



COMMONS REGISTRATION ACT 1965

Reference No.37/D/11

In the Matter of Abbey Green,
Battle, Battle R.D., East Sussex

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.VG.27 in the Register of Town or Village Greens maintained by the East Sussex County Council and is occasioned by Objection No.48 made by (1) The Trustees of the Battle Abbey Settled Estates and (2) Mrs. Evelyn Webster and noted in the Register on 30 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Lewes on 7 March 1973. The hearing was attended by Mr. Frederick William Wood in person and by the following six persons ("the Objectors") who were all represented by Mr. Matthew Horton of counsel instructed by Messrs. Stephenson Harwood & Tatham Solicitors of Saddlers Hall, Gutter Lane, Cheapside, London EC2, namely (1) Mr. Simon John Frederick Harbord (2) Mr. Anthony Dacres Hippisley Coxe (3) Mr. David George Price (4) Mr. Daniel Somerset Leggatt (5) Mr. Angus Kenneth Gordon and (6) Mrs. Evelyn Webster. Mr. Horton said that Mr. Harbord, Mr. Coxe and Mr. Price were the persons in the objection described as the Trustees of the Battle Abbey Settled Estates and that Mr. Price, Mr. Leggatt and Mr. Gordon are the present Trustees.

The registration was made pursuant to an application made on 14 June 1968 by Mr. Wood. The grounds of objection stated in the Objection Form (dated 15 September 1970) were as follows:- "The area coloured green ("the Market Green") on the accompanying plan forms part of the Market Green of Battle and is part of the property in ownership of the Trustees of the Battle Abbey Estate and Mrs. Evelyn Webster. The Market Green is not a "Town or Village Green" within section 22(1) of the Act for the following reasons:- (i) The Market Green has never been allocated by or under any Act of Parliament for the exercise or recreation of the inhabitants of Battle or any other locality and (ii) Neither the inhabitants of Battle nor of any other locality have a customary right established by judicial decision to indulge in lawful sports or pastimes on the Market Green and (iii) Neither the inhabitants of Battle nor of any other locality have indulged in such sports or pastimes as of right on the Market Green for a period of not less than 20 years." The area coloured green on the plan (1/500) accompanying the Objection is that similarly coloured on the Register map (1/10,560).

The land ("the Unit Land") comprised in this Register Unit is a triangular piece containing a little less than half an acre situate immediately to the north of the main gate into the grounds of Battle Abbey. It is bounded on the west by a main road (the A.21, being also the southern end of the High Street of Battle).

Mr. Horton in the course of his opening said:- The Unit Land has since 1929 been used as a car park. Although described as "Market Green" and "Abbey Green" in various documents it is no where called "Village Green". The Abbey had a franchise to hold a market or fair under a charter granted by King William I. The Unit Land has never been used for recreational purposes except with the consent of the Estate.



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Mr. Wood on being asked before any evidence was given to indicate the general nature of his case said (in effect):- The Unit Land cannot be used for sport. It should not have been turned into a car park. Planning permission was granted by the County Council (December 1970) to turn it back into grass; they (meaning who-ever turned it to asphalt) had done nothing about this, and it is clear that they have no intention of converting it to a Green, as it was 60 or 70 years ago (he produced a recent newspaper cutting showing a picture of the scene in the early 1900's). The Unit Land is open to the public to walk over as they like to get any where; it is therefore a public right of way. He (Mr. Wood) did not withdraw his application to register the Unit Land (under the 1965 Act), because he knew nothing would happen under the planning permission if he did so.

I summarise the evidence given by Mrs. Webster on behalf of the Objectors in the following paragraphs.

