



In the Matter of Huddle Grounds, Stainforth
and Thorne, South Yorkshire, (No. 1)

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 116 in the Register of Town or Village Greens maintained by the South Yorkshire Metropolitan County Council and are occasioned by Objection No. 857 made by the British Waterways Board, Northern Region and noted in the Register on 4 June 1971, Objection No. 1531 made by the former Yorkshire River Authority and noted in the Register on 7 February 1972, Objection No. 2135 made by the former Thorne Rural District Council and noted in the Register on 23 October 1972 and the conflicting registration at Entry No. 3 in the Land Section of Register Unit No. CL 401 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Thorne on 13 February 1984. The hearing was attended by Mr David Rose, of Counsel, on behalf of the Stainforth Parish Council, whose application was noted under section 4(4) of the Commons Registration Act 1965, Mr P M Stowe, Solicitor, on behalf of the Thorne Town (formerly Parish) Council, whose application was also noted under Section 4(4) of the Act of 1965, Mr Francis Radcliffe, of Counsel, on behalf of the Doncaster Metropolitan Borough Council, the successor authority of the former Thorne Rural District Council, and Mr C Dunkley, the Principal Estate Officer of the British Waterways Board. There was no appearance by or on behalf of Mr W Bunting, the applicant for both the registration and the conflicting registration.

Mr Stowe did not adduce any evidence in support of the registration.

As in In the Matter of White Lane Pond, Four Doles, and Clay Pits, Thorne and Stainforth (No. 1) (1984), Ref. Nos. 269/D/36-39, Mr Bunting's application for the registration was made in the first registration period and the objections were made in the second objection period, while the registration was made on 24 March 1969. Having dealt with the validity of such objections in that case, no useful purpose would be served if I were to repeat what I there said. In my view, all the objections were made in time.

Mr Rose based his case on the third limb of the definition of "town or village green" in Section 22(1) of the Act of 1965, namely, that the land comprised in the Register Unit is land on which the inhabitants of the locality have indulged in lawful sports and pastimes as of right for not less than twenty years. The general observations which I made about that definition in the White Lane Pond Case, supra, are equally applicable to this case, so I shall confine myself to stating my findings of fact and considering the consequent conclusions.

Mr Rose called a number of witnesses, and Mr David Owen volunteered to give evidence under regulation 23(5) of the Commons Commissioners Regulations 1971.

The land comprised in the Register Unit consists of a long narrow strip on the north side of the Stainforth and Keadby Canal. It is traversed by a public footpath, formerly an awarded road, leading from Stainforth to Thorne.



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There was evidence of the following activities on the land at various times during the period between 1945 and 1965:-

- (1) Local inhabitants walking with and without dogs;
- (2) Mr D Moores, now aged 38, said that he and other children used to camp near to Dunston Hill Bridge, but that a Mr Foot, who lived in Canal Cottage used to chase them off.

I do not regard Mr Moores's evidence as sufficient to prove camping as of right for twenty years.

Mr Rose argued that walking for pleasure or to exercise dogs was indulging in pastime rather than the exercise of a public right of way. I cannot accept this argument. The right of passage along a highway includes any reasonable and usual mode of using a highway: see per Lord Esher, M.R. in Harrison v. Duke of Rutland (1893), 1 Q.B. 142, at p.146. Nothing which has been proved here goes beyond a reasonable and usual mode of using a highway. It can make no difference to a person's right whether his object is to get from one place to another or to enjoy himself or to benefit his health or to exercise his dog. There is no proof of user of this land "as of right". A person who uses land "as of right" has no right even though his use if continued long enough may ripen into a right. Here there is a right, and what has been proved is the exercise of the right.

For these reasons I refuse to 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 30th day of March 1984

Chief Commons Commissioner