COMMONS REGISTRATION ACT 1965 Reference Nos. 259/D/4-5

In the Matter of Woodside Green, Croydon, Greater London (No. 1)

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG. 58 in the Register of Town or Village Green maintained by the Greater London Council and are occasioned by Objection No. 57 made by the Council of the London Borough of Croydon and noted in the Register on 15th December 1971 and the conflicting registration at Entry No. 1 in the Land Section of Register Unit No. CL. 135 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, London WC2 on 2nd March 1976. The hearing was attended by Mr P Clayden, the General Secretary of the Woodside Green Preservation Society, whose application was noted in respect of the registration, and whom I also heard on behalf of Miss O de Reding, the applicant for the registration, by Mr B E Garfath, the applicant for the conflicting registration, and by Mr D W J Patience, solicitor, on behalf of the Objector.

Mr Garfath stated that he could not support the conflicting registration, so it only remains for me to consider the Objection.

The land comprised in the Register Unit consists of a triangular area bounded on all sides by roads and also divided into sections by two roads and a footpath. This layout is, however, comparatively modern. The 1867-1873 25 in. to the mile Ordnance Survey map shows the area as consisting mainly of two parcels, the larger numbered 1110, being named as "Woodside Green" and the smaller, numbered 1109, being shown as enclosed land with buildings on it. Parcel No. 1110 was traversed by an unfenced road running from the south-west to the north-east, which has been diverted along the route of the present road on the south-eastern side of the triangle. In addition, a small part was included in O.S. No. 1108, shown as divided from O.S. No. 1110 by a fence or hedge.

The land which was formerly O.S. No. 1109 is in the ownership of the Objector under an indenture made 6th June 1888 between (1) Mary Teevan, Richard Stephen Watton Teevan, and Mackworth Bulkley Praed (2) The Mayor, Alderman and Burgesses of the Borough of Croydon. In the parcels of this indenture this part of the land is described as "all that messuage tenement or farm house together with the garden yard cowhouse and store shed thereto belonging known as Poplar Farm House situate at Woodside Green". Mr Clayden stated that he could not contend that this part of the land formed part of a town or village green as defined in section 22(1) of the Commons Registration Act 1965.

The relevant evidence relating to the land which was formerly O.S. No. 1110 begins with the Inclosure Award dated 2nd March 1801 made under the Croydon Inclosure Act of 1797 (37 Geo. III, c.144 (private)). The Act required the Commissioners appointed under it to allot the whole of the "Open and Common Fields, Common

Meadows, Commons, Marshes, Heaths, Wastes, and Commonable Woods, Lands and Grounds in the parish of Croydon (except a certain Piece or Parcel of Land or Ground called Parson's Mead)". The Award ~~also~~ contains no allotment of any part of the land in question, but it is shown without a number on the map attached to the Award and is named thereon as "Woodside Green". From this I draw the inference that it did not fall within the category of lands which the Commissioners were required to allot. A possible reason for this was that it was subject to, in the words used in the almost contemporary case of Fitch v. Rawling (1795), 2 Hy Bl.393, "an ancient and laudable custom...that all the inhabitants for the time being of the parish aforesaid have...used and been accustomed to have, and of right ought to have had, and still of right ought to have the liberty and privilege of exercising and playing at all kinds of lawful games, sports, and pastimes, in and upon the said close every year, at all seasonable times of the year at their own free will and pleasure" or, putting it more succinctly, that is was, as its name indicated, in law a village green. Whatever the reason may have been, the land remained uninclosed.

At the general court baron of the Ecclesiastical Commissioners for England, lords of the manor of Croydon, held on 4th January 1871, a copyhold estate in the land in question was granted to the Croydon Local Board of Health upon the condition that it should be appropriated by the Board to be forever kept as an open space and used as and for a place of recreation for the use of the inhabitants of the parish of Croydon and of the neighbourhood and for no other purpose. By an indenture made four months later, dated 4th May 1871, the Ecclesiastical Commissioners, under the authority of an Order in Council dated 9th January 1863 made under sections 6 and 8 of the New Parishes Act 1843 and sections 2, 3 and 24 of the Ecclesiastical Commissioners Act 1860, conveyed to the Local Board the freehold of the land freed and discharged from all fines, heriots, reliefs, quit rents and all other incidents whatsoever of copyhold or customary tenure to be held and used for the purpose of public walks, recreation or pleasure grounds only. The land has been so held and used by the Local Board and its statutory successors ever since and is subject to the byelaws for the regulation of pleasure grounds made under section 164 of the Public Health Act 1875.

