



In the Matter of The Greens, Burnham Market, Norfolk.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 18 in the Register of Town or Village Greens maintained by the former Norfolk County Council and is occasioned by Objection No. 316B made by the County Council and noted in the Register on 7 December 1970.

I held a hearing for the purpose of inquiring into the dispute at King's Lynn on 29 June 1977. The hearing was attended by Mr P R Fitzgerald, solicitor, on behalf of the Burnham Market Parish Council, the applicant for the registration, and by Mr B Chilton, solicitor, on behalf of the Norfolk County Council.

The land comprised in the Register Unit consists of eight island sites covered with grass, each being surrounded by metalled roadways. The area in which these island sites are situate appears from the Ordnance Survey map to be a typical mediaeval market-place with a church at one end and buildings round the other three sides, the islands being parts of it which it was not necessary to make up for the passage of traffic and were used for stalls on market days. There was no evidence of a market having been held within living memory, but a pleasure fair was held until about 50 years ago, and the whole of what may be termed the putative market-place, including the roadways, but with the exception of one of the islands and a public house standing on another island site, was let under the description of the Fairstead by the Earl of Oxford to Mrs Katherine West, presumably a fairground operator, on 4 July 1916. On 8 September 1927 it was let by the Earl of Leicester to the Parish Council. Both lettings were stated to be subject to the rights of the public, which were not specified.

The Objection relates to only parts of the grassed islands, the grounds being that 8 ft of verge along the road B 1155 and 6 ft of verge along the roads U 2186 and U 2349 form part of the highway. The road B 1155 is the main road through the centre of the Fairstead, the other two roads adjoining the buildings on the north and south sides of the Fairstead, being separated from B 1155 by the islands.

Mr Chilton adduced evidence directed to showing that the verges form part of the highway. This evidence partly related to the use of the verges by pedestrians avoiding the vehicular traffic using the roadways and partly to the placing of what may be termed street furniture in the verges, though the widths of 8 ft and 6 ft are not determined by anything visible on the ground, but distances fixed by the County Council as a matter of policy for safety reasons where B and U roads have no definite boundaries.

In my view, Mr Chilton was pushing at an open door, for if one applies the general presumption of law that all land between the fences or, where there are no fences, the buildings on either side of a highway forms part of the highway, the whole of the grassed islands are part of the highway. It does not, however, follow from this that they are not properly included in the registration. The definition of "common land" in section 22(1) of the Commons Registration Act 1965 excludes land forming part of a highway, but there is no such exclusion from the definition of "town or village green". It is therefore legally possible for land to be both part of a highway and part of a town or village green. Whether



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I am right in considering that the whole of the grassed islands are part of the highway or whether Mr Chilton is right in his contention that only the verges are part of the highway, the only ground put forward for excluding the verges from the registration is that they are part of the highway. In my view, this is not a sufficient ground for the exclusion sought by the County Council.

For these reasons I 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 29th day of July 1977

Chief Commons Commissioner