



COMMONS REGISTRATION ACT 1965

References Nos. 26 /D/19  
26 /D/20  
26 /D/21

In the Matter of land at Byfield,  
Daventry R.D., Northamptonshire.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.61 in the Register of Town or Village Greens maintained by the Northamptonshire County Council and are occasioned by Objection No.3 dated 23rd September 1970 and made by Mr. Reginald Haynes, by Objection No.4 dated 7th September 1970 and made by Mr. Kenneth James Merivale and by Objection No.10 dated 28th September 1970 and made by Finsons Ltd., which objections were noted in the Register on 29th, 9th and 30th September 1970 respectively.

The registration objected to was made pursuant to an application dated 22nd April 1963 and made by the Byfield Parish Council ("the Council"). The grounds of the objection were that the land identified by an attached plan (being in each case a different part of this Unit) "was not a town or village green at the date of registration".

I held a hearing for the purpose of inquiring into these disputes at Northampton on 21st July 1972. The hearing was attended by the Council who were represented by Mr. D. M. Orton-Jones, a solicitor of Messrs. Shoosmith & Harrison of Daventry, by Mr. Haynes in person and by Mr. Merivale in person.

Finsons Ltd. did not attend the hearing. I had a letter dated 10th July 1972 sent by Thomas J. Eckford, Rands & Co., solicitors of Northampton to the Clerk to the Commons Commissioners stating (among other things) that they acted for Andrews Corvell Building Limited the owners of Alley Close purchased from Finsons (Builders) Limited last year, that the subject of the objection did not form part of Alley Close and that they had asked the solicitors of Finsons (Builders) Ltd to arrange for their clients to formally withdraw the objection. No such withdrawal reached me before the hearing. Those attending agreed that I should hear all three disputes together.

This Unit is a roughly triangular piece of land ("the Triangle") with a comparatively narrow strip ("the Tongue") projecting from its north east corner. The north side (as I scale a map I have, about 50 yards long) of the Triangle is (starting from the west) the front wall of a building ("the Club building") now or recently used as a Conservative Club and formerly a School, the front wall of the house "Ferndon Cottage No.8 The Green," occupied (so he told me also owned) by Mr. Merivale and the gate into the field on the north west and the entrance to the Tongue. The east side (similarly scaled about 35 yards long) of the Triangle is the front wall of the house known as "Knowle Cottage No.9 The Green," occupied (so he told me also owned) by Mr. Haynes and the front wall of a house known as "The Olde Thatch" occupied by Miss Smart. The south west side (similarly scaled about 70 yards long) of the Triangle is a path (or road; whether it could properly be described as a road was one of the issues in these proceedings) leading from the north west to Holy Cross Church on the south east. The Tongue abuts on the north side of Knowle Cottage and on its back garden and then goes on beyond ending at a stream.



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It was agreed that Mr. Merivale and Mr. Haynes should give their evidence first.

To the Objection No.4 of Mr. Merivale there was attached a plan showing coloured red part ("the Red Land") of this Unit, being the part fronting on Farndon Cottage and extending right up to the path (or road) leading from the north west to the Church. Mr. Merivale in his evidence in chief handed me a written statement (41 paragraphs). It was, I think, clear from his explanation to me of this statement, that his main ground of objection was based on the proposition that the Red Land belonged to him; it was implicit in this proposition that because the Red Land belonged to him, it could not properly be, or be registered as, a town or village green. His alternative ground of objection related to a part "the Porch" of the Club building, which part is or was formerly a porch projecting into this Unit (not into the Red Land but west of it). In support of his main ground Mr. Merivale relied on an indenture dated the 28th November 1917 whereby Farndon Cottage was conveyed by W. C. Bromley to Mrs. Coy and a conveyance dated 23rd June 1927 whereby Farndon Cottage was conveyed by Mrs. Coy to Mr. Simeon Merivale (he died in 1959 and was Mr. Merivale's father); particularly on the words in the indenture and conveyance by which the property thereby conveyed was expressed to be bounded by: "a road leading from the Main Road to the Church at Byfield."

