



COMMONS REGISTRATION ACT 1965

Reference No 236/D/103

In the Matter of The Quadrant,
Heath Road, Weybridge, Elmbridge,
Surrey

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No VG28 in the Register of Town or Village Greens maintained by the Surrey County Council and is occasioned by Objection No 397 made by Walton and Weybridge Urban District Council and noted in the Register on 16 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 7 November 1978. At the hearing - (1) the Committee of The Weybridge Residents Association on whose application the registration was made, were represented by Mr P L Noble one of their members, and (2) Elmbridge District Council were represented by Mr R W Kirby their Solicitor.

The land ("the Unit Land") in this Register Unit is a strip about 80 yards long on the east side of the Junction of Church Street, Heath Road and Bridge Road, being bounded (as I read the 6 inches = 1 mile Register map) on the west by the made up carriageway of Church Street and Heath Road and on the east by the buildings (mostly shops) which front on it. The Unit Land has a maximum width of about 20 yards and tapers to a point at its north and south ends. For the most part it is grassland with a few trees; on it there are some public seats, and a GPO telephone box. It includes (as I read the map) the public made up footway ("the East Footway") which runs along and within the east side in front of the buildings, and also a narrow carriageway ("the Limes Road Access") leading to Limes Road.

The grounds of objection are:- "That the land was not a village green at the date of registration. The land forms part of the Highway and is Highway waste land at the present time, pending road improvements".

Oral evidence was given - (1) by Mr Noble who has resided in Weybridge since 1971 and been a member of the Weybridge Residents Association Committee since 1977, (2) by Mrs C E Toler who has lived in the Walton and Weybridge District (the old UDC area) since 1945, (3) by Mr D L D Steer who is a rights of way engineer employed in the County Engineers Department and has been employed by the County Council for the last 27 years. In the course of this evidence the documents listed in the schedule hereto were produced. On 20 November 1978 I inspected the Unit Land.

As to the Unit Land being highway:- The East Footway provides access to the adjoining buildings and is for pedestrians the only through way north-south. The Limes Road Access provides vehicular access (somewhat restricted when compared with the rest of the Road) to Limes Road; Mr Steer said that the Road was made up in 1937; and it may not have existed before then. It was not disputed that the East Footway and the Limes Road Access are (as they appear to be) highway; so on this part of this case I am concerned only with the rest ("the Disputed Area") of the Unit Land.

Against the Disputed Area being highway I have its present appearance, the evidence of Mrs Toler that since some time before 1945 it has always appeared much as it is now, and the 1951 byelaws.



For the Disputed Area being highway, Mr Kirby for the Council relied particularly on the 1811 Award map and contended (repeating the 1977 letter) that its inclusion in the 1951 byelaws was "erroneous". He cited *Steele v Prickett* (1819) 2 Stark 463.

When there are fences on both sides of a highway there is a presumption that the highway extends to the fences; and also a somewhat similar presumption (being that applied in *Steele v Prickett* super) that the owners of the adjoining land also own the soil up to the middle line of the made up roadway; both these presumptions are rebuttable by evidence. The 1811 map shows coloured brown without distinction what are now known as Heath Road, Bridge Road and Church Street and many other public roads then existing or to be set aside under the Award, and also all the Unit Land;— the map is therefore some evidence that at that time fences extended up to the east boundary of the Unit Land. Unlike the later maps the 1811 map does not indicate which part (if any) of the brown land was made up for vehicular traffic, and it may well be that at that time Unit Land was grass waste land open to any road there was, so that cattle driven along the road would have grazed such grass as they went by. So if the question now under consideration had been litigated in 1812 it is possible, indeed probable, that the Court would have applied the presumptions above mentioned and have determined that the highway included the Disputed Area.

Nevertheless I reject the contention that ~~upon~~ the evidence of the 1811 Award and the 1809 map referred to in it must (as a matter of law) have greater cogency than any contra more recent evidence; ~~see~~ *Copstake v West Sussex* 1911 2 Ch. 311 where it was said at page 340 that a presumption as to the extent of a public right of way ought to be drawn with reference to all the circumstances existing at the time when the question as to the extent of the public right arising; ~~see~~ also *Attorney General v Baeynon* 1970 1 Ch. 1 where at page 15. this case was cited as still being the law. So I must I think consider the circumstances as they were in the year 1970 (the date of the objection).

