



In the Matter of The Village Green, Butts
Garth, Thormer

SUPPLEMENTAL DECISION

This Decision is supplemental to my decision dated 17 March 1981 as amended by me on 9 October 1981, which purported to give effect to an Agreement reached between the Applicant, Thormer Parish Council and the Objectors Mr and Mrs T N Balmer. This Agreement provided for registration of the land mentioned in the Entry in the Land Section except for any part used as a highway. There was no plan to indicate which part of the area shown on the register plan was regarded by the parties as highway.

This defect gave rise to uncertainty as to effect of a planning permission obtained by the Objectors for the development of the S.W end of their property, Butts Garth House. I therefore agreed to re-open the hearing and give a definitive decision as to which part of the land shown on the Register Map as part of the Village Green was covered by the terms of the agreement as not being part of the highway.

For this purpose I held a hearing at Bradford on 30 March 1983, which was adjourned at the request of the Solicitors for the Parish Council, Messrs Harrison of Leeds on the grounds that they were not ready to present their client's case. This was opposed by the Objectors but I allowed the application but reserved any questions of costs as there was insufficient evidence on which to give a decision as to the costs of the adjournment at the time.

The adjourned hearing took place at Leeds on 18 May 1983 when the Parish Council was represented by Mr T Halstead of Messrs Harrison Solicitors of Leeds and the Objectors were represented by Mr P Hunt of Counsel instructed by Messrs Batson Bates and Co, Solicitors of Leeds.

Opening his client's case Mr Hunt said that they moved into Butts Garth House in 1971. He produced two coloured photographs mounted on a sheet of paper which I have marked 'A'. These had been taken in March 1983 and the low wall had been built in 1955. The map attached to the application appeared to be a copy of the O.S. 1966 Edition. He produced three maps which were copies of maps enclosed in a letter from the Registration Authority to the Commons Commissioners dated 30 December 1982. The map marked 'A' was a copy of the O.S. 1906 Edition, that marked 'B' was a copy of the O.S. 1966 Ed. and the third marked 'C' showed the site as it was today. His submission was that in the Agreement made between the parties, 'highways' meant the highway as it existed at the date of the Agreement. The effect of the Agreement was that 'Village Green' and 'Highway' were mutually exclusive. Both parties must be taken to have known the state of the highway in 1981 when the Agreement was made.

Giving evidence Mr Thomas Neville Balmer said that he and his wife had lived at Butts Garth House since 1971. The 1966 Edition of the O.S. did not show the boundary between Butts Garth House and Orchard House in its present position. In 1967 the boundary was moved 35 feet nearer Orchard House i.e. in a S.W direction. Previously the boundary had been at the end of the privet hedge; now it begins at the fencing shown in the two photographs. Cars are frequently parked next to the low wall.



Since 1971 the County Council had levelled the surface at the road edge and put gravel on it.

Since 1971, the area south of the words 'Slaughter House' had been built over and is known as 'The Paddock'. The only means of access to The Paddock for vehicles is along Butts Garth. Farm vehicles and machinery go along Butts Garth on their way to Littlemoor Lane.

In 1981 he obtained planning permission to build two houses on the basis that access thereto was across the space between the end of the privet and the fence.

In cross-examination Mr Balmer said that Butts Garth was ~~used~~ used for access to The Paddock and a few farms in Littlemoor Lane. He was shown a folder, which I have marked 'B', containing five coloured photographs numbered 1-5. (These photographs had been taken by Mr Halstead on 3 May 1983 and were agreed). No. 2 shows that the land in front of the low wall is not part of the carriage-way.

In reexamination the witness said that the post there shown is on the road side of the low wall. The other post is by the gate. There used to be a fence between the two posts which had blown down in February 1983.

Mr John Rushworth who lived in Station Lane, Thorner, said that he had been in business in Thorner as an Estate Agent and Surveyor for the past 15 years. He was familiar with Butts Garth and had sold a property in that road. The road had not varied in the 15 years during which he had known it. The building of houses in The Paddock had increased the volume of traffic using the road. The houses were built in about 1970. On an average he would go through Butts Garth about once a week. The Highway Authority put crushed lime with muck on the road surface.

For the Parish Council Mr William Reed, who had lived at Penay Cottage, Butts Garth, since 1971 said that Photo No. 3 showed him cutting the grass outside his house.

In September or October 1982 he had seen Mr Balmer throwing into the middle of the road, soil and grass from the strip of land running alongside the low stone wall. Mr Balmer had said that he wanted to clear the base of the post so that he could creosote it. The surface of the strip was covered with grass and weed and was not in as good a condition as the adjoining grass.

He used to park his car beside the grass verge in front of the stone wall, about 3' 6" to 4' from the wall.

In cross-examination he said he had no objection to the houses which Mr Balmer proposed to build. He was annoyed at the road being made muddy in front of his cottage.

In 1971-76 the occupier of the house next to his used the garage by the sub-station.

