COMMONS REGISTRATION ACT 1965

Reference No. 231/D/106

In the Matter of Minton Village Green,
Church Stretton Parish,
South Shropshire District, Shropshire

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 6 in the Register of Town or Village Greens maintained by the Shropshire County Council and is occasioned by Objection No. 0.55 made by Mr John Edgar Hartley, Mrs Winifred Edith Lloyd and Mr Sidney Harold Lloyd and noted in the Register on 5 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Shrewsbury on 24 February 1982. At the hearing Church Stretton Parish Council on whose application the registration was made, were represented by Mr A H Horrocks their clerk; and the said Objectors were represented by Mr G H K Brown, solicitor of Harry W Hughes & Son, Solicitors of Shrewsbury.

The land ("the Unit Land") in this Register Unit is a triangular grass covered piece containing about 0.216 of an acre (OS 1903 ed. No. 195) situate on the northwest side of and open to the road (a minor road) through Minton from Little Stretton on the northeast to Hamperley on the southwest. On the other two sides and also open to them are two roads providing access to some nearby houses and buildings and ultimately to a track northwestwards over the nearby Longmynd Moor (Register Unit No. CL 9). The grounds of Objection are that the land which is owned by Mr J E Hartley and Mr W E Lloyd and occupied by Mr S H Lloyd, was not a Town or Village Green at the date of registration.

In support of the registration oral evidence was given by Mr A H Horrocks who has resided in the Parish since November 1951 and is now and has been since January 1974 clerk (part time) of the Parish Council, in the course of which he produced: (a) an extract made by the County Record Office of the 1840 Church Stretton Tithe map, (2) particulars of the sale of the Minton Estate (1,359 acres) by auction on 23 October 1952 in 25 lots, (3) a letter dated 28 August 1967 to Mr Speechley from Miss H L Hornsby formerly a Parish Councillor and now deceased; (4) a form saying that the undersigned considered OS 195 to be subject to a customary right of playing lawful sports or pastimes as evidenced by the fact that they had "seen children and inhabitants of Minton using the land for the purposes of recreation from time to time over a period of years"; (5) a letter dated 23.2.82 to him from Mrs G Rooke; and (6) the Register of Electors dated 15 February 1982 for the Little Stretton Ward AL6 of the Parish or Registration Unit of Church Stretton. The 1840 map shows the Unit Land, the said surrounding roads and a smaller triangular area southeast of it (now open grass land) all as one piece with the various approach roads as non tithable; the rest of the Village appears much as it was in 1903. In the 1952 Particulars, lot 2, Manor House Farm containing 115.320 acres is described as "Minton Green Ord. No. 195 is in hand and is included in this lot subject to all rights ... as at present enjoyed. The remainder is let ...". Miss Hornby in her 1967 letter said of the Unit Land: "I understand that this has always been a Village Green, it is reputed to be one of the oldest, unspoiled, greens in the country. About

fifty years ago I remember seeing geese grazing on it and when we went to live at Minton House, thirty years ago, it was being used as a common or green". The 1982 Register shows that the electors of Minton to number 35, of altogether, 12 different addresses.

In support of the registration evidence was also given by Mr W E Davies who has lived for 35 years at Minton Batch Farm (by road or track about 1 mile southwest of the Village). He said (in effect):- He had always understood the Unit Land to be a place for public recreation: playing upon: there are 5 or 6 children who go and play there. For this no equipment had been provided by the Council but there is an elm and a few trees and a rather large patch of blackberry brambles, and a swing (a single rope) hanging from the elm. He identified the children as coming from one of two families living nearby. He had never seen cricket played there or football other than "kicking a ball"; or a bonfire (5 November).

In support of the Objection, Mrs W E Lloyd produced a conveyance dated 12 May 1955 by which the Public Trustee conveyed to Mr J E Hartley and herself Manor House Farm containing 115.320 as described in the Schedule and identified on a plan. The plan showed the premises conveyed edged red including without any distinction the Unit Land in the Schedule described as "195. Minton Green:. 216"; she also produced another copy of the said 1952 particulars together with a copy of the plan referred to therein. Also in support of the Objection oral evidence was given by Mr S H Lloyd who had lived at the Manor Farm since 1955 and who said (in effect):- Generally he disagreed with the evidence of Mr Davies; he had always regarded the Unit Land as part of the Farm owned by Mr Hartley and his wife Mrs Lloyd. The so called swing was only a piece of waggon rope; it was first put there about 25 to 26 years ago by himself for the amusement of his children: since then he had renewed it on 2 occasions. The children mentioned by Mr Davies as playing there, played with his (the witness) children, and he had never seen children not invited by his own children playing on the Unit Land. His farming stock included a flock of 300 to 500 sheep which he turned on to the Unit Land to graze about 2, 3 or 4 times a year; he also turned out cows there occasionally for the May, June and July grass. Against the registration also oral evidence was given by Mr J Downes who is now aged 74 and who since 1925 had lived at New House Farm about ¼ of a mile away and who said (in effect):- He had been asked to sign the form produced by Mr Horrocks and had refused because in his view it was not correct. There had never in his life time been sporting activities carried on on the Unit Land, or at least nothing organised. It was part of the Manor Farm; the geese mentioned by Miss Hornby in her letter belonged to a Mr Ward who about 50 years ago was the tenant. He had always known the Unit Land as "the Green" and only very recently heard it referred to as "the Village Green".

