



COMMONS REGISTRATION ACT 1965

Reference No.14/D/5

In the Matter of The Village Green,
Amport, Hampshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.150 in the Register of Town or Village Greens maintained by the Hampshire County Council and is occasioned by Objection No.OB 481 made by the Revd. G.S.G. Stokes and noted in the Register on 15th January 1970.

I held a hearing for the purpose of inquiring into the dispute at Winchester on 14th December 1972. The hearing was attended by Mr. C.W. Richardson, the Chairman of the Amport Parish Council, which made the registration, and by Mr. Stokes. I also heard Mr. J.D. Bucknill, solicitor, as amicus curiae.

Mr. Stokes's objection dated 28th September 1970, which he made as Chairman of the Amport Village Hall Management Committee, related to a small part of the Register Unit on which there was then standing a wooden Village Hall. The Hall was in a bad state of repair and was removed in 1971, but the Management Committee has maintained its objection because it wishes to erect a new Hall. The Parish Council is in favour of the erection of the new Hall and accordingly by letter dated 13th October 1971, addressed to the Clerk of the County Council, purported formally to amend the registration so as to exclude the site of the Hall. The County Council was, however, informed that there were some residents in Amport who did not wish to see the registration amended in this way, so it refrained, as it was entitled to do under section 5(5) of the Commons Registration Act 1965, from modifying the registration. Thus there remains a dispute into which I now have to inquire.

The whole of the land comprised in the Register Unit is shown in the Tithe Award and the Map therein referred to as one unit described as "The Green". By an indenture made 14th March 1923 it was recited that Captain Roland Thirlwall Philipson, then of Amport House, had purchased a wooden hut and set it up on the Green. Captain Philipson as beneficial owner then granted to certain named Grantees (predecessors of the present Management Committee) "the said Hut and building" on trust to permit the same to be used by the inhabitants of the parish of Amport as a village hall for social entertainments and parochial meetings and such other purposes as the Grantees for the time being might determine. The Grantees were empowered to sell the hut and to use the proceeds for the purchase of another hut. The Grantees and their successors occupied the hut from 1923 until 1971, during which time they paid no rent or other acknowledgement to anybody.

In 1945 some question arose with the District Auditor as to the legality of the Parish Council's spending money on the maintenance of the Green. This led to correspondence with the County Council and the Ministry of Health, which culminated in a letter from the Ministry dated 29th July 1945 in which



-2-

it was stated that the Minister saw no reason to differ from the view of the County Council that the inhabitants of the parish of Ampert had acquired by usage from time immemorial the right to use the Green for games and recreation, and that the Parish Council could incur expenditure on its upkeep. The Parish Council has since continued to incur such expenditure and its right to do so has never since been challenged.

On this evidence I am prepared to accept that before the Hall was erected in 1923 the whole of the land in the Register Unit was a "town or village green" as defined in section 22(1) of the Act of 1965. The question for my consideration is therefore whether the site on which the Hall stood from 1923 until 1971 is still part of the Green.

Mr. Richardson contended that any rights which the Parish Council may have had in the site on which the Hall stood were statute-barred under section 4(3) of the Limitation Act 1939. This may well be, but the question of the ownership of land is quite different from that of its status as a town or village green. Even if the Village Hall Management Committee has acquired a possessory title to the site on which the Hall stood it does not follow that the site is no longer part of the Green. Whether land is part of the Green depends on the rights of the parishioners over it. Until 1923 they had a customary right to indulge in lawful sports and pastimes over the whole of it. I suppose that it is arguable that they have continued so to indulge, even though some of their sports and pastimes have been indulged in under the protection from the weather afforded by the Hall. Be that as it may, a customary right can only be abolished by statute: see Hammerton v. Honey (1876), 24 W.R. 603, at p.604. The only effect of non-user of such a right may be to give rise to a presumption that the right never existed, but the evidence in this case excludes the possibility of such a presumption. I am satisfied that the site on which the Hall stood is now and always has been part of the Green.

For these reasons I confirm the registration without modification.

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 8th day of January 1973


Chief Commons Commissioner