



COMMONS REGISTRATION ACT 1965

Reference Nos. 20/U/125
20/U/127

In the Matter of (1) part and (2) another
part of The Square, Broughton West, South
Lakeland D., Cumbria

DECISION

These references relate to the question of the ownership of lands being (1) part and (2) another part of The Square, Broughton-in-Furness, Broughton West, South Lakeland District being the lands comprised in the Land Section of Register Unit No. VG.51 and No. VG.64 in the Register of Town or Village Greens maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Lancashire County Council in a letter dated 1973 claimed to be the freehold owner of the lands in question and no other person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Kendal on 4 March 1975. At the hearing Duddon Parish Council were represented by Mr. W. Atkinson legal executive with Thomas Butler & Son, Solicitors, of Broughton-in-Furness; Mr. H.J. Barker their chairman was present.

Evidence was given by Mr. E.P. Barker who has lived in the Parish all his life (64 years), is and has been for the last 30 years a member of the Parish Council (formerly Broughton West Parish Council), was for 3 years a member of the North Lonsdale Rural District Council and is now a member of the South Lakeland District Council. Two days after the hearing, I inspected The Square.

The Square is an open piece of land at a road junction in the middle of Broughton-in-Furness. On the north part ("the VG.51 land"; it was registered on the application of the Parish Council) there is an obelisk (inscribed: "THIS OBELISK WAS ERECTED IN 1810 TO COMMEMORATE THE 50TH YEAR OF THE REIGN OF HIS MAJESTY KING GEORGE III"), a bus shelter, 4 trees, stocks (wood and stone), and two large slabs of stone (supported horizontally about 2 feet above the ground). The south part ("the VG.64 land": it was registered on the application of the Friends of the Lake District) is now part of the motor road across The Square; perhaps in part taken into the road to improve the one way system. Save as above mentioned the surface of The Square is tarmacadam and tarred chippings; with some stones to prevent cars going over some parts.

Mr. Atkinson produced two letters dated 1952 and 1969 from the County Council stating (1952) they were agreeable to the Parish Council taking over the repair and maintenance etc. of The Square, so its future would be for them subject to the right of the County Council as Lord of the Manor to hold a fair as provided in the Ancient Charter if they desire to exercise this right in the future; and stating (1969) they had decided not to claim ownership.

Mr. Atkinson also produced instructions apparently given on behalf of the Parish Council in 1901 to counsel for his opinion as to the maintenance of The Square in which its history was set out as follows:-



In or about the year 1770 John Gilpin Sawrey Lord of the Manor of Broughton-in-Furness and Owner of the Demesne Lands of Broughton Tower formulated a scheme for transcribing a Square in the Town of Broughton and for that purpose appropriated certain land part of a close of land called "Low Park" part of the Demesne land, and sold off various building plots upon which the purchasers built houses all round the Square (except the Market - house now the Town Hall on the south side of which was already in existence) leaving open and unbuilt upon the land now forming the whole open space in the Square. In the Court Rolls of the Manor "The Square" is frequently mentioned as the "market place" and "Broughton Square". In Baine's History of Lancashire (1824) it is stated that John Gilpin Esquire (from whom the present Lady of the Manor derives Title) was a considerable benefactor to Broughton and gave ground for the purpose of building that spacious Square which ornaments the centre of the town and his widow under the influence of the same munificent disposition erected the handsome and lofty obelisk in the centre of the Square" Baines also states: "This place has been greatly improved within a few years and there is a weekly fair and market and three annual fairs the first held on the 27th April the second on the 1st of August and the last on the first Friday in October. The first and last are recently established, but the second is an ancient fair held by proclamation." This latter paragraph refers to an ancient charter to hold a market and fair granted by Henry the third in the year 1245. A fair is proclaimed every year by the Steward of the Manor from the obelisk. The area of the Square is approximately about 3000 square yards and is shewn on the plan sent herewith is faced on all sides by dwelling houses. It is traversed diagonally by a highway leading from Ulverston to Coniston and there are roads all round the Square to which the various owners and occupiers have access. They have also uninterruptedly passed and repassed in common with other inhabitants and the general public with and without horses carts and carriages laden and unladen and on foot over any part of the surface of the Square which is absolutely unenclosed there being no limitation of any particular highway. In the centre of the Square stands the obelisk (called sometimes in the Court Rolls "the Market Cross") before referred to and near are two large flat stones locally known as Fish stones upon which wares and merchandise were formerly exposed for sale at markets and fairs. Previously to the formation of the Square the old Highway went through another part of Broughton, and did not touch the site of the Square, and none of the existing roads or highways were in existence thereover the same having all been made since and in consequence of the formation of the Square. From the plan it will be observed that these are highways in continuation of and from each entrance to the Square. At fair and Market times Cattle Sheep and other animals are driven on to the Square and exposed for sale and for many years past sheep pens have been erected by the tenant of the Lady of the Manor for the convenience of Farmers and Dealers attending the various fairs occasionally also travelling shows and caravans temporarily locate themselves on the Square. The Lady of the Manor has not charged any tolls for upwards of thirty years but charges have been made by local persons for labour and material in providing sheep pens. Up to 1897 the whole of the surface was repaired and kept clean and in order by the respective surveyors of Highways, and after each fair they also cleaned the whole surface. In addition also several sewers have been laid in the Square from time to time and gratings culverts and drains have been put in by the Local Authorities. In the Jubilee year of 1897 application was made to the then existing Highway Board by the Lady of the Manor for consent to the planting of 4 trees shewn on the plan and some question arose as to the duty of the Highway Board to maintain and repair the Square and a resolution was passed by the Board authorizing the Surveyor not to do so. Since 1897 only the portion of the Highway running diagonally through the Square marked from Ulverton to Coniston



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and the portion of the highway from Griffin Street to New Street has been repaired by the Highway Board and District Council and it would appear that the former claimed the Highways and repudiated the remainder of the Square and the roads therein notwithstanding that previously to the formation of the Square there were no Highways thereon.

Mr. E.P. Barker said (in effect) :- The history as set out above accords with local tradition. He remembered in his younger days amusement fairs coming on to The Square with hobby-horses and all that sort of thing. The cattle auction market is not now held in The Square, he understood it ceased to be so held about 1910. The April and October fairs were hiring fairs. It is still the custom on 1 August every year to read the Market Charter; this is done by the Chairman of the County Council or his nominee, they being the present Lords of the Manor. The present inscription on the obelisk is new, there was none when he was a boy. The bus shelter was erected in 1955 by and at the expense of the Parish Council; they pay for its maintenance and cleaning; they replaced one of the four trees originally planted. The wooden part of the stocks he gave about 2 years ago, having fortuitously got them back when he purchased some property. Generally the Parish Council look after the Square, except the part now being used as a road.

On the above evidence I am satisfied that the Parish Council is the owner of the VG.51 land and I shall accordingly direct the Cumbria County Council as registration authority to register Duddon Parish Council as the owner of it under section 8(2) of the Act of 1965. But I am not on such evidence satisfied that the Parish Council or anyone else is the owner of the VG.64 land, and I shall accordingly direct the Cumbria County Council as registration authority to register Duddon Parish Council as the owner of it under section 8 (3) of the Act.

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 12th —

day of March

1975

A. A. Baden Fuller

Commons Commissioner