COMMONS REGISTRATION ACT 1965 Reference No. 204/D/49

In the Matter of Midsummer Green or Jesus Green and Butts Green, Cambridge, Cambridgeshire (No. 1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 59 in the Register of Common Land maintained by the Cambridgeshire County Council and is occasioned by Objection No. 81 made by Miss E Mitchell and noted in the Register on 11 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Cambridge on 18 February 1982. The hearing was attended by Mr D G Hopkins, Solicitor, on behalf of the Cambridge City Council, the successor authority of the former Lord Mayor, Aldermen, and Citizens of the City of Cambridge, the applicants for the registration at Entry No. 1 in the Rights Section of the Register Unit and by Mr D C F Hutchinson, Solicitor, on behalf of the Objector.

The registration was made by the former Cambridgeshire and Isle of Ely County Council, as registration authority, without application. The land comprised in the Register Unit is described as "Midsummer Green or Jesus Green and Butts Green.....containing 33.7 acres or thereabouts" and is shown on the Register Map.

It is stated in the Objection that "the detailed description, map and acreage as referred to as 'Midsummer Green or Jesus Green and Butts Green' is inaccurate and misleading" and that the registration should be amended so as to contain 63 acres or thereabouts shown on an attached map.

The land shown on the Register Map lies to the east of a road known as Victoria Avenue, while the land shown on the map attached to the Objection includes additional land to the west of Victoria Avenue. The Ordnance Survey map which was used as the base for the Register Map has on it the word "Midsummer" to the west of Victoria Avenue and the word "Common" to the east, the words "Jesus Close" to the west, the letters "But" to the west and the letters "t Green" to the east. It would therefore not be surprising if someone reading the description "Midsummer Green or Jesus Green and Butts Green" in isolation were to think that the description related to land on both sides of Victoria Avenue, though it would become apparent that such was not the case if the area of 33.7 acres and the Register Map were also taken into consideration.

The Objector claims that she was misled by a notice which appeared in the Cambridge Evening News on 16 April 1970. This notice was headed "Common Land and Town or Village Greens - Provisional Registrations and how to object to them" and stated:-

> "The Register of Common Land.....for this registration area, containing all registrations made under the Act.....are available for inspection free of charge at the [Cambridgeshire and Isle of Ely County] Council's office at Room 34, Shire Hall, Castle Hill, Cambridge, between the hours of 9am and 5pm on working days".

"A table giving brief information about registrations made after 30 June 1968 is at Annex B below. In addition, each local authority other than the Council has available for inspection copies of all registrations affecting land in its own area".

Annex B to this notice contained the following entry:-

"City of Cambridge Midsummer Common and Butts Green".

The notice was given in accordance with reg. 3 (2A) of the Commons Registration (Objections and Maps) Regulations 1968 (S.I. 1968 No. 989), as amended by the Commons Registration (Objections and Maps) (Amendment) Regulations 1970 (S.I. 1970 No. 384).

The Objector's case is that on reading this notice she assumed that the registration included the land on both sides of Victoria Avenue and that she remained under this impression until she discovered that she was mistaken shortly before she made the Objection on 24 May 1972, by which time it was far too late to apply for the registration of further land as common land.

My attention was drawn to Smith v East Sussex County Council, (1977) 76 L.G.R. 332 in which Templeman J. said that it must have been the intention of the Regulations that the brief description of registered land should alert or, at any rate, should not quieten any fears on the part of landowners and their neighbours and friends. That case, however, differed from the present case in that the misdescription of the land resulted in no objection being made, so that the registration became final, and Templeman J. granted a declaration that the registration had not become final.

In this case the registration has not become final, so that I have jurisdiction under Section 6 of the Commons Registration Act 1965 to confirm it with or without modifications or refuse to confirm it. The Objector does not, of course, want me to refuse to confirm it, but asks me to confirm it with the modification of adding to the land comprised in it land on the west side of Victoria Avenue. In my view, the addition of land to a register unit is not a modification which is authorised by Section 6 of the Act of 1965. The Act provided only for the registration of land in the prescribed manner, and Section 1(2)(a) states that after the end of such period as the Minister may prescribe no land capable of being registered under the Act shall be deemed to be common land unless it is so registered. The prescribed period ended on 31 July 1970 (Commons Registration (Time Limits) (Amendment) Order 1970 (S.I. 1970 No. 383). It is thus far too late to register the land to the west of Victoria Avenue as Common Land. I may also add that even had there been no such time limit as that provided for by Section 1(2)(a) of the Act, I should refuse to add land to a registration because that would by-pass the provisions of the Act which give a right of objection in a case in which it is sought to register land as common land. There could be persons who would wish to object to the registration of the additional land, and there is no machinery provided by the Act for discovering whether there is any such objection and still less for giving effect to it.

For these reasons I confirm the registration without any modification.

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 2nd day of March 1982

Chief Commons Commissioner