COMMONS REGISTRATION ACT 1965

Reference Nos 202/D/95-96

In the Matter of Mill Green, Wargrave, Berkshire

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. VG 91 in the Register of Town or Village Greens maintained by the Berkshire County Council and are occasioned by Objection No. 14 made by the Trustees of the M R Aird Will Trust and noted in the Register on 3 June 1970 and the conflicting registration at Entry No. 1 in the Land section of Register Unit No. CL 114 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Windsor on 13 December 1978. The hearing was attended by Mr M C Hayes-Allen, the applicant for the registratio and by Mr M J Foster, solicitor, on behalf of Mr and Mrs D H Houghton, the successors in title of the Objectors. There was no appearance on behalf of the Wargrave Parish Council, the applicant for the conflicting registration, but the Clerk of the Council informed the Clerk of the Commons Commissioners by letter before the hearing that the Council did not wish to support its registration, so I have only to consider whether the land comprised in the Register Unit falls within the definition of "town or village green" in Section 22(1) of the Commons Registration Act 1965.

The land in question is an open area of grassland with some trees on it lying to the east of St Mary's Church. It is crossed by a church path leading from Station Road to the Lych gate of the church, a drive leading to the house known as Wargrave Court, and a public footpath running from south to north. Along the north-western boundary of the land there is another church path leading to Church Street.

The land is shown with the name "Mill Green" on the plan attached to the Wargrave and Warfield Inclosure Award made in 1818 under the Wargrave and Warfield Inclosure Act of 1814 (54 Geo. III, C. [illegible]). It is there numbered 490, but there is no reference to it in the body of the award, so it does not fall within the first limb of the definition of "town or village green" as land allotted for exercise or recreation Mr Hayes-Allen, however, based his application for the registration on this map, contending that the name "Mill Green" showed that it was a village green in 1818. I find myself unable to accept this contention. A green is *prima facie* but an area of land more or less covered with grass, and the mere description of land as a green does not indicate that it falls within the special category of green known as a village green. Although not defined by statute until the Act of 1965, village greens were well-known to the law as places which the inhabitants of a particular locality had an immemorial customary right to use for exercise and recreation, including the playing of lawful games. On the other hand, I am equally unable to accept Mr Foster's counter-contention that this land is not a village green because the word "village" does not form part of its name. Thus, in *Warrick v Queen's College, Oxford* (1870) LR 10 Eq. 105 land known as Shoulder of Mutton Green was held to be a village green. What has to be sought is evidence as to the user of the land by the inhabitants of the locality. The inclosure award is silent on this point. The next evidence in chronological order is the tithe apportionment of 1840. This shows the land as still named Mill Green and as in the ownership of Lord Braybrooke and in the occupation of Frank and Edmund Sarney. Its state of cultivation is described as meadow and pasture, and it is stated to be subject to tithe.

Mr Foster argued that the facts that the land was occupied and subject to tithe showed that it was not then a village green. This, in my view, is not so: see Hall v Nottingham (1875), 1 Ex. D. 1, at p 2, where it is stated that a field called the Maypole Field, which was held to be a village green, had been regularly rated to the poor and tithe paid and commuted for it. However, Mr Foster pointed out that the tithe assessed in respect of Mill Green was at the same rate per acre as other meadow and pasture in the parish and that this indicates that the land was not subject to any right, such as that of the inhabitants of the locality to indulge in sports and pastimes on it, which would tend to reduce its value.

I have therefore come to the concluseion that Mr Hayes-Allen has not succeeded in proving that this land was subject to a customary right of the inhabitants of the locality to indulge in lawful sports and pastimes on it so as to bring it within the second limb of the definition of "town or village green".

It remains only to consider whether the land falls within the third limb of the definition as land on which the inhabitants of the locality have indulged in such sports and pastimes as of right for not less than twenty years. Lord Denning, MR expressed the view in New Windsor Corporation v Mellor, (1975) Ch. 380, at p 391 that the period to be considered for this purpose is twenty years before the passing of the Act on 5 August 1965. This was an obiter dictum, but I see no reason not to accept it as a correct statement of the law.

The principal evidence on this aspect of the matter was that given by Mr Hayes-Allen. From 1953, when he was aged 11, until 1968, when he ceased to reside in Wargrave, children, of whom he was one, played on this land and rode bicycles on it. There were no organised games, but some children kicked a football around. Mr Hayes-Allen's evidence was corroborated by Mr R R B Brown, who lived at Wargrave Court from 1955 to 1977. He said that walking dogs was the principal use made of the land by the local inhabitants, but he occasionally saw boys cycling on it. He sometimes saw people picnicking, but never any organised or semi-organised sport. On 31 December 1974 Mr Brown and Mr R Aird, his fellow trustee, granted a 99-year lease of this land at a peppercorn rent to the Wargrave Parochial Church Council. This lease contains a lessee's covenant to ensure that the land (to be known as the Church Green) shall be used only for the purposes of public amenity and recreation or for such other purposes or activities which the lessee shall consider fit, but provided that it shall not be used for the purposes of organised sports or games.

Although this evidence only went back to 1953, it is not unlikely that much the same sort of thing had been going on from 1945 or earlier. However, even if that had been proved by direct evidence, it would not have satisfied me that the inhabitants of the locality had been indulging in lawful sports and pastimes on this land as of right. The totality of the evidence indicates to me no more than the good-natured indulgence of land owners which is happily a feature of life in the English Countryside. Indeed, Mr Hayes-Allen when a child did not think of himself as having a right to play on this land, for he frankly admitted that if Mr Brown had told him to go, he would, as he put it, have bowed to superior authority. [illegible]

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 21st day of February 1979

[signature]

Chief Commons Commissioner