



## COMMONS REGISTRATION ACT 1965

Reference Nos. 44/D/62  
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In the Matter of Moor Road Green and  
 Thornsgill Green, Askrigg, Richmondshire D.,  
 North Yorkshire

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section and Entries Nos. 1 and 2 in the Ownership Section of Register Unit No. VG.55 in the Register of Town or Village Greens maintained by the North Northshire County Council and are occasioned (D/62 and D/63) by Objection No. 075 made by Miss M. Hartley and noted in the Register on 30 April 1970, (D/64) by Objection No. 038 and made by Mr T.B. Addison and noted in the Register on 20 November 1969, and (D/65 and D/66) by the said two Entries in the Ownership Section being in conflict.

I held a hearing for the purpose of inquiring into these disputes at Richmond on 29 October 1974. At the hearing, (i) Miss Hartley was represented by Mr J.S. Huntingdon solicitor of M.E. Scott & Son Solicitors of Leyburn, (2) Mr Addison was represented by Mr E.R.D. Johnson solicitor of Willan & Johnson Solicitors of Hawes, and (3) Askrigg Parish Council was represented by Mr J.R. Abraham their chairman (Mrs E.M. Moore their clerk was present).

Evidence was given (1) by Miss Hartley, who in 1938 purchased Coleshouse (a dwelling house fronting on the land) jointly with a friend, who after her death in 1945 became sole owner, and who in January 1968, as the then chairman of the Parish Council, applied for the registration of the land as a village green; (2) by Mr Addison who in 1942 (he was then 12 years old) came as a lodger to Whitfield View (another dwelling house fronting on the land; Miss K.E. Cloughton was then the owner and occupier), who continued as a lodger while he attended Yorebridge Grammar School, who afterwards frequently visited Miss Cloughton until her death on 16 July 1968, and who under her will became and is now the owner of Whitfield View; (3) by Mr B.W. Haw who while he was at Yorebridge Grammar School between 1946 and 1950 also lodged with Miss Cloughton and afterwards frequently came to Whitfield View until her death to visit her; (4) by Mr E.R.D. Johnson who explained the documents of title relating to Whitfield View held by his firm on behalf of Mr Addison; and (5) by Mr J.R. Abraham who was born in and has since 1948 lived in Askrigg, who has been a member of the Parish Council since 1964 and their chairman for the last 3 years. On 1 November I inspected the land, it having been agreed that I might do so unattended.



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The land ("the Unit Land") comprised in this Register Unit is at the north end of the Village of Askrigg (Wensleydale) and comprises two pieces. One ("Thornsgill Green") is by the side of Askrigg Beck and on the west side of the motor road which after crossing the bridge over the Beck continues northwards across high moor land to Swaledale (about 5 miles away). The other ("Moor Road Green") is about 100-150 yards higher up the said motor road, is (as registered) approximately V shaped, is on its ~~west~~ side (nearly straight and about 150 yards long) bounded by and open to the said motor road, is on its north side (also nearly straight except at the east end and about 140 yards long) bounded by the front wall of the garden of Coleshouse, by part of Coleshouse, by a stone wall <sup>by its gate</sup> through which there is a gap ("the Footpath Gap") giving access to a footpath across a field, by a small building ("the Game Parlour") or "Game Larder", having been formerly used for this purpose) and by another wall, and is on the east and south sides (the inside of the V) bounded by the front walls of various dwelling houses (the most north of which is Whitfield View) and of the gardens and lands held therewith or nearby.

The Parish Council are at Entry No. 1 in the Ownership Section registered as owners of all the Unit Land. Mr L. Thwaite is at Entry No. 2 in the said Section registered as owner of the south part (fronting for about 50 yards on the said motor road) of Moor Road Green; Mr Huntingdon said that his firm at one time represented Mr Thwaite, but they were now without any instructions.

The grounds stated in Objection No. 075 (Miss Hartley) are:- "Useage over twenty years. Plan enclosed. Also access roads across green. The land shown on the accompanying plan was not village green at the date of application". The said plan shows (a) the track ("the Disputed Track") which leads from the said motor road across the north part of Moor Road Green up to Coleshill and its garage as far as the Footpath Gap; (b) the part ("the East Part") of Moor Road Green which is east of the Footpath Gap; and (c) a track ("the South Strip") which crosses Moor Road Green just north of the part of which Mr Thwaite is registered as owner. The grounds stated in Objection No. 038 (Mr Addison) are: "The land indicated in red on the attached plan belongs to me and is part of the garage belonging to Whitfield View, Askrigg"; the land so indicated is the East Part (as hereinbefore defined).

