COMMONS REGISTRATION ACT 1965

Reference Nos. 270/D/1
270/D/2
270/D/3
270/D/4

In the Matter of Havercroft Green,
Havercroft-with-Cold Hiendley and Ryhill,
Wakefield District, West Yorkshire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and Entry Nos. 1, 2, 3 and 4 in the Rights Section of Register Unit No. VG. 17 in the Register of Town or Village Greens maintained by the West Yorkshire County Council and the registration at Entry No. 1 in the Land Section of Register Unit No. CL. 148 in the Register of Common Land maintained by the said Council and are occasioned by the said registrations in the said Land Sections being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Wakefield on 7 April 1976. At the hearing (1) Havercroft-with-Cold Hiendley Parish Council were represented by Mr N N Bradley solicitor of Green Williamson & Way Solicitors of Wakefield; (2) Mr Joseph Eric Wilson on whose application Entry No. 1 in the said Rights Section was made attended in person; (3) Mrs Rose Hopwood on whose application Entry No. 2 in the said Rights Section was made, also attended in person; (4) Mr Harry Cooper on whose application Entry No. 4 in the said Rights Section was made, was represented by his son Mr Melvin Cooper. Additionally Mr John Arthur Stevens and Mr Colin Bettley, neither of whom was entitled under regulation 19 of the Commons Commissioners Regulations 1971 to be heard took part in the proceedings as below described. The VG. 17 registration was made on the application of the Havercroft Residents Association by Mr J D Ellison, their secretary; in a letter dated 22.3.76, he said that the Association was wound up about 6 years ago.

The land comprised in Register Unit No. VG. 17 is in the Register described as five pieces containing about 9.94 acres and is shown on the Register map (1/2500) as two pieces on the northwest side of the road (B 6428) from Havercroft and Ryhill to Barnsley, two pieces on the southeast side of the said road, and one piece (a comparatively small triangle) where this road divides at the road junction (with Brier Lane) at the north end of the land. The land comprised in Register Unit No. CL. 148 is in the Register described as containing about 8.707 acres and is shown on the Register map (1/10,560) as one piece almost identical with the VG. 17 land, except that it includes the road. Nobody at the hearing suggested that the difierences between the two descriptions affected any question I have to determine, and I shall therefore treat the land ("the Unit Land") comprised in these two Register Units as identical in all now relevant respects. Of the five pieces shown on the VG. 17 Register map, the triangular and most northeasterly ("the Garden Piece") is

fenced in and laid out as a lawn with flower beds. The piece ("the Bus Shelter Piece"), which is on the opposite side of the road from the Garden Piece, which is bounded on the southeast by the wall of the garden of Lyndale and of some land adjoining it on the south, and bounded on the southwest by a track leading off the road (B6428) to some houses and buildings to the east, is grass land open to the road having on it a bus shelter and a small metal structure put there (so I was told) by the Gas Board. Of the larger of the two pieces on the northwest side of the road, the part ("the Pond Part") north of the track on the VG. 17 Register map marked "CT", is a large area, all grass land except for a large pond (about 1/10th of an acre), a small stone structure covering a spring (Green Well), and a track ("Greenside") providing access to the houses (Nos. 1-19) on the northwest; this area is for the most part apparently very suitable for recreational use by the inhabitants of Havercroft (and possibly also of Ryhill), particularly for those living in the houses nearby on the north.

The issues at the commencement of the hearing were much simplified by Mr Bradley stating that the Parish Council claimed, not that all the Unit Land, but only that part of it being the Pond Part, the Garden Piece, and the Bus Shelter Piece, was properly registered as village green; and by all present at the hearing agreeing that whatever might be my decision as to the Unit Land being registered either as a village green or as common land, the rights registered in the Rights Section were properly registered.

