



COMMONS REGISTRATION ACT 1965

Reference No.20/D/3

In the Matter of Gleaston Green,
Aldingham, North Lonsdale R.D.,
Lancashire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.18 in the Register of Town or Village Greens maintained by the Lancashire County Council and is occasioned by Objection No.03 made by Mr. Frank Nuttall and Mr. Francis Tate and noted in the Register on 4th December 1970.

I held a hearing for the purpose of inquiring into the dispute at Preston on 6th June 1972. At the hearing (i) Mr. Nuttall and Mr. Tate ("the Objectors") were represented by Mr. Dent, a solicitor of Parker & Yates of 9 Cannon Street Preston, agents for Brown Pearson Son and Murray of 5 Lawson Street Barrow in Furness (ii) the Aldingham Parish Council ("the Council") were represented by a member of the Council, Mr. H.M. Smith and (iii) the Lancashire County Council ("the County") were represented by their assistant solicitor Mr.J.A. Strong

The land was registered as village green pursuant to an application dated the 31st May 1967 and made by the Council. The objection dated the 30th September 1969 was:-

- "(1) Ownership by the objectors of the land edged red on attached plan by virtue of a conveyance dated the 22nd day of January 1960 made between The Queen's Most Excellent Majesty of the first part The Crown Estate Commissioners of the second part and the Objectors of the third part as Trustees of The Gleaston Green Committee
- (2) That the land was not a Town or Village Green at the date of registration."

Mr. Dent produced a copy of the conveyance mentioned in the objection; after reciting that the property thereby assured belonged to Her Majesty it was thereby witnessed that in consideration of £30; (clause 1) the Commissioners conveyed the land therein described "being part of the Waste of the Manor of Muchland" containing about 4 acres to the Objectors in fee simple subject to the existing tenancy agreements specified in the First Schedule and subject also "to all rights of common and all easements and profits now affecting or legally exercisable over the property hereby assured"; (clause 3) the Objectors covenanted with Her Majesty and the Commissioners so as to bind the property thereby assured and to benefit the adjoining land of Her Majesty to observe the stipulations and restrictions in the first part of the Second Schedule provided that Her Majesty and her successors in title owners of the adjoining land might waive vary and release the stipulations and restrictions. The first part of the Second Schedule contained the following:-



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"Neither the property nor any part thereof shall be used except as at present or for the purposes of a public recreation ground or for the erection thereon of a village hall for the inhabitants of the village of Gleaston".

On the back sheet the Objectors were described as "Trustees of the Gleaston Green Committee", but the conveyance did not declare any trusts being in a form appropriate (except for the back sheet) for a conveyance to persons taking as joint tenants beneficially.

Mr. Dent explained that the Objectors would like their views put to me:- The Objectors were purchasers under the conveyance as trustees of the Gleaston Green Committee. Mr. Smith would say that the purposes of the Committee was to improve the land for the benefit of the residents in Gleaston. The Objectors submitted that I should define the rights of common subject to which the land had by the conveyance been expressed to be conveyed. An objection to the registration of the land as a village green was that it might prevent the Objectors (or their successors) at some future time erecting on the land a new village hall for which there was a need; the use of the land should not be limited to village green and recreational purposes. Formerly the land had been used as a tip; improvements had been carried out by the Green Committee at a cost of about £800 which had been raised by public subscription. Under the ownership of the Objectors the land would be used for the benefit of the inhabitants of Gleaston Village as a whole not just as a village green. It was clear (so Mr. Dent said) that the whole of the land had not been used as playing fields for a long time; as was borne out by the tipping which had been done on the site. The main objection was that if the registration was effective, the control of the land would be taken from the Objectors, as owners and given to some other body; if the owners have the land it would be used for the benefit of the community; registration served no useful purpose. I should therefore refuse to confirm the registration or if I confirmed the registration I should direct the County to register the Objectors as owners.

The Objectors called no evidence, but in view of the evidence given as below mentioned by the Council, I should, I think, proceed on the basis that the conveyance could have been proved if this had been necessary. The land by the conveyance expressed to be conveyed forms the greater part of the land comprised in this register unit; this part ("the 4 acre piece") was that most disputed. In the appendix to this decision I describe in detail the part not included in the conveyance, because although there was little or no dispute about it, I must deal with this part particularly.

On behalf of the Council Mr. H.M. Smith gave evidence. His was the only evidence I had and I accept it. On some points (possibly not of great importance) it did not bear out the facts upon which the Objectors had apparently based their views as outlined above; however, I accept these views as being what the Objectors considered to be in the best interests of the inhabitants of the Village.



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Mr. Smith is and has been for the last $2\frac{1}{2}$ years a member of the Council; he is aged 43 years and has lived in Gleaston since 1939 (except between 1959 and 1961) and had known it for 2 or 3 years before that.

