



COMMONS REGISTRATION ACT 1965

Reference No.268/D/251

In the Matter of The Village Green (part),  
Commundale, Danby, North Yorkshire.

DECISION

This dispute relates to the registration at Entry No.2 in the Land Section of Register Unit No.VG 107 in the Register of Town or Village Greens maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No.072 made by Mr J.T.Featherstone and Mrs A.Featherstone and noted in the Register on 23rd April 1970. Although both Mr and Mrs Featherstone are named in the Objection, only Mr Featherstone signed it and he appears to be the only effective Objector.

I held a hearing for the purpose of inquiring into the dispute at Whitby on 4th June 1975. The hearing was attended by Mr H.D.Riley, the applicant for the registration, and by Mr H.Carter, solicitor, on behalf of the Objector.

The land the subject of the Objection consists of part only of the land comprised in the Register Unit. It is entirely separate from the rest of the land comprised in the Register Unit, and it is not necessary for the purposes of these proceedings to have any regard to the other land. The land with which these proceedings are concerned lies to the south-west of some disused brick and pipe works and was formerly included in the property of Crossley's Sanitary Pipe Company Ltd. The works were closed in 1947 and the company proceeded to dispose of the land which it owned. Much of the land was conveyed to purchasers, but officers of the company purported to give away some pieces of land of little value. The land the subject of this reference formed part of Ordnance Survey parcel No.219. Some parts of O.S.No.219 were sold, but the land the subject of this reference was not. Mr Featherstone gave evidence that the unsold land was "given" to him because he had been the company's rent collector. Mr Riley questioned this, but I accept that Mr Featherstone was telling the truth. This "gift" was, of course, entirely without legal effect, and so far as this case is concerned it is entirely irrelevant who is the owner of the land. However, the making of the "gift" explains some of the subsequent history. Furthermore, Mr Riley stated that he excluded from the registration the parts of O.S.No.219 which had been sold and that he would have excluded this land if Mr Featherstone had bought it and had it been properly conveyed to him.

When the brick and pipe works were in use the company used O.S.No.219 for the storage of pipes. By 1953 the part "given" to Mr Featherstone was a mass of nettles, thistles, and other weeds and was used as a general rubbish dump. After receiving his "gift", Mr Featherstone erected a fence between "his" land and part of O.S.No.219 to the south, which had been sold and now belongs to Mr Riley. Mr Featherstone then proceeded to clear away the weeds and the



-2-

rubbish. Since then the land has been left open, save that about 1965 Mr Featherston erected a garage on it. An unfenced strip along the southern boundary has been used as a means of access to two rows of houses, called Stone Row and Brick Row, built at the western end of O.S.No.219. The strip was made up with brick and pipe rubble from the land. About four years ago Mr Featherstone defined this access strip by erecting a fence along its northern side, so that the residents in Stone Row and Brick Row can no longer get onto the major part of the land to the north of this fence.

After Mr Featherstone cleared the land it became a place of resort for people living in the neighbourhood and especially for children living in Stone Row and Brick Row. This is common ground between the parties, but Mr Riley invited me to take into consideration statutory declarations made by two former residents in Brick Row, one of whom is now deceased, in which it was stated that this use of the land existed from the 1920's. One of these declarants (Mr J.G.Johnson) stated that throughout the period from 1924 to 1953 the land in question was part of a larger open grassed space. This is inconsistent with Mr Featherstone's evidence, corroborated by Mr P.Overy, that the land was overgrown with weeds and used as a rubbish dump when Mr Featherstone took it over in 1953. On the balance of probabilities it appears to me that while children may have got onto the land before 1953, the land could not at that time have been properly described as a town or village green. To my mind it seems clear that if children were using the land as what it is now fashionable to call an "adventure playground", they were not doing so as of right, but as trespassers.

I am far from satisfied that the use made of the land since 1953 has been as of right. It seems far more likely that it has been with the good-natured tolerance of Mr Featherstone, who has been in effective control of the land, even though it was never formally conveyed to him. However, even if Mr Riley were to be given the benefit of the doubt on this point, his registration would not be validated. The registration was made on 24th March 1970. This date being less than 20 years after 1953, it is impossible for the use of the land which began in or shortly after 1953 to satisfy the definition of "town or village green" in section 22(1) of the Act of 1965.

For these reasons I confirm the registration with the following modification:- namely, the exclusion of the land the subject of the Objection.

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 17th day of June 1975

Chief Commons Commissioner

