



In the Matter of The Green, Blaby Parish,  
Blaby District, Leicestershire

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DECISION

This reference relates to the question of the ownership of land known as The Green (an open space north of and adjoining Wigston Road and east of The Baker's Arms), Blaby Parish, Blaby District being the land comprised in the Land Section of Register Unit No CL. 7 in the Register of Common Land maintained by the Leicestershire County Council in which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference, the clerk of Blaby Rural District Council said (in effect): Dr J N G Drury who lives at Newark House, Chapel Street and others having properties abutting on the land have or may have access over it; some years ago his Council had some inconclusive correspondence with the County Council as to whether the land was highway; the land was then surfaced with tarmacadam, had the appearance of forming part of the highway, and was used for the parking of vehicles. No person claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Leicester on 20 July 1976. At the hearing Blaby District Council were represented by Mr J L Munby of counsel instructed by Bilson & Sharp, Solicitors of Leicester, and Blaby Parish Council were represented by Mr Cecil H Ward, their clerk.

The land ("the Unit Land") comprised in this Register Unit is approximately rectangular, being about 80 yards long and 70 yards wide, and is in an important part of the Village a little to the north of All Saints Church.

In the course of the hearing the following documents were produced: (1) a report dated June 1976 made by the District Council Planning Officer outlining the proposals for a Conservation Area (a large area which includes the Unit Land); (2) a draft (not yet completed) of a Scheme intended to be made under the Commons Act 1899; (3) a letter dated 26 July 1972 from Dews Welham & Co, solicitors of Leicester setting out the result of their researches into the history of the Unit Land and legal considerations applicable; and (4) Blaby Official Guide 1970-71 including a brief history of Blaby.

Mr Munby said that the District Council have no evidence of ownership, and do not claim ownership.



Mr Ward who was born in the Parish in 1905, has lived there ever since, and has been clerk of the Parish Council for 39 years said that the origin of the Green is very obscure. He suggested that under the Inclosure Act 1845, it became vested in Rector and Churchwardens (? the Churchwardens and Overseers) and by the operation of the Local Government Act 1894 and the Overseers Order 1927, the ownership passed to the Parish Council; alternatively he suggested that it is expedient that the ownership should be in the Parish Council. On my expressing doubts as to these suggestions, he gave evidence as to his knowledge of the Green to the following effect:- As he first remembered the Green, it was a muddy area on which from time to time children at the nearby Church of England School used to play; when he was there, there were about 100 children and they had no playing fields; at that time Blaby had a population of about 800 (now about 7,500). He understood that before his time the Green has always been used by the parishioners of Blaby for all kinds of celebrations and functions, and he had found a minute in the Parish Council Minute Book recording that at a meeting on 8 March 1905 it was considered the opportune time to improve the entrance to the Green from Northfield Road and that Mr J Turner was asked to allow a strip of his land to be used for that purpose. He also understood that the Green was used for the celebrations associated with the Golden Jubilee and Diamond Jubilee of HM Queen Victoria and the Coronation of HM King Edward VII and he remembered the celebrations there on Armistice Day 1918. He also remembered wakes and fairs (roundabouts and stalls) being held there for some years. On the west side of the Green stands The Baker's Arms (a public house reputed to have originated in the 14th Century) and the old bakery buildings; until about 3 years ago there were cottages on the north side and a factory and cottages on the east side. During the last 10 or 15 years the Green has been used as a free area on which cars and lorries can be parked and the land has been tarmacaded (as it now appears). The District Council and the Parish Council are now and have for some little time past been working together for the improvement of the Green; the District Council recently acquired the lands on which factory and the cottages used to stand and have demolished the buildings, so that land on the north and east of the Unit Land now appears derelict; however it will all look different when the development now proposed is completed and as part of this the scheme under the 1899 Act for the management of the Green is now under consideration by the Department of the Environment.

Village greens are by section 15 of the Inclosure Act 1845 preserved from inclosure under such Act. Section 12 of the Inclosure Act 1857 imposes penalties on persons doing things which are a nuisance on a village green and authorises any churchwarden or overseer to take proceedings. Section 29 of the Commons Act 1876 provides that any encroachment or disturbance or interference with a village green shall be deemed a public nuisance. However I can find nothing in these Acts which vests the ownership of a village green in the churchwardens and overseers in the way suggested by Mr Ward; and much of the 1965 Act appears to be on the basis that there is no rule or presumption in favour of a village green being owned by a parish council or having been owned by their predecessors the churchwardens and overseers. Accordingly I reject the first suggestion of Mr Ward.

By section 8 of the 1965 Act under which these proceedings are being held, I am as a Commons Commissioner required to determine whether I am "satisfied that any person is the owner of the land". The Act contemplates that a Commons Commissioner may be unable to be so satisfied, because it provides that where no person is registered under it as owner, the land shall "if it is common land be vested as Parliament may hereafter determine", see section 1(3). Many people think that



it would be expedient if common land like the Unit Land was vested in parish councils and it may be that Parliament will so enact; however in my view I have no jurisdiction to anticipate the decision of Parliament on this point and direct (as Mr Ward seemed to hope that I might) that the Parish Council should be registered as owners merely because it is expedient.

Accordingly I must be "satisfied". Happily I understood at the hearing that for the improvements now contemplated by the District Council and the Parish Council it is of no practical consequence whether I am or am not satisfied with the ownership of the Parish Council, because even if the Parish Council are not registered as owners, the improvements now under consideration will proceed ~~and~~ (there is nothing to prevent a scheme being made under the 1899 Act in relation to land of which no owner is known).

I accept that in order for a Commons Commissioner to be satisfied as to ownership of a parish council it is not necessary for them to produce documents of title such as would normally be produced on a sale of a private dwelling house; there is much land which from time immemorial has been Parish Property, ~~for~~ for which there are no such documents of title, but which has by operation of law devolved on ~~to~~ parish councils. But to be satisfied, I must I think have some evidence pointing to ownership as distinct from evidence pointing to the land in question being common land, for example evidence that the Parish Council have been in possession, or are reputed to be or are generally treated as owners. Notwithstanding the information outlined above so helpfully given to me by Mr Ward, it seems to me that I have nothing upon which I can properly base a conclusion that the Parish Council or its predecessors, the Churchwardens and Overseers, are now or were the owners.

For the above reason I am not satisfied that the Parish Council are the owners of the land. In the absence of any evidence that any other person is the owner, I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

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 4<sup>th</sup> day of August 1976

a. a. Baden Fuller

Commons Commissioner