



COMMONS REGISTRATION ACT 1965

Reference No. 59/D/7

In the Matter of Land to the North of Piper's Green Lane,
Brockley Hill, Stanmore, Barnet, Greater London.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.CL.164 in the Register of Common Land maintained by the Greater London Council and is occasioned by Objection No.94 made by the Corporation of the London Borough of Barnet and noted in the Register on 14th July 1972.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, WC2N 6LB on 2nd May 1974. The hearing was attended by Dr.J.T. Scales, who applied for the registration on behalf of the Brockley Hill Residents Association, and by Mr.Peter Langdon-Davies, of counsel, on behalf of the Corporation.

The land comprised in the Register Unit consists of a long narrow strip, the northern third being about half the width of the southern two-thirds. At its southern end it adjoins Piper's Green Lane at a point where the Lane turns sharply to the south-west to join Brockley Hill, which runs along the line of the old Watling Street. It appears from maps dated 1599, 1827 and 1845 that the short length of the Lane running into Brockley Hill is a modern construction, and that formerly Piper's Green Lane continued in a northerly direction along the southern two-thirds of the land comprised in the Register Unit as far as its junction with the northern third and then turned to the west to join Brockley Hill at a point some distance to the north-west of the present junction with Brockley Hill. The part of the Lane which formerly joined the land in question to Brockley Hill is no longer in existence, though its line is shown on the modern Ordnance Survey map as forming the boundary between two enclosures. The northern third of the land in question formerly led to two cottages and a woodland area of 137 ac., known as Brockall Wood. The cottages have disappeared and Brockall Wood has been cleared.

There is no evidence that the land in question is subject to rights of common, but Dr.Scales claimed that it fell within the definition of "common land" in section 22(1) of the Commons Registration Act 1965 by being waste land of the manor of Edgware.

The manor of Edgware was acquired by All Souls College, Oxford, in 1442. The manor lay to the north-east of Watling Street, and the whole of the land relevant to these proceedings is shown on the 1599 map as being within the manor. The parties relied on a reproduction of this map and copies of a number of documents relating to the manor contained in Collectanea I (Oxford Historical Society 1885, v).

For the purpose of these proceedings the most illuminating document is an abstract of a lease granted in 1580 by All Souls College to Christopher Hovenden, the Warden's brother, of all the woods on the lands and manors of the College in the County of Middlesex for 20 years at a yearly rent of £20.



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This lease recited that the College had granted to the farmers of certain lands in the parish of Edgware firebote, ploughbote, cartbote, and hedgebote to be taken out of the demised premises during certain years then to come, and the lessee covenanted to implement such grant. Mr. Langdon-Davies argued, and I accept his argument, that the fact that firebote etc. had been granted to the farmers for terms of years shows that the demised lands were not subject to any rights of common appendant or appurtenant. The map shows that the demised lands were parcel of the manor of Edgware, and the lease accordingly shows that the lands demised were part of the demesne lands of the manor, otherwise they could not have been let for a term of years. Therefore the demised lands were not waste of the manor.

The maps of 1827 and 1845 show both portions of the land comprised in the Register Unit coloured in the same way as the roads, i.e. as the northern end of Piper's Green Lane and a branch after the Lane itself turned to the west. The 1827 map is described as a map of the parish of Edgware, but it is not stated for what purpose it was made. The 1845 map is that made for the purposes of the Tithe Act 1836. It is almost identical with the 1827 map, and seems to have been based on it, for the numbers of the enclosures are the same on both maps. Neither map shows any numbers on the land in question. The fact that the land in question is shown on the tithe map as a road without a number indicates that it was a public road: see Att.-Gen. v. Antrobus, [1905] 2 Ch.188,193. This is sufficient to exclude it from the definition of "common land" in the Act of 1965.

Dr. Scales said that the land has a number of trees growing on it and that that indicates that it was a southerly extension of the former Brockall Wood. As I have already stated, the lease of 1580 shows that Brockall Wood was not waste of the manor, but demesne land. Furthermore, the fact that trees are now growing on land which formed part of a highway in 1845 does not deprive that land of its status as a highway. It could only cease to be a highway if action were taken to stop it up under section 85 of the Highways Act 1835 or some subsequent statute. There is no evidence that any such action has been taken. Subject to that, the rule is "once a highway, always a highway".

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 5th day of June 1974


Chief Commons Commissioner