There is, I think, no legal reason why a piece of land should not at the same time be a village green over which the public have rights and be owned by a private individual who as such owner also has rights. But I understood Mr. Merivale to contend that the indenture and conveyance showed that the parties intended to convey the Red Land as being held free from public rights in the same way as the garden at the back was so conveyed. I must, I think, consider whether such an intention could properly be ascribed notwithstanding that the ownership of this Unit is not the subject of this reference to me, because such intention might, I think, be some (not conclusive) evidence that the Red Land was not a town or village green within the definition in section 22 of the Act.

To enable the Council to be provided with a copy of Mr. Merivale's statement and of the 1917 indenture and the 1927 conveyance, before Mr. Merivale had concluded his evidence in chief, I heard the evidence in chief of Mr. Haynes. To the Objection No.3 of Mr. Haynes there was attached a plan showing edged red the part of the Tongue abutting on Knowle Cottage and (more or less) the land between the Red Land (as above defined with reference to the objection of Mr. Merivale) and Knowle Cottage. Mr. Haynes handed me a plan which he had prepared which showed this Unit and the surrounding buildings on it in such a way that the Tongue was shown as not existing as a separate piece of land at all and that most of this Unit was shown as belonging either to Farndon Cottage or to Knowle Cottage or to Olde Thatch. His contention was that the whole of the land edged red on the map on the plan annexed to his objection which plan was not the same as that he handed to me, was his property as part of Knowle Cottage and particularly that the small building ("the Alleged Outbuilding") shown on the Register map on the Tongue was an outbuilding of Knowle Cottage. He acquired Knowle Cottage in 1965; the Alleged Outbuilding was so he said, then full of ashes, its floor level being higher than the field behind it; there could be no way through the Tongue because of the ashes.

After an adjournment during which copy documents had been made, Mr. Merivale shortly concluded his evidence in chief and Mr. Haynes was cross-examined by



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Mr. Orton-Jones. He was questioned about a deed ("the 1968 Deed") dated the 31st December 1968 made between (i) the Council and (ii) Mr. Haynes and his wife by which after reciting that the Council was seised in fee simple in possession free from encumbrances of property delineated on the plan (being this Unit) and that Mr. and Mrs. Haynes were seised in fee simple in possession of the land also delineated on the plan (being Knowle Cottage and the garden behind exclusive of any part of the Triangle and of the Tongue and in particular exclusive of the Alleged Outbuilding) it was witnessed that in consideration of £5 the Council granted to Mr. and Mrs. Haynes a right of way as indicated on the plan (being from the front of Knowle Cottage across the Triangle) and that Mr. and Mrs. Haynes covenanted with the Council to maintain to the satisfaction of the Council a tarmac surface over the road and would use their best endeavours not to obstruct it. He was also questioned about a letter dated 2nd June 1972 written on behalf of the Council complaining about obstruction by him of persons having a right of access over the Village Green of Byfield. Mr. Haynes did not produce his title deeds but agreed that they contained nothing to suggest that he was the owner of the land in the 1968 Deed stated to belong to the Council.

Mr. Merivale when cross-examining Mr. Haynes asked him about the use made of the land for sports and pastimes. This was the first occasion during the hearing (which had already lasted some time) on which it seemed to have occurred either to Mr. Merivale or Mr. Haynes that such use was in any way relevant. Mr. Haynes after some discussion as to what exactly he meant, asked me to record his evidence on this point as:- "I have never known for the last 40 years anybody use this Unit for sports and pastimes." On being further cross-examined by Mr. Orton-Jones Mr. Haynes said that he could not recall seeing children playing on this Unit, and that although he worked at Woodford for 40 years, he used to go by the land once a week every Saturday from 1931 until 1965 and during that period it was all covered with rough grass apart from the footpaths which led to Farndon Cottage and Knowle Cottage.

Mr. Merivale was cross-examined by Mr. Orton-Jones. He agreed that the Register Unit land had always been rough open ground but said that children had not played on this Unit since 1948. When the new recreation ground became available his father chased the children off and added that children before 1948 did not to his knowledge play on the Register Unit land.

