



COMMONS REGISTRATION ACT 1965

Reference No. 24/D/3

In the Matter of The Village Greens,  
Waddingham, Lincolnshire (Parts of Lindsey)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No. V.G.2 in the Register of Town or Village Greens maintained by the Lindsey County Council and is occasioned by Objection No. OB/4 made by Mr. A.H. Scott and Mr. C.W. Rusling and noted in the Register on 12th February 1970.

I held a hearing for the purpose of inquiring into the dispute at Lincoln on 4th May 1972. The hearing was attended by Mr. K.T. Stubbs on behalf of the Waddingham Parish Council, which had applied for the registration, and by the Objectors.

The land comprised in the Register Unit consists of five pieces of land, but the objection relates solely to the easternmost piece, marked "A" on the Register Map, abutting on the north side of the road leading to the parish church. This piece of land is almost rectangular in shape. Its southern boundary against the road is unfenced; there are fences on the eastern and western sides; on the northern side are the houses and gardens of the Objectors.

The land the subject of the dispute is shown on the tithe apportionment map dated 26th September 1827 marked as "Common", and in the apportionment the owners and the occupiers are given as "Commoners". At the time when the tithe apportionment was made the Objectors' two properties were in one ownership and the title deeds from one dated 15th March 1836 onwards describe the property as being bounded on the south by the Town Street. There is, however, nothing inconsistent between the land's being in the ownership of the Objectors and its being a town or village green as defined in section 22(1) of the Commons Registration Act 1965.

The land has been open to the Town Street during the whole period of living memory. Mr. Scott said that when a hole was dug recently for the erection of a pillar box by the road side some stones were found which looked as though they might have been part of a wall, but if there ever was a wall along the road frontage, I find as a fact that it had disappeared by 1837. The land has been overgrown with nettles and weeds during the summer. The only evidence of any attention being given to it was that Mr. J.A. Woodley, who lived in what is now Mr. Scott's house for about 6 years, used to cut the grass with a hook so that his children could play on it, while during the last few years the Objectors have cut the grass, and about two years ago Mr. Scott put in some shrubs and plants.

Evidence was given by Mr. Brian Miller, now aged 29, that while he was a boy between the ages of 6 and 12 he, with other children from the village school, used to play on this land, and that other children played there after his time, and that older people had told him that they used to play there



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when they were young. The children who played with Mr. Miller were usually those living in the eastern part of the village. Some of them lived in the houses now owned by the Objectors, but Mr. Miller did not consider that he was playing there as their guest and sometimes he used to play there in the absence of those children. Mr. Woodley said that other children from that part of the village came to play with his children. Mr. Scott, on the other hand, said that he had only known children living in the houses now owned by him and Mr. Rusling to play on the land. Mr. Rusling said that only the children living in these houses and their friends used to play on the land.

Faced with this conflict of evidence, I find the account given by Mr. Miller and Mr. Woodley the more convincing. It seems to me more likely that children living in the eastern part of the village used to play on the land when they felt inclined without waiting to be invited by the children living in the houses.

It is perhaps somewhat artificial to consider whether young children played "as of right", for it is extremely unlikely that such a jurisprudential question ever entered their heads. Nevertheless, I am satisfied that they regarded the land as being there for those who wished to play on it without asking anyone's permission. I draw from the evidence the inference that this has been going on during the whole period of living memory until the Objectors discouraged it a few years ago by starting to use the land as a garden, and that there is a customary right for children to play on this land.

For these reasons I confirm the registration.

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 30th day of May 1972

Chief Commons Commissioner