

COMMONS REGISTRATION ACT 1965

DECISION -

Reference No. 260/D/74-77

In the Matter of the Village Green, Iron Acton, Northavon District Council.

DECISION

This Decision relates to the registrations at Entry No 1 in the Land Section and Entries Nos 2 and 3 in the Rights Section of Register Unit No. VG 36 in the Register of Town or Village Greens maintained by the Avon County Council.

I held this hearing ("the present hearing") at Iron Acton on 2 June 1987.

The land ("the unit land") comprised in this register unit consists of adjacent areas separated by roadways, one of which is Latteridge Road; the separate areas totalling some 2 acres. A very small area ("the R area") of some 60 square yards lies on the west of Latteridge Road at the northern end of the unit land, and it is with the R area that the present hearing was concerned. At a hearing held in January 1984 the Chief Commons Commissioner decided that Mr David Michael Roberts was the owner of the R area and he was duly registered as such. The remainder of the unit land was registered, under Section 8 (3) of the Commons Registration Act 1965, in the ownership of Iron Acton Parish Council.

An earlier hearing ("the 1980 hearing") had been held by me in April 1980. This was for the purpose of inquiring into disputes occasioned by two Objections made to the Entries in the Land Section and the Rights Section of the Register. The Objections were (a) No 84 to strips claimed by the County Council to be highway or highway land and (b) No 116 to a strip alleged to be a private road in the ownership of the Objector. No party concerned resisted these Objections and, in the result, I confirmed the registrations modified by excluding from the Unit land the strips which were the subject matter of the Objections. Mr Roberts was not present or represented at this hearing.

In 1985 Mr Roberts raised with the Department of the Environment the question of the removal of the R area from the Unit land and also applied to the County Council, as registration authority, for de-, registration of the R area. It appears that the registration authority instituted the procedure for this purpose under Section 13 of the 1965 Act (see Regulation 27 of the Commons Registration (General) Regulations 1966 - S.I.1966 No 1471) and issued the notices prescribed by the Regulations. Although no interested party objected to the proposed de-registration, the registration authority decided not to proceed with the matter, apparently on the ground that there was no evidence that the land had ceased to be village green as the result of an event occurring subsequently to the registration (as to this, see Corpus Christi College v. Gloucestershire County Council 1983 QB 360).



In the meantime the decision of the Court of Appeal in Re West Anstey Common 1985 Ch 329 had come to the notice of Mr Roberts and in July 1985 he applied to the Commons Commissioners to rehear the matter which was the subject of the 1980 hearing. he based on the decision of the Court of Appeal that an objection to registration of part only of the land puts in issue the validity of the registration as a whole and of the rights of common claimed over the whole of the land. In reply to the application Mr Roberts was informed that the Commissioner would be prepared to consider the re-opening of the 1980 hearing if this course was agreed to by the other parties and bodies concerned. Such parties and bodies were notified of the application by Mr Roberts; although consents or representations by them were not received, the Commissioner decided to re-open the hearing to consider the question of the registration of the R area as part of the Village Green.

The present hearing was accordingly held at Iron Acton on 2 June 1987. At the hearing Mr Roberts was present in person. There were also present: Mr A Bates, an officer of and representing Avon County Council: Mr G J Thomas, the Chairman of and representing Iron Acton Parish Council: Mr D L Alway, the applicant to register a right of grazing for horses over the whole of the Unit land (Entry No. 2 in the Rights Section of the Register): and Mr A J Townsend and Mr E R Curtis, persons interested as parishioners.

The first question, and one on which I requested the parties present to express their views and contentions was whether the re-opening of the hearing to consider the question of the registration of the R area as part of the village green was a proper cause. As to this, Mr Roberts, quite reasonably, relied on the ground on which he made his application, viz that the question of the status as village green of the whole of the Unit land was not considered at the 1980 hearing. Mr Bates, for the registration authority, drew my attention to factors in the West Anstey case which are not present in this case, and these I consider subsequently in this Decision. In addition he referred to the practical consequences in other cases, of a decision to re-open a hearing in circumstances such as those prevailing here. Mr Alway objected to any re-opening - as he put it, why should he be at risk of losing his established grazing right over the R area? The others present were also opposed to the hearing being re-opened.

The question of re-opening the hearing did not arise in the West Anstey case. There the party concerned ("H") was present at the original hearing and, like Mr Roberts, owned a part of the registered land and wished to challenge the registration of that part. No formal objection to the registration of that part had been made but the Court held that, since an objection to the registration of another part of the land had put in issue the validity of the registration of the whole of the land, the Commissioner should have heard H's evidence and have decided whether or not the registration of his part of the land was valid.

Regulation 21 of the Commons Commissioners Regulations 1971 provides for the re-opening of a hearing, if the Commissioner thinks fit, on the application of a person not present at the hearing who was



entitled to be heard at the hearing. Mr Roberts was not a person entitled to be heard (see Regulation 19) and I do not think that he is eligible to apply under Regulation 21. If this view is right, the question arises whether I have some general discretion to re-open a hearing. Assuming that there may be such a discretion in some circumstances where its exercise would not infringe any relevant provisions of the law or third party rights, this, in my opinion, is not a case in which those circumstances exist.

Under Sections 6 and 10 of the Act of 1965 the registrations of the land as village green and of the rights of common became final and conclusive on 12 September 1980. (That was not the position in the West Anstey case, in which as the result of the appeal, the registrations remained provisional). The only methods prescribed by the Act of 1965 for altering that position of finality and conclusiveness are by proceeding under Section 13 or Section 14 of the registration authority has decided that the Section 13 procedure is not available and a Commons Commissioner has no jurisdiction to interfere with that decision. Section 14 empowers the High Court to rectify the register in cases of fraud or an incorrect amendment made under Section 13. When the Act expressly provides that the registrations are final and conclusive and provides for only two methods of effecting any amendment to the registrations, I think it inappropriate to exercise a general discretion (if it exists) to re-open a hearing in order to provide a further means of effecting any such amendment.

In these circumstances I do not accept that I have a discretion to re-open the 1980 hearing. If such a discretion does exist, either under Regulation 21 of the 1971 Regulations or otherwise, it is, in my opinion, not one which should be exercised in Mr Roberts' I have some sympathy for his wish to have the status of the R area re-examined, and it may be that future legislation will provide other means for re-consideration of the not infrequent cases of pieces of land in private ownership which have become registered as parts of common land or village greens. At the present hearing he adduced a considerable amount of documentary evidence relating to the history over the past two centuries of the R area and its emergence in private ownership. This is not in dispute and his own ownership was confirmed by the decision of the Chief Commons Commissioner in 1984. Such ownership is not necessarily inconsistent with its being part of a village green and the evidence did not directly relate to the definition of 'town or village green' in Section 22 of the Act of 1965. Mr Thomas, in his evidence, said that the whole area was considered originally to be village green but had over past years been encroached upon by the erection of buildings and the construction of roads, including a by-pass built in the 1960s, which resulted in small areas such as the R area being left separated from the rest. He also said that the local people used the village green for recreational purposes and for children to play on. This may well be so in the case of the main area of the village green but seems a little unrealistic if applied to the very small and separate R area.



My decision, however, is not to re-open the 1980 hearing and I do not think it therefore necessary or desirable to make any finding as to the qualification of the R area to be included in 1968 in the area then registered as village green.

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 ... 23 September ... 1987

h.J. Kioms Suux

Commons Commissioner