On behalf of the Council Mr. J. R. Hutt gave evidence. He is 67 years of age and has lived in the Village all his life and for the last 20 years has been a member of the Parish Council. From 1921 to 1931 he lived in Knowle Cottage. He said:- No part of this Unit was part of Knowle Cottage. He remembered the alleged Outbuilding being used as lavatories by the School. The Unit land had always been used by children playing although such use had become less since the new recreation ground had been opened in 1950: this ground had been given to the Village, (the ordnance map shows it as having an area of 4.810 acres) and is situated south of and adjoining this Unit. The wall which formerly divided this new recreation ground from this Unit was pulled down by the Council with the intention that this unit and the new ground could be enjoyed together. Until Mr. Haynes had very recently put up concrete blocks in front of Knowle Cottage (so that the road to it looked as if it belonged to Knowle Cottage), this Unit and the new recreation ground appeared to be one piece of land. An area of land ("the Principal Area") to the north west of this Unit and next to Banbury Road and an area of land ("the Middle Area") between the Principal Area and this Unit had been registered under the Act by the Council as a town or village green and such registration being undisputed had become final. The travelling fairs which came to the Village (as mentioned by Mr. Merivale in his statement) had used the Principal Area and the Middle Area for their Entertainments, and



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this Unit for their horses and caravans. He produced an indenture dated 1st January 1904 by which his uncle Mr. J. R. Hutt conveyed the Olde Thatch in which this Unit was referred to as "a piece of Common Land or Green adjoining Byfield Green."

Mr. C. L. Fraser, on behalf of the Council, gave evidence. He told me he had examined the inclosure award of 1779. Neither this Unit nor the Principal Area nor the Middle Area were the subject of any allotment under the award, they being therein described as "roads", together with other roads in the Village. I did not examine the award because it was agreed that the copy of the map annexed to it with which I had been supplied was a true copy, that the porch was shown on it as not being part of the land therein described as "roads" and that the operative part of the award had no relevance to these disputes; his evidence was not challenged either by Mr. Merivale or Mr. Haynes.

In the course of the evidence two photographic postcards were produced to me showing as viewed from the west the whole of this Unit with the Church in the background, except that Farndon Cottage and the whole or some part of Knowle Cottage were obscured by buildings nearer to the camera. Mr. Merivale dated the later postcard as having been taken in about 1927 and I from the dress of the persons shown date it within 10 years before or after 1905. The postcard photographs show a well constructed stone or brick footpath passing along the south east side of the Triangle and leading to the Church, obviously not intended for use by wheeled vehicles; this Unit appears to be rough land bare in some parts and with some grass in other parts; without any thing on it which could in any way obstruct a member of the public who might wish to walk or drive wheeled vehicles over any part of it; and very suitable and (if no better alternative ground was immediately available) attractive for games of an informal character as indulged in by young children and for such communal activities as might be expected in any village.

There was a conflict on many points between the evidence of Mr. Merivale and Mr. Haynes on the one hand and the evidence of Mr. Hutt on the other hand, particularly as to the use of this Unit for sports and pastimes. I accept all the evidence of Mr. Hutt; he was, I think, a truthful witness. Mr. Haynes's statement about such use as set out above was, I consider, unreliable. His answers to the questions of Mr. Orton-Jones about the 1968 deed were, I think, discreditable; whether or not he is, by the recital in the deed, estopped in these proceedings from denying the Council's ownership of this Unit, from his answers and his manner when giving evidence, I am unable to accept any statement of his on any disputable matter of fact in the absence of some corroboration by some other reliable witness. In particular, I do not accept his evidence in support of his alleged ownership of any part of this Unit.

