



COMMONS REGISTRATION ACT 1965

Reference No. 58/D/9

In the Matter of Broad Heath Common  
Presteigne, Powys

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG.10 in the Register of Town or Village Greens maintained by the Powys County Council and is occasioned by the conflicting registration at Entry No. 1 in the Land Section of Register Unit No. CL.49 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Llandrindod Wells on 7th January 1975. The hearing was attended by Mr. D D Jones the County Land Agent of Powys County Council and by Mr. G.S.G. Richards, the former Clerk of Presteigne Urban District Council.

The land in question consists of some 26 acres situated within the former Urban District of Presteigne. It is the subject of a scheme approved under the Commons Act 1899 on the 18th November 1903 by the Board of Agriculture and Fisheries. On the 4th March 1904, pursuant to the scheme, the Presteigne Urban District Council made bye-laws for the prevention of nuisances and the preservation of order upon the Common. There is no doubt that the land has been used, since before living memory, both by commoners for grazing sheep and other animals, and by the public for recreational purposes. I see no reason to doubt that at common law, the land would have qualified both as common land and as a village green; but for the purpose of registration under the Commons Registration Act 1965, the expression "common land" does not include a town or village green. It seems to me therefore that I must first consider whether this land is a town or village green within the meaning of the definition in section 22 (1) of the Act of 1965. If it is, then it cannot be common land for the purposes of that Act.

There was no evidence before me that the land had been allotted by or under any Act for the exercise or recreation of the inhabitants of the locality. The question, therefore, is whether it is "land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years."

Mr. Richards gave evidence before me. He referred to House's "Welsh Border Town", from which it appears that Presteigne Races were habitually held on this Common from the early 19th century until 1880, and again after the 1914-18 war. Cricket was played there regularly from 1844 to the 1920s. Nearby there is a public house known as 'The Cricket Arms'. Golf was also played there for some 20 years up to 1915. Mr. Richards himself has been familiar with the Common since the early 1920s, and testified that the land has to his knowledge from time to time, been used by the public for recreational purposes. Mr. Richards conceded, however, that the land was subject to rights of common



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Indeed, nine commoners have registered rights of common over the land, and their registrations have become final.

The making and approval of a scheme under the Commons Act 1899 is not inconsistent with this land having the status of a town or village green, because a "common" was defined in that Act as including any town or village green. The Bye-Laws referred to above confirm the view that the land was used for all manner of games. Paragraph 13 of the Bye-Laws laid down rules of conduct for "every person resorting to the Common for the purpose of playing or taking part in any game of football, quoits, hockey, cricket or any other game"; and the same paragraph shows that the Council had the right (no doubt, a right conferred on them by the Scheme) to set apart portions of the Common for games.

Mr. D.D. Jones produced a letter dated 28th July 1973, signed by eight commoners, objecting to the registration of this Common as a village green. One of their objections is based on the fear that such registration might lead to the removal of the fence which has been erected along the road frontage, resulting in "straying sheep and fast traffic". Certainly, as it seems to me, it would be foolish and unnecessary to remove this fence. There is no question that the commoners are entitled to turn their sheep or other animals on to the Common to graze, and it is obviously sensible to protect the animals and the motoring public by maintaining the existing fence. Subject to this, it does not seem to me that in practice it would make much difference whether the land was registered as common land or as a village green. Be that as it may, my duty is simply to decide whether the land in question is a "town or village green" within the statutory definition. On the evidence before me I am satisfied that it is.

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

19<sup>th</sup>

day of

March

1975

A.E. Francis

Commons Commissioner.