



COMMONS REGISTRATION ACT 1965

Reference No.16/D/22

In the Matter of Fears Green,
Kelshall, Hertfordshire (No.1)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.78 in the Register of Town or Village Greens maintained by the Hertfordshire County Council and is occasioned by the conflicting registration at Entry No.1 in the Land Section of Register Unit No.C.L.183 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Hertford on 17th January 1973. The hearing was not attended by any person entitled to be heard.

The registration in the Land Section of Register Unit No.V.G.78 was made pursuant to an application made by the Kelshall Parish Meeting. The conflicting registration was made by Mr. W.T.C. Roden and relates to only a part of the land included in Register Unit No.V.G.78 and has therefore to be treated as an objection to V.G.78 only to the extent of the conflict. Nevertheless, the fact that an objection has been made to the registration has prevented the registration's becoming final under section 7 of the Commons Registration Act 1965. Therefore the reference under section 5(6) of the Act embraces the whole registration. It is accordingly my duty under section 6(1) of the Act to inquire into the whole matter which has been referred to me.

So far as the land which is included in both V.G.78 and C.L.183 is concerned, the only evidence which I have consists of the two statutory declarations which were made in support of the two registrations. These statutory declarations are mutually contradictory and I can see no reason for accepting that in support of V.G.78 and rejecting that in support of C.L.183. I therefore find myself in the position of being unable to confirm this registration in so far as it relates to the land included in the conflicting registration.

I am now faced with the problem of how to deal with the part of V.G.78 which is not the subject of the conflict. Had Parliament intended that a part of a registration to which there was no objection should automatically become final, provision to that effect could have been included in section 7 of the Act. In the absence of any such provision, I cannot confirm the undisputed part of the registration without some reason, however slender, for saying that the land within it falls within the definition of a "town or village green".

To this extent this case is similar to In the Matter of West Hanney Village Green (1972) 2/D/1. In that case there was an objection to a comparatively small part of the area comprised in the registration. Having found that the area in dispute did not fall within the definition of "town or village green", I dealt with the remainder of the land on the footing that the fact that there had been no objection in respect of it indicated that everybody concerned was content that it should be registered as a town or village green. I then exercised



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my discretion by confirming the registration with the modification that only the land the subject of the objection was to be excluded, even though I was not satisfied that any of the land comprised in the register unit was a town or village green.

I find myself unable to take a similar course in the present case because I am not merely not satisfied that the piece of land in question is a town or village green, but I feel satisfied that it is not a town or village green. There is a scintilla of evidence that the land now under consideration is a town or village green in the statutory declaration made in support of the registration. On the other hand, it would be unrealistic not to take into consideration the evidence afforded by the Register Map, which is based on the Ordnance Survey. This shows the land in question to be a long narrow strip along the side of a road in the middle of open country between two villages and with only one house within half a mile of it. To my mind the size, shape and situation of the land render it so unlikely that the inhabitants of any locality have ever used it for exercise or recreation or sports or pastimes of any kind that I cannot say that it falls within the definition of "town or village green".

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 28th day of February 1973

Chief Commons Commissioner