called and to the south-east of that there is a long narrow appendage consisting of land along the banks of the river.

Mason's Field was conveyed to the Mayor, Aldermen and Burgesses of the Borough of Rye on 5th March 1930 by Mrs Mary Emma Mason for the purpose of its being preserved and used as a recreation ground for the enjoyment of the public under the Open Spaces Act 1906. Part of the land conveyed in 1930 was subsequently used by the Corporation for housing and other land acquired in 1948 to replace it, but the details of this transaction are immaterial: the whole of the land now under consideration being held for the purposes of the Open Spaces Act 1906.

Mason's Field is and was during the period of twenty years before the registration used as a recreation ground. The Borough Council maintained it and provided playground equipment. It has been used by residents in the locality. The only question for my determination is whether they have used it as of right.

The key to the answer is to be found in section 10 of the Act of 1906. Under that section a local authority which has acquired land under the Act is required to hold and administer it in trust to allow, and with a view to, the enjoyment thereof by the public as an open space and under proper control and regulation and for no other purpose. By section 15(1) of the Act the authority



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is empowered to make byelaws for the regulation of the open space, and of the days and times of admission thereto, and for the preservation of order and prevention of nuisances therein.

In my view the use of this land by inhabitants of the locality has been in their capacity as members of the public. The trust upon which the land has been held has precluded the creation of any special right in the inhabitants of the locality over and above the right of members of the public to enjoy the land as an open space (if there is such a right and not merely a liberty).

This leaves for consideration what I have called the appendage to the south-east of the land held under the Act of 1906. The only evidence about the use of this land is that children climb over the fence separating it from the recreation ground in order to fish in the river. This fence was put up some years ago and has been regularly renewed after protests by neighbouring householders about the danger of small children falling into the river. Since the fence was erected only the older children and a few adults have fished along this stretch of the river. On this evidence I find myself quite unable to find that the inhabitants of any definable locality have indulged in lawful sports and pastimes as of right on this portion of the land comprised in the Register Unit.

For these reasons I refuse to confirm the registration.

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 29th day of *Sept* 1975

Chief Commons Commissioner