From some time before 1945 the Disputed Area had been laid out as amenity land in a way quite inconsistent with it being used by vehicles for highway purposes; and in a way convenient (although not impossible) for such use by pedestrians. There was no evidence that in any relevant recent times Heath Road and Church Street had been used for driving cattle or other animals, and from the appearance of the surroundings I think any such use would have been of no significance in this case. As regards the Open Spaces Act 1906 under which the 1951 byelaws were made it may be possible to read the expression "open space" as therein used as including a highway, or as including lands which are in part highway; but however this may be the Act is, clearly I think, not intended to deal primarily with highway land. The 1951 byelaws are definitely inconsistent with Disputed Area being highway.

On the highway question, it ~~was~~ not I think that the objection to the relation to the Unit Land have always been illegal and only be justified if at all on the assumption that the Council at one time highway authority had "control" (within the meaning of the 1906 Act) over the Unit Land. The effect of the appearance of the land and the apparent regulation of it under the 1951 byelaw was I think in relation to its possible use by the public for highway purposes substantially the same as the implied prohibition resulting from a permanent fence. As I read *Copstake v West Sussex* supra, the erection of a fence for 20 years would be enough to rebut any presumption which might be based on an enclosure award made 100 years earlier.

The finding ~~is~~ \longrightarrow that the Disputed Area is not highway.



On the question of whether the Unit Land is within the definition in the 1965 Act of a town or village green, its highway status is or maybe ~~very~~ relevant. But in my opinion it is not decisive either way; land within the definition may (unlike land within the definition of common land in the Act) be highway, with the result that questions may arise as to how far if at all customary recreational rights have priority over public highway rights. The grounds of objection in this case might easily be read as being limited to the highway point; however they can and in my view ^{could} be read as claiming in addition that the Unit Land is not within the 1965 definition.

Stating the effect of the definition shortly, land to be within it must be ^(land) ~~there~~ over which local inhabitants ~~may~~ indulge in sports or pastimes. I reject the suggestion that persons who sit on the seats on the Disputed Area or who otherwise pass their time by being on or walking about there, ~~are~~ ^{are} → because they are passing the time, indulging in a pastime within the definition; ~~it might be~~ something more is contemplated.

Of this there was no evidence, and Mrs Toler said that she knew of no such activity after 1945. From the appearance of the Disputed Area, I think it unlikely there was ever any such. Although it may have well been a "green" within the popular meaning of this word and was for this reason included in the county list summarised in the appendix to the 1963 book produced, the 1965 Act definition is narrower. My finding is therefore that the Unit Land is not within the definition.

On my inspection of the Unit Land it occurred to me that the Disputed Area must historically have been waste land of a manner and that in the absence of any evidence (I have none) I could ~~probably~~ conclude that it is still such and therefore ought to have been registered under the 1965 Act as common land. And it also occurred to me that the Council or the Residents Association might upon a consideration of what happened at the hearing, consider that it would be in the public interest for such a registration to be substituted for that which I am now considering. However I ought not I think to act upon a conclusion I have reached which was not asked for by anyone at the hearing without giving those concerned an opportunity of expressing their views and if they think fit calling further evidence.

Upon the considerations set out above my decision is: (1) if either the Residents Association or the Borough Council within 42 days after this decision is sent to them, apply to me (by letter addressed to the Clerk of the Commons Commissioners) to confirm the registration with a modification the effect of which will be that the Disputed Area will be registered as common land and if the other agrees and if also the County Council agree, I will without any further hearing give a supplementary decision confirming the registration with such a modification; (2) if either the Residents Association or the Borough Council make such an application and the other does not agree (or they agree and the County Council does not) I will adjourn the proceedings for further hearing in London at a date to be fixed by Commons Commissioner for the purpose of hearing, argument and evidence about such application; (3) if neither the Residents Association nor the Borough Council make any such application within the said 42 days, I refuse to confirm the registration (so that there will be no further hearing or decision and the matter as far as I am concerned will be final).

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



SCHEDULE

(Documents produced)

-	1963	Common lands of England and Wales by W G Hoskins and L Dudley Stamp.
PLN1	26 August 1977	Letter from Elmbridge Borough Council's solicitor to Weybridge Residents Association.
PLN2	13 November 1951	Byelaws made by Walton and Weybridge UDC under Section 15 of the Open Spaces Act 1906
PLN3	1890	Ordnance Survey map, Scale 1/2500.
PLN4	6 July 1978	Photograph in advertisement feature of Herald.
PLN5	12 May 1972	Two photographs in advertising feature of Herald and News.
CET1	1971	Ordnance Survey map: Scale 1/1250.
County Archives	1811	Inclosure Award and map (1808) referred to.
DLDS11	-	Statement of evidence by Dr D L D Stead.
DLDS12	-	Marked copy of OS map 1/2500 showing present features.
DLDS13	1808 1844	Tracing of part of Award map and of Tithe map relating to the Quadrant.

Dated this 1st day of February 1979

a. a. Bain Fuller

County Recorder