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COMMONS REGISTRATION ACT 1965

Reference No. 59/D/20

In the Matter of Bittacy Green,
Barnet,
Greater London.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 40 in the Register of Town or Village Greens maintained by the Greater London Council and is occasioned by Objection No. 22 made by the London Borough of Barnet and noted in the Register on 6 July 1970.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, WC2N 6LB on 11 and 12 May 1976. The hearing was attended by Mr L Craymer, Solicitor, on behalf of the Mill Hill Preservation Society, the applicant for the registration, and by Mr P. Langdon-Davies, of Counsel, on behalf of the Objector.

The land comprised in the Register Unit was acquired by the former Hendon Borough Council, the predecessor of the Objector, in 1952 for the purposes of public walks and pleasure grounds under section 164 of the Public Health Act 1875. It follows that any use of the land for lawful sports and pastimes by the inhabitants of the locality since 1952 is explicable by the fact that it was open to the public under the Act of 1875 after that date. However, if the land was a town or village green when it was acquired, the acquisition would not have the effect of abolishing any rights of the inhabitants of the locality to which it was subject. It is therefore necessary for me to consider whether the evidence supports Mr Craymer's contention that the inhabitants of the locality indulged in lawful sports and pastimes on the land as of right before it was acquired.

There can be no question of there having been a customary right to indulge in lawful sports and pastimes on this land, for a survey of the manor of Hendon published in 1796 shows that it was then the northern part of a field known as The Nine Acres or Barn Field. If the land falls within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965, it can only be because the inhabitants of the locality have indulged in such sports and pastimes as of right for not less than twenty years.

Mrs Ada Watts, whose memory goes back to 1910 or earlier, remembers that a Guy Fawkes night celebration bonfire was held on the land in question every year (except perhaps during the wars) until the 1970's when the land was fenced by the Council. Mrs J H Williams remembers this since 1947. Professor E H Warmington's memory of the bonfire goes back to the 1940's. He remembers that it was a large bonfire which was prepared before 5th November and that it left traces on the ground for months afterwards. From this it would appear that the bonfire was held as of right, for a landowner who did not acknowledge the existence of the right would be unlikely to tolerate the interference with his possession over a substantial part of the year caused by the placing of the materials for the bonfire beforehand and the damage condition of the land afterwards. I am therefore satisfied that the inhabitants of the locality indulged in the sport or pastime of lighting a bonfire on 5th November



during a period of more than twenty years before the land was fenced. Such a sport or pastime is analogous to dancing round a maypole, which is a well-recognised feature of some town or village greens.

The legal position is not now, however, as it was during the period covered by the evidence. In 1970 the Council was minded to cease to use the land for the purposes of public walks and pleasure ground and to appropriate it for housing purposes. Since the land was an "open space", as defined in section 22(1) of the Town and Country Planning Act 1962, because it was used for the purposes of public recreation, it was necessary to make an appropriation order, confirmed by the Secretary of State for the Environment, under section 73 of that Act. This order, the London Borough of Barnet (Sanders Lane Housing Area) Appropriation Order 1970, provided that other land should be provided in exchange and that the appropriated land should be discharged from the rights, trusts and incidents to which it was previously subject.

The 1970 Order did not, however, apply to all the land comprised in the Register Unit. There was excluded from it a triangle of land, which still remains open and outside the curtilages of the houses which have been built on the remainder. In my view, the effect of this Order was to discharge the part of the land used for housing from the right to indulge in lawful sports and pastimes on it and to leave the excluded triangle with the definition of "town or village green" in section 22(1) of the Act of 1965.

For these reasons I confirm the registration with the following modification namely the exclusion of the land the subject of the 1970 Order.

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 24th day of May 1976.

Chief Commons Commissioner