As to Thornsgill Green:-

Moor Road Green and Thornsgill Green are too far away from each other and too unlike each other to be considered in any now relevant way as one piece of land. Their registration together in one, rather than two, Register Units appears to have been fortuitous. Neither of the said objections nor the said conflicting entries relate to Thornsgill Green; if this Green had been registered by itself, its registration in the Land Section and also the registration of the Parish Council as owner in the Ownership Section would by now have become final under Section 7 of the 1965 Act. I have no evidence about Thornsgill Green, but having seen it, I consider that it is in the public interest that the registrations so far as they relate to it should be confirmed. The general intention of the 1965 Act is that undisputed registrations shall become final without any supporting evidence other than the statutory declaration required by the Commons Registration (General) Regulations 1966 when an application is made. Regulation 26 of the Commons Commissioners Regulations 1971 provides in effect that a dispute shall be disposed of having regard only to



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the grounds stated in the objections. Having regard to these considerations, I conclude that I need not investigate the circumstances in which the registrations applicable to Thornsgill Green, made, and can properly confirm such registrations without any evidence.

As to the registration of Moor Road Green (sometimes referred to as Top Green) in the Land Section of the Register:-

The Objection of Miss Hartley is the only Objection or Entry which in any way challenges this registration in the Land Section. It is not disputed (and this is indeed implicit not only in Miss Hartley's Objection but also in Mr Addison's Objection) that there is a piece of land known as Moor Road Green or Top Green which is properly registerable in the Land Section. Accordingly the only question I have to consider is whether the Disputed Track, and East Part and the South Strip or any of them are part of this piece of land so known.

As to the Disputed Track, Miss Hartley said (in effect):- When she first bought Coleshouse, the Disputed Track was used for horse-and-carts. Soon afterwards with the permission of the Parish Council she and her co-owner put down hard core to make it suitable for motor cars; and two or three times since 1938 it has been covered with limestone chippings to maintain the surface. As so made up, it was used not only by Miss Hartley and her friend for vehicular access to Coleshouse and the garage held with it, but also by Miss Cloughton and after her death by Mr Addison or his tenants as occupiers of Whitfield View. Nobody had made any objection to this use of the Disputed Track. Neither the County Council (as highway authority) or the Parish Council had done anything to it. As to her participation in the application for the registration of the Unit Land (including the Disputed Track) as a village green:- on behalf of the Council, in 1965 she considered whether the whole of the Unit Land was Village Green and concluded that it was; subsequently at a meeting of the Parish Council it came to her notice that the East Part might not be a village green, and she accordingly wrote to the owner Mr Addison (at that time he had just come into the ownership), and herself put in an objection to the East Part and also to the Disputed Track and the South Strip.

As to the East Part, Miss Hartley said (in effect):- Both she and Miss Cloughton had used this land as a drying ground, putting up clothes props; she so used it for about 20 years until she purchased a spin dryer. She understood that Miss Cloughton owned the Game Parlcour, which had been used by gamekeepers for a long time (at least 20 years) until the last gamekeeper to use it died (about 10 years ago); she then had no doubt that the Game Parlcour was part of the Whitfield View property owned by Miss Cloughton.

As to the East Part, Mr Addison said (in effect):- He always understood from Miss Cloughton that the East Part was part of the land in her ownership; she used it as a drying ground. She also sometimes ran chickens on it. As a boy it was one of his tasks to cut the grass to keep the nettles down on the East Part, and he did this on Miss Cloughton's instructions. Nobody objected to the use made of the East Part by Miss Cloughton.



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Mr Haw in some detail confirmed the evidence of Mr Addison as outlined above.

Mr Johnson confirmed Mr Addison's statement that his title deeds contained no plan; he produced (a) a mortgage dated 10 April 1886 made by Mr Robert Cloughton, in the parcels of which the mortgaged property ~~was~~ was described as "All that messuage or dwelling house and garden with the appurtenances situate at High End in the town of Askrigg aforesaid and now in the occupation of Thomas Cloughton as the early tenant"; (b) a conveyance dated 25 November 1920 by which Barclays Bank Limited conveyed land to Mr George Cloughton, being a reconveyance on payment off of the 1886 mortgage, the parcels of which were referential; and (c) an assent dated 1 August 1968 made in favour of Mr Addison, which the parcels were similar to those of the 1886 mortgage.

Mr Abraham said (in effect):- The minute books of the Parish Council (he provided me with a note of the relevant entries) showed that from 1959 the Parish Council had arranged for the mowing of Top Green had in 1970 concerned themselves with the repair of the lid of the well at its north end had in 1972 given permission to a villager to graze a donkey (the Council thought that they could not refuse this permission). A search at the County Record Office at Northallerton showed that the 1854 and 1914 O.S. maps showed Top Green as an open space and that the Askrigg Moor Inclosure Award did not include the village. He did not on behalf of the Parish Council argue for any particular conclusion because the Council were content that these disputes should be settled by a Commons Commissioner and wished him (Mr Abraham) to do no more at the hearing than put forward such information as they had.

