



In the Matter of Land partially covered with water forming the River Swale and the Banks thereof, Great Longton, Kiplin, and Kirkby Fleetham, North Yorkshire.

#### DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. VG 170 in the Register of Town or Village Greens maintained by the former North Riding of Yorkshire County Council and are occasioned by Objection No. 085 made by Mr R D Stockil and noted in the Register on 28 May 1970, Objection No. 087 made by Mr H M Peacock and Mr C M Peacock and noted in the Register on 28 May 1970, Objection No. 0110 made by Edgar Lawson Ltd and noted in the Register on 5 August 1970, and Objection No. 0440 made by the Yorkshire River Authority and noted in the Register on 26 July 1970.

I held a hearing for the purpose of inquiring into the dispute at Northallerton on 10 March 1977. The hearing was attended by Mr C Hoare, Clerk of the Kirkby Fleetham Parish Meeting, Mr R W Hinks, solicitor, on behalf of all the Objectors other than Mr Stockil, and Mr J H R Cuthbert, the executor of Mr Stockil's will. There was no appearance by or on behalf of Mrs M E Robertson, the applicant for the registration, but her solicitor informed the Clerk of the Commons Commissioners by letter before the hearing that she did not wish to support the registration. The registration was, however, supported by the Parish Meeting.

The land comprised in the Register Unit consists of a stretch of the River Swale and some land on either side of it. Its eastern and western boundaries and most of its northern boundary are ascertainable only by reference to the Register Map, there being no visible boundaries on the ground.

The relevant evidence was confined to the land on the south side of the river. The river is crossed by a bridge. For many years access to the land to the west of the bridge could be obtained over a stile at the southern end of the bridge and from this land there is a way under the bridge to the land to the east. Along the southern side of the land on both sides of the bridge there is a bank with a path along the top of it. The path leads to land to the west and east of the land comprised in the Register Unit, and there is nothing on the path to indicate where the Register Unit land ends. From the bank the land slopes down to the river. There is scrub grass on the slope, giving way to sand and gravel nearer to the river. It is mostly gravel, but the relative areas of grass, sand and gravel change from time to time. The path along the top of the bank has been used by pedestrians and packhorses. Children have played on the land between the path and the river. The land is not suitable for organized games, but, as one witness put it, it has been used for ball games as on a beach. Children from the village school have been taken to the land for nature study; villagers have had picnics on it; and children have bathed and paddled in the river.

These activities continued from 1930, and possibly earlier, until 1968 when, following a change of ownership, ~~then~~ a notice reading "Private. Keep Out" was posted up by the stile. The notice disappeared and a few months later the means of access from the bridge was replaced by a fence with barbed wire. The Parish Council did not complain or take any action about this.

In my view, this evidence is insufficient to prove that the inhabitants of the locality have indulged in sports and pastimes on this land as of right. The activities of which evidence has been given can be explained by the good-natured



tolerance of the owner of the land, which is fortunately a feature of life in the English countryside. The owner would have been churlish to have objected to children and others deviating from the path on to the adjoining land which had no agricultural value, but his acquiescence was not equivalent to the granting of a right to do it.

For these reasons I refuse to 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 17<sup>th</sup> day of May 1977

Chief Commons Commissioner