



In the Matter of The Village Green and Hargill,  
Redmire, North Yorkshire.

DECISION

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This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No VG 120 in the Register of Town or Village Greens maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No 0247 made by Mr J U Machell and Sir Henry Lawson-Tancred and noted in the Register on 7 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Richmond on 10 May 1978. The hearing was attended by Mr E R D Johnson, solicitor, on behalf of the Redmire Parish Council, the applicant for the registration, and by Mr J H N Towers, solicitor, on behalf of the Objectors.

The land comprised in the Register Unit consists of a number of areas scattered through the village of Redmire. Although the Objection in terms relates to the whole of the land, Mr Towers informed me that the Objectors agreed to the registration of most of it, and the hearing was devoted to the consideration of a small part of one of the constituent areas.

The area in question is an island site, on which stands a Jubilee Memorial. In this island site there is what may be termed a sub-island, which is not comprised in the Register Unit, consisting of Oak Tree Cottage and its garden. The front of Oak Tree Cottage is on the eastern boundary of the sub-island and abuts on the land comprised in the Register Unit. The land in front of the cottage consists of a narrow strip between the cottage and the road further to the east. It is this strip to which the evidence and the arguments were directed.

The history of the matter goes back to an indenture made 20 October 1899 between (1) William Thomas Orde Powlett, Lord Bolton (2) Redmire Parish Council, by which Lord Bolton let to the Parish Council, with other land, the whole of the area round Oak Tree Cottage, including the strip in front of it, for twenty-one years from 25 March 1899 to be used by the inhabitants of the parish or township of Redmire as a public recreation ground or village green. On 5 January 1900 the Parish Council made bye-laws with respect to the village green, which bye-laws were allowed by the Local Government Board on 20 March 1900. In the bye-laws the expression "the Village Green" was defined as meaning "the Village Green or open space in the Village of Redmire, which was leased by Lord Bolton to the said Council on the 20th day of October 1899". Bye-law No 16 contains a prohibition of the erection of (inter-alia) any fence in any part of the Village Green.

In the early years of the present century the tenant of Oak Tree Cottage was a Mr Ralph Horn. On 6 April 1904 the Clerk of the Parish Council was instructed to write to Mr Horn to request that the fencing which had been put up in front of his house be removed as soon as possible because it encroached on the Village Green and thereby infringed bye-law No 16. On 8 November 1917 the Clerk was instructed to write to Mr Horn and request that he remove the stones, thorns, and any other obstruction from off (sic) the Village Green in front of his house. On 21 November 1917 the Parish Council resolved that the Clerk should meet Lord Bolton's agent regarding the business, connected with Mr Horn, as to the removal of obstruction.



on the Village Green.

There is no demarcation of the northern and southern ends of the strip. Except during the time that Mr Horn fenced it off, children playing on the land to the north and south could, and did, run along the strip.

By 1948 a rockery had been constructed against the front wall of Oak Tree Cottage. In that year a Mrs Dinsdale became the tenant of the cottage and, since the rockery was making the wall damp, she removed the rockery and replaced it with what was described as a "stoned-up" garden, which now covers about half the width of the strip.

By a conveyance made 13 June 1977 the Objectors conveyed to the Parish Council "all those pieces or parcels of land (forming part of the Village Green) situate in the Village of Redmire ..... all which said pieces or parcels of land are more particularly delineated on the plan annexed hereto and thereon coloured red": The land coloured red includes the whole of the island area with the exception of the "sub-island" and the disputed strip.

On the evidence, I am left in no doubt that the strip formed part of the village green at the end of the nineteenth century. It has since been subject to various encroachments made by the tenants of Oak Tree Cottage. It would appear that Mr Horn's encroachments were fairly short-lived, since the minutes of the Parish Council contain no evidence of refusal by him to comply with the requests to remove them, in contrast to the present "stoned-up" garden, which has been there for the last thirty years. However, a long-continued encroachment on a village green cannot deprive the site of the encroachment of its status as part of the green. There is no way in which the encroachment can lawfully continue or the green be put to some use other than the indulging on it in lawful sports and pastimes other than by getting a private Act of Parliament: see per Lord Denning M.R. in New Windsor Corporation v. Mellor, [1975] Ch. 380, at p.393. Rights of inhabitants cannot be waived or abandoned or lost by disuse: see Wyld v Silver, [1963] Ch. 243, at pp. 255 - 6, 263 - 4.

For these reasons I confirm the registration without any modification.

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 7th day of June 1978

CHIEF COMMONS COMMISSIONER