



COMMONS REGISTRATION ACT 1965

Reference No 225/D/79
225/D/80

In the Matter of Land at Gissing,
(including Mill Green), South Norfolk
District, Norfolk

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section of Register Unit (1) No CL. 201 and (2) No VG. 69 in the Register of (1) Common Land and (2) Town or Village Greens maintained by the Norfolk County Council and are occasioned by these registrations being in conflict.

I held a hearing for the purpose of inquiring into the dispute at Norwich on 10 June 1976. At the hearing (1) Gissing Parish Council on whose application the VG registration was made, were represented by Mr J B Philip their vice-chairman, and (2) Miss J A Colchester and Mr K E Gill (the surviving executors of Mr C R Colchester, on whose application the CL registration was made) were represented by Mr E Clarke solicitor of Lyus Burn & Lyus Solicitors of Diss.

The land ("the VG Land") comprised in the VG Register Unit is sometimes known as Mill Green and contains (according to the Register map) 2.235 acres. It is approximately triangular, and is west of and open to the road near where there is a T junction (east to Tivetsall St Mary across a railway bridge by Hail Green, south to Burston and north to Aslacton). Near its south end, by the site of an old windmill, it is about 30 yards wide; its width diminishes regularly from south to north, and at its north end it becomes a narrow roadside verge. The land ("the CL Land") comprised in the CL Register Unit includes the whole of the VG land and also a comparatively very narrow strip on the north, being land on the west side of and open to the road; the total length of the CL land is about $\frac{1}{2}$ a mile.

At the commencement of the hearing it was agreed that if the VG land is not properly registered as a town or village green, I should confirm the registration of the CL land as common land.

In support of the Objection oral evidence was given (1) by Miss J A Colchester who is the daughter of the Objector Mr C R Colchester (he and his father were tenants of Homefield Farm which is about half a mile north of the VG land, and which was formerly known as Hill House Farm; in about 1946 he bought the Farm; he died 3 October 1970), (2) by Mr R L Garland who has for the last 18 years owned and occupied Red House Farm (near the north end of the VG Land), (3) by Mr C C Watson who has for the last 14 years lived at the Hawthorns (on the east side of the railway bridge), and (4) by Mr S Wapthine who has lived for about 7 months at Hove To, a newly erected house on the opposite side of the road to and near to the north end of the VL Land. In support of the registration oral



evidence was given (1) by Mr A S C Ringer who was born in Gissing 72 years ago, has lived there all his life, has been a member of the Parish Council since 1937, and was for 10 years a member of the former Rural District Council, and (2) by Mr Philip who came to the Village in 1970. On the day after the hearing I inspected the Unit Land, it having been agreed that I might do so unattended.

I am concerned to determine whether the Unit Land is within the definition in section 22 of the 1965 Act of a town or village green, which definition so far as is now relevant is "land...on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes..."

There were few if any important differences between the witnesses about the things of which they had personal knowledge. Mr C R Colchester acquired the Manor of Gissing under a conveyance dated 15 December 1959; it was not disputed that the Unit Land as belonging to the Manor passed under this conveyance to Mr C R Colchester, and in the Ownership Section of the CL Land he is the registered owner. Apart from Mr Ringer none of the witnesses had any personal knowledge of the Unit Land before the 1939-45 war, and I conclude from what they said that the only recreational use of it since then which could be ascribed to a customary right was a Guy Fawkes night bonfire in the year 1974; Mr Philip helped to organise this, because he and other parishioners thought that old customs should be revived.

Mr Ringer said (in effect):- During his early days at school (he started school in 1909) the bright light of the year was a huge bonfire on the VG Land. The bonfire was dropped during the 1914-18 war but was revived when hostilities ceased. He could not say how long it continued because as a growing lad his efforts strayed to other matters rather than bonfires. He could well recollect as a child going up to the VG Land to witness a cricket match between two village teams; he went with his note-book to record the score. He took part in games there on occasions, a crude form of football, not organised matches, but a number of boys who got together to kick about. (When questioned by Mr Clarke he said) as to bonfires after 1919, he could only be certain about bonfires before 1914; in 1919 his interests in these had begun to wane. The cricket he described was not an annual match; it was a knock about game, a pick up of lads in the Village, amongst those who were inclined to play. As to cricket after 1918, he was not certain, but would say it continued for a year or two but after that nothing happened on the Unit Land; it was just allowed to deteriorate for lack of use. He agreed that it would be fair to say that it had not been used for anything since 1925 (there was some evidence that it had recently on occasions been grazed). When they played there it was not so rough as now because it was regularly grazed by Mr Colchester's father.

The period of recreation within the personal knowledge of Mr Ringer is less than 20 years, and I could not without making some inference as to longer use on his evidence alone find that the VG Land was subject to a customary right. The Village of Gissing is somewhat scattered, being for the most part either in and around Lower Street or in and around Upper Street, two localities a little distance from each other. The VG Land is not particularly conveniently situated in relation to either of them, nor if I disregard (as I think I should) the recently erected houses conveniently situated in relation to any significant number of houses which I can regard as having for a long time formed part of the Village. It was emphasised that there was no other ground in the Village on which the inhabitants have a right of recreation and no field or area for recreation;



but even allowing for this deficiency, I am not persuaded that the use of the VG Land by the inhabitants of Gissing for recreational purposes ever continued long enough or was ever of a character sufficiently certain, on which I can properly base a conclusion as to the existence of a customary right. By registering the land as common land, Mr Colchester in effect conceded that the land is and was waste land of the Manor; ^{the} use of the VG Land described by Mr Ringer should I think be attributed to it being waste land of a manor rather than it being subject to any customary right such as is mentioned in the section 22 definition. *the use*

I conclude therefore that the VG Land is not within the definition, and accordingly I refuse to confirm the VG registration and confirm the CL registration without any modification.

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 *June* ————— 1976

a. a. Baden Fuller

Commons Commissioner