The Battle Abbey Estate in addition to the Battle Abbey grounds and lands held therewith include Powdermill House where Mrs. Webster now resides and various other lands and buildings. Under the will of Sir Augustus F. W. E. Webster Baronet ("the Testator"; he died 13 August 1923), the Estate was immediately before the deed next mentioned vested in his daughter Miss Lucy Webster in fee simple upon trust for her Miss Lucy Webster for life with remainder (on the footing that she had no male issue; she was born 2 September 1900 and was then and still is unmarried) for Mrs. Webster (another daughter of the Testator) for her life with the remainder for Mr. G. V. H. Webster (the eldest son of Mrs. Webster) in tail male. By a disentailing deed and resettlement ("the Principal Deed") dated 17 April 1969 it was provided among other things that certain lands therein specified should be held in trust for Miss Lucy Webster in fee simple and that the lands then let to Battle Abbey School Limited, and certain other lands including Powdermill House should be demised to Mrs. Webster for a term of 50 years terminable after her death by the lessors on notice. By a conveyance ("the 1969 conveyance") also dated 17 April 1969, supplemental to vesting deeds dated 14 March and 29 July 1926, Miss Lucy Webster conveyed the lands specified in the schedule to the Trustees in fee simple; the lands so specified included those intended to be demised to Mrs. Webster and in particular a piece described as follows: "15 Pt993. Market Green (Abbey Green). In hand. 0.465 est". By a lease dated 9 July 1969 the Trustees in accordance with the Principal Deed made to Mrs. Webster the demise as therein provided.

Mrs. Webster said:- Her interest in the Estate under the 1969 lease was in lieu of her interest as a hereditary tenant for life. The Estate had been in her family since her ancestor Sir Thomas Webster early in the eighteen century purchased it from Lord Montague. In 1848 the Estate was sold to the Duke of Cleveland with a proviso that her father, the Testator should have first refusal; under this proviso, he repurchased the Estate after the death of the Duchess of Cleveland in 1901, and it was conveyed to him by an indenture ("the 1902 Indenture") dated 29 April 1902.

By the 1902 Indenture the lands conveyed to the Testator were described as "ALL ... the Manors ... of Battle, Aymerhurst, and Stone ... and ALL THAT ... mansion house of Battle ... otherwise Battle Abbey ... with the lawns pleasure grounds ... and the Park ... called Battle Parks and the right to levy tolls for all booths or tents pitched or cattle tethered in or upon the Market Green of Battle aforesaid as far as such right is now vested in the said Francis William Forester and the ... land and hereditaments containing by admeasurement three thousand six hundred and sixty six acres three roods and twenty eight perches ... as delineated on the plan ... and



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described in the Schedule ...". The Schedule included the "Abbey Ruins grounds stabling etc. and the old Market Green" and the delineation on the plan included the whole of the Unit Land and some of the land which now surrounds it.

By a deed ("the 1929 Deed") dated 18 July 1929 and made between (i) Miss Lucy Webster (ii) Sir T. H. C. Troubridge and Mrs. A. S. R. Askwith ("the Trustees") and (iii) the Urban District Council of Battle ("the Council") after reciting (among other things) that the Trustees were trustees of the Settlement created by the will of the Testator, that the Battle Abbey Estate included "the Manor of Battle and the Market Green" at Battle, that in or about October 1926 Miss Lucy Webster erected a row of low posts connected by chains along the East side of part of the said Green, that in October 1926 Miss Webster erected three Notice boards and the Council caused the same to be removed, that on 17 November 1926 Miss Webster and the Trustees commenced an action in the High Court of Justice against the Council asking for an injunction and damages in consequence of the removal of the said Notice boards and that the Council delivered in such action a defence and counter-claim "in which they claimed that portions of the said Green were public carriageways and that the Green was waste of the said Manor and a Town or Village Green", it was by the 1929 Deed witnessed and agreed (among other things) as follows:- "2. The portion of the said Green shown on the said plan thereon coloured green shall (subject to tolls as hereinafter mentioned) be an unenclosed parking place for vehicles ... 3. PROVIDED that the owner or owners for the time being of Battle Abbey Estate (hereinafter called "the Estate Owners") shall be entitled to collect tolls in respect of all vehicles parking in the said parking place ... 6. PROVIDED ALWAYS that nothing herein contained shall prejudice or affect the existing right of the Estate Owners with reference to the holding of the Annual Pleasure fair on the said Green or to the exaction of tolls in respect of such fair to be held on the said Green or else where or to authorise the use of any part of the Green for any other purposes or to make charges for such use so long as such purposes shall not interfere with the said carriageways as highways ..."

