



COMMONS REGISTRATION ACT 1965

Reference No. 219/D/11

In the Matter of Yorkletts Recreation Ground,  
Whitstable, Kent

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No.VG.120 in the Register of Town or Village Greens maintained by the Kent County Council and is occasioned by Objection No. 116 made by the former Whitstable Urban District Council and noted in the Register on 1 June 1972.

I held a hearing for the purpose of inquiring into the dispute at Folkestone on 23 January 1980. The hearing was attended by Mr P Clayden, Solicitor, on behalf of Mrs A Wilks, the applicant for the registration, and Mr J Laws, of Counsel, on behalf of the Canterbury City Council, the successor authority of the Objector.

Mr Clayden and Mr Laws informed me that it had been agreed that a part of the land, having an area of about 8 ac., belonging to the City Council should be excluded from the Register Unit.

In these circumstances I confirm the registration with the following modification, namely the exclusion of the area of about 8 ac. the property of the City Council.

Mr Laws applied for an order for costs against Mrs Wilks. Mr Clayden opposed the application.

Mrs Wilks has no personal interest in the land comprised in the Register Unit. She applied for the registration as a public-spirited member of the community, and that she did so in good faith is not questioned. Such an applicant is not usually ordered to pay costs if unsuccessful. Whether such an order is to be made depends upon the manner in which the applicant has conducted the proceedings.

The dispute was referred to a Commons Commissioner on 13 January 1975. This was nearly three years after the Clerk of the former Urban District Council had written to Mrs Wilks on 30 March 1972 stating:-

"Although the Council have objected to the registration of the whole of the land it does seem that they in fact own only some 8 acres of the whole, and I see no reason why the Council should object to your registration of the land which is not in their ownership".

On 13 April 1972 Mrs Wilks asked for a plan showing the land in the ownership of the Council. On 10 May 1972 the Clerk of the Council wrote to Mrs Wilks, stating

"The Council's objection to the registration of the part of the land not within their ownership will be withdrawn. I regret that I have no spare plan of the Council's land which I can send you". Although the inability of the Clerk to send a copy of the plan may seem to have been somewhat unsatisfactory from Mrs Wilks's point of view, the information which she sought was in fact available on a plan attached to the Objection. However, it appears from a letter which Mrs Wilks wrote to the Clerk of the Council on 8 January 1973 that she had by that time acquired another plan showing the land owned by the Council, so she then knew with certainty the terms on which the matter could be compromised.



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Further correspondence took place during the spring and summer of 1973, ending with a letter from the Clerk of the Council, dated 19 July 1973, in which he said: "So far as I can see, our views are so wide apart that the matter will have to go before the Commons Commissioner".

Thereafter there was no further correspondence until Mr Claydon took up the matter in a "Without Prejudice" letter dated 3 August 1979, to which the City Secretary replied on 31 August 1979, stating that the registration would certainly be strongly contested by the City Council. This section of the correspondence then ceased.

On 7 December 1979 notice of the hearing was given. On 21 December 1979 Mr Claydon wrote to the City Solicitor, stating that Mrs Wilks had decided that her application could not be sustained and that she would like the matter dealt with by means of a decision by consent. This letter was received on 28 December 1979. By that time instructions had been drawn and delivered to Counsel to represent the City Council at the hearing and costs had been incurred in the preparation of the Council's case. In a letter dated 31 December 1979 the City Secretary refused to agree to the matter being determined by consent unless the agreed determination included an order for the Council's costs on the highest scale of County Court costs. In a letter dated 8 January 1980 Mr Claydon stated that Mrs Wilks would not agree to a settlement on these terms.

In my view, the procrastination until 21 December 1979 of the acceptance of the terms which had been available by 8 January 1973 was unreasonable. The City Council was fully justified in incurring costs in the matter on receiving notice of the hearing. I shall therefore order Mrs Wilks to pay the costs of the Council on County Court Scale 4.

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

8th

day of

February

1980

Chief Commons Commissioner