



COMMONS REGISTRATION ACT 1965

Reference No. 64/D/1

In the Matter of Kings Norton Village
Green, Kings Norton, Birmingham City,
West Midlands.

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 West Midlands County Council (formerly the Birmingham City Council) and is occasioned by Objection No.2 made by the Lord Mayor Aldermen and Citizens of the City of Birmingham and noted in the Register on 17 April 1969.

I held a hearing for the purpose of inquiring into the dispute at Birmingham on 2 October 1975. At the hearing West Midlands County Council were represented by Mr M. P. Blamire-Brown solicitor with the Council, and Dr R. J. Hetherington on whose application the Entry was made, attended in person.

The land ("the Registered Land") now comprised in this Register Unit is approximately triangular with sides about 110, 130 and 160 yards long, situate (for the most part) north of and including the road through the middle of Kings Norton from Rednal and Longbridge to Solihull and situate south of St. Nicolas Church. The Registered Land includes six pieces of grass land with trees on them, one ("the Central Piece") being much the largest approximately triangular and bounded by the said through road, and two other roads, and the five others being on the northwest, west, southwest, south and southeast side of the Central Piece and separated from it by one of the before mentioned roads. The remainder of the Registered Land is either maintained roadway or maintained footway or unadopted roadway or unadopted footway, and having in one or two places a tree growing on it. Mr Blamire-Brown said that the County Council supported the objection as successors of the City Council. The grounds of objection are: "That the land shown coloured red on the annexed plan was not part of the Town or Village Green of Kings Norton at the date of Registration"; coloured red on the plan is the whole of the Registered Land except the Central Piece and four of the other five smaller pieces of grassland (the fifth not excepted from the Objection being the southeast piece) and except possibly two very narrow strips (at the hearing not particularly mentioned being I suppose practically unimportant) east of the west and southwest piece.

Dr Hetherington who represented the Northfield Conservation Group (the Northfield Survey Group on whose behalf Dr Hetherington made his application, began as a local history society interested in Northfield, later extended their interest to Kings Norton and were recently taken over by the Northfield Conservation Group who have wider interests) in the course of his evidence produced:- (1) a copy of part of the Tithe Apportionment Award 1843 and the map referred to, (2) a copy photo of the north end of the Registered Land (with the Church in the background) as it appeared in 1890, (3) four picture postcards showing various views of the Registered Land about 1905 - 10, (4) a copy of the Scheme made on 9 June 1909 by the Kings Norton and Northfield Urban District Council under the Commons Act 1899 for the laying out and improvement of Kings Norton Village Green, (5) a printed History of and Description of Birmingham Public Parks Gardens and Recreation Grounds by R. K. Dent (1916), (6) the O.S. map 1936 edition, and (7) a recent photograph of the north end of the Registered Land (with the Church in the background).



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Mr J. W. Turner who is Senior Legal Executive in the Solicitors Department of the Birmingham District Council in the course of his evidence produced:- (1) a conveyance dated 30 April 1901 by which after reciting (among other things) that under a settlement dated 16 November 1887, the Manor of Kings Norton was then settled land under which Mr G. W. Taylor was beneficially entitled in possession, and reciting that the pieces of land coloured red on the plan drawn thereon were "waste of the said Manor of Kings Norton and as to the greater portion of them constituted or are regarded as constituting the Village Green at Kings Norton", it was witnessed that Mr G. W. Taylor conveyed to the Kings Norton Urban District Council the said several pieces of land "upon trust that the Council shall lay out the said several pieces of land or so much at least of them as consist of or make up the said Village Green as a Recreation Ground and do and shall always keep all the said parcels of land expressed to be conveyed under proper control ..."; (2) an order dated 3 April 1905 by Worcester County Quarter Sessions pursuant to the Highways Act 1835 that the old highway across the Kings Norton Village Green be diverted in the manner described in the certificate therein referred to; (3) a copy of a plan in 1908 sent to the Minister of Agriculture showing the diversion and (4) a press cutting from a September 1975 Birmingham Post showing the 1890 and recent photograph produced by Dr. Hetherington.

Mr J. L. Mellor who is the Area Engineer for the West Midlands County Council, produced a plan of the Registered Land showing who was responsible for the maintenance of the roads and paths which he had prepared from old records and after consulting the Divisional Surveyor for the Area; he thought that the road across the south side of the Registered Land was part of an old Turnpike Road.

