



COMMONS REGISTRATION ACT 1965

Reference No.12 /D/43

In the Matter of Harwich Green,Harwich, Essex.DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.159 in the Register of Town or Village Greens maintained by the Essex County Council and is occasioned by Objection No.143 made by the Harwich Borough Council and noted in the Register on 26th October 1970.

I held a hearing for the purpose of inquiring into the dispute at Colchester on 19th December 1970. The hearing was attended by Mrs. W.B.Cooper, who applied for the registration, and by Mr. T.B.A. Moonlight, the Deputy Town Clerk of Harwich.

The land the subject of this reference lies on the western side of Harwich Harbour. The northern end of it is used as a car park. Mrs. Cooper informed me that she did not wish to support the registration in so far as it related to the car park.

The remainder and by far the greater part of the land is the property of the Harwich Corporation and is maintained by the Council as public walks and pleasure grounds under section 164 of the Public Health Act 1875. It was conveyed to the Corporation by the War Department by a conveyance dated 2nd October 1930, but had previously been held by the Corporation under a lease from the War Department dated 15th December 1912. It thus follows that any use of the land by the inhabitants of Harwich for lawful sports and pastimes since 1912 is explicable by the fact that it has been open to the public under the Public Health Act 1875 since that year. The question for determination is, therefore, whether the land was subject to a right for the inhabitants of the locality to indulge in lawful sports and pastimes on it at the time when it came to be used by the Corporation for public walks and pleasure grounds.

Mr. Moonlight contended that even if the land was then a town or village green the registration was invalid because the indulging by the inhabitants in lawful sports and pastimes as of right would be incompatible with the use of the land as statutory public walks or pleasure grounds. The use of the land by the public is controlled by bye-laws and these, so Mr. Moonlight argued, prevent the use of the land as of right.

In my view, if the land was a town or village green when it was acquired by the Council, the acquisition did not have the effect of abolishing the rights to which the land was subject. There are statutory provisions which authorize the acquisition of land subject to rights of common, but such provisions have no application to customary rights: see Forbes v. Ecclesiastical Commissioners (1872), L.R.15 Eq.51. It is therefore necessary for me to consider whether the evidence supports Mrs. Cooper's contention that the inhabitants of the



locality had a customary right to indulge in lawful sports and pastimes on this land before it was acquired by the Council.

Mrs. Cooper, Mr. Moonlight, and Mrs. Cooper's witness, Dr. S.W.E. Vince, have done a considerable amount of research into the history of Harwich Green and between them have collected a number of useful and interesting documents. The earliest of these documents is a plan of the copyhold and freehold lands of Roger Drayton, gent. in Sir George Whitmore's manor of Dovercourt. This plan is not dated, but it must have been made between 27th May 1632, when Whitmore was knighted, and 12th December 1654, when he died: see Silas Taylor, History and Antiquities of Harwich and Dover, p.205. On the plan an irregular shaped area to the east of the land the subject of the dispute is described as "The Bowling Place", and the remainder of the land is described as "The Waste".

The earliest verbal reference to the land is on p.27 of Taylor's book, where it is called the Town Green and is said to have had a light on it. This is said by Samuel Dole, who edited Taylor's work, to have been written in 1676.

On a plan dated 1709 there is shown a bowling green, but this bowling green lies to the south west of the "bowling place" shown on the earlier plan. The remainder of the land (including the site of the former "bowling place") has no legend, but is shown as being traversed by paths and with scattered trees or bushes on it. In addition to the lighthouse mentioned by Taylor, there was also a small building near to the town.

Some idea of the appearance of the northern part of the land in the early years of the eighteenth century can be gained from an engraving in Taylor's History and Antiquities, which was published in 1730. This shows an area of rough open ground and the legend states that one of the paths shown on the map was used as a rope walk. The small building on the plan appears in the engraving as two single storey sheds, described as "Store-Houses to the Rope Walke".

On the map annexed to a report by Capt. William Homerck to the Board of Ordnance, dated 27th August 1729, among the Treasury Papers in the Public Record Office the land in question is described as "Town Waste". In the report, the land is described as "the Shore on the East Side of the Town" and was said to have been much washed away by the sea. It was stated that this land was then the property of the Crown, having been bought from the Harwich Corporation jointly with the Lords of the Manor, who claimed a share in it. This sale took place shortly before 3rd January 1717, when the Mayor, Aldermen and Capital Burgesses somewhat unwisely resolved to invest their share of the purchase price in South Sea stock. In 1729 the land was held under a lease by Sir Philip Parker and a Mr. Heath.

There is no further evidence about the land during the eighteenth century, but from 1822 onwards there is a series of engravings which show it. There was an esplanade, which appears to have been about 15 feet wide, along the eastern side and the remainder was open grass. In 1822 there were still several paths, which were later reduced to one leading from the town to the



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lighthouse. Between 1867 and 1875 rows of trees were planted on each side of this path and on the west side of the esplanade. There were also a few seats on the esplanade.

The engravings show people strolling about, mostly keeping to the path and the esplanade. One engraving shows some boys on the grass playing with a kite, and another shows a few people sitting on the grass, with a boy chasing butterflies.

The impression left on my mind by this evidence is that this was a piece of waste land to which members of the public used to resort, mainly to walk and sit, and that there was some casual playing by children. There is nothing to indicate that the inhabitants of any identifiable locality, such as the borough of Harwich or the manor of Dovercourt, made any use of the land different from that of the public at large. Still less is there anything to indicate that the inhabitants of any locality claimed any legal right to indulge in lawful sports and pastimes on this land. The evidence seems to me to indicate that such use as was made of the land was by the general public and with the good-natured acquiescence of the owners, at first the Corporation and the lords of the manor and later the Crown. This is far short of satisfying the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965.

For these reasons I refuse to confirm the registration.

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

7<sup>th</sup>

day of

February

1974

Chief Commons Commissioner