COMMONS REGISTRATION ACT 1965

Reference No. 234/D/79

In the Matter of The Green, Hargrave, Suffolk

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 1 in the Register of Town or Village Greens maintained by the Suffolk County Council and is occasioned by Objection No. 0/46 made by Estate Associates Ltd and noted in the Register on 21 August 1970.

I held a hearing for the purpose of inquiring into the dispute at Bury St Edmunds on 14 February 1979. The hearing was attended by Mr A D Shirreff, Solicitor, on behalf of the Hargrave Parish Council, the applicant for the registration, and by Mr B Cohen, Solicitor, on behalf of the Objector.

The land comprised in the Register Unit is crossed by a road running from north to south, which is joined by a road leading from the west. The construction and position of the road junction is not now identical with that shown on the 1904 edition of the Ordnance Survey Map, on which the Register Map is based, but it does not appear to me that any change which may have taken place in the alignment of the roads during the last 75 years should have any affect upon my decisions.

The land in question is roughly rectangular in shape. It is shown in its present shape on the tithe apportionment map, but the boundaries shown on that map give rise to the inference that the road leading from the north was formerly much wider having been narrowed by encroachments on both sides, so that the land in question is really the southern portion of an elongated triangular area. This inference is borne out by the record in a memorial book of the grant on 4 August 1819 of one of the encroachments on the western side of the road, the encroachment being described as "part and parcel of Hargrave Green and wastes of this Manor". Further support for this inference is afforded by the tithe award in which the land comprised in the Register Unit, which has an area of slightly less than an acre, is included in one parcel with the road for about a mile to the north and is described as "Bury Road" with an area of about [illegible] acres.

Mr Cohen submitted that in these circumstances there is a presumption that the land comprised in the Register Unit is part of the highway and that there is nothing to rebut this presumption. This appears to me to be correct. It does not, however, necessarily follow that the land cannot also be a town or village green as defined in Section 22(1) of the Commons Registration Act 1965. While it would not be possible in law for the inhabitants of the locality to acquire a right to indulge in sports and pastimes on a highway, it would be perfectly possible for the highway to have been dedicated subject to a pre-existing right to indulge in sports and pastimes. In the absence of evidence to the contrary, the property inference is that the dedication of the land as a highway was subject to such a pre-existing right: see Hampson v Woodgate (1869), L R 20 E P 2[illegible].

It is therefore necessary to consider whether the evidence supports a customary right for the inhabitants of the locality to indulge in lawful sports and pastimes on this land. There was evidence from a number of witnesses that children had played games on this land during the whole period of living memory without asking for permission and without any objection from anybody. There was also evidence that adults had similarly played quoits on the land until the village hall was built in 192[illegible].

Mr Cohen submitted that there was nothing to show that such activities had been as of right. As to this aspect of the matter, the evidence is not strong. Mr D F C Pettit said that he did not consider the law when he was a child. Mr G F Cook said he accepted that he and others had a right to play on this land, but that he did not go into the legal question. Mrs P A Polter said that she thought that she had a right to play, though she never had to consider the legality. Similarly Mrs R B Woodroof said that she thought that it was their right,but she did not know about legality. Mr J F Fearnley said that he thought that people had a right to play on the land, but he was aged 21 when he came to live in Hargrave and so did not play himself. Mrs M P Sealey, now aged 86, who lived at Green Farm on the western side of the land in question, did not play there herself,but she remembered other children playing there, and she said that she thought that the villagers had a right to use it. As she put it: "Everybody used the Green as their own". Mr Cohen argued that this evidence showed no more than toleration and indulgence on the part of successive lords of the Manor, whose copyhold tenants surrounded the land.

If the successive owners of the soil of the land in question had been the only persons having a legal interest in the land, I should have felt inclined to regard this as another example of the tolerant attitude of landowners towards their neighbours which is fortunately a common feature of life in the English countryside. I must, however, bear in mind that the owners of the soil have not been the only interested parties. This is land over which the public at large has a right of passage, but they have no right to use it for any other purpose than as a highway. To use it for some purpose which is not an ordinary and reasonable use of the right of passage is not only a trespass against the owner of the soil, but also a common law nuisance, which is an indictable misdemeanour. To indulge in sports and pastimes on a highway is not an ordinary and reasonable use of the right of passage and so can only be justified, if at all, by the existance of some right other than the right of passage.

On the evidence in this case, there are thus two possible alternatives. Either there has been for the whole period of living memory a continuous succession of unlawful acts on this highway, or the highway was dedicated with the reservation that it could be used by the inhabitants of the locality for lawful sports and pastimes. Faced with a choice between these two possibilities, I can do no other than apply the principle of law commonly expressed in the maxim omnia praesumuntur rite esse acta and accept the second as correct.

I therefore find that the land in question falls within the definition of"town or village green" in Section 22(1) of the Act of 1965 by being land on which the inhabitants of the locality have a customary right to indulge in lawful sports and pastimes.

For these reasons I confirm the registration,Mr Shirreff asked me to make an order for costs should his clients be successful. This was opposed by Mr Cohen. I can see no reason why the Objector should not suffer the common fate of an unsuccessful litigant, and I shall make an order for costs to be taxed, if not agreed, on County Court Scale D.

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 April 1979

Chief Commons Commissioner