Mr P. Whatley, who is the Civil Engineer with the West Midlands County Council, explained the highway improvements which those considering the matter on behalf of the Council had in mind.

Mr Blamire-Brown in support of the Objection relied on the 1901 conveyance and the 1905 order. The land coloured red on the plan on the conveyance (except for a Y shaped piece) is the same (in places a little more or less) as the Central Piece and the south, southwest, west and northwest pieces of grassland above mentioned. Objection was not taken to the Y shaped piece because the 1908 plan shows it to have been the road which was by the 1905 order diverted, so the site became part of Kings Norton Village Green as it now appears in the recent photograph.

Dr. Hetherington contended first that the Objection was unnecessary and should therefore be disregarded, because the 1909/^{Scheme} refers expressly to highway, and expressly states that it shall not affect their lawful use, should therefore be read as including all the Registered Land, and because the 1965 Act does not prejudice highway rights. He referred me to section 10 and to P. G. Langdon-Davies' book on the Act.

In my view apart from the 1965 Act, there is no legal reason why land should not at the same time be a public highway and also subject to customary rights for the inhabitants to indulge in sports and pastimes on it. Although the 1965 Act definition of "common land" excludes highways, there is no such exclusion in the definition of a "town or village green"; so land may for the purposes of the Act be town or village green and highway. To this extent I agree with Dr. Hetherington. Nevertheless in my view a highway authority may get some advantage by successfully objecting to land which is highway being registered as a town or village green, because if land is both highway and town or village green questions may arise as to whether the recreational rights of local the inhabitants are subject to the highway rights of the public or conversely.



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Further I am concerned only to determine whether on the facts and law applicable the Objection is valid, and I see no reason for criticising the Council's motives merely because the result may be that part of the Registered Land will be less available for the local inhabitants and more available for a larger section of the public.

Dr. Hetherington contended secondly that the objection was historically unsound. The whole of the Registered Land must have been an open space from time immemorial: all Village Green. Kings Norton is mentioned in Domesday; the Church has Norman work. There is a charter of 1616 for a Saturday market and for two fairs in the year. The Registered Land was not included in the Inclosure Award (? 1774). The 1843 award describes it as "2378 Kings Norton Green and roads 2.3.12". He referred me to a statutory declaration made by Mr G. A. Hemus on 22 May 1967, and to Hunter on Preservation of Open Spaces (1898).

In my view although historical considerations are of great importance when considering the operation of the 1965 Act, they are not in all cases decisive. It may be that at one time it mattered not which parts of the Registered Land were waste land of the Manor, were subject to customary rights for the inhabitants to indulge in sports and pastimes, were common land or were highway. Under the 1965 Act, all I have to determine is whether the land edged red on the Objection plan is within the 1965 Act definition. The map attached to the 1843 Award shows the Registered Land as divided by roadways and in the Schedule it is included under a group headed "public roads and waste"; evidently the Valuer who made the Award did not consider (there was no reason why he should) the exact legal status of the Registered Land. And I have no reason for supposing that its status was considered when the Award (? 1774) was made inclosing the surrounding land. But when the 1901 Conveyance was made the legal status of the Registered Land was directly relevant and appears to have been considered; I am not persuaded by anything said by Dr Hetherington that those then concerned must have made a mistake; in my view the evidentiary value of the 1901 conveyance is high. It proceeded on the basis that the pieces of land thereby conveyed were then waste land of the Manor and were then all constituted or regarded as constituting the Village Green. I conclude that this was the position in 1901 and apart from the alteration affected by the 1905 order nothing has since happened to subject the land surrounding the pieces thereby conveyed to recreational rights such as are specified in the 1965 Act definition of a town or village green.

It was not disputed that the Central Piece, and the south, southwest, west and north-west pieces of grassland were properly registered under the 1965 Act; notwithstanding that I had little or no evidence that they were properly within the definition, I can I think properly conclude that their registration was in order.

For the above reasons I confirm the registration with the modification that there be removed from the register the land shown coloured red on the plan annexed to the Objection.

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 9th day of October 1975

a. a. Baden Fuller

Commons Commissioner

correct
a. a. Baden Fuller
6 Jan 1976

correct
a. a. Baden Fuller
Jan 1976