As appears from the Register map, the 4 acre piece is bounded on the north by a carriageway which (except as mentioned in the Appendix) separates it from the church, houses, gardens, etc. on the other side; on the east, south and west sides of the 4 acre piece, there is a hedge which has been there ever since Mr. Smith can remember. There is a recreational hall on the triangular piece on the north side. Gleaston Beck flows through the 4 acre piece; it was before the levelling below mentioned, occasionally tidal there. When he first knew it the land near the Beck (lower than the rest) was swamp (delineated in the Register map as "533a") and this part was used as a tip.

At that time, 1936, the 4 acre piece was used mainly on the north side, (because the swamp part and the part south of the Beck was unsuitable) for football in the winter evenings by persons working in neighbouring farms and others (then organised informally not as team sports, although there was inter-village football), for competitive sports, and in the summer for cricket (not so organised as football); and there were swings and wooden frames for the children. The land was also grazed and used for hens.

The use of the 4 acre piece for recreational purposes increased during the 1939-1945 war, because of the young people evacuated to the Village.

After the war the use of the 4 acre piece as above described for recreational purposes became more organised; the Village competed in Sunday League football, and the 4 acre piece was used basically for training in football; from 1945 there was a Green Committee.

In about 1957 some inhabitants were concerned with the proportions which the tip was taking and with the dilapidated state of the swings and frames. Mr. Smith with others was instrumental in setting up the Village Green Committee; the Objectors were among the first members. Mr. Smith was one of the members of The Village Green Committee who approached the Aldingham Parish Council with regard to determining the ownership of the land; thus they were led to the Crown and the Conveyance followed. The Village supported the Village Green Committee in their fund raising^{1/2} sweeps, football pools, and this type of thing, and later by Bingo. In about 1962, the land was levelled by the soil, etc. on the north side of the 4 acre piece being bulldozed towards the south to cover the tip and fill up the swamp; the work was done under contract and paid for out of the funds raised. The immediate effect was to destroy much of the grass; but the effect in a year or two when the grass had started to grow, was to improve the 4 acre piece for football, cricket and recreation for children and adults, and it was thereafter so used.

In about 1967 the Objectors put up a 4 foot fence with a lockable gate, and let the 4 acre piece; the tenant from 1967 to 1970 used it as a "kraal" for horses; such grass as was there was trampled down and the land became unplayable; thus the efforts of the Village Green Committee for the previous four years were destroyed. The Council registered the land as a Village Green because it had not been used as a playing field and the general feeling was



that there had been mismanagement; it was thought that such registration would bring this to an end, but nothing further was done pending the hearing of this matter before a Commons Commissioner.

Meanwhile the surface of the land near the Beck was further disturbed by the laying of a sewer near the line of the Beck.

On the evidence of Mr. Smith, I find that the inhabitants of Gleaston have on the 4 acre piece indulged in sports and pastimes continuously between the years 1936 and 1967 inclusive.

At the conclusion of the hearing I understood that the above finding was not disputed on behalf of the Objectors except as to the part of the 4 acre piece which had formerly been swamp and tip. Before 1962, it would, I think, have been impracticable to play cricket or football on the part which was then swamp or being used as a tip and on the south east side of the Beck. But there was then as now nothing to prevent any person walking from the recreational area on the north across the swamp and the tip to the other side of the Beck right up to the hedge which then as now forms the south east boundary of the 4 acre piece; and children could and did play over the whole area of the 4 acre piece. In my opinion the definition of "Town or Village Green" in section 22 of the Act does not require me to limit the land to which the definition applies to the exact area on which sports and pastimes are actually indulged; it must, I think, include all the surrounding area of land which can be fairly regarded as part of the same piece of land. I find that the whole of the 4 acre piece was one piece of land in this sense, extending from the north side right up to the hedge above described on the south east side. It cannot, I think, be sensibly divided into two pieces by the line of the former swamp and tip or by the line of the Beck. I conclude therefore that the indulgence in sports and pastimes which I have found extends to the whole of the 4 acre piece.

I accept the evidence of Mr. Smith that persons other than inhabitants of Gleaston did not use the 4 acre piece for recreational purposes to any significant extent.

For the Objectors it was said that the recreational activities were from 1945 regulated by a Committee and that from 1960 (the date of the conveyance) such activities were under the control of the Objectors as owners; I take this to be an argument that the indulgence in sports and pastimes which I have found was not "as of right" within the definition in the Act.

In my view mere regulation of sports and pastimes by a Committee does not prevent the participants from indulging in them "as of right" if, as I find from the evidence of Mr. Smith happened in this case, such regulation was merely to secure an orderly use of the land for the purpose.

