



In the Matter of The Grove, Tunbridge Wells,

Kent

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 177 in the Register of Town or Village Greens maintained by the Kent County Council and is occasioned by Objection No. 105 made by the Town Clerk of the former Corporation of Tunbridge Wells and noted in the Register on 17 May 1971.

I held a hearing for the purpose of inquiring into the dispute at Maidstone on 8 February 1979.

The hearing was attended by Mr P H Cutler, Solicitor to the Tunbridge Wells Borough Council ("the Objector") and by Mr R P Cook, Solicitor, representing the Royal Tunbridge Wells Civic Society, which was the applicant for registration.

The ground for the Objection is that the Grove was not within the definition of "town or village green" in S 22(1) of the Act of 1965. Both parties were agreed that the relevant part of the definition for the purposes of this case is the first limb viz. "land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality". Mr Cook, accordingly, did not seek to uphold the registration by reference to the other limbs of the definition.

By an Indenture dated 20 April 1703 the Grove was conveyed to trustees ("the Grove Trustees") on trust to preserve it as a grove or shady walk for the benefit of the inhabitants of certain nearby houses. By an Agreement dated 27 March 1890 and made between the Grove Trustees and the Corporation of Tunbridge Wells (after reciting that the Grove had been used for many years by the public as a public pleasure and recreation ground and it was impossible to ascertain the persons for whose benefit the Grove was held by the Grove Trustees and that the Corporation proposed to promote a Bill authorising them to acquire the Grove for the benefit of the inhabitants of the Borough of Tunbridge Wells and the public generally) it was agreed that within six months from the date of the Royal Assent to the Bill the Grove Trustees would convey the Grove to the Corporation which would hold and maintain it as a place of public resort and recreation for the benefit of the inhabitants of the Borough and the public generally. The Agreement provided that it was made subject to the approval of Parliament being obtained in the 1890 Session to the proposed Bill and that if such approval was not obtained the Agreement should be void.

The Tunbridge Wells Improvement Act 1890 made provisions relating to the Grove in Part XIII of the Act.—Sections 145 to 150. The Act recited (inter alia) the Indenture of 20 April 1703 and that entrances to the Grove from adjacent premises had been made in some cases with the consent of the Grove Trustees, in others without such consent (contrary to the provisions of the Indenture): further that the Grove had for many years been used by the public as a public pleasure and recreation ground and that it was expedient that the Grove Trustees be authorised to transfer the Grove to the Corporation and the Corporation be empowered to acquire the Grove for the use and benefit of the inhabitants of the Borough. By Section 145 of the Act the Agreement of 27 March 1890 was confirmed and made binding: Section 147 gave the owners of the adjacent premises rights to use their private entrances provided that such rights of access should not be used for certain purposes calculated to interfere with the enjoyment of the Grove as a place of public resort and recreation. Following the acquisition of the Grove the Corporation in 1901 made Bye laws regulating the activities



of the public on what was described in the bye laws as "the public pleasure ground" known as the Grove.

Reverting to the first limb of the definition in S 22(1) of the 1965 Act, Mr Cook submitted that the Grove was held "for the use or recreation of the inhabitants of any locality", the particular locality being Tunbridge Wells. Mr Cutter, whilst not disputing that Tunbridge Wells was the relevant locality, argued that this part of the definition was not satisfied since the Grove was held for the use of the public generally (see the recitals to the Agreement of 27 March 1890 and of Section 147 of the Act of 1890). In my view the Grove is held for the use of the inhabitants of Tunbridge Wells and of the public generally, and if so, it satisfies this part of the limb since if it is earmarked for the use of the inhabitants of the Tunbridge Wells locality, it is none the less so because user by the public generally is also recognised.

The main argument concerned the question whether in the circumstances the Grove had been "allotted by or under any Act". The transaction was effected under the authority of the 1890 Act and accordingly, in my view, "under" that Act. But was the transaction one whereby the land was "allotted"? The word "allotted" is, in the context, obviously referable to the Inclosure Acts and awards made thereunder, and the first limb "concerns chiefly land which was set aside under the Inclosure Acts" (see *New Windsor Corporation v Mellor* 1975 Ch. 380 at p 387). This is not to say that the first limb is to be construed as limited to land allotted under the Inclosure Acts, and Mr Cook submitted that the word should be given its widest dictionary meaning. He did not however refer me to any dictionary definition which, on this basis, would comprehend the transaction in this case: nor have my investigations discovered dictionary definitions which would be apt for this purpose. In my view 'allot' in the present context signifies a setting aside or distribution of land, and there are neither legal nor linguistic grounds for describing this transaction - a transfer of property from A to B made pursuant to an agreement between them for which statutory powers had to be obtained - as an 'allotment'. Accordingly in my opinion, on the true construction of S 22(1) of the Act of 1965, the Grove is not land "allotted by or under any Act".

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

11th

day of

April

1979

L. J. Morris Smith

Commons Commissioner