



COMMONS REGISTRATION ACT 1965

Reference Nos. 20/D/4
20/U/5
20/U/6
20/D/7

In the Matter of the Green,
Wrea Green, Ribby with Wrea,
Fylde R.D., Lancashire.

DECISION

These disputes relate to the registration of the following Entries all numbered 1 in the Registers of Common Land and of Town or Village Greens maintained by the Lancashire County Council as follows:-

Ref:-	Section:-	Unit No.	Register:-
D/4	Land	C.L.5	Common
D/5	Land	V.G.1	Green
D/6	Rights	C.L.5	Common
D/7	Rights	V.G.1	Green

and are occasioned by each Entry being in conflict with one of the others.

I held a hearing for the purpose of inquiring into these disputes at Preston on 6th and 7th June 1972.

All these disputes relate to the same piece of land and I heard them together

The registrations were all made pursuant to applications made in January 1967 by Mr. E.G. Sergeant. The right of common now provisionally registered is:-

"To graze 5 cows, 3 horses, 6 sheep, 5 stirks, 5 goats, 6 geese and 10 ducks over the whole of the land comprised in this register unit",

and is in the Register described "as held in gross". In the Land Section of the Register of Town or Village Greens applications by the Ribby-with-Wrea Parish Council ("the Council") and by Mr. G.A. Whittaker are noted. In the Land Section of the Register of Common Land applications by Mrs. I.F. Lawrence, by Mr. J. Whitehead and by Miss H. Eccles are noted.

The hearing was attended by the Council who were represented by Mrs. A. Berry a member and recently chairman, and by Mr. Sergeant, Mrs. Lawrence and Miss Eccles in person.

The land is known as "the Green" and is in its general appearance like many village greens being mostly grass and (obviously for the most part) suitable for sports and pastimes. Apart from the triangle which extends from the north east corner, the Green is roughly square with sides (as I have scaled them from the Register map) about 180 yards long; the shorter sides of the triangle (similarly scaled) are each about 50 yards long. On the north west corner of and adjacent to the Green is a comparatively large area of water known as "the Dub". The road through the Village from Kirkham to Lytham forms the



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west and north boundary; there are also roads along the east and south boundary and across the triangle.

The hearing started in the middle of the afternoon and Mrs. Lawrence and Miss Eccles, who could not conveniently attend on the following day, gave evidence first; I infer from their evidence that they supported the contention later made by Mr. Sergeant that the registration of the Green as common land should be confirmed. On behalf of the Council Mrs. Berry submitted a detailed statement as to the control and ownership of the Green, as to the references to it in documents in the Parish Chest and on the maintenance and improvement carried out by the Council since 1894; evidence was given by Mr. W. Valentine who is their Clerk, was born in the Village in 1920 and has lived there all his life except during the 6 war years and between 1947 and 1951, and by Mr. S.J. Kirkham who is and has been for the last 40 years a member of the Council, was born in the Village in 1896 and has lived there ever since, and until his retirement on the edge of the Green. Mr. Sergeant as part of his evidence submitted a written statement; he was born in the house on the Green in which he now lives; he has been lord of the manor of Kirkham since 1932; he is Chairman of the Manorial Society of Great Britain. His wife, Mrs. M.K. Sergeant also gave evidence; she has lived in the Village for the last 25 years and before then within 2 or 3 miles.

On behalf of the Council the evidence led and the questions asked appeared to be mainly directed to establishing that the Council had been in control of the Green since 1900 and that it had as far as living memory extended been regularly used for football and cricket, in winter for skating on the Dub, for the annual "Field Day", for the annual crowning of the "Rose Queen", and for other sports and pastimes by the inhabitants. Bye laws for the regulation of the Green, made by the Council in 1901 under the Local Government Act 1894 section 8 and allowed by the Local Government Board, were produced.

The evidence led by Mr. Sergeant and the questions he asked appeared to be directed to establishing that the Green had ever since as far as living memory extended been common land and used as such, for grazing by local farmers, walking and breaking of horses, ducks on the Dub, and taking marl for the building of cottages.

As to the registration of common rights, Mr. Sergeant explained that the registration took its present form because he altered his original application (which he showed me) to meet a direction made by the County Council as Registration Authority; in his original application under the heading "Capacity in which the applicant is entitled (Part 3)" he wrote:-

"As a commoner application for the rights of common pasture over the Green (1) that his land is common land (2) rights of common over such land".