Mr Patience argued that in taking the copyhold grant and the subsequent enfranchisemen the Local Board was exercising the power to provide premises for the purpose of being used as public walks or pleasure grounds conferred on it by section 74 of the Public Health Act 1848, and that any use of the land for lawful sports and pastimes since its acquisition in 1871 is explicable by the fact that it has been open to the public under the provisions of the Act of 1848 and their subsequent re-enactments since that year. Mr Patience also relied on the fact that the land was acquired by the Local Board freed and discharged from all incidents of copyhold and customary tenure. Furthermore, he contended that the use of the land has been controlled by the byelaws, which prevent the use of the land being as of right.

In my view, if the land was a village green when it was acquired by the Local Board, the acquisition did not have the effect of abolishing the rights to which the land had been previously subject. I do not construe the words "freed and discharged from...all...incidents of copyhold or customary tenure" as including any rights of the inhabitants of the locality to indulge in lawful sports and pastimes. In my view, they related solely to the rights of the lords of the manor as against their copyhold or customary tenants. In the absence of an express statutory

provision to the contrary, any conveyance of a village green is subject to the right to use it as such : see Forbes v. Ecclesiastical Commissioners for England (1872), L.R.15 Eq.51.

It is therefore necessary for me to consider whether the evidence supports Mr Clayden's contention that the inhabitants of the locality had a customary right to indulge in lawful sports and pastimes on this land before it was acquired by the Local Board.

The evidence can only be described as meagre. First, there is the fact that the Inclosure Commissioners did not allot this land in their Award. This is consistent with the land having been then a village green, but it could not be said to prove it.

Next there is the fact that the land was named "Woodside Green" on the map attached to the Inclosure Award and on the Ordnance Survey Map before it was acquired by the Local Board. This again cannot be said to be more than consistent with the land having been a village green. As a general rule, names are unsafe guides in cases under the Act of 1965. An area of land which was once a common frequently continues to be known as So-and-so Common long after it has lost its legal status as such. I had to consider a case of anachronistic nomenclature in In the Matter of Lord's Waste, Winterton-on-Sea, Norfolk (1972), Ref. No. 25/D/12. Nevertheless, it must be borne in mind that a village green can only lose its legal status by an Act of Parliament, so that the fact that a piece of land has been named So-and-so Green throughout its known history is some indication, though by no means conclusive evidence, that it was and still is a village green.

The last piece of relevant evidence before the acquisition of the freehold by the Local Board is the condition in the grant of the copyhold estate that the land should be appropriated by the Local Board to be for ever kept as an open space and used as and for a place of recreation for the use of the inhabitants of the parish of Croydon and of the neighbourhood and for no other purpose. The wording of this condition is in marked contrast to that of the indenture by which the land was later enfranchised, whereby the land was conveyed to the Local Board to be held and used for the purpose of public walks, recreation or pleasure grounds only. Although not identical, the wording of the indenture resembles that of section 74 of the Act of 1848 in its use of the word "public", whereas the ambit of the condition of the copyhold grant is narrower in that it embraces only the inhabitants of the parish of Croydon and of the neighbourhood. It may well be that in accordance with normal conveyancing practice the indenture was drafted by the purchaser's solicitor, who would presumably have in mind the provisions of section 74 of the Act of 1840, which empowered his client to enter into the transaction. The copyhold grant, on the other hand, being a copy of an entry in the court roll of the manor, would have been drafted by the steward of the manor, and the condition as to the use of the land would have been included at the instance of the lords of the manor, for if it had been included at the instance of the Local Board the wording of section 74 of the Act of 1848 would have been employed. The inclusion of a condition for the benefit of the inhabitants of the parish of Croydon and of the neighbourhood seems to indicate that the lords of the manor were concerned to protect an existing right rather than to secure the future use of the land by the Local Board under the Act of 1848.

Meagre though this evidence is, there is no evidence that the land in question was not a village green before its acquisition by the Local Board, and I feel bound to find on the balance of probabilities that it was then a village green. The acquisition by the Local Board did not extinguish its status as a village green, which still remains.

The small area which was formerly part of O.S. No. 1108 is a triangle on the north-east side of O.S. No. 1109. It was not purchased by the Local Board in 1871 and there is no evidence as to how it came to be incorporated in the present open space. The 1862-1873 Ordnance Survey Map shows O.S. No. 1108 as an area of enclosed land and there is no evidence that it was subject to any user for sports and pastimes before it became part of the present open space.

For these reasons I confirm the registration with the following modifications namely the exclusion of the area acquired by the Croydon Corporation in 1888 and the triangular area to the north-east of it.

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 18th day of March 1976

Chief Commons Commissioner