There was a conflict between the evidence of Mr. Hutt and Mr. Merivale on some points. Mr. Merivale after saying that he had, although he lived at Wolverton (Buckinghamshire) from 1936 to 1970, perfect knowledge of what then went on in the Village especially as regards the use of this Unit for recreational purposes, added that his mother had been in occupation of the house from 1927 (she died in 1969), and that from her he was aware of what took place and his knowledge up to 1970 was his mother's knowledge. Quite apart from any question there may be as to the admissibility of statements made by Mr. Merivale as to what his mother saw, I have no reason to suppose that his mother ever directed her mind to any of the important issues in these proceedings. As to what at any time went on in the Village I prefer the evidence of Mr. Hutt to that of Mr. Merivale.



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Even assuming in favour of Mr. Haynes that the part of the Triangle and of the Tongue adjoining Knowle Cottage now appears to belong to Knowle Cottage such appearance is, I think, of very recent origin (e.g. he told me he planted three trees there 18 months ago), and in my view quite insufficient to rebut any inference which I can, for the benefit of the inhabitants, properly make from the use of this Unit before 1965 when Mr. Haynes acquired Knowle Cottage. In my view the alleged outbuilding was formerly a public earth closet and neither it nor any other part of the Tongue nor any part of the Triangle was ever part or parcel of Knowle Cottage or appurtenant or belonged to Knowle Cottage in the legal sense of these words. Accordingly I reject the objection of Mr. Haynes, it being based I think on his alleged ownership and on nothing else.

Mr. Haynes treated the inclusion of the front bay window of Knowle Cottage (as he said about 18 square feet of his house) in the land comprised in this Register Unit as being most absurd. The ordnance survey map on which the Register map is based shows this bay window; although on such map the verge line may there appear to be quite straight, I construe the Register as showing the intention that such line shall follow that drawn on the ordnance survey map so that the bay window is in my view not included.

The introductory words in the parcels of the 1917 indenture and the 1927 conveyance are:- "ALL that Messuage or Dwelling House known as "Farndon Cottage" together with Wash House Stable Loft Coalhouse Pigsty and other Outbuildings Yard and Garden Land thereto adjoining and belonging"

From the evidence before me particularly the postcard photographs, I conclude that at the time when the 1917 indenture and the 1927 conveyance were made the Red Land was rough land and indistinguishable from the rest of this Unit; from its appearance it could not I think be regarded as coming within the words above quoted. It never occurred to either of the parents of Mr. Morivale during the long period during which they resided at Farndon Cottage that they could use the Red Land as they would have done if they had been owners. I conclude that the Red Land is not within the description above quoted under any possible meaning of the words used.

In my opinion the words in the indenture and conveyance "road leading from the Main Road to Byfield Church" do not aptly describe any piece of land. The only way that leads from the Main Road right up to the Church ends with the footpath on the south east side of the Triangle which continues to the west side of the Churchyard and this is not, I think, where it passes near this Unit aptly described as a "road". Mr. Nutt remembered a track passing across the northern side of the Triangle near to the front of Farndon Cottage and leading down the Tongue (not to the Church). There is a road known as "Church Road" some distance north west of this Unit being a public highway which leads from another part of the Village to and beyond east side of the Churchyard.

The parcels of the indenture and conveyance are carelessly drawn in that the boundaries described as "north", "south", "west" and "east" refer (as was agreed before me) to the wrong points of the compass. In my view the word "road" quoted above from the parcels refers to the whole of this Unit and the land to the east between it and the Main Road consisting of the Central Area, the Middle Area and the adjoining highways, the word "road" being used in the sense of everything over which the public could apparently pass without hindrance including the verges of rough land right up to the walls and buildings apparently enclosing it. Such a "road"



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would for those walking lead directly to the west end of the Churchyard and for those in vehicles provide a convenient place to leave them and proceed there on foot. By appropriately varying the points of the compass and reading the word "road" in this sense the parcels unambiguously describe land which does not include the Red Land, and I so construe the indenture and conveyance. Indeed if the parties had intended to include in the land thereby conveyed something as different as the Red Land would then have been from Farndon Cottage and the garden and yard behind, I should have expected them to have used very clear words showing this intention. My construction is, I think, consistent with the use of the word "Green" in the grant in the indenture and conveyance of a right of way, which and can I think be aptly read as referring to the northern end of the Red Land. Accordingly I reject Mr. Merivale's main ground of objection.

