



In the Matter of Gatacre Green, Gatacre,
Merseyside

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 2 in the Register of Town or Village Greens maintained by the Merseyside County Council and is occasioned by Objection No. 1 made by the former Liverpool Corporation and noted in the Register on 4 November 1968.

I held a hearing for the purpose of inquiring into the dispute at Liverpool on 24 June 1983. The hearing was attended by Mr W G Richards, the applicant for the registration, Mr P Rhodes, Solicitor, on behalf of the Liverpool City Council and Mr V A Kay of the Conveyancing Department of the Merseyside County Council.

The land comprised in the Register Unit is situate at the junction of Grange Lane and Gatacre Brow. The earliest evidence relating to it is contained in the inclosure award dated 15 February 1813 made under the Childwall, Great Woolton and Little Woolton Inclosure Act of 1805 (45 Geo. III, c. 1x), in which it was numbered 45 and described as part of the commons in Little Woolton and was set out and allotted to Ellen Ryding, it being directed that the fences along the sides of the roads should be made and for ever afterwards be kept in repair by the owners of the land.

There is nothing in the Act of 1805 or the award allotting the land for the exercise or recreation of the inhabitants of any locality, so it cannot fall within the first limb of the definition of "town or village green" in Section 22(1) of the Commons Registration Act 1965. Furthermore, the award makes it clear that in 1813 the inhabitants of the locality cannot have had a customary right to indulge in lawful sports and pastimes on the land so as to bring it within the second limb of the definition. It therefore only remains for me to consider whether the inhabitants of the locality have indulged in such sports and pastimes as of right for not less than twenty years so as to bring it within the remaining limb of the definition.

It appears that the fences along the sides of the road required by the award of 1813 were never made, so that the land remained open to the roads.

In March 1876 the land was conveyed to Andrew Barclay Walker, being described in the parcels of the indenture of conveyance as "formerly part of the common or waste of Little Woolton".

There is no record that it was ever known as a village green until 21 August 1883, when there was published in the Liverpool Mercury a letter in which the writer complained about the aesthetic qualities of a memorial fountain which was being erected on the "village green" at Gatacre.

Andrew Barclay Walker was knighted in 1877 and was created a baronet in 1836. At some time before 1887 he had enclosed the land with a railing and planted it with shrubs, since when it had been called or known as Gatacre Green. By an indenture made 24 May 1887 Walker conveyed the land to the Local Board of the District of Little Woolton as a gift to commemorate the Golden Jubilee of Queen Victoria to be held as a public walk or pleasure ground within the meaning of section 154 of



the Public Health Act 1875. When the deed of gift was presented, the Law Clerk of the Local Board read out an address thanking the donor for his gift of the "Village Green with its tasteful planting and sward which has secured to Gatacre a healthful open space in the most crowded part of the village and a quiet resort where the older inhabitants may rest in the summer evenings among trees and flowers". At a meeting held on 6 June 1887 the Local Board requested the Law Clerk to draw up regulations for the protection of the Green. As a result of successive reorganisations of local government the Green is now held by the Liverpool City Council.

Since Sir Andrew Barclay Walker's gift in 1887 the land has been known as Gatacre Green and sometimes as Gatacre Village Green. While the description of land as "X Green" for a long period can sometimes be regarded as some evidence that it has been a village green from time immemorial, such a description is of no assistance in the present case, where its origin is certainly known. What has to be sought in this case is evidence that the inhabitants of the locality have indulged in lawful sports and pastimes on the land as of right for not less than twenty years.

There is clear evidence going back to 1913 of children living in Gatacre playing on the Green games which could be dignified as "lawful sports and pastimes". This leaves for consideration whether these children were playing their games "as of right". In my view, they were not. They were on the land as members of the public using a public walk or pleasure ground subject to the regulations made by the local authority and to the powers which that authority has in relation to public walks and pleasure grounds under section 44(1) of Public Health Acts Amendment Act 1907, section 76 of the Public Health Acts Amendment Act 1907, and section 69(1) of the Public Health Act 1925, including powers of letting, building, closing, and charging for admission, which are quite incompatible with a right of a limited class of persons to use the whole of the land at all times without any restriction. It cannot, therefore, be said that the land falls within any of the three limbs of the definition of "town or village green" in Section 22(1) of the Act of 1965.

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

12th

day of

July

1983

Chief Commons Commissioner