



COMMONS REGISTRATION ACT 1965

Reference No.45/D/16

In the Matter of the Village
Green, Roecliffe Nidderdale
R.D., Yorkshire

DECISION

This dispute relates to the registration at Entry No.3 in the Land section of Register Unit No. V.G.14 in the Register of Town or Village Greens maintained by the West Riding County Council and is occasioned by Objection No.663 made by Bass Limited and noted in the Register on 29 July 1971.

I held a hearing for the purpose of inquiring into the dispute at Harrogate on 5 October 1972. The hearing was attended by Roecliffe Parish Council ("the Council") who were represented by Mr. D. Bywater solicitor with Messrs. E. Fitzgerald Hart & Son solicitors of Boroughbridge and of Wetherby and by Bass Limited ("Bass") who were represented by Mr. I. Fowler solicitor with Messrs. Atha Denison Suddards & Co. solicitors of York. The West Riding County Council attended as observers.

The land ("this Unit") was registered on 16 June 1967 pursuant to an application by the Council. As so registered it contained 3.64 acres and comprised an area ("the North East Area") about 150 yards by 50 yards, an area ("the South West Area") about 50 yards by 50 yards and two connecting areas ("the North West strip" and "the South East strip") each about 75 yards by 10 yards, so that the land so registered completely surrounded an area ("the School Area") which was not included in the registration and which consisted of the School, some cottages and the lands held therewith. The objection of Bass is dated 25 September 1970 and is: "The land edged red on the attached plan was not town or village green at the date of registration"; the attached plan shows edged red a rectangular piece of land ("the Objection Land") having a frontage to the Crown Inn of about 140 feet and projecting for about 30 feet in to the South West Area. On the 29 July 1971 the Register was amended by removing two carriage ways ("the Through Highways") which cross the land on either side of the School Area from a point at the south west end (where the public highway from Bishops Monckton divides into the two Through Highways) to a point near the north east end (where the two Through Highways after passing through this Unit join up again to become the public highway to Boroughbridge) as a result of this amendment this Unit now comprises 2.63 acres, with the North East Area divided into an area ("the North West Triangle") bounded by the Through Highways and the School Area, and an area (the North Surround) bounded by the surrounding houses, buildings and other lands and the Through Highway, and with the South East Area divided into an area ("the South East Triangle") and an area ("the South Surround") similarly bounded. The Objection Land is either wholly or for the most part situated in the South Surround between the north eastern of the two Through Highways and the Crown Inn; it may be that a small part of the Objection Land forms part of the Through Highways and has therefore been removed from the Register; such removal in relation to these disputes is I think insignificant and unimportant.

Evidence was given by Mr. R. H. Crozier (affidavit sworn 26 September 1972 on behalf of the Council) who has been resident in the Village for more than 35 years last past (from 1937 to 1952 he lived at the Manor Farm opposite the Crown Inn and from 1952 at the Lilacs which is very close), by Mr. G. A. H. Ingram (affidavit sworn 29 September 1972 on behalf of the Council) who was born in the Village in 1911, lived at the Farm until 1920 and lived at the Crown Inn from 1920



until 1932, by Mr. D. R. Burgoyne-Johnson (Affidavit sworn on 28 September 1972 on behalf of Bass) who is the Western Divisional Director (Tied) for Bass Charrington (North) Limited (they manage the Crown Inn on behalf of Bass) and has for the past 6 years been responsible for the management of the Crown Inn, by Mr. M. A. Barker (affidavit sworn 2 October 1972 on behalf of Bass) who is the licensee of the Crown Inn and has lived there for 9 years and for that period held office as vice-president of the Village Ladies Cricket Team and generally taken an active part in village life, by Mr. J. W. Bielby (affidavit sworn on 3 October 1972 in reply on behalf of the Council) who was the tenant of the Crown Inn from 1938 until 1963, by Mr. J. G. Benson (examined orally at the hearing) who is 49 years of age and was born at the Green (overlooking this Unit) is now chairman of the Council, has been a member for 9 years and attended the annual parish meetings for the last 15 years and by Mr. L. Welch (examined orally at the hearing) who has resided in the Village since 1954 and been Clerk of the Council since 1956. Bass put in a written "Case for the Objector" in which they stated they claimed the Objection Land by virtue of a possessory title and to which they attached a copy of a conveyance dated the 2nd July 1937 by Dame M. E. Lawson-Tancred to Tadcaster Tower Brewery Company Limited.

At an early stage in the hearing it was agreed that I should treat the affidavits intended to be read to me as evidence by the deponents. After hearing the oral evidence and reading the affidavits, I adjourned the hearing for the Council and Bass to consider how I should resolve such conflict as there might be in the affidavits and oral evidence without having the deponents cross-examined before me. After the adjournment, I was requested by both Mr. Bywater and Mr. Fowler to give my decision on the evidence as it stood without any such cross-examination. Mr. Bywater requested me to inspect this Unit; to this Mr. Fowler raised no objection, although he thought an inspection unnecessary.