Under the heading "Description of Right of Common (Part 5) he described the situation of the Green and under the heading "Description of the Farm to which the right is attached (Part 6) he left a blank space. Mr. Sergeant described



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a commoner as one born and bred in the Village and claimed the right to graze as set out in the Register as such. Stable boys employed by himself and his parents (his father died in 1921 and his mother in 1925) had walked and broken horses on the Green but he himself had no horse there since the end of the last war; Mrs. Sergeant explained that the rights of common claimed had not been exercised by him since then.

In the course of the hearing, the Council and Mrs. Sergeant invited me to inspect the Green, offering to attend my inspection.

The evidence I heard was full and detailed. Although on some matters of fact the evidence of Mr. Valentine and Mr. Kirkham conflicted with that of Mr. and Mrs. Sergeant, Mrs. Lawrence and Miss Eccles, these matters were, I think, of little or no importance. On all matters of fact which appeared to me to be important they were, I think, agreed in substance. The conflict between them was, I think, as to the inference I should draw from these facts. Photographs of the Green shown to me as it is and as it was in 1914 and the description of it given in evidence were, I think, clear enough to enable me to give my decision without inspecting it; for this reason I did not think fit to inspect the Green because it seemed to me that the benefit I would get would be disproportionate to the expense which would fall on the public funds and on the parties.

The definition in section 22 of the 1965 Act of a "Town or Village Green" is (so far as relevant):- "land ... on which the inhabitants of any locality have indulged in (lawful) sports or pastimes as of right for not less than 20 years". The evidence of Mr. Valentine and Mr. Kirkham satisfied me that from some time before 1905 to the present day the inhabitants of the Village of Wrea Green had so indulged. Their evidence was, I think, in many respects, confirmed by the evidence of Miss Eccles, Mr. Sergeant and Mrs. Sergeant; indeed I did not understand Mr. Sergeant, although he contended that the Green was common land, was suggesting that I should not conclude that the Green had for many years been used by the inhabitants of the Village for sports and pastimes.

Mr. Sergeant did not himself put forward any argument directed particularly to the applicability of the statutory definition above quoted to the Green. However, I should, I think, deal with an argument put forward by Mrs. Sergeant in her evidence, which I understood to be as follows:- A village green which is not in a manor and is not subject to common rights is properly described as a "Village Green"; but if the green is in a manor or is subject to common rights, although there is nothing to prevent it being used as a green by the Village, it remains "Common Land". I am not concerned with the correctness of this argument either as a matter of history or as being in accordance with the use of the words "village green" and "common land" in ordinary English. As a matter of law, I reject it, because I consider it to be contrary to the 1965 Act by which I am bound; although the earlier part of the definition of common land in section 22 defines it as meaning "land subject to rights of common or waste of a manor not subject to rights of common" the definition concludes with "but does not include a town or village green" As I read this definition, when considering Wrea Green, I have first to determine whether it is a town or village green within the definition and if I conclude (as I have done as above stated) that it is



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I am not concerned to consider whether it is or could be "common land".

Having regard to my reading of the Act as outlined above, it follows I think, from my conclusion that the Green is properly registrable under the Act as a town or village green that it cannot properly remain registered under the Act as common land.

Mr. Sergeant gave me the impression that he applied for the registration under the Act of a right of common because he wanted some part of the Green to be kept in a state suitable for grazing of cattle, for walking horses, for exercising dogs and for various other activities which might be convenient for the inhabitants of the Village but which were not "sports and pastimes", and that he never wished to secure for himself a right of common over the Green which could not be exercised by every other inhabitant. However this may be, I must, I think, express an opinion on the right of common as it now stands provisionally registered in his name as "owner".

This right is expressed to be held "in gross" and can, I think, only subsist if I can find either that it was expressly granted (this was not suggested) or that I ought to presume from the use made of the Green by Mr. Sergeant (and his predecessors in title) that such a grant had been made. I find that Mr. Sergeant never made any use for grazing of the Green since the last war, and that such use as he and his parents before him made of it before then for grazing (its exact extent was never defined) was too uncertain for me to infer that such use was in exercise of any right such as is registered. I therefore find that such right is not established.

In view of Mr. Sergeant's statement that the registration was made following a direction from the Registration Authority, I think I should record, that I would find against any such right as was described in his original application because in my view the description lacked the certainty needed for the definition of a right of common over land; I think the Registration Authority rightly directed Mr. Sergeant to alter his original application.

For these reasons I refuse to confirm the registration of the right of common above mentioned either in the Register of Common Land or in or deemed to be in the Register of Town or Village Greens and to confirm the registration of this land in the Register of Common Land, but I confirm the registration of this land in the Register of Town or Village Greens without any 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.

a. a. Baxter Fitch

Dated this 24th day of July 1972

Commons Commissioner