



## COMMONS REGISTRATION ACT 1965

Reference No 44/D/1

In the Matter of School Hill and Low Green,  
Horsehouse, Carlton Highdale, Leyburn R.D.  
Yorkshire

This dispute relates to the registration at Entry No 1 in the Land Section of the Register Unit No VG.117 in the Register of Town or Village Greens maintained by the North Riding County Council and is occasioned by Objection No.0206 made by Mr John Wilson and noted in the Register on 2 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Richmond, on 23 January 1973. The hearing was attended by Mr W Lambert in person (clerk and chairman of the Carlton Highdale Parish Meeting) and by Mr Wilson ("the Objector") who was represented by Mr L A Hope solicitor of Messrs. Burnick, Appleby and Hope Solicitors of Sunderland.

The registration was made upon an application dated 14 June 1968 and made by the Carlton Highdale Parish Meeting "through their chairman". The grounds of objection were as follows:- "That the land registered is not a Town or Village Green in that it forms part of Manor Farm having been used and occupied therewith for upwards of sixty years. That from the year 1962 a substantial concrete and steel cowhouse dairy and barn have been erected on part thereof in accordance with Planning Permission and that the remainder of the land has for the same period been used as the Farm Yard and is concreted over to whole extent. That prior to the erection of the said buildings wood buildings used in connection with the Farm were erected on the land. That if the land was, which is not admitted, a Village Green, it had ceased to be at a date prior to the date of registration."

The land comprised in this Register Unit consists of; (i) a piece ("the Undoubted Green") known as "School Hill" and situate on the north west side of and adjoining the road ("the Metalled Road") through the Village from Melmerby and Carlton on the north east up to Bradley and the pass over to Kettlewell on the south west; and (ii) a piece (the Disputed Area") known or at one time known as "Low Green" and situate on the south east side of and some distance below the Metalled Road.

Mr Hope said that the Objection was not intended to be read as relating to the Undoubted Green. This piece, apart from a tarmac road on its north side, is grassland sloping steeply up from the Metalled Road to a building which includes the School. It is an attractive piece of open land and an amenity for the Village. Notwithstanding that the use which could be made of the Undoubted Green for sports and pastimes (as contemplated by the definition of a town or village green in section 22 of the 1965 Act), is not very obvious, there being no objection to its registration under the Act I consider that I should confirm the registration of the land comprising this Unit at least to the extent of the Undoubted Green.

On behalf of the Parish evidence was given by Mr Lambert (he is 62 years of age and has lived in the Village all his life). On behalf of the Objector evidence was given by the Objector himself (he is 68 years of age, was born and until 1970 lived at the Manor Farm, which has since 1840 been in his family, which in 1924 on the death of his father he took over and which in 1970 he passed on to his nephew Mr Clive Wetherall) and by Mr A Suttill (he has for the past 14 years been the representative of the Parish on the Leyburn Rural District Council and he worked at the Manor Farm from 1930, when he was 14 years of age, until 1940). On 26 January, I inspected the



land, it having been agreed that I might do so unattended.

Mr Lambert said that at a Parish Meeting held in March 1971 after considering the objection in this case, it was resolved that the registration which (as above stated) had been made on the application of the Meeting) should be withdrawn; he (Mr Lambert) understood that such a withdrawal was not possible at this stage. It is therefore necessary that I give a decision on the dispute; as to this Mr Lambert said that the Disputed Area had always been regarded as Village Property; contra, the Objector and Mr Suttill said that it had always been part of Manor Farm. This question has long been an unresolved local issue.