Mrs. Webster mentioned the following occasions when the Unit Land had been used with her consent for recreational purposes:- Annually for a bonfire by the Boys of Battle (an association of which she is the president). Meets on Boxing Day of the Fox Hounds. Twinning celebrations: Battle is a twin town of St. Valerie, in Picardy, the point from which King William I sailed in 1066. Morris dancers. The week of festivities on the coronation of H.M. the Queen; these festivities included a mediaeval scene during which she rode down with a large retinue to visit "the Abbott".

Mrs. Webster remembered the Abbey Green when she was a child (she is now 68 years of age); on her marriage she left the village but returned in 1934/35 and lived at Powdermill House (about a third of a mile away from the Unit Land). Ever since 1934 she has acted in all local matters on behalf of her sister Miss Lucy Webster.

Mrs. Webster had applied for the planning permission mentioned by Mr. Wood. In the middle of the car park on the Unit Land there is or was a hole surrounded by paving steps known as the Bull Ring. She had never seen the Bull Ring used for any purpose. The application was to remove the surface of the car park (in part only was the intention), make good with soil, plant grass, provide kerb, enlarge area of the Bull Ring and provide a path; the purpose being amenity space. The delay in doing work in accordance with the permission was because the expense would be more than she originally contemplated.



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I summarised the evidence given on behalf of the Objectors by Mr. James Woodhams (he is a chartered surveyor and land agent, is aged 57 years, was born in Battle and has apart from war service lived there all his life) in the following paragraphs.

His firm for many years acted as agents to the Battle Abbey Estate. He had always regarded the Unit Land as correctly described as "Market Green, being at one time a place where the Lord of the Manor (the Lordship being part of the Estate) held the market. He referred me to the Victoria History of Sussex Volume 9, the Rape of Hastings 1937 at pages 101 102: the author after mentioning charters attributed to William I granting a right to hold a market, said:- "In 1670 a cattle market was established in Battle to be held every second Tuesday in the month ... Fairs were formerly held on Whit-Monday and on 22 November and the two following days but the Whitsun one was abolished in 1875".

A cattle market was held at Battle ever since he Mr. Woodhams could remember; during his lifetime it was in or near the High Street. His firm conducted the auction and they had records for many years. The cattle auctions were discontinued in 1967.

The Unit Land was asphalted over after the 1929 Deed. Since the 1939-45 war, it has been used to capacity as a car park. When he Mr. Woodhams was young the Bull Ring was considered to be lost; it was unearthed in 1929.

In connection with the market a fun fair was also held. The showmen obtained permission from the Lord of the Manor (meaning the Estate) by applying to his firm and they were always charged a toll; so much for a shooting gallery, cocoanut shy, fish pond, etc and more for a roundabout. As a result of the asphaltting in about 1934, the Unit Land became less attractive to showmen and the Fun fair ceased practically altogether in 1939. However in 1948 a showman, Mr. Matthews, pulled off from the Green, insisting he had a right to do so; Mr. Woodhams arranged a meeting between representatives of his firm and the solicitors for the Estate and the Secretary of the Showmen's Guild and Mr. Matthews, and as a result of the meeting, Mr. Matthews accepted that he had no rights.

From time to time his firm on behalf of the Estate had given permission for various functions. The inhabitants had never used the Green for lawful sports and pastimes as of right; it was too small for cricket or any organized games.

At the conclusion of the evidence given by Mrs. Webster and Mr. Woodham, Mr. Wood stated he did not wish to give evidence (although as below mentioned he subsequently did so on the question of costs) and had already said all he wished to say.

I am concerned to determine whether the Unit Land is within the definition of a "town or village green" contained in section 22 of the 1965 Act.

As to the first part of the definition:- I find that the Unit Land was never allotted under any Act of Parliament for the exercise or recreation of the inhabitants of any locality. There was no evidence upon which I could base any such finding.



