



## COMMONS REGISTRATION ACT 1965

Reference No. 26/D/8  
26/D/9  
26/D/10

In the Matters of three parts of  
the Green, Lilbourne, Daventry R.D.,  
Northamptonshire

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DECISION

These disputes relate to the registration at Entry No.1 in the Land section of Register Unit Nos.V.G.31, V.G.32 and V.G.33 in the Register of Town or Village Greens maintained by the Northamptonshire County Council and occasioned by Objections Nos.28, 29 and 30 respectively made by the said Council and noted in the Register on 19 October 1972.

I held a hearing for the purpose of inquiring into these disputes at Northampton on 19 July 1972. The hearing was attended by the Northamptonshire County Council ("the County") who were represented by Mr. D. J. Jones a member of their staff and by the Lilbourne Parish Council ("the Parish") who were represented by Mr. P. Smith solicitor of Messrs. Bretherton Turpin & Pell solicitors of Rugby. It was agreed that I should hear all these disputes together.

All the registrations were made pursuant to an application dated 9 January 1968 and made by the Parish. The grounds of objection (the same in each case) were:- "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".

All these units are situated in an open space in the centre of the Village where five metalled carriageways meet. Units 31 and 32 are oval or oblong pieces of land bounded everywhere by metalled carriageways. Unit 33 is an approximately triangular piece of land bounded on the north and east by metalled carriageway and on the west by a footpath separating it from the enclosed land. All these units (except for a telephone kiosk and seat on Unit 31 and a telephone pole stay on Unit 33) are grass land.

It was agreed that the metalled carriageways are all public highways.

On behalf of the County evidence was given by Mr. D. Nightingale who is an Engineering Assistant employed by the County and by Mr. P. Spencer who is a travelling maintenance foreman also so employed. On behalf of the Parish evidence was given by Mr. H. Seal who has lived in the Village since 1954 and has been clerk of the Parish since 1963.

Mr. Nightingale produced an ordnance survey map dated 1883 which showed the open space as a junction of roads but which apart from marking a pump gave no indication as to how much of this open space was made up carriageway and how much grass land. He also produced an ordnance survey map dated 1900 which showed the open space and which marked part as apparently made up carriageway and part as other land, but Units 31 and 32 were therein showed as 3 (not 2) pieces of land larger than and of a different shape from what they are now, and Unit 33 was shown as having a pump which is now no longer there. He produced some 1938 correspondence which showed that the telephone kiosk now on Unit 31 had been



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erected there after the County Surveyor had stated "I have no objection, to offer to the proposal subject to the erection and maintenance of the kiosk being governed by the existing agreement" (that dated 2 February 1932). He also produced some 1956 correspondence which preceded the realignment by the County of the roads across the open space and, which showed that the Parish had stated "So far as the Parish Council is aware no one is in a position to claim any rights over the Green".

The evidence of the Parish which did not relate, or necessarily relate to the use of these Units by the inhabitants for sports and pastimes was as follows ("first heading"):- The Parish always understood that the Green was in fact a village green which could be enjoyed by the residents of the village. The Parish wanted to maintain this state of affairs; the activities of the residents of the village would be restricted should it appear that the green is in fact a public highway. No objection was raised to the 1956 realignment because it was not appreciated that a diversion order was needed and that as far as the Parish were concerned one part of the green was taken but a part of the old highway was substituted for it. Mr. Seal understood from older inhabitants that livestock had been grazed on the green by the Villagers. The green has not always been maintained by the County to the standard required by the Parish; householders have had the grass cut from time to time. The Parish on Unit 31 provided a seat to commemorate the Coronation of Her present Majesty and have since maintained it. He produced: three photographs showing the Green as it would have looked about 60 years ago; a letter dated 15/3/71 from Mrs. V. Husband in which she said she lived in the Village for 47 years and used to visit the Village many years before that, that she remembered it being used by the Village people and the trees on the Green and thinks it would be a dreadful thing should the Village be deprived its Green; and a statement by Mrs. P. Goring that the Village pump was in use on the Green until piped water was brought, that there were two trees planted on the Green to mark the jubilee year celebration 1897 and that horses were allowed to graze on the Green.

The evidence of the Parish which related to the use of these Units by the inhabitants for sports and pastimes was as follows (second heading):- The School Mistress Miss Lovett had been accustomed to take out the children on to the Green (Unit 33) annually to dance the maypole until about five years ago when the School was closed by the Education Authority; Mr. Seal remembered her doing this in 1953; the maypole dance was attended by the villagers. Until a few months ago when a playing field had been provided for the children, it was common for children to play cricket, football and other games on the Green, for the most part on Unit 33 but also on the other Units although he was not keen on that because of the possibility of damage to the seat.

The definition of "town or village green" in section 22 of the Act, so far as relevant is: "land on which inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years".

I am bound by this definition, and must I think therefore regard the first heading evidence of the Parish as having no direct relevance, notwithstanding that it may show that these Units are village green within one of the ordinary or popular meanings of these words.



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For the County it was argued that the evidence given on their behalf as summarised above showed that these Units were part of the highway (being highway verges), that it is not possible in law or alternatively it is administratively and practically inconvenient for any land at the same time to be highway (under the control of the County as highway authority) and village green (under the control of the Parish) and that at any rate so much of Unit 31 as was carriageway before the 1956 realignment could not be within the definition.

I can I think give my decision without expressing any opinion as to whether it is legally possible for land to be at the same time both highway and village green, because it was agreed that in the particular circumstances of this case, these Units could not sensibly be both. Further I can I think having regard to my views on the other aspects of this case, without any injustice to the County, ascribe to these Units any customary right over or use of the grassland this open space before the 1956 realignment to the Units as they have been since then. Although I do not regard the circumstances in which the telephone kiosk was erected and the carriageways realigned either as precluding the Parish from contending these Units are village green or as conclusive evidence that these Units are highway, I agree with the County that their evidence provides some ground (which I must consider along with the contrary evidence of the Parish) that these Units are not within the above quoted statutory definition.

The second heading evidence of the Parish extends for less than 20 years (the period mentioned in the above quoted definition). But even if I could infer that the use of these Units which Mr. Seal described as having made during his 19 years of knowledge was in continuation of the use made for some years previously I cannot I think also infer that such use was "as of right" as required by the definition; the use he described seems to me to be no more than the sort of use which those concerned would have rightly thought no one could find objectionable and which the highway authority would (although such use might have been technically irregular) tolerate as of course; see the observations in the Court of Appeal in Beckett v Lyons 1967 1 Ch.449 at pages 468, 469 and 475.

Balancing the evidence of the County against the evidence of the Parish, I conclude that these Units are not within the statutory definition, and accordingly I refuse to confirm the registration.

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 3rd day of November 1972.

a. a. Baden Fuller

Commons Commissioner