On behalf of the Havercroft-with-Cold Hiendley Parish Council (nearly all the Unit Land is in this Parish; it may be a small part —→ is in Ryhill) oral evidence was given (1) by Mr W Henry who is in his 78th year, has lived in Havercroft for the last 50 years (and before that for 20 years in South Hiendley), and who was a member of the Parish Council for 45 years and formerly their chairman; (2) by Mr Melvin Cooper who was born in Havercroft (he is 44 years of age) and is now chairman of the Parish Council and (3) by Mr A H Eardley who has lived in Havercroft since 1953 and is a member of the Parish Council. Oral evidence was also given by Mrs Hopwood, who was born in 1891 and first came to Ryhill in 1912 and has ever since lived there (except so far as she had to lodge about four miles away where she was working) and was at one time chairman of the Parish Council; and also oral evidence was given under regulation 23(5) of the said 1971 Regulations by Mr Stevens of Westwood, Havercroft, and by Mr Bettley of Colwyn Brier Lane, Havercroft. After the hearing I walked over the Unit Land.

At the conclusion of the hearing all present agreed that my decision should be either (1) that all the Unit Land was properly registered as village green; or (2) that the part, being the Pond Part, the Garden Piece and the Bus Shelter Piece was properly registered as a village green and the remainder ("the Remainder") of the Unit Land was properly registered as common land.

Apart from the 1965 Act, land may at the same time be both common land and a town or village green; however by section 22 of the Act, "common land...does not include a town or village green..." so I must first consider whether the Remainder is within the section 22 definition of a "town or village green", being (so far as is now relevant) "land...on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right not less than twenty years". The twenty year period ends on 5 August 1965 (the passing of the Act), see New Windsor v Mellor 1975 Ch 380.

Mr Henry produced a conveyance dated 9 March 1953 by which the National Coal Board conveyed to Havercroft-with-Cold Hiendley Parish Council "all manorial rights and incidents relating to the surface of Havercroft Common...which said Common is more particularly identified on the plan annexed...". On the plan annexed the Unit Land is delineated therein and marked as "Havercroft Green". The 1953 conveyance recites a conveyance dated 24 July 1933 by which Mr L H Green conveyed (inter alia) the same property to New Monckton Colliery Limited.

Before the 1953 conveyance was made, the Unit Land was all rough grass with some scrub, and much of it was very uneven, looking much as the Remainder now appears; at that time children played informal games (such as Cowboys and Indians) all over it. About the time of the conveyance or soon afterwards, the Pond Part was levelled and the Pond itself and the Green Well structure put in order, the Garden Piece was laid out as a garden, trees were planted on various parts of the Unit Land (including the Remainder; there is a line of trees nearly the whole length); this was all done at the cost of the Parish Council (Mr Henry thought it cost about £1,800). Thereafter the Pond Part was regularly used for football and other organised games, and for organised folk-dancing by children, and the Parish Council employed a man to keep tidy the Pond Part, the Garden Piece and the Bus Shelter Piece. The Bus Shelter itself was erected a little later as also was the Gas Board structure.

Mrs Hopwood, who contended that all the Unit Land was village green, said in effect:- She did not think that the levelling above described had separated the Pond Part, the Garden Piece and the Bus Shelter Piece from the Remainder. Before the levelling, the children played over all the Unit Land; afterwards the level part was monopolised by cricket and football and the children did not enjoy it so much. Of an access track (made about Christmas 1974) leading across the northeast part of the Remainder to Mr Stevens' new bungalow, she contended that the Parish Council had no power to permit it.

Mr Stevens explained that the access track was in accordance with a resolution (set out in a letter dated 4 October 1973 to the solicitors acting for Mr Dennis, his predecessor in title); "that Mr Dennis be granted access over the Council verge to the highway subject to an easement being prepared and a payment of 5p per annum".

Mr Betteley, who supported the views expressed by Mrs Hopwood, produced the Ordnance Survey map 1891 (1st edition: 25 inches to 1 mile) on which the Unit Land was marked "HAVERCROFT GREEN" written over nearly all the Unit Land.

