



COMMONS REGISTRATION ACT 1965

Reference No.16/D/23

In the Matter of Fears Green,
Kelshall, Hertfordshire (No.2).

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.183 in the Register of Common Land maintained by the Hertfordshire County Council and is occasioned by the conflicting registration at Entry No.1 in the Land Section of Register Unit No.V.G.78 in the Register of Town or Village Greens maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Hertford on 17th January 1973. The hearing was not attended by any person entitled to be heard.

The registration in the Land Section of Register Unit No.C.L.183 was made pursuant to an application made by Mr. W.T.C. Roden. The conflicting registration was made by the Kelshall Parish Meeting and relates to only a part of the land included in Register Unit No.C.L.183 and has therefore to be treated as an objection to C.L.183 only to the extent of the conflict. Nevertheless, the fact that an objection has been made to the registration has prevented the registration's becoming final under section 7 of the Commons Registration Act 1965. Therefore the reference under section 5(6) of the Act embraces the whole registration. It is accordingly my duty under section 6(1) of the Act to inquire into the whole matter which has been referred to me.

So far as the land which is included in both C.L.183 and V.G.78 is concerned, the only evidence which I have consists of the two statutory declarations which were made in support of the two registrations. These statutory declarations are mutually contradictory and I can see no reason for accepting that in support of C.L.183 and rejecting that in support of V.G.78. I therefore find myself in the position of being unable to confirm this registration in so far as it relates to the land included in the conflicting registration.

I am now faced with the problem of how to deal with the parts of C.L.183 which are not the subject of the conflict. Had Parliament intended that a part of a registration to which there was no objection should automatically become final, provision to that effect could have been included in section 7 of the Act. In the absence of any such provision, I cannot confirm the undisputed parts of the registration without some reason, however slender, for saying that the land within them falls within the definition of "common land".

To this extent this case is similar to In the Matter of West Hanney Village Green (1972) 2/D/1. In that case there was an objection to a comparatively small part of the area comprised in the registration. Having found that the area in dispute did not fall within the definition of "town or village green", I dealt with the remainder of the land on the footing that the fact that there had been no objection in respect of it indicated that everybody concerned was content that it should be registered as a town or village green. I then exercised my discretion by confirming the registration with the modification



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that only the land the subject of the objection was to be excluded, even though I was not satisfied that any of the land comprised in the register unit was a town or village green.

I find myself unable to take a similar course in the present case because I am not merely not satisfied that the pieces of land in question are common land, but I feel satisfied that they are not common land. There is a scintilla of evidence that the pieces of land now under consideration are common land in the statutory declaration made in support of the registration. On the other hand, it would be unrealistic not to take into consideration the evidence afforded by the Register Map, which is based on the Ordnance Survey. This shows the pieces of land in question to be long narrow strips along the sides of a road and divided by hedges or fences from the adjoining fields. The road is the most direct route between the villages of Kelshall and Sandon and I feel entitled to draw the inference that it is a highway. There being no evidence to rebut the presumption that all the land between the fences is part of the highway, I feel driven to the conclusion that the pieces of land in question are excluded from the definition of "common land" in section 22(1) of the Act of 1965 by forming parts of a highway.

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 29th day of February 1973

Chief Commons Commissioner