



COMMONS REGISTRATION ACT 1965

Reference No 232/D/15

In the Matter of Staplegrove Green  
or The Grove, Staplegrove, Taunton  
Dean District, Somerset

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DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No VG. 71 in the Register of Town or Village Greens maintained by the Somerset County Council and is occasioned by Objection No O/788 made by the said Council and noted in the Register on 31 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 3 June 1975. At the hearing the Commons Open Spaces and Footpaths Preservation Society on whose application the registration was made were represented by Mr B T Jacobsen solicitor with Bircham & Co, Solicitors of London, and Somerset County Council were represented by Mr T J Driver, Senior Administrative Assistant in their Chief Executive's Department. Mr Driver produced a letter dated 22 May 1975 from Staplegrove Parish Council agreeing an adjournment, and Mr Driver and Mr Jacobsen being also agreeable, I adjourned the proceedings.

I held a further hearing at Taunton on 29 November 1977. At the hearing Somerset County Council were represented by Mr Driver as before, and Staplegrove Parish Council (their application for the same registration is noted on the Register) were represented by Mr R W Morgan solicitor of Clark Willmott & Clark, Solicitors of Taunton.

The land ("the Unit Land") comprised in this Register Unit is situated at a T road junction where the road ("the Side Road") leading to Staplegrove Church and Village leads off the main road from Taunton to Milverton and Minehead (A361). The Unit Land is two pieces: one approximately triangular ("the West Piece") on the west of, and the other approximately triangular except that its north end tapers to a point ("the East Piece") on the east of the Side Road. Both Pieces are much overgrown with trees, including some very big oaks of considerable age and some other mature trees of natural beauty; both pieces are for the most part a few feet below the level of the metalled surface of the Side Road, and are in places swampy. There is only a little grass, and neither piece is suitable for sports and pastimes as generally understood. Nevertheless the Unit Land, even although its recreational value may not be much, is by reason of its situation an amenity to the Village of some importance.

The grounds of Objection are: "The land coloured red on the attached plan was not a village green at the date of registration". The plan shows so coloured: (i) a strip ("the Northwest Strip") being a footpath (somewhat rough, a short cut from the A361 road which runs along and within the northwest side of the West Piece; (ii) a strip ("the Disputed Strip") which runs along and within the east side of the West Piece; and (iii) a strip ("the East Strip") being a footpath (recently made up) along and within the west side of the East Piece.



In the course of the hearing, Mr Morgan said that the Parish Council agreed that the Northwest Strip and the East Strip should be excluded from the registration.

On behalf of the Parish Council evidence was given by Mr T W Fraser who has been a member for the past 13 years and who is and has been for the last 10 years their chairman, in the course of which he produced: (1) a conveyance dated 26 November 1956 which recited (among other things) an Award dated 6 March 1851 by which the land thereby assured was allotted to A Turner and C J Turner as a place for exercise or recreation for the inhabitants of Staplegrave and the neighbourhood, and by which Mr D L Drummond and Mr G F Powell as personal representatives of Mr C A G Turner (he died 8 February 1954) by the direction of Colonel L H B Burlton (he being absolutely entitled to the property) conveyed the Unit Land (said to contain 2.144 acres) to the Parish Council; and (2) an extract from the said Award enclosed with a letter dated 19 December 1894 from the Board of Agriculture, there being attached to it an extract from the Award map.

On behalf of the County Council oral evidence was given by Mr J D B Naylor who is the County Divisional Surveyor (for the southwest division), in the course of which he produced a letter dated 27 July 1976 from the Parish Council clerk.

On the day after the hearing I inspected the Unit Land.

The maps produced at the hearing are on too small a scale to show with any precision the relevant part of the boundary of the Unit Land as it was claimed that it now is and as it was claimed it should be. At the hearing it was agreed that the question for my decision is whether the boundary is the line of the edge of the tarmac road or the line of the trees nearest the road. My inspection showed that the edge of the road is somewhat irregular, there being some strips of variable width which although apparently not used by moving traffic were apparently part of the highway conveniently usable by a waiting vehicle; and also it showed that the trees were at such varying distances from the road that any line joining them would be so irregular as not to be a sensible boundary. However there should I think be no difficulty in marking out a smooth line in a reasonable way which would accord a little more or less with the definition given at the hearing, and I proceed accordingly.

The substance of the matter, as I understood Mr Frazer and Mr Naylor, is: The County Council as highway authority are concerned with preventing any interference with or danger to vehicular traffic which might result from some use of the Unit Land near its boundary, and also concerned with preventing any objection being made to a possible improvement of the highway. The Parish Council are concerned with preventing any unnecessary encroachment on the rights of the inhabitants. Neither Mr Fraser nor Mr Naylor suggested that the County Council and the Parish Council had not in the past in relation to the Unit Land cooperated in a reasonable way or that either contemplated doing anything to which the other might object, so the question before me is somewhat hypothetical.

There is no legal reason why land should not at the same time be both village green subject to a statutory or customary right of recreation for the benefit of the local inhabitants, and highway over which the public at large have a right of passage; and indeed many village greens are crossed by public footpaths and other highways. But I accept Mr Naylor's contention that the circumstance that



land forms part of a highway is evidence that it is not village green because in general land cannot be both conveniently. The circumstance that the County Council as highway authority may for more than 20 years have from time to time tidied up the grass on the Disputed Strip or used it for purposes incidental to the highway, although it might establish that it had been dedicated for highway purposes cannot I think establish that it was dedicated for highway purposes free from the recreational rights granted by the 1851 Award, because such a presumed dedication is outside section 34 of the Highways Act 1959, see subsection (8).

The plan referred to in the 1851 Award and the Register map (based on the OS map 1/2500) are in all relevant respects the same, that is they show the relevant parts of the boundary as a smooth line from the T junction on the south to the wall on the north. When these maps were made the highway would not I suppose in any way resemble what it is now; nevertheless interpreting these maps as best I can, it seems to me that the line drawn on it corresponds as nearly as may be to the line of the edge of the tarmacadamed road and not at all to any line corresponding in any way with the trees, as they are now growing. I disregard the very aged tree, because it is so near to the edge of the road that any line based on it could not sensibly be other than the edge of the road. I disregard also the posts recently put in by the Parish Council to prevent vehicles from driving onto the Unit Land; they were erected a short distance from the edge of the road so that they would not be a danger to vehicles; I see no reason for regarding them as boundary posts indicating the position of the line drawn on the 1851 Award map. I treat the lampost at the north end of the boundary now in question as having been erected on the highway.

For the above reasons I conclude that the Disputed Strip was properly included in the registration. It may be that some of the considerations outlined above if applied to the Northwest Strip and to the East Strip would lead me to the same conclusion; nevertheless this provides no good reason for my refusing to give effect to the agreement made between the County Council and the Parish Council as to the exclusion of these parts of the Unit Land from the registration; these Councils are entitled to take into account the possibility that any conclusion I might reach, might be reversed on appeal, and I shall assume that both Councils, *being* concerned  $\longrightarrow$  with the public interest (in different ways), have taken this and all other relevant considerations into account when making their agreement.

For the above reasons I confirm the registration with the modification that there be removed from the Register the Northwest Strip and the East Strip as above defined by reference to the grounds of 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 16<sup>th</sup> day of February — 1978

a. a. Baskin Julia

Commons Commissioner