After the hearing I inspected this Unit (the necessary arrangements being made by the County Council) in the presence of Mr. Bywater and Mr. Fowler.

The North West Triangle is now a well kept and well mown area of grass apparently suitable for, and being used for, sports and pastimes. It was not disputed that this area is properly registerable under the Act.

The contentions of Bass were as I understood them:- (i) The North West Triangle was the only area properly registerable because this was the only piece of land on which the activities of the inhabitants of the village could reasonably be described as being "sports and pastimes"; (ii) Alternatively the North West Triangle and the South East Triangle and the small parts of the North West strip and the South West strip enclosed by the Through Highways together constituted the only piece of land properly so registerable (arguing that the Through Highways could properly be regarded as forming a boundary to such piece of land separating it from the other pieces of land which together constitute the north surround and the south surround); (iii) Alternatively the Objection Land should be regarded as a distinct and separate piece of land from the rest of this Unit and such piece of land not having been used either at all or at least to any appreciable extent for sports and pastimes should be removed from the Register.

The North West Triangle is, I think obviously, suitable for sports and pastimes of an organised and adult kind; quoits, cricket, croquet and village sports were mentioned by witnesses. But the South East Triangle although in parts very rough grass, is suitable for unorganised games as commonly played by children; rounders, ball games and hide and seek were mentioned by witnesses. The North Surround and the South Surround are not, considered by themselves, suitable for games or pastimes; the grass areas are either too small or too much crossed by paths and tracks as above mentioned; further for any adult to organise games for children there, at any rate while the North West Triangle and the South West



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Triangle were not being used for any other purpose, would be unneighbourly if the occupier of any adjoining house objected. Nevertheless in appearance there is I think nothing to indicate that the North Surround and the South Surround certainly belong, in the legal sense, to the houses and lands which abut on this Unit; the mowing and planting of flower beds (done so I was told by the occupiers of these houses and lands) could as well be considered as a contribution to the general tidy appearance of the Village as an assertion of ownership. In 1971 the Village was awarded the Lower Dale Award of the best kept village.

In the Case for the Objector, it is submitted that the Objection Land "is sufficiently distinct" because bounded on the north west by the Crown Inn and the north east by the boundary wall of the adjoining premises known as "The Smithy" (formerly a Smithy but now a dwelling house so called). This submission is I think factually incorrect in that the north east boundary includes a piece of open grass land between the Smithy and the north eastern of the two Through Highways; in this respect the Register Map may be misleading as it does not clearly show the grass land at the now relevant place between the edge of this Through Highway and the boundary marked on the map by a green verge line.

The Objection Land at its southend is crossed by a vehicular track leading to a yard and car park behind the Crown Inn and by a stone paved track leading to the front entrance of the Inn; parallel with part of the front wall of the Inn there is a narrow strip of concrete and a narrow flowerbed; the rest of the Objection Land (being by far the greater part) is grass land (there is an attractive lime tree on it) sloping gently down to the adjoining Through Highway. In appearance, the Objection Land does not I think belong to the Crown Inn any more than the North Surround and the rest of the South Surround belong to the other houses and lands abutting on this Unit. All the North and South Surround could be considered as notionally divided into plots belonging to the houses and lands abutting on this Unit; on such a notional division the Objection Land would be smaller than some and larger than other plots but not I think in any way essentially different from any of such plots because it happens to abut on a public house or for any other reason. But such a notional division would not I think be sensible by reason of anything apparent when I inspected this Unit or of anything said in evidence.

The ownership of the Objection Land is not now referred to me under Section 3 of the Act. Nevertheless I accept the submission made to me on behalf of Bass that I should on this reference now made to me under Section 6 consider evidence of ownership and possession so far as it is relevant to the definition of "town or village green" in section 22 of the Act. But under this heading I cannot attach any weight to the evidence of Mr. Burgoyne-Johnson when he says he is unable to find in the records of Bass and knows from his own dealings with the Crown Inn "there have not been any claims by any other person to the ownership of" the Objection Land; I find there has never been anything on the Objection Land which would prevent the inhabitants of the village indulging in sports and pastimes there; he does not in his affidavit mention any recorded act or dealing which would if the Council was the owner have provoked a claim by the Council, so the absence of any such claim does not I think assist me to conclude that the Objection Land is not within the definition. Mr. Burgoyne-Johnson concludes his affidavit by stating "that Bass Limited and its predecessor in title have for a period in excess of 12 years been in undisturbed possession of" the Objection Land. I am unable to imagine to what acts of possession by Bass or its predecessors these words refer; if he has in mind "his own dealings with the premises", these do not go back before 1966 and he does not explain how any dealings he had were adverse to the use of the Objection Land by the inhabitants of the Village for sports and pastimes. The cutting of the grass and the cultivating the border containing rose



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bushes described by Mr. Barker are consistent with a desire to contribute to the general tidiness of the Village and do not I think constitute acts of possession from which I can infer (as against the contrary evidence given on behalf of the Council) that the Objection Land is outside the definition.