I also reject his alternative ground of objection; that I should treat the whole of the registration as void merely because it included the Porch, seems to me absurd. That I should confirm the registration with the modification that the Porch be removed from the Register was a possibility which was not suggested either by Mr. Merivale or Mr. Haynes, and I see no need to consider it.

In his written statement Mr. Merivale alleges that the Council and certain persons connected with the Council did certain things which they knew or should have known or been aware were irregular. In my view these allegations have no foundation. As they might be read as reflecting on the integrity of the persons referred to, I think it proper to record that in my opinion these allegations ought not to have been made.

Neither Mr. Merivale nor Mr. Haynes asked Mr. Hutt to elaborate his statements about the use of this Unit for sports and pastimes and I infer from their failure to do this that each of them was concerned only with establishing that the part of this Unit land in which he was interested was his property. In my view I can properly give full effect to the evidence of Mr. Hutt on this aspect of the case notwithstanding its brevity. The use of this Unit during Entertainment Fairs can I think properly be regarded as a use for pastimes notwithstanding the actual entertainments were on the Principal Area and the Middle Area and the use of this Unit was ancillary. In recent years, because the adjoining new and well kept recreation ground was better, the use made of this Unit by children for games may not have amounted to much, but I am satisfied that there has been some.

But in considering whether a particular area of land is within the statutory definition of a "town or village green", a test which may I think be properly applied is whether the area is part of a piece of land which the inhabitants "have indulged in... sports and pastimes..."; for example, a remote area of a piece of land can be regarded as used for cricket notwithstanding that it is rough and is outside the boundary line of the game and nobody has ever thrown a ball there; the test in such a case being whether the area can fairly be regarded as part of the piece of land on which cricket is being played.

Applying this test this Unit I think passes it easily. All the maps before me show the Principal Area, the Middle Area and the land now roads and paths as one piece of land open for public use. Mr. Merivale in his written statement describes the Principal Area as "the proper Village Green". Registration under the Act of the Principal Area and the Middle Area is conclusive evidence that they are town or village green. The 1779 award map which shows the way from the High Street to the south was then along what is now Banbury Lane (Banbury Road had not then been constructed), with the result that this piece of land must then have been more secluded than now and more suitable than now for recreational use. I can, I



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think, properly conclude that this piece of land has from time immemorial been used for sports and pastimes by the inhabitants of the Village, notwithstanding that parts of it had been separately registered under the Act and that parts have (probably because they are now public roads and public footpaths) have not been registered at all; and notwithstanding also that the new recreation ground has now become or is in the process of becoming part of the same piece of land. Accordingly I find that the inhabitants of the Village have a customary right to indulge in lawful sports and pastimes on this Unit.

The plan attached to the objection of Finsons Ltd shows edged red on it the east end of the Tongue being the part of the Tongue not edged red on the plan attached to the objection of Mr. Haynes. As Finsons Ltd did not appear in support of their objection, I make the same finding against them as I have made against Mr. Merivale and Mr. Haynes.

Neither the non-appearance of Finsons Ltd nor the said letter of 10th July 1972 made a hearing of the dispute occasioned by their objection unnecessary; accordingly they should I think pay the costs of the Council occasioned by their objection. However I record for their benefit that in my view not more than one per cent of the time spent at the hearing before me, at which I dealt with all three objections together, can properly be attributed to the objection of Finsons Ltd. In the circumstances as summarised in this decision, I consider that Mr. Haynes and Mr. Merivale should each pay the costs of the Council occasioned by their respective objections and that such costs should be taxed on a higher scale than those payable by Finsons Ltd.

For these reasons I confirm the registration without any modification and I order Mr. Haynes, Mr. Merivale and Finsons Ltd to pay the costs of the proceedings occasioned by their respective objections to be taxed as regards the costs payable by Mr. Haynes and Mr. Merivale on scale 3 and as regards those payable by Finsons Ltd on scale 2.

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 2nd day of November 1972

*A. A. Baden Fuller.*

Commons Commissioner