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As to the two other parts of the definition:- The 1929 Deed is I think a strong indication that the inhabitants of Battle had no customary right to indulge in sports and pastimes on the Unit Land; at that time the question whether there was any such right was directly in issue; the Council compromised on terms precluding them from ever claiming that such a right had ever existed. I accept the evidence of Mrs. Webster and Mr. Woodhams. The subsequent use of the Unit Land as described by them was entirely inconsistent with there being any such customary right. The Council were under a duty to consider whether any evidence was available to establish any such right, and I have no reason to suppose that they did not perform this duty. Any indulgence in sports and pastimes by the inhabitants of Battle or elsewhere on the Unit Land as described in any of the evidence before me, was I think not "as of right" within these words as used in the definition.

Although the above quoted description of the Unit Land as "the Market Green" or "the Abbey Green" might in the absence of other evidence provide some indication that the Unit Land was within the definition, these descriptions having regard to the evidence given by Mrs. Webster and Mr. Woodhams, I think indicate no more than that the Unit Land was used for market purposes or belonged to the Abbey.

I reject the suggestion made by Mr. Wood that those who adopted this description of the Unit Land when drafting the Principal Deed and the 1969 Conveyance had in mind the registration under the 1965 Act. I also reject the suggestion made by him in a letter dated 13 December 1971 that the High Court Judge who approved the Principal Deed and the 1969 Conveyance (the Court's approval was necessary for reasons which I need not mention) would have been under the impression that the Unit Land was a village green within the meaning of the 1965 Act; the status of the Unit Land under such Act would have been entirely irrelevant to any matter requiring his consideration. I accept the statement made by Mrs. Webster that during the discussion leading up to the Principal Deed and the said High Court proceedings, she (being the person most responsible on behalf of her sister, her son and herself) either did not know of or altogether overlooked the registration.

I also reject the suggestion made by Mr. Wood that Mrs. Webster in making the said application for planning permission was in some way influenced by the registration or that such application indicates that she either was or thought she was under an obligation to grass over the Unit Land as it was before it was asphalted.

I consider that the indications in the evidence before me that the Unit Land is not within the definition far stronger than any indications to the contrary (I have mentioned above all contrary indications either expressly or impliedly put forward by Mr. Wood) and I accordingly find that the Unit Land is not properly registerable under the Act and I therefore refuse to confirm the registration.

Mr. Horton submitted that Mr. Wood should be ordered to pay the costs of the proceedings on County Court scale 3. On this question Mr. Woods gave evidence, and was cross-examined by Mr. Horton.

Mr. Wood on 11 June 1968 when he applied for registration of the Unit Land had lived about a mile away in Battle for about 10 years. He was unable to specify apart from marbles any sport or pastime for which he had seen the Unit Land being used and agreed that it had never been grass at any time he had known it. As I understood him, he applied for registration because he considered the Unit Land should be grass.



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Following the objection, Mr. Wood had some correspondence with the solicitors for the Objectors. He said that his case for maintaining the registration was as he had set out in the said letter of 13 December 1971. The strongest point in the letter was: ~~that~~ the above quoted description of the Unit Land in the 1969 Conveyance. Mr. If Wood wished to rely on a few words in a legal document executed after he made his registration, he should I think have made a far greater effort than he did to understand its purpose and the circumstances in which it was made.

In my view Mr. Wood never had any reasonable ground either for making or maintaining the registration, and I shall therefore order him to pay the costs incurred by the Objectors in respect of these proceedings except so far as such costs have been increased by Mr. Price, Mr. Legatt and Mr. Gordan having since 15 September 1970 (the date of the objection) succeeded Mr. Harwood, Mr. Coxe and Mr. Price as trustees of the Battle Abbey Estate and I shall direct that such costs be taxed according to Scale 3 prescribed by the County Court Rules 1936 as amended.

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 20 ~~th~~ day of June 1973

a. a. Baden Fuller

Commons Commissioner