



In the Matter of Raeburn Avenue Open Space,
Kingston-upon-Thames,
Greater London.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 60 in the Register of Town or Village Greens maintained by the Greater London Council and is occasioned by Objection No. 96 made by the Town Clerk of the Royal Borough of Kingston upon Thames and noted in the Register on 25 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, London WC2 on 13 July 1976. The hearing was attended by Mr J L Baron, the applicant for the registration, and by Mr Terence Etherton, of Counsel, on behalf of the Council of the Royal Borough of Kingston upon Thames.

In 1930 the land comprised in the Register Unit formed part of an estate known as the Berrylands Farm Estate within the then Urban District of Surbiton, the property of Thomas and Macdonald Ltd. Thomas and Macdonald Ltd prepared a lay-out for the development of the estate. This lay-out included the roads now known as Raeburn Avenue, Grand Avenue, and Greenfield Avenue. Between the land fronting onto the eastern side of Raeburn Avenue and the land fronting onto the western sides of Grand Avenue and Greenfield Avenue lay an area on either side of a stream, which it was not proposed to develop. This area was conveyed to the former Urban District Council of Surbiton by a deed dated 5 August 1930. It appears from the Ordnance Survey map that the southern part of the land so conveyed was later used for the construction of a bathing pool and a paddling pool, known as the Surbiton Lagoon, and a car park. The remainder of the land is that now comprised in the Register Unit.

The deed and the Ordnance Survey map together show that the land comprised in the Register Unit was not a separate entity until some time after 5 August 1930 and that its boundaries were settled by reference to the lay-out of the Berrylands Farm Estate and the Surbiton Lagoon and its car-park. It would, therefore, appear that if this land falls within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 at all, it can only be because the inhabitants of some locality have indulged in lawful sports and pastimes on it as of right for not less than twenty years.

Since its acquisition by the former Urban District Council parts of the land in question have been used for varying periods as allotments, and at the present time approximately 10% of the area is so used. Other parts, amounting together to approximately 5% of the area are at present used by the 3rd Tolworth Boy Scout Troop and the Surbiton Pet Club under leases granted in 1954 and 1957. The remainder has been left open. The former Urban District Council and the present Royal Borough Council have treated the land as public walks or pleasure grounds and have made byelaws for its regulation under section 164 of the Public Health Act 1875.

The Royal Borough Council objected to the registration on the ground that the land is in the ownership of the Council for the purposes of a public open space. To this Mr Baron replied when opening his case that his interpretation of the Act of 1965



was that the ownership is irrelevant and the object is to register land freely accessible to the public.

Mr Baron is, of course, right in saying that the ownership is irrelevant, but he is clearly wrong in his contention that the object of the Act of 1965 is to register land freely accessible to the public.

That Mr Baron started by making a bad point is not fatal to his case if the evidence is such as to bring the land within the definition of "town or village green" in section 22(1) of the Act of 1965, but the evidence which he adduced was directed to proving that the land in question was freely accessible to the public.

Mr Baron, who lives in Raeburn Avenue, gave evidence himself. He called two witnesses. Mr P. C. Gray has lived in the neighbourhood for the last five years, but knew the land previously, having played on it as a child. Mr Gray was not resident in the neighbourhood when he was a child, and he said in cross-examination that he was on the land as a member of the public. Alderman C. Granville-Smith has lived in Manor Drive, Surbiton since 1939. During that period his children have played on the land and he has walked on it. In cross-examination Alderman Granville-Smith said that he and his children had done so as members of the general public, emphasising his answer by adding: "Of course we have".

On that evidence Mr Baron made two submissions. He submitted that the byelaws made under section 164 of the Act of 1875 declared the land to be a pleasure ground and that it therefore fell within the opening words of the definition of "town or village green" in section 22(1) of the Act of 1965 by being land which had been allotted by or under any Act for the exercise or recreation of the inhabitants of a locality. The use of land as public walks or pleasure grounds under s.164 of the Act of 1875 is not an "allotment" of such land. In my view, the word "allot" in section 22(1) of the Act of 1965 is used in the technical sense of allotment by or under an inclosure Act for the benefit of the inhabitants of a defined locality. Mr Baron's second submission was that the land had been available to the public, without restraint, for the playing of sports and pastimes for well over twenty years before 1965 and that therefore it fell within the last limb of the definition in section 22(1). Unfortunately for Mr Baron's submission, the evidence clearly shows that this land has been available to the public for that purpose for well over twenty years. He has therefore proved too much. In order to bring the case within the definition, he would have to prove that the inhabitants of a defined locality had so used the land as of right. There is no evidence to support this. The use has been by members of the public and it is nothing to the point that some of them have lived in houses in the vicinity. So far as the use of this land is concerned, there is nothing in the evidence to differentiate them from members of the general public.

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 22nd day of July 1976.


Chief Commons Commissioners