In the 1965 Act the definition of "town or village green" is (so far as relevant) "land ... on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes ...", see section 22. To come within the definition it is not enough that the land is known as a "Green" or is land open to the roads with a lot of grass on it or is otherwise within the popular meaning of the word. But it is enough the land has been used for 20 years as of right by the inhabitants of the locality for lawful sports and pastimes, see Brocklebank v. Thompson 1903 2 Ch 344.

The apparent conflict between the evidence given for and that given against the registration as above summarised is, I think, more apparent than real, and I accept

that all the witnesses truthfully stated their own understanding of what has been happening. I find that the Unit Land is (as stated in the Objection) and has been since 1955 owned by Mr J E Hartley and Mrs W E Lloyd and occupied by Mr S E Lloyd as part of Manor Farm, and I accept that their children and any other children residing at Manor Farm would have frequently played on the Unit Land. I think it likely that children from the few other farms and dwellinghouses nearby would also have played on the Unit Land and that all the children that played there would normally have played together; but I reject the suggestion that the other children only played there after they had been "invited" to do so by those from the Manor Farm, at any rate if the word "invited" is used in the legal sense usual in the context of disputes such as I am now considering. It does not follow that because none of the children could be regarded as wrong-doers that their play was "as of right" in the now relevant sense. In Beckett v Lyons 1967 1 Ch 449, the Court of Appeal said: "When the law talks of something being done as of right it means that the person doing it believes himself to be exercising a public right"; the question is whether the act was done by a person who "believes himself to be exercising a right or was merely doing something, which he felt confident the owner would not stop, but would tolerate because it did no harm"; and a distinction must be made between the activities of the person doing something as of right and doing it as "a de facto practice which (he) rightly thinks no one would find objectionable and which the owner ... in fact tolerated as unobjectionable"; see pages 468, 469 and 475.

Mr Borrocks contended that the village being so small, and the number of residents being so small it would be unreasonable to expect on its village green any organised sports; and that I should interpret the statutory definition accordingly. In my view I cannot overlook that in this sort of dispute there are 2 classes of case: on the one hand a populous village (reasonably describable as a "locality") in the middle of which there is a plot of grass land (reasonably describable as a "village green") on which adults, and children organised by adults, indulge in sports and pastimes (such as cricket played on a reasonable pitch with 11 players on each side or village fetes etc); and on the other hand a small group of dwellinghouses (perhaps describable as a hamlet but only doubtfully as a locality) in or near which there is grass land (possibly highway verge or otherwise part of the highway or possibly open because the owner likes to keep it open) on which children in an unorganised way play in a manner tolerated by the owner and others because it could not possibly do any harm. One class is clearly within the definition and the other is clearly not. There are bound to be cases like the one I am now considering which are in the blurred area between the two classes.

It was not suggested that the Unit Land was ever used for recreational purposes by the inhabitants of the parish of Church Stretton, which includes the well built up area about 3 miles from the Unit Land or that the customary right could be otherwise than in respect of about a dozen farm and other dwellinghouses situated very near to the Unit Land, at the hearing called "the Village". Even, which I doubt, these houses could properly be regarded as a "locality" within the definition, my conclusion is that the playing by children described by Mr Davies was not "as of right" within the relevant meaning of these words. It may be that the Unit Land should in law be regarded as part of the highway, but I am not concerned with this question.

During my inspection I was struck by the general attractiveness of the Village to which the layout and arrangement of the Unit Land made a significant contribution; no doubt it is an amenity to all who live nearby. It may be that because it is highway land it cannot be fenced; it may be in any event the owners and occupiers of Manor House Farm would never wish to fence it. In my view its appearance is if anything against being within the above quoted definition of a town or village green in that the configuration of the land and its position in relation to the buildings of Manor House Farm, do to the eye, suggest that it might well be private land belonging to this farm and as such properly usable by children living there rather than those living further away.

Balancing the conflicting considerations summarised above, my decision is that (not) the Unit Land is subject to any customary recreational right and was therefore not properly registered as a town or village green; 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 6th — day of August — 1982

A. A. Baden Fuller

Commons Commissioner