



COMMONS REGISTRATION ACT 1965

Reference No.37/D/19

In the Matter of The Salts,
Rye, East Sussex.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.VG 41 in the Register of Town or Village Greens maintained by the former East Sussex County Council and is occasioned by Objection No.168 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 8th and 9th April 1975. The hearing was attended by Mr Alastair Bigham, of counsel, on behalf of Mr L.H.Boreham, the applicant for the registration, 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. Mr B.P.M.Bayliss, whose application for registration was noted under section 4(4) of the Commons Registration Act 1965, appeared in person.

The land comprised in the Register Unit consists of two areas divided by a road, the area south of the road being known as the Town Salts and that to the north as the Middle Salts. To the north of the Middle Salts is an area formerly known as the North Salts, now developed as a housing estate. It was contended in support of the registration that the Town Salts and the Middle Salts fell within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 by being land on which the inhabitants of a locality had indulged in lawful sports and pastimes as of right for not less than twenty years before 18th December 1969, the date of the registration.

So far as is material for the purposes of this case, the history of the land in question begins with a local Act of 1833 relating to Rye Harbour (3 Will.IV,c.lxvii). The Act authorised the embanking of certain salt marshes, including the land in question, which was the property of the Rye Corporation, so as to keep out the tidal waters.

The land belonging to the Corporation had an area of 30a.1r.32p. and was bounded on the west by a road. At an Assembly of the Mayor, Jurats and Freemen held on 5th June 1834 it was resolved to lay out the road frontage to a depth of 80 ft in building plots to be let on 99 year leases. The leases were sealed on the following 4th December. Some of the houses built on these plots were demolished after the leases expired and their sites are now used as two car parks, one lying to the north of the road dividing the Town Salts from the Middle Salts and the other lying to the south of that road. Both car parks are included in the Register Unit, but it was agreed by Mr Bigham and Mr Bayliss that they should be excluded.

The part of the Corporation's land which was not to be included in the



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building leases was the subject of a plan for setting out a garden and pleasure ground, and at an Assembly held on 23rd August 1834 a committee was appointed to consider the best mode of carrying the proposed improvement into effect. At the following Assembly held on 22nd September 1834 it was resolved as follows:-

"That as it does not appear at this time advisable to incur the Expense
"of laying out the Marshes proposed for a Sporting Ground, so as to form
"Bowling Greens, Cricket Grounds or Gardens, the most eligible plan for
"the present would be both for the accommodation of the Public and for
"the sake of Economy to form such Marshes into a level space to which
"the Public should at all times have access and admission there to amuse
"themselves at their Pleasure doing no wilful damage to the Fences or
"Enclosures".

At the same Assembly it was resolved that the North Salts be let by auction, and the subsequent history of that part of the land embanked under the Act of 1833 is not relevant for the purposes of these proceedings.

I was invited to consider a passage at pp.420-422 of The History and Antiquities of the Ancient Town and Port of Rye by William Holloway, published in 1847. The author quotes perfectly accurately the resolution of 22nd September 1834 set out above. There then follows the passage upon which reliance is placed in support of the application. This is in the following terms:-

"We know, because we were present at the time and took a part in
"the proceedings, that it was the full intention of the members of the
"Corporation to set apart this piece of land as a sporting ground for
"the inhabitants for ever. They saw that their town was circumscribed
"within very narrow limits, and that unless that opportunity was seized,
"no other was ever likely to offer itself to furnish them with grounds
"on which the inhabitants might take air and exercise; and we sincerely
"hope that no one will attempt to throw a barrier in the way of the
"people's full enjoyment of the rights and privileges which were thus
"fully intended to be conferred upon them."

"We have made these few latter remarks because we have heard that
"the town council have levied a small fine, by way of acknowledgement,
"on certain parties amusing themselves on the Town Salts, that they
"have no actual right to sport there. Now if this be true, we sincerely
"regret it; for, as we have before said, the Corporation in 1834 fully
"intended to give this land freely to the inhabitants at large, so
"that they might for ever hereafter disport themselves thereon, without
"any let, hindrance, or molestation".