Mr Stephen Walksley said that he lived at Norwood House, Thorner. He was a Farmer and had farmed at Garth Farm for the past 16 years. He would travel along Butts Garth several times each day.



On being shown photograph B2, he said that in the past there used to be more grass on the land in front of the stone wall than there is today. He had seen Mr Balmer digging there after the previous hearing. He was digging near the wall and putting the spoil in the road.

(The witness produced an ^{airial} ~~airial~~ photograph of the area taken by a commercial firm in about 1970 which I did not find of any assistance because of the density of the foliage on the trees.)

In cross-examination the witness said that his parents had lived in Orchard House since Christmas 1981. His father had farmed Garth Farm for 40 years. His parents were not anxious to have houses built next door to them. Other farmers have land in Littlemoor Lane. He farmed other land besides Garth Farm. He only kept a tractor at Garth Farm.

The metalled part of the road has been resurfaced several times.

In re-examination Mr Walmsley said that the wheel-base of his combine-harvester was narrower than the upper parts of the vehicle.

^{The father of the previous witness,}
Mr Kenneth Walmsley said he was aged 64 and had lived at the Orchard, Butts Garth since December 1981. He had farmed in the area for 55 years and had travelled up Butts Garth usually 3-4 times per day. On being shown photograph B2, he said that he had seen grass growing on the strip outside the low wall. The width tapered from 4ft-1ft. ~~Cattle being driven along Butts Garth road to cut the grass on the verge.~~

About 35 years ago he and three other farmers had made up the road surface. There was a manhole at the corner of Littlemoor Lane. Before the road was made up, it was a mud track with 5-6 yards of grass verge on either side. It was made up with railway stones. He did not know when the grass disappeared.

In cross-examination the witness said that he had dug out the grass from time to time. The limestone put on the surface of the road never touched the stone wall. It was not limestone and muck but 1 1/2" limestone wash that was used for resurfacing, the same as is used for roads. The Council had only mended the road on two occasions. The road when it was made up was moved away from the cottage. Cattle used to graze on the area in front of the stone wall when being driven along Butts Garth.

In re-examination Mr Walmsley agreed that some one could have interfered with the surface of the land in front of the stone wall without his knowledge.

Mr Halstead submitted that the highway did not include the strip from the end of the privet hedge to the gates into The Orchard. Mr Balmer had removed grass and weeds from the surface of the strip. There was no evidence that vehicles ran over the strip. Mr Hunt submitted that the evidence showed that the strip was part of the highway.

Although Mr Balmer said that in 1971 the County Council had levelled the surface of the road edge and put gravel on it; no witness was called to confirm this or to state what, if any, work had been done to the surface of the road since 1970. It is clear from photographs B3-5 that the surface of the disputed strip slopes down from the front of the wall towards the edge of the metalled surface.



No witness had any clear idea of when the grass had been removed from the surface of the disputed strip and no evidence was given as to when the low wall had been built. Photographs B4-5 indicate that farm vehicles are not driven over the surface of the disputed strip.

Mr Reed's evidence that Mr Balmer had recently cleared the surface of the strip of grass and weeds while preparing to creosote the bases of the wooden posts was not challenged.

Approaching the issue historically, I am of opinion that the whole of the area between the properties on either side of Butts Garth was a Village Green. At least from 1906 there had been a public right of way as shown on the Map marked 'A'. The width of this right of way may have been extended when a metalled surface was put down by Mr Kenneth Walmsley and others but that width did not include the surface of this disputed strip. In my view the burden of proving that the disputed strip had ceased to be part of the Village in 1981 and had become part of the Highway is on Mr and Mrs Balmer and they have not discharged that burden.

I will now deal with the question of the costs of the abortive hearing on 30 March 1983. So far as I can establish the relevant facts are that notice of that hearing dated 11 February 1983 was sent to the person to whom the first notice of a hearing had been sent in 1981, at his private address, as the Clerk to the Parish Council at the time. In 1983 he was no longer Clerk to the Parish Council and there was some delay in the Notice reaching the present Clerk.

On 11 March 1983, Mr Balmer's Solicitors wrote to Messrs Harrison's, who acted for the Parish Council, a letter which stated that the 'Commons Commissioner is to review this matter on 30 March 1983 in so far as all questions arising from the location of the road are concerned'. This letter was acknowledged on 14 March and on 24 March, Messrs Harrison's wrote that they had now obtained their client's instructions on the letter of 11 March and expressing a certain view of the legal position.

The only conclusion I can draw from this correspondence is that the person dealing with the matter on behalf of the Parish Council was or should have been aware that there was to be a hearing on 30 March before that letter was sent off and if the Parish Council or its Solicitors were likely to be in difficulty in getting the case ready for 30 March, they should have so advised Mr Balmer's Solicitors.

For these reasons I order the Parish Council to pay Mr Balmer the costs thrown away by the adjournment of the hearing on 30 March 1983 to be taxed on County Court Scale 4.

The statutory right of appealing against a decision will run from the date of receipt of this decision

*George Blackett
Commons Commissioner*

26 July 1983