



COMMONS REGISTRATION ACT 1965

Reference Nos 220/D/87
220/D/88

In the Matter of Wennington Green,
Wennington, Lancaster City,
Lancaster

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section of Register Unit No CL. 182 in the Register of Common Land maintained by the Lancashire County Council and at Entry No 1 in the Land Section of Register Unit No VG. 6 in the Register of Town or Village Greens also maintained by the said Council and are occasioned by the said registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Lancaster on 25 November 1976 and 5 May 1977. At the 1976 hearing Mr E S Temple on whose application the VG. registration was made, was represented by Mr C G C Nickel solicitor of Swainson Son and Reynolds, Solicitors of Lancaster, and Wennington Parish Council (an application by them is noted against the VG registration) were represented by Mr A E Davey one of their members. Present also was Mr A Young of the Crazy Cow (also called Fosters Arms). After reading a letter dated 24 November from Mr A W Taylor on whose application the CL registration was made, I adjourned the proceedings.

At the 1977 hearing, Wennington Parish Council were represented by Mr J L Gillibrand solicitor of Oglethorpe Sturton & Gillibrand, Solicitors of Lancaster, and Mr A W Taylor attended in person. Mr Young was present. Mr Gillibrand handed me a letter dated 19 April 1977 from Swainson Son & Reynolds explaining why Mr Temple would be neither present nor represented at the hearing.

The land ("the Unit Land") comprised in this Register Unit is in three pieces, all being grass land open to the adjoining roads. One piece is by and on the north side of the River Wenning, next to Wennington Bridge; it is south and west of the Foster Arms (The Crazy Cow) and extends as far as Lodge Lane, a road leading westwards out of the Village. Another of the pieces is a strip on the opposite side of Lodge Lane. The remaining piece is by the River next to the Bridge on the side of the road opposite the first piece.

A number of pieces of land near to the Unit Land under Register Unit Nos CL. 8 and CL. 36; about these I held hearings on 8 June 1972 and gave decisions dated 2 August 1972. For the purpose of those decisions I inspected the pieces of land, and incidentally saw something of the Unit Land and its surroundings. All present at the 1977 hearing knew of this inspection.

In support of the VG registration, there was produced a copy of the Tithe map dated 3 April 1848 and of the accompanying Tithe map, and oral evidence was given by Mr A E Davey who is now 57 years old, has lived in Wennington (apart from the war years and 9 years afterwards) since 1926 and has been a member of



the Parish Council since it was formed in 1961, and by Mr E Atkinson who was born in 1910, lived at Moss House Farm since 1923 and been chairman of the Parish Council since 1969. The Tithe Award and map show the Unit Land as being lands or part of lands therein described as "waste"; in the Schedule, in the columns headed "Landowners" and "Occupiers", these wastes are shown as "Township of Wennington" and "Themselves". Mr Davey said (in effect) that these pieces of land had always been called "The Village Greens" or "The Greens", that children of the Village had always played on them and there had always been an annual bonfire on 5 November. Mr Atkinson confirmed this evidence, and produced the Minute Book of the Parish Meetings and Council (since 1894 and 1961 respectively). In support of the CL registration oral evidence was given by Mr Taylor, by Mr R H Middleton who is 64 years of age and has lived in the Village all his life, by E Harding who is 76 years old and has lived in the Village since he was 15, and by Mr J Brooks, who is a retired livestock auctioneer and valuer. Mr Taylor said (in effect) that he and his father before him had been grazing The Greens since 1963: "We have been tidying it up all the while; grazing it with cattle and also carted the grass away". Mr Middleton and Mr Harding also said that The Greens had been grazed by people of the Village (not only by Mr Taylor and his father). Mr Brooks stated what Mr Taylor (now deceased, the father of the applicant Mr A Taylor) had told him about grazing, when they had together walked over The Green in 1958 for the purpose of making a valuation.

Mr Taylor's contention (as I understood him) was that the Unit Land was ~~was~~ ~~because~~ it had been grazed as common land and could not therefore be a village green. Apart from the 1965 Act, there is no legal reason why land should not at the same time be a village green (that is land which the inhabitants of a locality have a customary right to indulge in lawful sports and pastimes) and common land (that is either land subject to rights of common or land which is waste land of a manor). But for the purposes of the Act, land which is both village green and common land is to be treated as village green because the definition in section 22 expressly provides that "common land" does not include a village green.

The circumstance that land has been grazed is in my opinion no indication that it is not a village green for the purposes of the 1965 Act particularly when the purpose of the graziers has been to keep the land tidy. Many village greens have been kept tidy and in a condition suitable for sports and pastimes by being grazed; if the circumstances are suitable, this may be the best and cheapest way of doing this.

Mr Taylor in the course of his evidence, of The Green said: "I have been trying to farm (it) the same as my own ground". If by this he meant (he may not have) that The Greens had in fact been grazed like his own farm, I do not accept his statement; clearly they had not been, since they have always been open to the road and unfenced, in this respect unlike his own ground.

The recreational use of the Unit Land by the inhabitants does not amount to much. But the Village has always been a small one; Mr Harding said that before 8 houses were recently built by the Council, there had only been roughly 20 houses in the Village; so there was never any need for much recreational use. All the witnesses when referring to the pieces of land which together make up the Unit Land, called them "The Greens". That the Parish Meeting and the Parish Council had not done much if anything towards the keeping ~~of~~



up of The Greens is I think in the circumstances of this Village no indication that they are not subject to a customary right; such Meeting and Council never had very much money available, and such care as the Unit Land needed (mostly the grazing) was done without the necessity of there being any public organisation. My conclusion is therefore that I can give full effect as to the 1848 reputed ownership of the Township and to the oral evidence of Mr Davey and Mr Atkinson as to the recreational use (their evidence on this point was not challenged) and conclude that the Unit Land is subject to a customary right for the inhabitants of Wennington to indulge in lawful sports and pastimes on it.

Mr Young volunteered evidence in the course of which he said that a short piece of road ("The Access Land") was in fact part and parcel of the Crazy Cow premises; this road provides vehicular access to the car park which is part of the premises, and should not have been registered. Mr Gillibrand on behalf of the Parish Council and Mr Taylor both agreed that the Access Land was mistakenly registered. Notwithstanding that the CL and VG registrations are only in issue because they are in conflict, I have I think jurisdiction to modify them because under the 1965 Act a Commons Commissioner's jurisdiction is to "confirm the registration with or without modification". It being agreed that there has been a mistake, I consider I ought to correct it if I can. It was at the hearing agreed that the Access Land could be defined by words such as follows:- A rectangular strip of land 9 feet wide all of which is now comprised in this Register Unit, the northeast short boundary of which is the edge of Lodge Lane, the southeast long boundary of which is a wall and part of a building belonging to The Crazy Cow (Foster Arms) premises and an entrance gate-way providing access to such premises and the southwest short boundary of which is a straight line passing through the gate-post of the said entrance gate-way (there is now only one such post; it is on the south side of the entrance).

For the above reasons I refuse to confirm the CL registration and I confirm the VG registration with the modification that there be removed from the Register the Access Land as defined in this decision.

I give to the Lancashire County Council and the Lancaster City Council 6 weeks from the date on which notice of this decision is sent to them liberty to apply to me to set aside this decision and reopen the hearing on the grounds that the Access Land should not have been removed from the Register, and to the other persons who attended or who were represented at the hearing liberty within a like time to apply to me for an amendment, by way of clarification or otherwise, of the definition of the Access Land above set out. Any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners.

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 17th day of May —

1977

a. a. Baker-Jones

Commons Commissioner