



In the Matter of Ashfield Bank and Ponds,  
Stainforth and Thorne, South Yorkshire (No.1)

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No. VG.117 in the Register of Town or Village Greens maintained by the South Yorkshire Metropolitan County Council and are occasioned by Objection No. 271 made by J and D Stubley Estates and noted in the Register on 11 May 1971, Objection No. 853 made by the British Waterways Board, Northern Region and noted in the Register on 3 June 1971, Objection No. 1529 made by the former Yorkshire River Authority and noted in the Register on 2 February 1972, Objection No. 2136 made by the former Thorne Rural District Council and noted in the Register on 23 October 1972, Objection No. 2190 made by the National Coal Board and noted in the Register on 25 October 1972 and the conflicting registration at Entry No. 3 in the Land section of Register Unit No. CL.401 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Thorne on 13 February 1974. The hearing was attended by Mr David Rose, of Counsel, on behalf of the Stainforth Parish Council, whose application was noted under section 4 (4) of the Commons Registration Act 1965, Mr P M Stowe, Solicitor, on behalf of the Thorne Town (formerly Parish) Council, whose application was also noted under section 4 (4) of the Act of 1965, Mr Francis Radcliffe, of Counsel, on behalf of the Doncaster Metropolitan Borough Council, the successor authority of the former Thorne Rural District Council, and Mr C Dunkley, the Principal Estate Officer of the British Waterways Board. There was no appearance by or on behalf of Mr W Bunting, the applicant for both the registration and the conflicting registration, or J & D Stubley Estates. Mr J. DS Adams on behalf of National Coal Board

Mr Stowe did not adduce any evidence in support of the registration.

As in In the Matter of White Lane Pond, Four Doles, and Clay Pits, Thorne and Stainforth (NO.1) (1982) Ref. Nos. 269/D/36-39, Mr Bunting's application for the registration was made in the first registration period and the objections were made in the second objection period, while the registration was made on 24 March 1969. Having dealt with the validity of such objections in that case, no useful purpose would be served if I were to repeat what I there said. In my view, all the objections were made in time.

*and Mr Adams*  
Mr Rose based his case on the third limb of the definition of "town or village green" in Section 22 (1) of the Act of 1965, namely, that the land comprised in the Register Unit is land on which the inhabitants of the locality have indulged in lawful sports and pastimes as of right for not less than twenty years. The general observations which I made about that definition in the White Lane Pond Case, Supra, are equally applicable to this case, so I shall confine myself to stating my findings of fact and considering the consequent conclusions.

Mr Rose called a number of witnesses, and Mr David Owen volunteered to give evidence under regulation 23 (5) of the Commons Commissioners Regulations 1971.



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The land comprised in the Register Unit consists for the most part of a long narrow strip lying in part on the south side of the Stainforth and Keadby Canal and in part on both sides of the Stainforth East Ings Drain, including the drain itself. The remainder lies on the south side of the canal and includes the western part of the drain and an area of about 8 acres. This area was formerly marshy ground with ponds in it, but it was drained about 18 months ago. The whole of the southernmost part of the land consists of a grass bank, known as Ashfield Bank, along the top of which there is a public footpath.

There was evidence of the following activities on the wide area where the ponds were to the south of the drain at various times during the period between 1945 and 1965:-

- (1) Unaccompanied local children playing games, picnicing, picking blackberries, skating, sliding on ice and snowballing in the winter, and fishing for carp in the ponds;
- (2) Local children in the charge of teachers engaging in nature study;
- (3) Local children accompanied by adults playing games;
- (4) Local adults picnicing.

The only evidence of people being turned off this area related to people who were shooting.

For the reasons given on similar findings of fact in the White Lane Pond, Case, Supra I take the view that these activities other than the organised nature study, were pastimes and were carried on as of right. I exclude, however, the narrow strip at the south of the area which forms part of the public footpath and cannot be used as of right for any purpose for which a public footpath can not be used.

Turning to the remainder of the land comprised in the Register Unit, this consists in part of the public footpath along the top of Ashfield Bank, in part of the Stainforth East Ings Drain, and in part of narrow strips of land on either side of the drain. The footpath must be excluded, since it cannot be used as of right for any purpose for which a public footpath cannot be used. There was no evidence of sports or pastimes in relation to the drain or the strip of land on the north side of it. There was some rather vague evidence that children sometimes strayed from the footpath and played on the strip of land between it and the drain, but this is attributable to the fact that the footpath has not been fenced and has nothing approaching the weight of the evidence relating to the wide area where the ponds were before it was drained.

For these reasons I confirm the registration with the following modification:- namely, the exclusion of all the land other than the former marshy area and the ponds, which will be defined more precisely on a map to be attached to the notice of final disposal.

*(is defined by a red verge line on a map by me marked G.D.S.1, which map will be referred to in*

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 High Court.

Dated this **30th** day of **March** 1984

*CORRECTED pursuant to paragraph (B2) of 16<sup>th</sup> Ther  
chedule to my decision dated 19 November 1987  
a. a. Baden Fuller*

*E. J. Lambie*  
Chief Commons Commissioner