



In the Matter of the Village Green situate at
Lower Penn in the parish of Lower Penn,
Staffordshire

DECISION

This dispute relates to the registration at Entry No. 13 in the Land section of Register Unit No. VG 13 in the Register of Town or Village Greens maintained by the Staffordshire County Council and is occasioned by Objection No. 36 made by Staffordshire County Council and noted in the Register on 27 October 1979.

I held a hearing for the purpose of inquiring into the dispute at Stafford on 15 October 1980. The hearing was attended by Mr J Jose (Deputy Clerk) appeared for South Staffordshire District Council, the successor to Seisdon Rural District Council, the original applicant and Mr C Davis, Solicitor, appeared for Staffordshire County Council, the objector.

The Register Unit is an equilateral triangle, the corners of which have been rounded by kerbing. The highway has recently been widened and the present area of the triangle is about 240 square yards. In the centre there is a raised bed containing trees, shrubs and an electric light column. The bed is supported by a retaining dwarf stone wall and the whole of the bed is encircled by roses. There is a wooden seat set in a paved area and a receptacle for litter within the triangle. The triangle is bounded on all three sides by a highway which is maintained at public expense.

Mr Robert Walker a Deputy District Housing Manager had been born at Walnut Tree Cottage in Lower Penn in 1922. He still owned the cottage though he now lived next door to it. Mr Walker said that the Register Unit had always been known as the Village Green. To his knowledge boys in the village had played football on the green from 1930 onwards but this had ceased after the war because of danger from the increased road traffic. The green was used as a picnic area and there had been celebrations on the green in 1935, 1937, 1953 and 1977. He admitted that there was no local event which took place on the green regularly each year. During the war stalls had been erected on the green for church fetes.

Mr Jose read a letter from Councillor Icke now nearly 70 and living at Lower Penn Farm who had lived in the village since 1914. He remembered the green as the playing and meeting place of the village children and confirmed the celebrations in 1935, 1937, 1953 and 1977. With others he had spent many happy hours caring for the green. Another letter from a Miss Lewis now aged 86 and living at Malvern who had lived at Charlton House overlooking the green from 1899-1945 confirmed that the Register Unit was always spoken of as The Village Green. Miss Lewis who was writing to the Clerk to the Parish Council also referred to the interest taken in the green by local residents and the care with which they looked after the green.

Evidence for the County Council as Highway Authority was given by Mr Robert Ogden Fowkes, B.Sc. M.I.C.E., M.I. Mun. E. an Area Surveyor with the Council. In support of the Council's contention that the Register Unit formed part of the highway, he referred to the 1887 Ordinance Survey Ed. Scale 1/2500 and the 1919 Ed. on the same scale. He agreed that the inference to be drawn from these maps was that the Register Unit, being land between the boundary lines of property adjoining the highway must therefore be part of the highway. The earlier map showed a track across



the middle of the triangle which did not appear in the later Edition. The rounding of the corners of the triangle in 1979 had been done when the Parish Council asked the County Surveyor to widen the carriageway on the northern side and 4 feet was taken off the triangle.

The 1843 Tithe Award showed by reference to numbers 691 g and 691 b that the triangle was part of the road system.

There were no pavements in the area of the triangle and the public had to walk on the triangle in the interest of safety. The playing of games on the triangle would create a danger of traffic accidents. Mr Davis submitted that the inference from the OS Maps and the Tithe Map was that the triangle was part of the highway. There had been no closure order and therefore 'once a highway always a highway' applied. There had been no recreation on after World War 2. The fact that there was no regular annual function held on the green, was in the County Council's favour.

Mr Jose submitted that the provision of school playing fields was the cause of the diminishing use of the green for recreation.

I am satisfied on this evidence that the Register Unit was used for recreational purposes by the children of Lower Penn from 1914-1946. The unit therefore qualifies to be a Village Green unless it is part of the highway.

In my judgment the presumption relied on by Mr Davis does not apply to the triangle by reason of the distance between the boundaries of the properties which abut on the triangle on its various sides.

This enables me to confirm the registration in relation to that part of the Register Unit which is bounded by the kerbing.

For these reasons I confirm the registration with the following modifications:- that it is restricted to the present boundaries as marked out by the kerbing.

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

5th

day of

November

1980

Langston H. H. H. H.

Commons Commissioner