COMMONS REGISTRATION ACT 1965

Reference No. 3/D/4

In the Matter of The Rye, High Wycombe, Wycombe District.

DECISION

This dispute relates to the registration at Entry No.1 in the Land section of Register Unit No. VG.1 in the Register of Town or Village Greens maintained by the Buckinghamshire County Council and is occasioned by Objection No. 12 made by High Wycombe Borough Council and noted in the Register on 16th October 1970.

I held a hearing for the purpose of inquiring into the dispute at Aylesbury on 16th October 1975.

The hearing was attended by Mr D. J. Woods the Secretary of the High Wycombe Rye Protection Society on behalf of that society and by Mr Lloyd on behalf of the Wycombe District Council.

In order that land shall have the status of Town or Village Green it must fulfil one of three alternative conditions viz:

(1) It must have been allotted by or under any act for the exercise or recreation of the inhabitants of any locality, or

(2) The inhabitants of a locality must have a customary right to indulge in lawful sports and pastimes on the land, or

(3) The inhabitants of the locality must have indulged in such sports and pastimes as of right for not less than twenty years;
See section 22 of the Commons Registration Act 1965.

It will be convenient to consider these alternatives one by one.

(1) The alleged allotment

Mr Woods submitted that sub section 58(b) of the Chepping Wycombe Corporation Act 1927 was an allotment which would confer upon the Rye the status of a Town Green. I am unable to accept this submission.

Sub section 58(b) provided inter alia:- as from 1st January 1928 the Rye Mead shall be deemed to be a public park or pleasure ground or land acquired by the Corporation for the purpose of cricket, football or other games and recreations. In 1927 the Rye was in the ownership of the Corporation. In my view this sub-section did not allot the Rye it merely imposed a statutory restriction on the use to which the land could be put.

In my view an allotment involves a transfer of property as in the case of an allotment made by an Inclosure Award which in my view was the allotment contemplated by the 1965 Act. A modern illustration of an allotment is when a company allots shares to an applicant. In my view on the true construction of sub-section 58(b) and of the word "allotted" in the context in which it is found in section 22 of the Act of 1965, sub-section 58(b) was not an allotment for the purpose of Section 22.

(2) A customary right

Mr Woods produced the fruits of a great deal of very praiseworthy historical research

starting with The First Ledger Book of High Wycombe of 1472. The minutes in this book made no reference to sports and pastimes but disclosed that the Borough was concerned to preserve the Rye as a Common Pasture. I was told that during the reign of Queen Mary she expropriated the Rye and gave it to the Throgmorton family and that there was a story that Queen Elizabeth returned it to the Borough because she found difficulty in obtaining milk for her breakfast and wished to avoid a repetition of that difficulty. The Charitable Foundation known as the Grammar School and Almshouse Charity in the Borough and Chepping Wycombe was constituted by a Charter or Letters Patent of Queen Elizabeth in 1562 and it is possible that she gave the land to that charity. The first reference to any recreational use of the Rye is to be found in Section 74 of a Scheme of the Charity Commissioners of 1874 which provided that the Rye subject to any existing rights of the inhabitants of Chepping Wycombe in or over the same might be retained by the governors of the Charity for the purpose of a recreation ground for the scholars and alms people of the Foundation and of such inhabitants and that the expenses should in part be met from fees or payments made by the inhabitants for the exercise of their rights.

This section 74 was purely permissive. The Rye was at this time subject to grazing rights which were only extinguished by the Act of 1927 referred to above but the governors were free to dispose of the Rye or to determine or restrict its use for recreational purposes. In my view section 74 does not establish the existence of any customary right to indulge in games or pastimes and I can find no evidence in the documents produced by Mr Woods of any such customary right.

(3) User for 20 years.

The Act of 1965 provides that the user for 20 years must be as of right; it must not be permissive. Mr Woods contended that the user for games and pastimes subsequent to 1st January 1928 fulfilled the third condition of the definition of Town or Village Greens in Section 22 of the Act of 1965. I cannot accept that submission for the reason that in my view such use was permissive. The Chepping Wycombe Borough Extension Act 1880 conferred powers on the Governors of the Charity to make bye-laws regulating the depasturage of the Rye and "for determining what sports and recreations shall be permitted on the Rye Mead and the terms and conditions of its user for such purposes and for the watching of the good government of Rye Mead. The Rye was conveyed to the Borough by the Charity on 22 August 1923 and Mr Lloyd produced the current Bye-laws relating to pleasure grounds including the Rye which refer to an earlier series of Bye-laws.

Mr. R. H. Andrews, assistant Technical Services Officer for recreation gave evidence that he had in various capacities been concerned in the administration of the Rye and that no-one had to his knowledge claimed any customary rights. There were cases in which individuals claimed to pursue certain activities on the grounds that they were not expressly prohibited by the bye-laws. Mr Andrews told me that pitches were booked for organised games; in the case of football the staff erected the goal posts and the players were responsible for returning them at the end of the game. Unorganised games are permitted but not on grounds when the goal posts are erected. Fees are charged for use of the pitches. A swimming bath dressing room and car park have been constructed without objection. All this evidence has led me to the conclusion that the user of the Rye for sports and pastimes since 1928 and probably as far back as 1880 has been permissive. For these reasons I take the view that the Rye is not a Town or Village Green as defined in Section 22 of the Act and refuse to confirm the Registration.

It must in my view be open to doubt whether even if the Rye were a Town Green the inhabitants could override the statutory powers conferred on the Council and if the Council threaten to exceed these powers the inhabitants will have their remedy in the Courts

The Registration, even if I be wrong and it ought to be confirmed, would in my view have no practical affect.

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 10th day of November 1975

C. A. Settle.

Commons Commissioner