



COMMONS REGISTRATION ACT 1965

Reference No.45/D/20

In the Matter of Ladies Walk,
Stainforth, Settle R.D.,
Yorkshire

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No.C.L.31 in the Register of Common Land maintained by the West Riding County Council and is occasioned by Objection No.2 made by Mr. Joseph Robert Forster and noted in the Register on 8 October 1968.

I held a hearing for the purpose of inquiring into the dispute at Skipton on 5 October 1972. The hearing was attended by Mr. J. R. Forster ("the Objector") who was represented by Mr. W. Foster solicitor of Walker Charlesworth & Foster solicitors of Skipton and by the Stainforth Parish Council ("the Council") who were represented by Mr. J. Moody solicitor of J. P. Mewies & Co. solicitors of Skipton.

The registration was made pursuant to an application dated 6 April 1967 and made by the Council. The grounds of objection were stated as follows:- "The land is not common land and was not common land at the date of registration."

On the Register map the land appears like an inverted "U", and for the purposes of this decision I find it convenient to treat it as divided into three:-

(i) The west strip which is (as I scale the Register map) 62 yards long, has a width (similarly scaled) for the most part of about 6 feet but widening at the south and the north to about 20 feet and 15 feet respectively, is bounded on the west by Stainforth Beck and on the east by a stone wall (with a gateway in it) separating it from the north strip (below mentioned) by a stone wall being the boundary of a separate garden belonging to Brook House Farm (in an indenture dated 12 November 1825 this garden is described as having an area of 23 poles) and by a stone wall being the boundary of a croft (said in the said indenture to be a croft and plantation having an area of 34 poles).

(ii) The north strip which is (similarly scaled) 23 yards long when measured from the west strip to the carriage way (being a highway for vehicles which is known as or joins on the north east a highway known as Goat Scar Lane and which runs past the below mentioned east strip southwards to the centre of the Village) has a width (similarly scaled) of about 10 feet at its east end widening to about 25 feet at its west end and is bounded on the north by Brook House Farm House (recently converted into three dwelling houses), the middle of which is now used as a farm house and on the south by the wall of the separate garden above mentioned.

(iii) The east strip which is (similarly scaled) 23 yards long when measured from the west strip and about 15 feet wide and is bounded on the east by the metalled carriage way of the highway for vehicles above mentioned and on the west by the stone wall of the said separate garden and by a line which is in or near the croft and which it is not by reason of the agreement below mentioned necessary to specify.



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The Objector in the course of his evidence produced an agreed copy conveyance dated 3 May 1950 by which Brook House Farm as described in the Schedule (an area of 212.983 acres) and delineated on the plan was conveyed to the Objector; the land so conveyed included Brook House Farm House, the separate garden and the croft above mentioned but did not expressly include any part of this Unit. While the Objector was giving evidence, it was agreed that the south end of the east strip extending up to a straight line obtained by producing the line of the wall between the said croft and the said separate garden (which line would if drawn on the register map pass approximately through the middle of the C.L.31 shown thereon) was not common land; I am satisfied that I should give effect to this agreement by excluding this part ("the agreed exclusion") from the Register. On behalf of the Objector evidence was also given by Mr. J. Birtle who was born in 1890, went with his father to Brook House Farm in 1915 and was himself tenant of the Farm from 1920 to 1930. On behalf of the Council evidence was given by the Rev. E. Allen who is the vicar of Stainforth, has lived in the Village for 21 years and is now the chairman of the Council.

