COMMONS REGISTRATION ACT 1965

Reference No. 259/D/18

In the Matter of Elmbridge Avenue Open Space
Kingston upon Thames
Greater London.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 61 in the Register of Town or Village Greens maintained by the Greater London Council and is occasioned by Objection No. 95 made by the Town Clerk of the Royal Borough of Kingston upon Thames and noted in the Register on 25 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, London WC2 on 13 July 1976. The hearing was attended by Mr J L Baron, the applicant for the registration, and by Mr Terence Etherton, of Counsel, on behalf of the Council of the Royal Borough of Kingston upon Thames.

In 1930 a part of the land comprised in the Register Unit formed part of an estate known as the Berrylands Farm Estate within the then Urban District of Surbiton, the property of Thomas and Macdonald Ltd. Thomas and Macdonald Ltd prepared a lay-out for the development of the estate. This lay-out included the road now known as Elmbridge Avenue. Behind the land fronting onto the eastern side of Elmbridge Avenue lay an area which it was not proposed to develop. This area was conveyed to th former Urban District Council of Surbiton by a deed dated 5 August 1930. Another part of the land comprised in the Register Unit formed part of another building estate within the Urban District, the property of Mr C. F. Cook. The lay-out for this estate included the southern section of Elmbridge Avenue, behind the eastern frontage of which lay an area which it was not proposed to develop and which was conveyed to the Urban District Council by a conveyance dated 6 July 1931.

These deeds show that the land comprised in the Register Unit was not a separate entity until some time after 6 July 1931 and that its western boundary was settled by reference to the lay-out of Elmbridge Avenue. It would, therefore, appear that if this land falls within the definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 at all, it can only be because the inhabitants of some locality have indulged in lawful sports and pastimes on it as of right for not less than twenty years.

Since its acquisition by the former Urban District Council parts of the land in question have been used for varying periods as allotments, but at the present time none of it is so used. A part was also used for controlled tipping during the 1960's. The remainder has always been left open. The former Urban District Council and the present Royal Borough Council have treated the land as public walks or pleasure grounds and have made byelaws for its regulation under section 164 of the Public Health Act 1875.

The Royal Borough Council objected to the registration on the ground that the land is in the ownership of the Council for the purposes of a public open space. To this Mr Baron replied when opening his case that his interpretation of the Act of 1965 was that the ownership is irrelevant and the object is to register land freely accessible to the public.

Mr Baron is, of course, right in saying that the ownership is irrelevant, but he is clearly wrong in his contention that the object of the Act of 1965 is to register land freely accessible to the public.

That Mr Baron started by making a bad point is not fatal to his case if the evidence is such as to bring the land within the definition of "town or village green" in section 22(1) of the Act of 1965, but the evidence which he adduced was directed to proving that the land in question was freely accessible to the public.

Mr Baron, who lives in Raeburn Avenue on the Berrylands Farm Estate, gave evidence himself. He called two witnesses. Mr P. G. Gray has lived in the neighbourhood for the last five years, but knew the land previously, having played on it as a child. Mr Gray was not resident in the neighbourhood when he was a child, and he said in cross-examination that he was on the land as a member of the public. Alderman C. Granville-Smith has lived in Manor Drive, Surbiton since 1939. During that period his children have played on the land and he has walked on it. In cross-examination Alderman Granville-Smith said that he and his children had done so as members of the general public, emphasising his answer by adding: "Of course we have".

On that evidence Mr Baron made two submissions. He submitted that the byelaws made under section 164 of the Act of 1875 declared the land to be a pleasure ground and that it therefore fell within the opening words of the definition of "town or village green" in section 22(1) of the Act of 1965 by being land which had been allotted by or under any Act for the exercise or recreation of the inhabitants of a locality. The use of land as public walks or pleasure grounds under s.164 of the Act of 1875 is not an "allotment" of such land. In my view, the word "allot" in section 22(1) of the Act of 1965 is used in the technical sense of allotment by or under an inclosure Act for the benefit of the inhabitants of a defined locality. Mr Baron's second submission was that the land had been available to the public, without restraint, for the playing of sports and pastimes for well over twenty years before 1965 and that therefore it fell within the last limb of the definition in section 22(1). Unfortunately for Mr Baron's submission, the evidence clearly shows that this land has been available to the public for that purpose for well over twenty years. He has therefore proved too much. In order to bring the case within the definition, he would have to prove that the inhabitants of a defined locality had so used the land as of right. There is no evidence to support this. The use has been by members of the public and it is nothing to the point that some of them have lived in houses in the vicinity. So far as the use of this land is concerned, there is nothing in the evidence to differentiate them from members of the general public.

For these reasons I refuse to confirm the registration.

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 30th day of July 1976.

Chief Commons Commissioner