The Disputed Area and the land ("the Adjoining Yard") south of it together make up one of the largest areas of accessible level ground in the Village; which is for the most part built on land sloping more or less steeply up from the River Cover on the east to the high ground on the west. Covering nearly the whole of the east side of the Disputed Area there is now a modern building ("the 1962 Cowhouse") which extends (or has recently been extended) over part of the adjoining field ("the Garth"). The remainder of the Disputed Area (except possibly a small part on the north west corner covered by some ruined buildings) is concreted over so as to provide a well drained hard surface for cattle, vehicles and machinery coming from the Adjoining Yard, on which front part of the farm house and other buildings, and coming from the adjoining fields. A concrete private road leading from the north side of the Disputed Area northwards across a field towards the Metalled Road is being constructed.

The 1856 Ordnance Survey Map shows the village much as it is now. The Disputed Area and the Adjoining Yard are shown as one or as part of one piece of land. The general pattern of the Village was then (as now) of buildings separated by three nearly parallel roads joining up at the north and south ends; on the west, the main highway ("the Metalled Road") running through the Village; in the middle, the road ("the Subsidiary Road") running west of the back of Manor Farm farmhouse; on the east, the road or track of which the piece of land formed by the Disputed Area and the Adjoining Yard is the widest part.

The 1856 Map shows a small dot on the Disputed Area as a "ruin". The Objector said that his great aunt (she died in 1936) told him that when she was a girl there was a building there which had one day fallen unexpectedly and her elder brother had had a narrow escape. Whether or not what she said is legally admissible evidence, I am not persuaded that the building represented by this small dot can in law in any relevant way be regarded as the predecessor of the 1962 cowhouse.

Mr Lambert remembered from his earliest years, youths and young men from the Village plying quoits on the Disputed Area. But quoits were not played there after the beginning of the War (1939).

The Objector remembered when he was a boy his father erecting two bedding stacks (each about 25 loads resulting in a stack about 25 feet across) on the Disputed Area; he also remembered henhouses there. Until recently when the unbuilt or part of the Disputed Area was concreted over, there was some grass grazed as part of Manor Farm. Before 1935, the water draining from the land and buildings higher up flowed across the Disputed Area into the Garth; when in 1935 piped water was introduced to the Village, the flow of this drainage water increased so much that a large part of the Disputed Area became a quagmire. The local sanitary inspector either could or would not do anything about this, so those at Manor Farm put in drainage pipes across the Disputed Area (now the Village has drains for soil and sewage). Sometime before the 1939 War, a wooden building was erected on the Disputed Area and thereafter used for the purposes of Manor Farm. After the War (about 1948) this was replaced by a Nissen Hut. In 1962 this was replaced by the 1962 Cowhouse. Shortly afterwards



the remainder of the Disputed Area was concreted over as it now is.

These and similar activities were not unnoticed by the Parish. In the Minutes of a meeting held 17 May 1926 it was recorded in relation to a hut or proposed hut, that the property commonly known as "Low Side" was Parish property. In the minute of a meeting held on 16 December 1954, it is recorded with reference to "Low Side" that quite a portion of this seems to have been commandeered by a local tenant. Before the erection of the 1962 Cowhouse, a special parish Meeting held on 20 May 1962 considered the plan and there followed a meeting between representatives (Mr Lambert was one) of the Parish Meeting and the Objector and his solicitor.

Mr Lambert criticised the Objector for not producing any written evidence of his title to build the 1962 Cowhouse either at or after the 1962 Meeting or at the hearing before me. From the Objectors evidence that Manor Farm had in 1840 been bought by his great grandfather Mr Simon Brockell, it is likely that he had in his possession an indenture of that date containing a description of Manor Farm as it then was; Mr Suttill in his evidence said that the difficulty in this case was that no one had any relevant records or deeds. I conclude that the Objector has no "paper title" to the Disputed Area and that Mr Lambert's criticism is to this extent valid. However because the criticism is made by Mr Lambert on behalf of the Parish who have themselves no paper title, its validity does not help me towards any conclusion.

