



COMMONS REGISTRATION ACT 1965

Reference No.19/D/2

In the Matter of Land in front of
18-66 Chequer Lane, Ash, Kent.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.65 in the Register of Town or Village Greens maintained by the Kent County Council and is occasioned by Objection No.2 made by the County Council and noted in the Register on 11th November 1968.

I held a hearing for the purpose of inquiring into the dispute at Canterbury on 15th November 1972. The hearing was attended by Mr. D.G. Downes, the Clerk to the Ash Parish Council, which made the registration, and by Mr. K.E. Moore for the County Council.

Mr. Downes and Mr. Moore very helpfully put in an agreed statement of facts, most of which I have incorporated in this decision.

The ground of objection by the County Council was expressed as follows:-

"The land was dedicated by the Rural District of Eastry as part of the public highway by a Deed of Dedication dated 7th August, 1958, made between the said District Council and the Kent County Council. The Deed contains a covenant by the County Council that the said land should be added to and form part of the highway and any necessary works carried out at the County Council's expense. It is considered that as the land is part of the highway it cannot properly be registered as Village Green."

The land the subject of the reference has not been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality. Nor is it land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes. If it is a village green, it can only be as land on which the inhabitants of a locality have indulged in such sports and pastimes as of right for not less than twenty years.

Until about 1928 the land formed part of Chequer Court Farm, the property of Emmanuel College, Cambridge. It was cultivated agricultural land and there is no evidence that there was any public use of it. In or about 1928 the land was (with other land, including the sites of what are now 18-66 Chequer Lane) purchased from the College by the Eastry Rural District Council for housing purposes. Most, but not all, the plots were soon resold by the Rural District Council. For example, by Conveyance of 11th April, 1929, the Rural District Council sold to the County Council (as the police authority) the sites of what are now 18 and 20 and 44 and 46 Chequer Lane. This Conveyance contained a covenant by the Rural District Council with the County Council that the Rural District Council would as early as practicable thereafter make up the footpaths and "proposed public greens" shewn on the plan attached to the Conveyance. I was informed that it was believed that Conveyances of other plots were in similar form. The "proposed public greens" formed the major



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portion of the land the subject of the reference.

In or about 1930 the land was laid out by the Rural District Council with paths in its present form. Steps were provided on the steep bank down to Chequer Lane. During the 1930s residential development began on the east side of Chequer Lane, both opposite the land the subject of the reference and also further north. The grass on the land the subject of the reference was roughly mown by the Rural District Council: some of the occupiers cut the grass more closely in front of their respective houses. The land was left entirely unfenced. The Parish Council took no part in maintaining the land.

From 1930 until the present time, children have played on the land. Cricket and football have been played by children there, but not in teams or normally in any organised way, though at one time a cricket wicket was pitched north of Holness Road. Usually it has just been two or three children with a bat and ball or merely 'kicking around'. Small children have played childish games there. The children's play has taken place openly and without interference from any person or authority. The children playing on the land have mostly been those living on both sides of Chequer Lane, and also from the Council housing estate to the west. They have brought friends to play there, and the former infant school stood a few yards south of the land. It has not served as a focus of play for the whole parish which is over 7,000 acres in extent.

In the last few years more of the occupiers of the houses between 18 and 66 Chequer Lane have possessed motor vehicles. The Rural District Council, to whom some of the properties still belong, has provided rear vehicular access to some but not all: the occupiers of some of the properties not so served have therefore taken to driving from Holness Road over the footpaths in front of the houses across the land the subject of the reference.

On 7th August 1958, the freehold of the land was dedicated by the Rural District Council to the County Council in the manner set out in the ground of objection already quoted. Since that date the County Council has roughly mown the grass, and some of the individual occupiers of 18-66 Chequer Lane have continued as before to mow closely that part of the grass which lies in front of their houses.

In 1966, at the request of the Parish Council, the County Council put up posts on the land, on each side of Holness Road, to discourage the passage of motor vehicles referred to above. No part of the land has to date been used to widen Chequer Lane or Holness Road or otherwise for actual highway improvement.

While on these facts it might just be possible to make a somewhat artificial finding that some children have played on this land "as of right", I find it quite impossible to define these children as being the inhabitants of any particular "locality", using that word in the sense of some division of land known to the law: see Edwards v Jenkins [1896] 1 Ch.308, 313.



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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 the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 14th day of December 1972

A handwritten signature in cursive script, appearing to read 'G. D. Lymbert', with a horizontal line underneath.

Chief Commons Commissioner