



COMMONS REGISTRATION ACT 1965

Reference Nos. 54/D/3 and 7

In the Matter of Bala Green, Bala,
Meirionnydd D

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 3 in the Register of Town or Village Greens maintained by the former Merioneth County Council and are occasioned by Objection No. 411 made by Bala Urban District Council and entered in the Register on 14 June 1972 and the conflicting registration at Entry No. 1 in the Land Section of Register Unit No. CL 158 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into these disputes at Dolgellau on 6 and 7 November 1975.

The hearing was attended by Mr Oliver Jones, counsel on behalf of Meirionnydd District Council the successor to Bala Urban District Council and by Mr Melvyn Mars and Mr Joseph Lloyd Owen in person.

Mr Owen had registered the land in question as part of a larger area of land under Unit No. VG 5. I have given a decision that the land comprised in VG 5 and not comprised in VG 3 is not part of a Town Green and to avoid duplication I have refused to confirm that Registration and left Mr Owen to join with Mr Mars in supporting the Registration of VG 5.

Mr Owen had done a great deal of praiseworthy research and based his claim that the land in question is a Town Green on all the three alternatives open to him under the definition in Section 12 of the Commons Registration Act 1965. I will deal with each of these alternatives in turn.

1 "That the land has been allotted by or under any Act for the recreation of the inhabitants of any locality". The Green was acquired by the Local Government Board of the Town of Bala by a conveyance dated 30 August 1861. Mr Owen endeavoured to persuade me that this conveyance was an allotment within the meaning to be attributed to that word in the context in which the word "allotted" is found in Section 22 aforesaid. Even if the conveyance could on the true construction of Section 22 be regarded as an allotment, as to which I have considerable doubt, it was not an allotment "under any Act". This circumstance is sufficient to defeat the claim that the land is a Town Green, based on the first alternative.

It is also relevant to mention that the said conveyance makes no reference to recreation. It was conveyed subject to "such rights of common of pasture or turbary and to such rights of way and other rights" as were then legally exercisable over the land. Even if the conveyance was an allotment it was not in my view an allotment for the recreation of the inhabitants of Bala.

2 That the inhabitants of Bala have a customary right to indulge in lawful sports and pastimes on the land.

Mr Owen had no evidence of any customary right. The above-mentioned conveyance reserved a right for the use of the land by the militia of the County of



Merioneth as a drill and exercise ground and there was some historical evidence that it had been so used by the forces of the Crown when they were garrisoned at Bala. On this evidence Mr Owen invited me to infer that the Green had been used for archery and on the basis of that inference to find that the Green was a Town Green in accordance with the decision in *New Windsor Corporation v Mellor* 1975 3WLR.25.

Even if I can infer that in the days when the forces of the Crown used bows and arrows they practised archery on the Green I cannot infer that the inhabitants of Bala indulged in a similar practice. In my view if the Crown was under the necessity to maintain a garrison at Bala the probability is that it would have discouraged and not encouraged the practice of archery by the inhabitants. In the *New Windsor* case the customary right was well documented over a very extensive period. In this case there is no evidence of the inhabitants of Bala ever having asserted a customary right.

Mr Owen made a further submission which if I correctly understood it was to the effect that the Petition by one tenth part of the ratepayers of Bala made in 1859 for the application of the Local Government Act of 1858 to Bala was made for the express purpose of enabling the town of Bala to acquire the land in question from the Crown, that the purpose of that acquisition was to improve the health of the inhabitants by maintaining the land as an open space and affording them a facility for fresh air and exercise and that therefore the land was and still is held upon trust to retain it for use by the inhabitants for recreation.

No evidence was led to establish that there was any nexus between the petition in 1859 and the conveyance of 1861, or that the land was acquired for the purposes suggested by Mr Owen.

Bala was in 1861 a not very large town set, as it still is, in a wide expanse of beautiful countryside. It was stated that in 1859 there was no drainage or sewage system in Bala and while there was, in these circumstances, no doubt concern for the health of the inhabitants I cannot infer that the acquisition of an open space for recreation was a top priority.

For these reasons I cannot accept Mr Owen's submission on the second alternative.

3 The use of the Green by the inhabitants of Bala for sports and pastimes as of right for not less than twenty years.

On this third alternative Mr Owen and Mr Mars joined forces.

As appears from the plan attached to the Objection No. 411 made by Bala Urban District Council it only objects to part of the land being registered as a Town Green. The dispute relates to the remainder of the Green.