Mr. Smith knew of no written rules applicable to the Village Green Committee which operated as above described in 1957 and subsequently, nor (apart from the conveyance) of any rules or trust or other document declaring the trust applicable to the funds which were raised and the land which was



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acquired. However from the activities of the Village Green Committee as described by Mr. Smith I infer (and this inference was, I think, to some extent confirmed by the views expressed to me on behalf of the Objectors) that such funds and land were subject to a trust to improve the 4 acre piece for the benefit of the inhabitants of Gleaston or a trust for the benefit of the inhabitants generally including a trust to benefit them in this particular way. I have not overlooked that the letting by the Objectors in 1967 of the land for grazing of horses was or may have been contrary to such trusts; but in the absence of evidence by them explaining why such letting was done, I am unable to qualify in any way the inference which I draw from the evidence of Mr. Smith that such a trust exists. The trust I infer is, in my opinion, charitable trust enforceable against the Objectors in appropriate proceedings; accordingly I conclude that if the Objectors had after 1960 refused to permit the 4 acre piece to be used for recreational purposes, those concerned could, by process of law, have compelled them to execute the trust properly, and if need be obtained an order for the appointment of other trustees. Although the definition in the 1965 Act does not apply very happily to land which is subject to a trust to permit the inhabitants of a locality to indulge in sports and pastimes, I can, I think, properly conclude that the words in the definition "as of right" are fulfilled by persons who indulge in sports and pastimes on such land. I find therefore that the indulgence in sports and pastimes on the 4 acre piece was "as of right" not only from the years 1936 to 1959 but also from the years 1960 to 1967.

The objection dated the 30th September 1969 is expressed to be limited "to the date of registration"; I am not, therefore, I think, concerned to express an opinion as to the "horse kraal" described by Mr. Smith as this happened after the registration (the 14th August 1967).

I conclude therefore that I ought to confirm the registration so far as it relates to the 4 acre piece.

I have, I think, no jurisdiction to define the rights of common subject to which the land was by the conveyance expressed to be conveyed as submitted by the Objectors. I therefore do not attempt any such definition.

I reject the submission made by the Objectors that I should not direct the County to register them as owners. Such a direction can, I think, only be given by me on a reference under section 8 of the Act to determine ownership. Although such a reference may come before me or some other Commons Commissioner at some future time, I now have none such.

The land described in the first part of the appendix is separated from the 4 acre piece by a hedge. It is part of a field marked on the register map and thereon numbered "535" and is occupied therewith. This field is farmed with a farm to which it belongs. In the view of Mr. Smith it cannot be sensibly described as a Village Green and its inclusion by the Parish Council in their application for registration must, he thinks, (and I on his evidence agree with him) have been a mistake.

The land described in the second part of the appendix consists of two small triangular pieces which cannot in the view of Mr. Smith be sensibly



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regarded as part of the Village Green as they belong more appropriately to the adjoining land to the north and west. These also were, in his view (and I agree with him) included in the application for registration by mistake.

On the question whether I should refuse to confirm the registration so far as it related to the pieces of land described in the appendix I had the benefit of a helpful discussion with Mr. Strong representing the County, who are, of course, concerned to secure that the benefit which the inhabitants obtain by registration of land as a Village Green and to which no objection has been made, shall not be lost without good reason.

While not overlooking that if there had been no objection by the Objectors, the owners of the pieces of land described in the appendix would, in all probability have been met by registration of their land as Village Green having become final and therefore have had no opportunity of having any mistake there may have been corrected by a Commons Commissioner, and also while not overlooking that such owners did not attend the hearing and make any objection before me, I feel nevertheless that a mistake having now been acknowledged by the authorised representatives of the Parish Council, I ought if I can to rectify it. I may thereby save the Council the expense of defending proceedings in the High Court to correct the mistake. I conclude therefore that I ought not to confirm the registration as regards the two pieces of land described in the appendix hereto.

For the above reasons I confirm the registration with the modification that there shall be excluded from the land registered the two pieces of land described in the appendix hereto.

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 desire me to state a case for the decision of the High Court.

APPENDIX

Part One

The piece of land being part of the field numbered 535 on the Register map bounded on the north west, on the west, on the south east and (for a short distance) on the east by a line coloured green on the said map and bounded (for the remaining distance) on the east and on the east north east by the line of the western boundary of the land numbered 533, 533a and 533b on the said map.

Part Two

The piece of land being the north eastern part of the land numbered 533 on the said map, bounded on the south east by the central line of the carriage way which commences at its north east end near the point marked B.M.47.5 on the said map and which ends at its south west end at a point where



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such central line cuts the line coloured green on the said map and bounded elsewhere by 4 straight lines coloured green on the said map two of which run approximately east and west and the remaining two of which run approximately north and south, which said piece of land now being described includes the point marked 45 on the said map.

a. a. Baden Fuller

Dated this 28th day of July 1972.

Commons Commissioner