Read in isolation, this passage appears to support the applicants' contention, but if it is read with the terms of the resolution of 22nd September 1834 in mind, it becomes apparent that the author has substituted for the words "the public" in the resolution the words "the inhabitants" in two places and "the inhabitants at large" in a third. In my view, Holloway's History not only does not support the applicants' contention, but is a salutary warning



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of the extreme care necessary in making use of statements in local histories in any legal proceedings.

A further illustration of the danger inherent in accepting an author's version of a document is to be found at p.70 of H.P.Clark's Guide and History of Rye, published in 1861. Here the resolution of 22nd September 1834 appears in the following guise:-

"On the right of the bridge are the Town Salts, which were, in 1834, walled in, and, by a large meeting of the Freemen, were given to the town for ever as a sporting field".

Another garbled account of the events of 1834 is to be found at p.49 of A.G.Bradley's An Old Gate of England, published in 1917, where the author states:-

"Eighty years ago, however, when it was first embanked there were a few disinterested men in Rye town who protested against a proposed subdivision and leasing out of this now invaluable ground and urged, fortunately with success, that it should be allotted as playing fields to the commons of Rye".

My attention was also drawn to p.60 of an anonymous Guide to Rye and Winchelsea, published in 1881, and to p.121 of A New History of Rye by L.A.Vidler, published in 1934, in both of which "the inhabitants" appear. I attach no more importance to these works than to those previously quoted.

Turning to the more reliable evidence, it is clear that both the Middle Salts and the Town Salts have been used for a variety of recreational purposes, including what may be described as lawful sports and pastimes, during the whole period of living memory and by inference as far back as 1834. The only question to be determined is whether such indulgence in lawful sports and pastimes has been by the inhabitants of any locality as of right.

Evidence was given by a number of local residents from which it appears that the land in question has been a place of resort for visitors as well as for residents: indeed, at certain times of the year visitors have greatly outnumbered the inhabitants. This is in accordance with the intention expressed in the resolution of 22nd September 1834 that the public should have access and admission to amuse themselves at their pleasure. There was no evidence that the inhabitants of any definite locality have enjoyed this land in any way differently from members of the public at large, save only that it may be presumed that those playing organized games are more likely to have been inhabitants than visitors. It is therefore necessary to consider the evidence regarding organized games.

The Corporation's terriers show that the Middle Salts were let to a cricket club from 1884 to 1944 and that the Town Salts were let for grazing from 1884 to 1942. The cricket club used to sub-let parts of the Middle Salts to a bowls club and a tennis club. During its tenancy the cricket club was



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responsible for the maintenance of the Middle Salts, but after World War II the Corporation took over the maintenance and charged the cricket club and also a football club for the use of the ground. From time to time the Corporation gave approval to the enclosure of the ground so that charges could be made for admission to league matches.

The Corporation allowed football clubs to play on the Town Salts. In 1938 these clubs were merged to form a united club and had a second pitch on the Middle Salts. The use of the Town Salts for football ceased about 1955 because the ground could not be enclosed. After this the football club paid for all the work on the pitches instead of paying rent. From time to time the Corporation let the Town Salts to a fair-ground proprietor, who sub-let pitches to amusement operators. The Corporation also allowed a model aeroplane club to use the Town Salts, but later moved it to the Middle Salts on account of complaints about the noise. The Corporation laid out a putting green on part of the Town Salts and have charged for its use. At one time a now defunct hockey club paid rent to the Corporation for the use of a pitch on the Town Salts and there was also at one time an enclosed cycle track at the south end of the Town Salts.

I am satisfied on the evidence that during the twenty years preceding the registration all organized recreational activities on both the Middle Salts and the Town Salts were under the complete control of the Corporation and that the public at large were allowed to have free access to the land for unorganized sports and pastimes. If it be correct to presume that most of the persons indulging in the organized games were inhabitants of Rye, I do not consider that they were so indulging as of right, the Corporation having and exercising complete control of the use of the land.

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 April 1975

Chief Commons Commissioner