Standing on the southend on Moor Road Green and looking north, the part of the Unit Land in view appears to be one piece of public land which ends somewhere out of sight in the narrow strip between Coleshouse and Whitfield View and which could ~~be~~ sensibly and properly ~~be~~ described as a village green. Standing on the east end of the Moor Road Green (as now registered) and looking west, the part of the Unit Land at this end appears to be a piece of private land almost completely enclosed which ends somewhere in the last mentioned narrow strip and which could not sensibly or properly be described as a village green. The 1914 O.S. map shows Moor Road Green (as now registered) as two pieces of land, the dividing line between these pieces being a straight line across the said narrow strip starting from the east side of the Footpath Gap. This dividing line now corresponds very closely with the east edge of the hard core track leading directly into the garage of Coleshill. The said narrow strip is now neither particularly private nor particularly public, and if I am (as I think I am) obliged draw a dividing line somewhere across it there is no very cogent reason deducible from the appearance or from the evidence given at the hearing for drawing the line ~~to~~ any particular point. However having walked over the land I conclude that the dividing line ~~is~~ as ~~drawn~~ drawn in 1914 by the Ordnance Survey is still the most appropriate, and I accordingly conclude that the part of the Unit Land east of this dividing line is not part of the piece of public land now known as Moor Road Green and should therefore be removed from the Register.



The Disputed Track although the largest, is not the only track that crosses Moor Road Green. There are I think in law two possibilities, either (i) the Disputed Track is not part of the piece of land known as Moor Road Green; or (ii) the Disputed Track is part of Moor Road Green but the owner and occupiers of Coleshouse, and possibly the owner and occupiers of Whitfield View also, have a right of way over it. It may I think be of little practical consequence to Miss Hartley which possibility is correct. Evaluating the evidence as best I can, I prefer the second possibility; having seen the land, it seems to me that I should treat all the open space now registered (except the East Part) including the various tracks across it, as one piece of land all of which is village green subject to various private rights of way, rather than treat it as a number of pieces of land each of which is village green, and each of which is separated from the next piece by a track in private ownership. I conclude therefore that the Disputed Track is part of the piece of land known as Moor Road Green, and should therefore remain on the register.

I have no jurisdiction to declare or order that any registered land shall be considered to be subject to a right of way such as I have assumed is appurtenant to Coleshouse, and possibly also to Whitfield View. Nevertheless I draw the attention of Miss Hartley and Mr Addison to regulation 24 of the Commons Registration (General) Regulations 1966, which seem to provide a means by which such a right of way might be ~~protected~~ recorded.

Miss Hartley at the beginning of her evidence said she did not wish to pursue her claim with regard to the South Strip; it is a track leading from the road across the registered land to a dwellinghouse; she has ceased to have any interest in the dwellinghouse. From the appearance, I conclude that the same considerations as are outlined above in relation to the Disputed Track are applicable to the South Strip and that accordingly the South Strip should remain on the Register.

As to the registrations applicable to Moor Road Green in the Ownership Section of the Register:-

Moor Road Green appears from the apparent date of the buildings surrounding it and from the 1854 C.S. map to have been an open space which could reasonably be supposed to have been the property of the Parish from time immemorial; on this supposition it could now by operation of law be vested in the Parish Council. The evidence of Mr Abraham shows the Parish Council to be in possession.

In the absence of Mr Thwaite, I have no evidence in support of his registration as owner of the south part of Moor Road Green. In the absence of evidence, I cannot imagine how his claim for ownership could be better than that of Miss Hartley, whose interest, I have for the reasons set out above, determined to be no more than a right of way.

Upon the above considerations, I conclude that the ownership registration of Mr Thwaite should be deleted and the ownership registration of the Parish Council should stand in its entirety.



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I should record that because in accordance with my decision the East Part will be removed from the Land Section of the Register, it will follow that the ownership registration of the Parish Council in the Ownership Section will no longer be applicable to the East Part. Accordingly I need express no opinion as to the claim of Mr Addison (made in his Objection) that the East Part is part of the land which with Whitfield View was formerly owned by Miss Cloughton and is now owned by him under her will.

For the above reasons I confirm the registration at Entry No. 1 in the Land Section of This Register Unit with the modification that there be removed from the Register all land which is on the east side of a straight line delineated on the Ordnance Survey map, being the line which runs as follows:- the north end of the said line is at the east side of the gap in the stone wall forming part of the north boundary of the land comprised in this Register Unit which gap adjoins the southeast corner of the garage now held with Coleshouse and is the commencement of a footpath which leads from the land comprised in this Register Unit east-northeast across Ordnance Survey No. 272; the middle of the said line runs near the hard core driveway into the said garage; and the south end of the said line is the side of the wall or building now occupied with Whitfield View. I also confirm the registration at Entry No. 1 in the Ownership Section without any modification and I refuse to confirm the entry at No. 2 in the said Ownership Section.

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

9<sup>th</sup>

day of

January

1975

*a. a. Baden Fuller*

Commons Commissioner