



In the Matter of The Tye, East Hanningfield, Essex.

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No VG 50 in the Register of Town or Village Greens maintained by the Essex County Council and are occasioned by Objection Nos 102, 151, 99 and 336 made by Truman, Hanbury Buxton and Co Ltd and noted in the Register on 3 November 1970, 28 October 1970, 3 November 1970, and 9 August 1971 respectively, and the conflicting registration at Entry No 1 in the Land section of Register Unit No CL 422 in the Register of Common Land maintained by the Council.

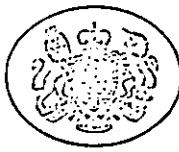
I held a hearing for the purpose of inquiring into the dispute at Chelmsford on 19 January 1978. The hearing was attended by Mr E A Peel, solicitor, on behalf of the East Hanningfield Parish Council, the applicant for both the registration and the conflicting registration, and by Mr K H Moffat of the Objector's legal department.

Mr Peel informed me that he was instructed not to pursue the conflicting registration.

The land comprised in the Register Unit consists of strips of land on either side of the main road through the village of East Hanningfield. Objections Nos 99 and 336 relate to a small area in front of the Windmill Public House at the northern end of the strip of land on the west side of the road. Mr Peel informed me that he was instructed not to resist these Objections.

Objections Nos 102 and 151 relate to an area at the northern end of the strip of land on the east side of the road. The land comprised in the Register Unit is bounded on the north by the Three Horse Shoes Inn and by a garage (formerly a stable block) at right angles to the inn on the east side of the strip. The 1922 edition of the 25" to the mile Ordnance Survey map indicates that the land immediately to the south of the inn and to the west of the garage afforded a means of access to those buildings from the road. The map indicates that this land was devoid of grass. The map shows that there was a fence or hedge projecting a few feet to the west of the garage in line with its southern wall between the grassed area to the south and the ungrassed area to the north. Apart from paths giving access to buildings to the east, the remainder of the land comprised in the Register Unit had grass on it, as most of it still has. The position at the present time differs from that in 1922 in that an area of land to the south of the garage has been gravelled and is used as a car-park by the customers of the inn. This newly gravelled area and the land to the north of it is the subject of Objection No 102. The grassed area lying between the gravelled area and the road is the subject of Objection No 151, the grounds of that Objection being that the Objector maintains a pictorial sign in the position marked on a plan attached to the Objection.

The evidence regarding the land the subject of the Objections can only be described as meagre. I was informed that it and the land to the south are shown on the tithe apportionment map of 1835 as not being subject to tithe, but I had no opportunity of seeing what light, if any, is thrown by the map upon the physical condition of the land at that date. There is no plan on the conveyance by which the Writtle Brewery Co Ltd acquired the inn in 1891, the premises being described merely by name. Mr T W Saville, now aged 79, who has lived in East Hanningfield



all his life made oral statements to both the Parish Council and the Objector. Mr Saville was not called as a witness, but neither side had any objection to my being told about his statements. He told the Clerk of the Parish Council that as a boy he used to play toss-halfpenny outside the inn, and he told a representative of the Objector that the area in front of the inn had never been any different from what it now is. Since the 1922 Ordnance Survey map clearly shows that the area in front of the inn was different when Mr Saville was a boy from what it now is, I do not feel that I can attach any importance to what Mr Saville is said to have said.

On this meagre evidence I have come to the conclusion that the area which has been gravelled since 1922 was previously part of the village green and has not lost its status as such by the encroachment of the car-park.

The area to the north which had no grass on it in 1922 presents more difficulty. Either it was originally part of the village green and was encroached upon when the inn and its stable block were built or the right to indulge in lawful sports and pastimes never extended further north than the area which was grassed in 1922. In the absence of any evidence as to when building on the sites of the inn and the garage first took place, it appears to me that I can only proceed upon a presumption that the situation shown on the 1922 map had persisted from time immemorial, so that when the land in the neighbourhood was first laid out, buildings were erected on the sites now occupied by the inn and the garage, the land immediately to the south was left as a means of access to the buildings, and the land further to the south was appropriated for use as a village green. It would be unrealistic to say that this is an inference of historical fact based on the evidence, but in the absence of knowledge of what actually happened it is necessary to make some presumption in order to decide the case. The rule in such cases is omnia praesumuntur rite esse acta. In other words, it must be presumed that the land in front of the inn and the garage was lawfully appropriated for use with the buildings on those sites and was not an encroachment on a pre-existing village green.

For these reasons I confirm the registration with the following modifications:- namely, the exclusion of the land the subject of Objections Nos 99 and 336 and of the area shown on the 1922 map as a means of access to the Three Horseshoes Inn and its garage (or stable block).

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

14th

day of

February

1978

CHIEF COMMONS COMMISSIONER