In substance Mr Lambert's claim that the Disputed Area is Parish Property is sensible in that it (or the greater part of it) up to 1948 (when the Nissen Hut was erected) and possibly afterwards was just as open to the public as the subsidiary Road and the other roads in the Village. Also in substance the Objectors claim that the Disputed Area is part of Manor Farm is sensible in that it is and the Adjoining Yard from the farmyard of Manor Farm available for and used by the Objector, his father before him, and Mr Wetherall after him for the purpose of the farm and in that its present use is economically the most advantageous to the Village (there was no evidence at the hearing that the Disputed Area had ever been used for any Village purpose after 1939). I cannot properly express an opinion on every aspect of these alternative claims, because my only jurisdiction on this reference is to determine whether the Disputed Area is within the definition of a town or village green in section 22 of the Act of 1965.

As to this, of the three parts into which the definition is divided, the most relevant is; "land... on which the inhabitants of any locality have indulged in (lawful) sports and pastimes as of right for not less than twenty years". From as far back as Mr Lambert can remember (say 1916) until sometime before the war, as above stated the inhabitants of Horsehouse have played quoits on some part of the Disputed Area; a period of just 20 years. As to such play being as of right:- (a) The Parish Meeting on the occasions above mentioned considered the Disputed Area to be Parish Property. (b) It has not been suggested that those who played quoits ever asked the permission of anyone. (c) Although the Objector described how when digging for the foundations for the 1962 Cowhouse he found the remains of the former wooden hut (and the drainpipes put in in 1935) I am not persuaded that these earlier buildings interfered in any way with the use of the Disputed Area for the playing of quoits. But against such play being as of right:- (1) I cannot ascribe such play as amounting to indulgence in sports and pastimes over the whole of the Disputed Area; the activity is not large enough in relation to the size of the Disputed Area; no particular part was identifiable. (2) Having regard to the size of the Village (it was said to be no more than 20 dwelling houses), such play would be tolerated as of course by the owner of Manor Farm or whoever else was the owner of the Disputed Area. (3) Play ceased altogether before 1939. (4) The 1962 Cowhouse and concreting since effected make it impossible to play quoits on the Disputed Area, and the Nissen Hut erected in 1948 (and also the 1962 Cowhouse) would prevent any other sports or pastimes which I can imagine anyone in this Village ever wanting to play.



(5) The Disputed Area has, as long as the Objector can remember, been used and occupied with Manor Farm and at least since 1962 he and his successor Mr Wetherall have been in possession. (6) Even if such possession is not inconsistent with the inhabitants of the Village having some rights, the objections of the Parish Meeting to the activities of the Objector have been expressly based on interference with indulgence in sports and pastimes. (7) I had no evidence that anybody had ever attempted or even wanted to indulge in the sport of pastime of quoits after 1939 or in any other sport or pastime either before or after 1939, or that anybody ever considered taking legal proceedings against the Objector for such of his activities above described as openly and obviously interfered with such indulgence.

Bearing in mind the meaning given to the word "as of right" by the Court of Appeal in Beckett v Lyons 1961 ch 449 at pages 468, 469, 475 having regard to the above considerations and the appearance of the Disputed Area when I inspected it, on balance I conclude that the inhabitants of Horsehouse who played quoits on the disputed area before 1939 did not do so as of right. There was no evidence that anybody ever indulged in any other sport or pastime there and I accordingly conclude that the Disputed Area is outside this part of the definition in section 22 of the Act.

There was no evidence that the Disputed Area had ever been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality. I cannot I think from any of the evidence summarised above (there was none other relevant) conclude that the inhabitants of Horsehouse had a customary right to indulge in sports and pastimes. I conclude therefore that the Disputed Area is not within any part of the definition in section 22.

For the reasons above set out, I confirm the registration with the following modification:- of the two pieces of land comprised in this Register Unit the piece on the southeast side of the metalled road passing between the said pieces (which said piece is now or formerly known as "Low Green") to be removed from the Register.

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 22<sup>nd</sup> day of March 1973

A. A. Bacon F.R.S.

Commons Commissioner