



COMMONS REGISTRATION ACT 1965

Reference Nos. 26/D/12
26/D/13
26/D/14
26/D/15
26/D/16
26/D/17

In six Matters of six several parts
of The Village Green, Braunston,
Daventry R.D., Northamptonshire

DECISION

These disputes relate to the registration at Entry No.1 in the Land section of Register Units Nos. VG.41, VG.42, VG.43, V.G.44, V.G.45 and V.G.46 in the Register of Town or Village Greens maintained by the Northamptonshire County Council and are occasioned by Objection Nos.35, 36, 37, 38, 39 and 40 respectively made by the said Council.

I held a hearing for the purpose of inquiring into these disputes at Northampton on 19th and 20th July 1972. The hearing was attended by the Braunston Parish Council ("the Parish") who were represented by Mr. J. Creek a solicitor with Messrs. Stops and Burton solicitors of Daventry and by the Northamptonshire County Council ("the County") who were represented by Mr. D. J. Jones, one of their staff. It was agreed that I should hear all these disputes together.

Units 42 and 43 ("the North Units") are north of the carriage way of the High Street and Ashby Road (or one of them) and are separated from each other by the carriage way of Barby Road. Units 41, 44, 45 and 46 ("the South Units") are south of the carriage way of the High Street and Welton Road (or one of them). It was agreed that these carriage ways are all public highways. The South Units are separated from each other by roads or tracks providing access from the carriage way on the north to the lands and buildings on the south. On the north side of Unit 41 abutting on the carriage way there is a layby and a bus shelter; otherwise all the Units are all grass land apart from such things as a road sign, litter basket and a Post Office pole.

The application for the registration of all these Units was made by the Parish in one application dated 16th February 1968. The objection of the County against each of the Units was the same:- "The Land comprised within this Register Unit was not a town or village green at the date of registration because it then formed and still forms part of the public highway".

On behalf of the County evidence was given by Mr. J. G. Nightingale a County Engineer Assistant, by Mr. F. Shepherd a lengthman employed by the County between 1951 and 1960, by Mr. G. W. Hart and Mr. G. Marlow tractor drivers now employed by the County and Mr. P. Spencer a travelling maintenance foreman also now so employed.

Mr. Nightingale produced some correspondence ("the 1953 correspondence") between the Parish and the County relating to the then intended erection of the bus shelter which showed that those then concerned on behalf of the County apparently granted their approval on the basis that the land on which it was erected was then highway; he said that the layby was constructed by the County in 1971 on the same basis. The other above mentioned witnesses ("the Maintenance Employees") described how they had at various times been employed by the County to mow or otherwise tidy the grass verges adjoining the carriage ways vested in the County as highway authority



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and had in the course of such employment, mowed and tidied these Units.

On behalf of the Parish evidence was given by Mr. G. E. Green who is 61 years of age and the clerk of the Parish, who has lived in the Village since 1935, been a member from 1946 to 1970 and for more than half that time chairman; and by Mr. T. E. Jones who is the chairman of the Parish, has been a member since 1955 and has lived in the Village since 1945.

Mr. Green described how ever since he had known the Village the South Units had been used for recreational purposes. The Silver Jubilee of His late Majesty King George V, the Coronation of His late Majesty King George VI, V.E. day, V.J. day and the Coronation of her present Majesty had all been celebrated there; he produced photographs showing a bullock being roasted whole and other jollifications. An Entertainment Fair for which the promoters paid a fee to the Parish came there annually. Childrens Sports had been held there annually until the School about 5 or 6 years ago moved from a site lying between Unit 43 and the South Units to a site further away; as appeared from photographs, for this purpose all the South Units were used to provide the necessary length for the longer races without regard to the separating roads or tracks. He mentioned various Entertainments and functions including a Village Feast and a fete and flower show held since 1951 annually by the Braunston Village Garden Association of which Mr. Green was a founder member and is now Honorary President. Mr. Green said that the purpose of this association was to improve the appearance of the Village and promote good gardening; the association had arranged for weekly mowing of the greens in the Village including all these Units; as a result of these activities the Village on one occasion had won the cup for the tidiest Village in Northamptonshire with a population of under 1,000 and had been nearly always highly placed in other years. Mr. Green had examined the old books held in the custody of the Parish; these showed the interest of the Parish in the Green as far back as 1895. He produced a receipt and payments book for the years 1894 - 1915 which contained a number of entries relating to the Green; he understood (as was confirmed by his examination of these books) that the recreational activities he described went back at least to 1895. Mr. T. E. Jones said he had seen children playing on the South Units for at least 20 years and was amazed at the suggestion made by the County that they were highways; he disputed the evidence of the Maintenance Employees that they had mowed or tidied any of these Units; when they came by reason of the activities of the Garden Association and others, these Units had already been mowed to look like lawns.

The witnesses dealt with numerous incidental matters not above mentioned, particularly Mr. Green whose evidence was detailed. It is, I think, unnecessary for me to set out these matters, because in my view every witness was describing to me as truthfully as he could what he knew and the conflicts were (as mentioned below) either about facts which I consider unimportant or as to the inferences to be drawn the facts about which there was no conflict.

