



In the Matter of Land known as Arkle  
Town Village Green, Arkengarthdale

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No.VG.85 in the Register of Village Greens maintained by the North Yorkshire County Council and is occasioned by the conflicting registration at Entry No.1 in the Land Section of Register Unit No.CL.43 in the Register of Common Land maintained by the same authority.

I held a hearing for the purpose of inquiring into the dispute at Richmond on 25 June 1985.

The hearing was attended by Mr Garget of Hunton and Garget, Solicitors of Richmond for the Arkengarthdale Parish Council and Mr G H Walker as successor in title to Mrs Ethel Walker the maker of objection No. 015.

The unit land consists of two parcels in the hamlet known as Arkle Town which have since registration been acquired by the Arkengarthdale Parish Council by conveyance from the former Lord of the Manor on 28 November 1975. There was unchallenged and uncontradicted evidence that the larger of these had been used by the children of the locality for various games and pastimes since at least 1914 and up until the middle of the second World War also by adults for playing quoits.

On this evidence I am satisfied that at the date of its registration as a village green, subject to the exception mentioned below, this was land on which the inhabitants of the locality had indulged in lawful sports and pastimes as of right for not less than 20 years.

The exception relates to part of the land provisionally registered in the north-east corner. On this part of the land two cottages originally stood. By the time of the first World War they were abandoned and falling into decay. There were holes in the roof and the children used to run in and out.

In front of the cottages at this time there was a paved area with outside staircases at each end. This extended to about 4 feet from the front of the cottages.

In 1938 or 1939 Mr Robert Hutchinson a farmer who farmed nearby was looking for a place near the road to use for storage. He thought of the site of the two ruined cottages which he had known as a child and which by then were in an advanced state of decay. He made inquiries of the Lord of the Manor's agent and others but no one claimed ownership. He thereupon decided to level the ruins to the ground and to erect a hut there. This he did in about 1939 and it is common ground that the hut has stood there since then.



-2-

The controversy which has arisen is not whether the land on which the hut stands forms part of the village green - it clearly does not - but whether a strip of land six feet wide in front of the hut should also be excluded.

There is no specific objection made or deemed to be made in the register of town and village greens to the registration of either the building or the strip of land as part of VG.85. The dispute arises from the conflict between this registration and the inclusion of the same land in Entry No. 1 in the Land Section of Register Unit No.CL.43 in the Register of Common Land.

The matter which is before me, however, is whether the registration of this land as a village green should be confirmed and this question necessarily includes the question whether the registration of any part of it should not be confirmed. That this is the correct approach in the present case is supported by the fact that objection O15 to Entry No. 1 in the Land Section of Register Unit No.CL.43 in the Register of Common Land specifically objects to the inclusion of this building and the land in front of it as part of that entry. Although these entries are not deemed to be made in this register under regulation 14 of the Commons Registration Regulation 1966, the existence of this objection, the dispute arising out of which has been referred to me in respect of CL.43 (reference no. 268/D/464) is something which I am bound to take into consideration.

When Mr Hutchinson put up his hut he set it back two feet from the original line of the front of the two cottages in order, as he told me, that the doors, which were 6 feet wide, should not, when open, protrude beyond the original front line of the flagged area in front of the cottages, thus not protruding on to the village green any further than the original cottages had done. The flags however were covered with the rubble from the cottages and within a few years were covered with grass like the rest of the green so that as Mr Hutchinson admitted it was impossible to see any difference between that part of the land which overlay the flags and the rest of the green.

It was argued in support of the objection that the flagged area in front of the cottages did not form part of the village green and that, when Mr Hutchinson possessed himself of the site of the cottages in 1939, that area remained outside the green. But the evidence was all the other way. Mr Hutchinson himself agreed with the evidence given by other witnesses that very soon after he had erected the hut not only was there nothing to be seen of the flags which had been in front of the cottage and which had been covered in rubble but the whole area up to the front of the hut itself was covered with grass and indistinguishable from the rest of the village green. He also agreed that he never claimed ownership of the strip.

Evidence was also given which I accept that the children when playing games on the green did so right up to the front of the hut on which they often used to bounce their balls.





-3-

Evidence was also given that a Mr Longstaffe a friend of Mr Hutchinson who used part of the hut for some time after the war used the land in front of his part of the hut as a "mini-scrapyard" and that the chairman of the Parish Council had to remonstrate with him after which he moved some of the machines.

While I accept that this happened there was no evidence that he ever claimed a right to do so and I am not satisfied that any use he may have made of part of the green in front of the hut which included part of the strip in question was either sufficiently definite in area or for a sufficiently long period to prevent that strip from becoming and remaining part of the village green.

Accordingly I shall confirm the registration of the north-eastern piece of land in this unit as a village green with the modification that there shall be excluded from it the site of the hut.

There remains the small triangular piece of land at the south-western end of the hamlet. The longest side of the triangle is only about 25 feet long. There was evidence, which I accept, that while the larger piece was being used by the children for playing games they sometimes played on the smaller piece without asking permission and without being turned off, though it was too small to do much. This evidence, though not very strong, is enough in the absence of any opposition to convince me that this land too was a village green within the definition in the 1965 Act.

Since this land is registered both as village green and (in Register Unit CL.43) as common land, every entry in the rights and ownership sections of that unit is deemed also to be made in this register.

None of the persons who claimed rights of common in that register have come forward to claim that their rights extend to these two small and isolated pieces of land and everyone present at the hearing, including two rights owners, assured me that no rights of common had ever been exercised over this land. That being so I shall refuse to confirm any rights of common over this unit.

The ownership section contains an entry by Thomas Edward Brodie Sopwith as owner of the whole of the land comprised in the unit and it is noted that this registration "being undisputed" became final on the 1st August 1972. But this seems to overlook the fact that the entries in the ownership section of CL.43 which are deemed to be made also in this register include two objections (Nos 015 and 0104) which are in similar terms by Ethel walker to Thomas Sopwith's ownership of the area comprising the site of the hut and the land in front of it. The disputes raised by these objections have been referred to me (reference nos. 268/D/475 and 268/D/476) and I shall deal with them here. From the evidence referred to above it is clear that while at the date of registration a good possessory title to the site of the hut which does not form part of the village green had been obtained by Mr Hutchinson and his successors in title, the land in front of it, whatever its status before 1939, formed part of the village green, the owner of which at the date of registration was



-4-

Thomas Edward Brodie Sopwith. These objections accordingly fail.

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

15<sup>th</sup>

day of

July

1985

*Peter Lamden-Davis*

Commons Commissioner