COMMONS REGISTRATION ACT 1965

Reference No. 215/D/140

In the Matter of Woodcote Green Recreation Allotment, Dodford and Grafton, Hereford and Worcester.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 55 in the Register of Town or Village Greens maintained by the former Worcestershire County Council and is occasioned by Objection No. 92 made by Valid Farms Ltd and noted in the Register on 14 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 29 November 1977. The hearing was attended by Miss D E Brown, Assistant County Solicitor, on behalf of the Hereford and Worcester County Council, the successor authority of the former Worcestershire County Council, which made the registration without application, and by Mr R M Bache, solicitor, on behalf of the Objector.

The land comprised in the Register Unit was allotted by the Bromsgrove and Upton Warren Inclosure Award, made 5 July 1855 under the Annual Inclosure Act 1852, to the then Earl of Shrewsbury, his heirs and assigns in trust as a place of exercise and recreation for the inhabitants of the parishes of Bromsgrove and Upton Warren and neighbourhood.

On the face of it such an allotment would appear to bring the land in question within the first limb of the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 as being "land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality". Mr Bache, however, contended that the area specified in the award was much too wide to fall within the expression "locality" in the Act of 1965. He pointed out that the land in question is some miles from the built-up parts of both Bromsgrove and Upton Warren and that even in 1855 Bromsgrove was a substantial town. Miss Brown argued in reply that in 1855 there was no definable locality less than a parish in the area covered by the award.

Mr Bache argued in the alternative that the award was bad because it purported to give rights to the inhabitants of more than one locality. In support of this proposition he relied upon Edwards v. Jenkins, [1896] 1 Ch. 308, where Kekewich J. held that a custom for the inhabitants of several adjoining or contiguous parishes to exercise the right of recreation over land situate in one of such parishes was bad. In my view Edwards v. Jenkins is not a binding authority for this case. Kekewich J. was considering a custom, which, as he pointed out at p.313, must be taken to have been granted by the lord before the time of memory and would therefore be limited to an area over which the lord had power to grant. It is, however, to be noticed that Kekewich J. did not entirely rule out the possibility of a grant extending to more than one parish. He only refused to accept that it could extend to more than one parish without specific evidence. Here the award expressly specifies two parishes.

Even if it be correct to regard each parish as a separate locality, there is nothing in the context of section 22(1) of the Act of 1965 to exclude the provision of section 1(1)(b) of the Interpretation Act 1889 that words in the singular shall include the plural, so that the definition of "town or village green" must be read as if it referred to the inhabitants of any locality or localities.

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For these reasons I 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 20th day of December 1977

Chief Commons Commissioner