Mr. Allen said: The west strip has been used by the Village as a footpath for all purposes. Normally there is so little water in the Beck that the fishing from the bank is negligible. The path is a convenient short-cut from a point near Stainforth Bridge and the Craven Heifer Public House (on the south) to the Village Hall and the other buildings which abut on Goat Scar Lane (on the north). The Village consider that all this Unit belongs to them. They are particularly concerned with the 8 posts which the Objector erected in or about 1964 at the east end of the north strip to prevent vehicles from going on to the north strip and which give the north strip the appearance of not being public land but being part of Brook House Farm. Mr. Allen made it clear that he realised that if there were no posts the north strip would almost certainly be much used as a car park which would be inconvenient and unpleasant for the occupiers of the dwelling houses in Brook House Farm, at any rate unless the parking of cars there could (he did not know how it could effectively) be somehow regulated say for example by limiting such parking to persons coming to the Village Hall. The east strip (apart from the agreed exclusion) now comprises (on the east) a piece of land almost level with the carriage way which can be conveniently used either as a foot-way or as a lay-by or a car park and (on the west) an ornamental shrubbery which was recently planted by the Objector and which is enclosed in the front by a post and wire fence. Mr. Allen said that this shrubbery had a pleasing and attractive appearance but was objectionable because it gave this part of the east strip the appearance of not being public land.

Mr. Allen explained that the application to register this Unit under the Act was made on the assumption that any land which belonged to the Village (this Unit was not specifically included in the Objector's deeds) was common land and was therefore properly so registerable. In considering whether this Unit should remain on the Register, I am I think bound by the definition of "common land" in section 22 of the Act; and cannot therefore give these words a meaning such as Mr. Allen gave them even although such meaning may be in accord with much common usage. By this definition (stating its effect so far as relevant shortly) land to be "common land" must be (i) either land subject to "rights of common", (ii) or "waste land of a manor" not so subject, but (iii) "does not include..... any land which forms part of a highway".



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The Objector in his evidence said that he considered the west strip to be a public footpath, and he mentioned that the name "Ladies Walk" (which in the Register is ascribed to the whole of this Unit) is properly applicable only to the west strip; it is reputed that sometime about 100 years ago the owner of Brook House Farm to enable his daughters to go to church without going past the Craven Heifer opened up this strip of land as a path. This story is consistent with the 1840 Ordnance map which does not show the path or all the path, and with the plan attached to an indenture dated 12 November 1885 (which plan is substantially the same as that attached to the conveyance of 3 May 1950) which does show it. The west strip has the appearance of a public footpath. Mr. Birtle told me he kept it up for this purpose. I can think of no legal grounds for limiting the use of the west strip to the inhabitants of the village; I must I think presume that it was sometime between 1840 and 1885 dedicated as a public footpath for use by the public generally. A public footpath is in law a highway and I must therefore conclude that the west strip is outside the section 22 definition.

The Objector in his evidence also said that the public had a right of way on foot over the north strip. The 3 posts he erected in 1964 were in accordance with this being the legal position. I see no reason for limiting the right of the public to pass and repass on foot over the north strip to any particular part of it and I must therefore conclude (in the same way as I have done with regard to the west strip) that the whole is highway and outside the section 22 definition.

The east strip (apart from the land which it has been agreed as above mentioned shall be excluded from it) before it was recently tidied up by the planting of the scrubbery by the Objector, was rough grass land with bushes on it. It was not suggested that anybody ever had any rights of common (within the meaning of these words in the section 22 definition) over this land; from its situation it is I think so improbable that such rights ever existed, that I can properly conclude that this land does not come within this part of the definition. This land was before it was so planted wholly unenclosed and uncultivated and may I think therefore properly be regarded as having then been "waste land" within the section 22 definition. There was no evidence that the east strip was ever part of a manor. Mr. Birtle and the Objector in their evidence said that it had been looked after by the occupiers of Manor House Farm and it was argued that I should infer (notwithstanding 1885 indenture and the 1950 conveyance) that it was in the same ownership. When a highway runs between fences, there is a rebuttable presumption that the highway extends up to the fences, see Attorney General v Eymon 1970 1 Ch.1; in this case, the stone wall of the separate garden where it runs along the east strip must I think be regarded as a fence for the purpose of the presumption. There is nothing in the condition of the road or in the situation of the land to negative the applicability of the presumption. In the circumstances of this case, any use by the public of the east strip is I think more likely to be referable to it being part of the highway because the presumption is applicable to it, than to it being waste land, part of some manor. I therefore conclude that this land either is part of the highway or is not waste land of a manor, and must therefore be outside the section 22 definition.

For the above reasons I refuse to confirm this registration of any part of this Unit. It was agreed between the Objector and the Council that I should make no order as to costs whatever might be my decision.