



COMMONS REGISTRATION ACT 1965

Reference No. 19/U/7

In the Matter of The Village Green,  
Westerham, Kent.

DECISION

This reference relates to the question of the ownership of land known as The Village Green, Westerham, being the land comprised in the Land Section of Register Unit No. V.G.13 in the Register of Town or Village Greens maintained by the Kent County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Westerham Parish Council claimed to be the freehold owner of the land in question and Mr. John St A. Warde claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Canterbury on 14th November 1972.

At the hearing, Mr. M.F. Oldale, solicitor, appeared for the Parish Council and Mr. Horton, of counsel, appeared for Major John Robert O'Brien Warde, the father of Mr. John St A. Warde.

Mr. Oldale produced a copy of the court roll of the Manor of Westerham (with the Manor of Squerryes) dated 14th November 1923, whereby the homage gave and granted "free leave liberty and licence" to Major Warde as Lord of the Manor and Major Warde also gave leave to the Parish Council to enclose with a fence the land the subject of this reference "to hold unto and to the use of the Council ..... for ever", reserving the annual rent of one red rose to the Lord or Lady of the Manor. While this document cannot be described as a masterpiece of legal draftsmanship, it seems to have been intended to grant to the Parish Council a copyhold estate in the land in question. This was certainly the view taken at the time, for the previous consent of the Minister of Agriculture and Fisheries to the grant had been sought and obtained on 10th October 1923. When such a grant had been lawfully made the land comprised in it would by virtue of section 81(3) of the Copyhold Act 1894 cease to be of copyhold tenure and would be vested in the grantee to hold for the interest granted as in free and common socage. The land has been under the control of the Parish Council ever since 1923 and on 27th January 1924 the Council made bye-laws for its regulation under the Public Health Act 1875 and the Local Government Act 1894, which bye-laws were allowed by the Minister of Health on 18th August 1924.

The land in question is described in the grant as being part of the wastes of the Manor of Westerham, and Mr. Horton argued that the grant could not be valid unless by the custom of the Manor the Lord was authorised with the consent of the homage to grant any common or waste lands to hold by copy of court roll.

While I accept Mr. Horton's contention that the grant of 1923 was only



-2-

valid if there was a custom of the Manor authorising the Lord of the Manor to make it, the very fact that such a grant was made is some evidence of the existence of such a custom. In my view where I find that a grant has stood unchallenged for nearly half a century I ought to refer it to a legal origin: cf. per Lush J. in Lascelles v. Lord Onslow (1877), 2 Q.B.D. 433, at p 452.

If there was no such custom, the grant may have operated to the prejudice of any persons entitled to rights of common over the land in question, but there has been no complaint by any such persons. It does not, in my view, lie in the mouth of the Lord of the Manor to say that he concurred in making a grant without any right to do so.

For these reasons I am satisfied that the grant of 1923 must be taken to be a valid one and that the Westerham Parish Council is the owner of the land, and I shall accordingly direct the Kent County Council, as registration authority, to register the Parish Council as the owner of the land under section 8(2) of the Act of 1965.

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 December 1972

Chief Commons Commissioner