



COMMONS REGISTRATION ACT 1965

Reference No. 214/D/153

In the Matter of Ashley Children's
Corner, Ashley, New Forest District,
Hampshire

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG89 in the Register of Town or Village Greens maintained by the Hampshire County Council and is occasioned by Objection No. OB357 made by Lymington Borough Council and noted in the Register on 2 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Winchester on 21 March 1979. At the hearing (1) Mr F J Osgood on whose application the registration was made, attended in person; (2) New Forest District Council, as successors of Lymington Borough Council, were represented by Mr F W N Slinger their chief assistant solicitor; and (3) New Milton Neighbourhood Council (it was said that they would within a few days be succeeded by New Milton Parish Council) were represented by Mrs M W Bowsher, their chairman.

The land ("the Unit Land") in this Register Unit contains (according to the Register) about 0.5 acres; it is on the west side of Lower Ashley Road and is bounded on the south by a road (no longer than the Unit Land) called Ash Tree Close, and is fenced from these roads by hedges (a gap in each for access). The Unit Land is grass land laid out as a children's playground with a mound (slide and pipe tunnel), a see-saw, some swings etc.; and a large part is a flat area suitable for ball games. The grounds of objection are: "That the land was not a Town or Village Green at the time of registration".

Mr Osgood in the course of his evidence produced: (1) a PRO extract from the Ashley Inclosure Award dated 27 November 1862 by which was awarded: "unto the Churchwardens and Overseers of the poor of the said Parish of Milton all that...land numbered 33 on the said Map containing Two acres to be held by them and their successors in trust as a place for exercise and recreation for the inhabitants of the said parish and neighbourhood..."; and (2) a PRO extract from the Award map.

Mrs Bowsher who has lived in the Area since her marriage in 1951, and has for the last 3 years been a member of the New Milton Neighbourhood Council, in the course of her evidence produced a letter dated 23 February 1979 from the New Forest District Council and an extract (page 124) from the Victoria County History of Hampshire. Mr W A Murphy who has lived in the area since March 1972 and has been a member for the last 3 years of the Neighbourhood Council also gave oral evidence.

Two days after the hearing I inspected the Unit Land.

It was not disputed that the Unit Land is part of the "Two acres" mentioned in the above quoted allotment. The remaining part ("the 1½ Acres Part") now has on it two blocks of 16 flats with garages; the 1½ Acres Part is separated from the Unit Land by a fence.



The relevant part of the 1965 Act definition of a town or village green is: "land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality". This definition if read literally includes land which "has been" so allotted, notwithstanding that subsequently it has lawfully ceased to be subject to any local recreational obligation, for example, because other land has been substituted under section 4 of the Inclosure Act 1846, or because it has been disposed of under a scheme made by the Charity Commissioners under section 18 of the Commons Act 1899. In my view the 1965 Act definition should be read as impliedly excluding land which has lawfully ceased to be subject to the obligation.

Mr Slinger said (in effect):- The draft Lymington Town Map (prepared in the early 1960's) showed the Unit Land and the $1\frac{1}{2}$ Acres Part as an open space (one piece). The Borough Council seeing it as waste ground, considered that three quarters might with advantage be used for flats for old people and one quarter as a children's playground. At first planning permission for the flats was refused, but later with the consent of the Minister of Housing and Local Government, was granted by the County Council, and the flats were erected as they now are.

I am not concerned directly with the $1\frac{1}{2}$ Acres Part, because neither Mr Osgood nor anyone else registered it under the 1965 Act. When the flats were erected, the 1862 Award may have been overlooked; however this may be (I have no detailed information as to what happened) I will for the benefit of the District Council assume (as is perhaps likely, or at least sensible) that the flats are now lawfully there and that accordingly the $1\frac{1}{2}$ Acres Part has somehow been discharged from any local recreational obligation under the 1862 Award. But even on this assumption, I decline to treat the remaining $\frac{1}{2}$ acre as too small to continue by itself subject to such obligation or otherwise to infer from the erection of the flats that the Unit Land has ceased to be subject to it.

Mrs Bowsher said (in effect):- The Area has much changed since she first knew it (1951). There was then (as now) a school in Lower Ashley Road about 300 yds north of the Unit Land and there was also a much smaller school about 50 yds to the north (now a Special Education Unit); so there were then a lot of children about and a lot of use was made of the Two acres by the children. Lower Ashley Road in those days was a country road although there were Council houses at one end (now the area round the Unit Land is much built over). She remembered the flats being put up in the 1960's since they were built the Unit Land has been used more.

Mr Murphy said that the bigger school was an infant school for about 120 children and the smaller school was special for about 35 children (backward or with behaviour difficulties) and by the children at this school the Unit Land was used very considerably and with advantage.

From the circumstance that the Unit Land has been used for recreational purposes very little if at all by adults, and that it has been used by children from other localities I decline to infer that the local recreational obligation imposed by the 1862 Award has somehow been abrogated. I incline to the view that its use as described by Mrs Bowsher and as I would infer it from its present appearance is within the trust declared by the above quoted allotment; even if I am wrong about this, such use is so nearly within the trust that the difference cannot I think for the purposes of this case be significant. My decision is therefore that the Unit Land is still subject to the allotment above quoted and that accordingly registration was properly made. As a result I confirm the registration without any modification.



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 23rd day of April — 1979

a. a. Baden Fuller

Commons Commissioner