On behalf of the Council it was submitted:- The whole of this Unit is now and always has been one piece of land. As far back as living memory extends the inhabitants of the Village have on it indulged in lawful sports and pastimes. It is within the definition of town or village green in Section 22 of the Act either because such indulgence has been as of right for not less than 20 years or because it should be presumed to have continued from time immemorial and therefore to be under a customary right.

In my view the reference in the definition to "a customary right" enables me to consider how this land appeared from time immemorial to the present day. I have an agreed copy of the map annexed to the Inclosure Award dated 11 November 1841 in which this Unit appears to be much the same as it is now except that on this map the Through Highways are not delineated (the whole Unit with any through roads is treated as one piece of land), except that there appears to be a building in the South Surround projecting in front of what is now a dwelling house known as the Smithy, and except that the pond below mentioned appears to have been much larger. I have the conveyance of 2 July 1937 from the plan on which I infer that the Objection Land did not then form part of or belong to the Crown Inn: Bass did not in their Case for the Objector suggest that they had any title under such conveyance. I have the Register map (apparently based on a pre-1956 Ordnance Survey) which shows a pond in the middle of the North East Triangle and evidence that in 1956 with a view to creating a flat recreation area such as is now there this pond was drained, and the land levelled. It is I think obvious that the Through Highways would 30 or more years ago have been much less used than now; even now, the highways from Bishops Monckton through the Village to Boroughbridge carry little motor traffic except in the summer; although persons wanting to indulge in sports and pastimes on this Unit might now be deterred by the risk of injury from a passing motor vehicle from playing across or near the Through Highways, such risk would I think 30 or more years ago have been negligible. Looking into the past in this way, I conclude that the whole of this Unit (treating the Through Highways as part of it) can for the purpose of this reference properly be regarded as one piece of public land and that the various parts into which I have earlier in this decision for the purposes of exposition notionally divided it have not now and never had any reality (apart from the Through Highways being highway) to those who walk over, enjoy and otherwise use this Unit.

The evidence of Mr. Crozier, Mr. Ingram, Mr. Bielby and Mr. Benson cover a long period of time. Although some of their evidence was criticised as being vaguely introduced by the words such as "understand", "our attitude", "always felt", I feel no difficulty in accepting without qualification their general statements to the effect that the inhabitants of the Village have indulged in lawful sports and pastimes on the whole of this Unit (regarded as one piece of land including the Objection Land) as far back as their memory extends. The circumstance that at the present time the North East Triangle is the part now most used for adults sports and pastimes, does not I think compel me to qualify the evidence of Mr. Crozier and Mr. Ingram supported by the evidence of Mr. Benson about the general use of this Unit; it seems to me that before the draining of the pond the South East Triangle would have been more convenient for sports and pastimes than the North West Triangle and therefore more used for this purpose. Actual use of the Objection Land for this purpose would then be more likely than now. Further I have the evidence, which I accept, of Mr. Benson that when he was a boy, children



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played on the South East Triangle and that such play from time to time extended to the Objection Land. I do not decide that it is within the definition merely because children living in the houses adjoining the North Surround and the South Surround played games on the grass near where they lived or because the children of customers at the Crown Inn played games on the grass near the Inn. I think the recreational use of the North Surround and the South Surround was more than this: they were I think at least used as might be convenient by adults and children playing or watching games on the North West Triangle and South East Triangle in much the same ancillary way as the parts of an ordinary recreation ground which are outside the marked out boundaries of the games are ordinarily used.

The indulgence in sports and pastimes by the inhabitants of the Village which I have found must I think have always been as of right. In my view the whole of this Unit is within the definition of "town or village green" in Section 22 of the Act, either because such indulgence has been for not less than 20 years or because it was in pursuance of a customary right which has existed in this Village from time immemorial.

For these reasons I confirm ~~the~~ the registration without modification. I order Bass to pay the costs incurred by the Council in these proceedings and I direct such costs to be taxed on County Court scale 3.

I should I think record that I think Mr. Bywater and Mr. Fowler rightly requested me to decide this case without any cross-examination of the deponents to the affidavits on the basis that I should resolve any factual conflicts in the evidence on common sense grounds in accordance with what I considered to be the likelihood; cross-examination of the deponents would have involved the Council and Bass in costs and expenses without I think much helping me to resolve the questions which were discussed at the hearing.

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 *1st* day of *December* 1972.

a. a. Baden Fuller

Commons Commissioner