M/s Helen Williams, Mr Owen himself, M/s Hawkins, Mr P J Roberts and Mr E W Roberts all gave evidence on behalf of Mr Mars and Mr Owen. They all gave evidence as to the activities on the Green more particularly during their schooldays. Football, rounders, quoits and to a lesser extent cricket were then played on the Green. M/s Williams was at school during the period 1925 to 1930 and M/s Hawkins who is now aged 46 was at school not less than thirty years ago. There was a dearth of evidence as to the user of the Green during the period of 20 years immediately preceding the 5 August 1965. Mr Mars and Mr Owen were under the impression that the further back in time their evidence as to the user of the Green went the stronger their case would be and I have no doubt that if the



Commons Registration Act had come into force some years prior to 5 August 1965 the Green would have been a Town Green as defined by that Act. Mr Owen knew of the decision in the New Windsor case but he had not read the report of the case in the Court of Appeal and he and Mr Mars were taken by surprise when confronted with the necessity to prove a period of 20 years terminating on 5 August 1965.

Mr Oliver Jones, who was manifestly under-instructed perhaps by reason of the Meirionnydd District Council having taken over from Bala Urban District Council under the recent reorganisation, was as helpful as he could be in the circumstances. His cross-examination of the witnesses called by Mr Mars and Mr Owen indicated that his case was that Bala Urban District Council was the owner of the land, and that it was free to use it as it thought fit for the benefit of the inhabitants. The evidence given as to the user of the Green for sports and pastimes was not and no doubt could not be disputed.

The Bala Urban District Council made charges for fairs and markets held on the Green and Gorsedd Stones were erected on the Green when some years ago the Llisteddod was held in Bala. The more recent history is that the Urban District Council registered the Green as Common Land, but withdrew that registration in order to enable a factory to be built on the land. The proposal to build a factory led to a petition signed by a very large number of inhabitants being presented to the Urban District Council protesting against development on the Green. No factory was in fact built, whether as a result of the petition or for some other reason I was not told. Thereafter on or about 1969, I was not told the precise date, a macadam car park and roads were made on that part of the Green which is the subject of the Urban District Council's objection. The roads I was told are maintained by the Highway authority.

Mr Oliver Jones called only two witnesses on behalf of the Meirionnydd District Council, Mr C H Jones and Mr J R Davis. Mr C H Jones stated that there was a Castle Park football ground and that there was another children's playground with tennis courts, that the Green became remote and a new playing field was located near a new housing estate. He spoke of an electricity sub-station having been erected on the southwest corner of the Green and explained that the proposal to build the factory referred to above was consequent upon Bala being named as a growth centre.

Mr J R Davis, clerk to Bala Urban District Council during the period 1965 to 1965, was the last witness called at the very end of the hearing. He stated that in 1965 part of the Green less extensive than the area which has been macadamed was used as a car park. There was a ticket machine but no car park attendant and it was left to the honesty of the users to purchase their tickets, the machine being emptied from time to time. He further stated that the Urban District Council occasionally filled in pot holes when necessary and there was no objection to the use of this part of the Green as a car park.

He told me that he would be able to identify on the Register map the land used as a car park in 1965. One witness called by Mr Mars and Mr Owen who was still present at the hearing when Mr Davis gave his evidence confirmed his evidence as to the user of part of the Green as a car park.

During the course of the hearing I became aware that there is a great deal of local feeling in favour of the preservation of the Green attributable inter alia to the "sasiwrth" held there and also armistice day ceremonies. Notwithstanding this I must give my decision in accordance with the law as enacted by Parliament and the evidence given at the hearing.



Since it is not disputed that part of the land is a Town Green and since the evidence has established that for a period far in excess of twenty years the land had been used for sports and pastimes I must in my view come to the conclusion that so much of the land in question as has not been devoted to highway purposes or had erected thereon an electricity sub-station, or ceased to be used for recreational purposes prior to 5 August 1965 is a Town Green.

The only evidence of the land ceasing to be used for recreational purposes is that of Mr Davis as at 1965. I will therefore confirm the registration modified ~~so~~ as to exclude (1) the electricity sub-station (2) all highways; and (3) the land used as a car park in 1965 as identified on a plan by Mr Davis, such identification to be agreed by Mr Mars and Mr Owen on a plan to be provided to the Gwynedd County Council as the Registration Authority. If the said plan cannot be agreed I will re-open the hearing for the purpose of hearing further evidence as to the use of the land in 1965 and down to 5 August 1965. The circumstance that part of the land is now under a macadam surface is in my view no bar to its remaining in that condition. Many lawful games and pastimes can be played on a hard surface which may even be preferable to land which may become pot holed or become water logged.

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 16 day of January 1976

C. A. Settle

Commons Commissioner