

COMMONS REGISTRATION ACT 1965

Reference Nos 216/D/22
216/D/23

In the Matter of The Common Wharf,
Ware, East Hertfordshire District,
Hertfordshire

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 113 in the Register of Town or Village Greens maintained by the Hertfordshire County Council and to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 311 in the Register of Common Land also maintained by the said Council, and are occasioned by these two registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Hertford on 13 January 1981. At the hearing The Ware Society on whose application both registrations were made, were represented by Mr John Tapper, their River Group Leader; and Dr Violet V Rowe of 7 Albion Close, Hertford attended in person as having been in 1965 a founder of the Society and their Secretary up to 1972; and having as such in 1969 applied for these registrations.

Dr Rowe is a Ph D (history) of the University of London, produced an extract made by herself from the Court Rolls of the Manor of Ware from 1669 to 1706 (the original is paper not parchment in the British Library), from which it appears that between 1669 and 1686, the homage were concerned on 12 occasions with obstruction or damage to "the Common Wharf".

Mr Tapper in the course of his evidence said (in effect):- The land is (in accordance with its name) a wharf on the north side of the River Lee; the land includes not only the wharf itself (a frontage to the River of about 70 feet) also a strip leading from it northwards to Star Street. The land has a hardstanding surface; Thames Water Authority has restored the River frontage as part of the River Lee flood relief scheme. The most important use of the Wharf is by narrow boats: by Holland (Mr J Milton), Lupin (Mr R Butler), Jaguar (by Mr A Braby), Aries (Mr D Grove) and Titania (Mr J Bowles); it is also used by boats of members of the Lee & Stort Cruising Club based at Stanstead Abbot and of members of Broxbourne Cruising Club based at Broxbourne. Holland is a substantial narrow boat (being he thought about 70 feet ~~wide~~ capacity for about 48 passengers; Mr Milton had constructed a bollard on the Wharf. Jaguar is used for delivery of coal (licensed for commercial user), Lupin is a personal boat based near Ware Lock. Aries and Titania are visitors. Holland has been used daily between April, to October ever since 1976; use by the two clubs above-mentioned has been frequent during summer months for the same period.

In the 1965 Act the definition of a "town or village green" so far is relevant is "land ... on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes"; and the definition of "common land" so far is now relevant includes "waste land of a manor" but does not include a town or village green. So although apart from the 1965 Act the same land could be both common land and a village green, registration of land under the Act as both cannot properly continue.



As to this land being a town or village green within the said definition:- The commercial use of Jaguar is not I think decisively against. I accept the suggestion that the use of the other boats is generally by persons who want to "indulge" in a "pastime"; use of Holland may not be such for Mr Milton, but it would be such for his passengers. The evidence of Mr Tapper is against any such indulgence in pastime being by "the inhabitants of any locality"; in my opinion these words contemplate a locality such as the parish or district (whatever is now or may have been the appropriate word) of Ware; places from which the boat users come cannot I think be combined together so as to become a locality within the meaning of the 1965 Act. Accordingly in my opinion the information put before me falls short of establishing that the land is for the purposes of the Act a town or village green.

As to its being common land the information put before me by Dr Rowe is I think (as she contended) ~~not~~ evidence that at one time it formed part of waste land of the manor of Ware. She mentioned that she had consulted ~~the~~ local history by Mrs E Hart, which she understood there are two manors in Ware: "Rectory Manor" and "Ware Manor" but that this History did not otherwise throw any light or status on this land.

In the absence of any evidence that the land has in any now relevant way changed to what it was 200 years ago, I conclude from the Court Rolls referred to by Dr Rowe that it is within the 1965 Act definition of common land.

For these reasons I refuse to confirm the VG 113 registration and I confirm the CL 311 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 6th — day of February 1981.

A. A. B. Fuller

Commons Commissioner