At the end of the hearing it was agreed that the layby and the area of land on which the bus shelter stands should be omitted from Unit 41. I am satisfied that I ought to give effect to this agreement.

The agreement so made was without prejudice to the contentions of either party as to the inferences I should draw from the 1953 correspondence or any other matter as to any other part of the South Units being or not being highway. In my view neither the 1955 correspondence nor anything which happened before the bus shelter was erected or the layby constructed constituted an agreement between the County and the Parish that any part of the South Units (except possibly the land which it is now



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agreed shall be omitted from Unit 41, and with which therefore I am not on this point concerned) was then highway or can be properly regarded as estopping the Parish from claiming that the South Units are now village green.

I reject the contention of the County that I should exclude from the South Units a narrow strip of land (a width of 6 feet was suggested) on the northern side of the South Units as being highway either by reason of the 1953 correspondence or by reason of any presumption of law that a highway includes grass verges up to the fences apparently bounding it or for any other reason.

I was favourably impressed by the attitude of the Maintenance Employees that when mowing or otherwise tidying up grass verges adjoining carriage ways vested in the County as highway authority they should mow and tidy up any nearby grass land which seemed in need of attention. But they did not I think in the course of their activities have in mind the exact extent of the grass land for which the County was or was not responsible. I agree with the argument of the Parish that they, in relation to all these Units, somewhat exaggerated the extent of their activities.

I accept the contention of the County that the mowing and tidying of a piece of land by their employees and the construction of a layby and a bus shelter on part of it, is some evidence that no part of the piece of land is a town or village green within the definition in section 22 of the Act. But in my view such evidence is not conclusive and in determining whether a piece of land is within the definition I must balance such evidence against any evidence that the piece of land is within the definition.

In this case balancing the evidence of the County against the evidence of the Parish in relation to the South Units the scale tips I think against the County. I accept the evidence of Mr. Green as summarised above and as confirmed by the evidence of Mr. T. E. Jones. From it I conclude that the inhabitants of the Village have indulged on the South Units in sports and pastimes from some time before 1895 to the present time and that such indulgence was as of right. In my opinion I can properly presume that such indulgence has continued from time immemorial in pursuance of a customary right.

The North Units slope down to the carriage way (unlike the South Units which are reasonably level) and are thereafter not suitable for athletic races (additionally they are not long enough) or for any other "sports" or "pastimes" as these words are ordinarily understood. The North Units have been regularly mowed by the Garden Association who have also planted daffodils on Unit 42. On this Unit, there is a Post Office pole for the erection of which the Parish gave permission. There is a footpath across Unit 42 providing access to a building on the north; this footpath was constructed after permission had been granted by the Parish following representation by Mr. Withal the owner and occupier. The North Units could I suppose be used (but not conveniently because too far away) by anyone who wanted a distant view of the recreational activities on the South Units.

Until about 1951, there stood on part of Unit 41 a building (formerly two cottages ultimately one dwelling house); the site of this building and the garden and yards held with it were a substantial part of Unit 41, see the Ordnance Survey maps dated 1887 and 1900. About 1952 this building was (I was told pursuant to a dangerous structure notice or some such requirement) demolished, the site cleared and the ground grassed over so as to appear like the adjoining land. Mr. Nightingale in his evidence said that before 1952 the then owner offered the dwelling to the County if it were taken down and the land on which it stood became part of the highway, and Mr. Shepherd said that it was seeded down by the Council. But contra, Mr. T. E. Jones said that the building had been demolished at the request of Mrs. Berry and that he



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understood from her that she had allowed the County to have it so it should be part of the Village Green.

In my opinion neither the mowing and planting of daffodils by the Garden Association nor the permissions granted by the Parish for the construction of a footpath and the erection of a pole can be ascribed to indulgence by the inhabitants in "lawful sports and pastimes" within the meaning of the definition section 22 of the 1965 Act; and accordingly in my view the North Units cannot be within the definition unless the North Units and the South Units can properly be regarded as one piece of land so that the recreational use made of the South Units could properly be ascribed to the North Units.

In my view, ^{the} North Units were clearly not one piece of land with the South Units before 1953 when there was a building on Unit 41 as above described. They did not I think as a result of the demolition of this building, become one piece of land. I reject the suggestion that I should treat Unit 41 as a town or village green by reason of some declaration of intention by Mrs. Berry or who ever was then owner; in my view any such intention if relied on either by the Parish or the County should have been proved by evidence far more cogent than that put before me as summarised above.

For these reasons, (i) I refuse to confirm the registration of Register Units V.G.42 and V.G.43 (ii) I confirm the registration of Register Units V.G.44, V.G.45 and V.G.46 without any modification, and (iii) I confirm the registration of Register Unit V.G.41 with the following modification: the layby and the area of land on which the bus shelter stands 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 25th day of October 1972.

a. a. Baden Fuller.

Commons Commissioner