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COMMONS REGISTRATION ACT 1965 Reference No. 266/D/1

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In the Matter of The Field, Smailes Lane, Rowlands Gill, Gateshead B

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 96 in the Register of Town or Village Greens maintained by the Tyne and Wear County Council and is occasioned by Objection No. 7 made by Blaydon Urban District Council and noted in the Register on 3 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Newcastle Upon Tyne on 20 October 1983. The hearing was attended by Mr W A Kinlock, Solicitor, representing Gateshead Metropolitan Borough Council ("MBC") and by Mr Peter Morley, on whose application the Field was registered as a Village Green. MBC is the successor Authority to Blaydon UDC, the Objector.

The Field is some 2.76 acres situated in what is now a largely built up area. It is unfenced grass land and was acquired by Blaydon UDC in 1947. Mr Morley's case is that it qualified for registration as a village green as defined in Section 22(1) of the Commons Registration Act 1965, being land "on which the inhabitants of any locality have indulged in (lawful) sports and pastimes as of right for not less than twenty years". This period, in the view of the Court of Appeal in New Windsor Corporation v Mellor 1975 Ch. 380, means the twenty years immediately prior to the passing of the 1965 Act.

Mr Morley gave evidence. He said that he had lived in his parents' house in Smailes Lane, Rowlands Gill until 1971 - he now lives some three miles away. From the time (C. 1956) when he was six or seven until 1968 he went on the Field, and other land to play football: about 1968 he left to go to college. All the children from Smailes Lane and the housing estate in Rowlands Gill used the Field for communual games: they were not organised team games but informal types of games, suited to the age of the children, who were either infants or in the 12 to 13 years old range. No teenagers or older people played games. In cross-examination, he agreed that children will go and play on unfenced land and that there were other places in the neighbourhood where they could and did go to play. Looking back he thought he regarded as a right what children are not forbidden to do. Almost all his friends who played on the Field lived in Rowlands Gill, though he did not think they would have objected to other children playing there - there was no hindrance or objection made to children playing and probably other children did come: he recalled some children from the school at Highfield coming to play with him. He was not aware of other activities on the Field, though people would walk their dogs there.

Mr Morley said he had not sought to get other people to come and give evidence, but he produced two written statements made in October 1983, one from A Elliott who stated that he had lived at 13 Smailes Lane since March 1948, and during all that period children had used the Field for playing games without hindrance, the other from D Morris who stated that he was housing officer for Blaydon UDC when in 1948 he moved to Smailes Lane, and that to his knowledge the Field had been used for playing games by children without official disapproval.

Mr Kinlock called several witnesses. (1) Mr Henry Hunter who is aged 84, has lived in the area all his life and at Rowlands Gill since 1969. When he was young the Field was used for grazing, but the farm went about 1950. He had seen kiddies

aying on the Field as Mr Morley had described - it wasn't the only place they ayed on. In cross-examination he said that Highfield had playing areas about mile from the Field. (2) Patricia A Dawson, who is the Planning Techinical fficer of the County Council, and from 1946 to 1966 lived at Highfield about ½ - ¾ mile from the Field, said she used the Field as a short cut but didn't play it - she had seen boys kicking a football there on Saturday mornings. (3) rman Sheeman, a municipal engineer with MBC and previously with Blaydon UDC om 1966, said he was familiar with the Field and had lived at Rowlands Gill nce 1971 and that children did play on the Field but there were no organised mes: there are larger areas in Highfield and one formally set aside for games. e believed the Field was originally bought by Blaydon UDC for housing purposes, ut it was thought of as an amenity open space. (4) Alan Humble, who has been lanning Officer of MBC since 1974. He said that the Field appears to be an rea left over from land originally acquired for residential development, a use or which it was shown on an approved town map of the early 1960s. The current iew of MBC was that there was a demand for further shopping development and the ield is the only suitable area. He did not know of any one who had objected to uch development as an interference with children's playing opportunities: there s other adequate provision in Rowlands Gill for children to play. In cross- xamination he agreed that planning schemes should take into account the equirement of space for children to play. In a survey in 1974/5 of proposals or development the replies from Rowlands Gill residents showed a large majority n favour of further shop development.

onclusions. The decision on this dispute turns, in my view, on the definition f village green quoted above. As to the different ingredients of that definition, find that children did play on the Field in the manner described by Mr Morley, nd that their play can properly be described as lawful sports and pastimes. As o the period of 20 years, the evidence in no case went back earlier than 1948, 7 years before the Act of 1965. It would be a fair inference that such use by children started earlier than that, but Blaydon UDC did not acquire the land until 1947, before which it appears to have been in private ownership and it is more difficult to make the inference in respect of the years during which there was a private owner. On the evidence, therefore, I am not satisfied that playing on the Field was taking place for not less than 20 years before the passing of the 1965 Act.

Apart from this, there are other requirements in the ingredients of the definition which the evidence in my view does not establish. First, what is required is that "the inhabitants of any locality" have indulged in sports and pastimes. It is clear that games of a sporadic and unorganised nature were played by children of a narrow age band, inhabitants, it is true, of a locality, Rowlands Gill, but whose number can have been only a comparatively small and unrepresentative percentage of "the inhabitants" of the locality. This is not to suggest that this ingredient can be satisfied only if all the inhabitants indulge in sports and pastimes, but to my mind it does require that a substantial number of the local inhabitants make use of the area for recreational purposes of some kind or that there are organised team games where the participants and spectators can be said to be representative of the local community. But I cannot regard the playing by a relatively small number of children as equivalent to indulging by the local inhabitants.

Secondly, there is the further requirement in the definition that the recreational activities were indulged in "as of right". On the evidence it appears to me that the activities were those of children who natually make use of an unoccupied area of grass land when no obstacle or prohibition is put in their way, such use being, not as of right, but by the tolerance of the owner: of Beckett v Lyons 1967 Ch. 449 at pp. 469, 475,

For these reasons the Field, in my opinion, did not qualify for registration as a village green and I refuse to confirm the registration Mr Kinlock asked that, in this event, Mr Morley be ordered to pay the Objector's costs On the facts as established by Mr Morley's evidence, which was not seriously challenged and which I accept, it was not unreasonable for him to make the registration and to seek to maintain it. He had an arguable case and there is nothing to suggest that he was not acting bona fide or in what he conceived to be in the interests of the local community. In these circumstances I shall make no order as to costs.

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 1 February 1984

L. J. Morris Smith

Commons Commissioner