I decline to express any view as to the legality of the new access made by Mr Stevens or how my decision might help to resolve any question there may be about this. In my opinion on the question which I have to determine, any access across the Unit Land and the terms of any permission granted by the Parish Council for any access might be relevant, and accordingly evidence about Mr Stevens access/its terms was admissable. But I refused to listen to evidence offered by Mr Betteley as to the motives which may have induced members of the Parish Council to vote for the above-quoted permission being given to Mr Stevens or for voting any other matter relating to the Unit Land or as to any unsuccessful application that may have been made for some intended, never made, access, on the grounds that none such evidence could be relevant.

The contentions in favour of all the Unit Land being Village Green may I think be summarised thus:- As appears from the 1891 OS map and the 1953 conveyance plan, all the Unit Land is thereon called "Havercroft Green" (the word "Common" is not used); on the more recent OS map, used as a basis for the Register map, the description is similar, although the words "Havercroft Green" are smaller. It follows that when these maps were made all the Unit Land was one piece of land properly described as a "Green". Before 1953 it was used recreationally by children playing such games as Cowboys and Indians, which they did over all of it. The Unit Land has never been separated into two pieces, and it being conceded that part is a village green properly registrable as such, I should conclude that all the Unit Land is properly so registrable.

My conclusion from the evidence and from what I saw of the Unit Land when I walked over it is that the Unit Land is now and has been since about 1953 two pieces of land: the tidier and well kept land (being the northeast part) which looks like a recreation and amenity area, and the waste land (being the southwest part) which is rough grass land with some scrub and newly planted trees. Although different persons might draw different lines as being the dividing line between these two pieces, the greater part of each is I think distinct enough. In my view the best dividing line is that suggested by Mr Bradley on behalf of the Parish Council namely the line between (1) the part being the Pond Part, the Garden Piece and the Bus Shelter Piece, and (2) the Remainder. For the purpose of supporting the registration as a town or village green of the Pond Part, the Garden Piece and the Bus Shelter Piece, I think it permissible to combine the use of such land for recreational purposes by adults and children since 1953 with the use before 1953 by children of all the Unit Land and thus complete the twenty years ending on 5 August 1965 as required by the 1965 Act; so the concession made about this part accords with the facts and the law. But the Remainder after 1953 was I think different; it is more remote than the other part from the built up area of the Parish, and obviously any use made of it by the children of the inhabitants must always have been much less than the use before 1953 made of the rest of the Unit Land. The levelling and other work done in and after 1953, although it much increased the usefulness of the Unit Land for recreational purposes, also much diminished the area of the land so used; so that in the result the use (if any) of the Remainder by children (no such use was particularly described by any witness) could not after 1953 be significant for the purpose of bringing the Remainder within the above quoted definition.

For the above reasons I am satisfied that the Remainder should not have been registered as a town or village green.

The rights registered (as above stated) were not challenged by anyone at the hearing. Such evidence about them as was given, indicated that some such rights did exist, and there was no evidence pointing to a contrary conclusion. In these circumstances, notwithstanding the absence of any detailed evidence supporting the rights, I can I think properly conclude that these rights were properly registered.

For the above reasons I confirm the registration at Entry No. 1 in the Land Section of Register Unit No. VG. 17 with the modification that there be removed from the Register all the land now therein comprised except the part earlier in this decision called the Pond Part, the Garden Piece and the Bus

Shelter Piece; and I confirm the registration at Entry No. 1 in the Land Section of Register Unit No. CL. 148 with the modification that there be removed from the Register the part earlier in this decision called the Pond Part, the Garden Piece and the Bus Shelter Piece, and I shall in the notice which I am in pursuance of section 6(2) of the 1965 Act required to give define the Pond Part, the Garden Piece and the Bus Shelter Piece accordingly; and I confirm the registrations at Entry Nos. 1, 2, 3 and 4 in the Rights Section of Register Unit No. VG. 17 with the intent that such registrations shall continue to be applicable not only to so much of the land as continues to be as a result of this decision in the Land Section of such Register Unit, but also by virtue of regulation 4 of the Commons Registration (Disposal of Disputed Registrations) Regulations 1972 ~~continue to be applicable~~ to the land which as a result of this decision continues to be in the Land Section of Register Unit No. CL. 148.

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 15th day of April 1976.

A. A. Baden Fuller

Commons Commissioner