COMMONS REGISTRATION ACT 1965

Reference No.197D/1

In the Matter of Land bounded by
Fairlawn and The Leas, Chestfield, Kent.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.72 in the Register of Town or Village Greens maintained by the Kent County Council and is occasioned by Objection No.57 made by Mr. Jack Cabburn and noted in the Register on 29th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Canterbury on 15th November 1972. The hearing was attended by Mr. K.J. Barton, solicitor, for the Chestfield Preservation Society, which made the registration. Mr. Cabburn did not appear and was not represented, though he sent a letter dated 13th November 1972 stating that he was only interested in claiming the ownership of the land and that he never regarded it as anything other than an "open space".

Had Mr. Cabburn not made his objection or if he had withdrawn it while it was still possible to do so, this registration would have become final by virtue of section 7(1) of the Commons Registration Act 1965. It is tempting to achieve the same result by confirming the registration without more ado. However, the matter having been referred to me it is my duty under section 6(1) to inquire into it and to give a decision in accordance with what I find after making such inquiry.

The land in question is a more or less quadrangular open space (using that expression without any technical connotation) bounded on all sides by roads, which were laid out as part of the development of a building estate in the 1930's. I heard evidence from Mrs. Greta Woodman, the daughter of Mr. G.B. Reeves, a Whitstable builder, who acquired the land in 1920 with the object of creating what Mrs. Woodman described as an "ideal village". It was Mr. Reeves's wish that Fairlawn should never be built on, but left as an amenity for the owners and occupiers of the houses built on the plots overlooking it. Mrs.L.R.L. Bradford, whose husband bought some of the plots from Mr. Reeves, said that Mr. Reeves told her that Fairlawn would never be built on. Mr. Reeves's wishes have been observed to the present day, and I have no doubt that Mrs. Bradford was right when she described it as an amenity. Mr. E.G.D. Hughes, the Secretary of the Chestfield Preservation Society, put the matter in another way when he said that Fairlawn was a vital lung.

All this, however, is far from bringing this land within the definition of "town or village green" in section 22(1) of the Act of 1965. It was not allotted by or under any Act for exercise or recreation, and its history rules out the possibility of any customary right. That only leaves for consideration the question whether the inhabitants of the locality have indulged in lawful sports and pastimes on the land as of right for not less

than twenty years.

The land, so Mr. Hughes said, is not large enough for any organized game, such as football. The only evidence about any play on it was that of Mrs. Bradford who said that little children living in the neighbouring houses played about on it.

Mr. Barton argued that my decision in In the Matter of The Village Greens, Waddingham, Lincolnshire (Parts of Lindsey) (1972), 24/D/3 was a precedent for holding that land such as this should be held to be a town or village green. In that case I held that there was a customary right for children to play on the land there in question. There is no evidence at all in this case to support a customary right. As far as playing by the inhabitants of a locality as of right for more than twenty years, I do not consider that the few houses around Fairlawn can properly be regarded as a locality in this context. All the cases on this subject relate to defined localities,such as parishes, townships, boroughs, or manors. While it would be wrong to suggest that the class of localities is now closed, in my view a few houses on a modern housing estate lack the definitiion which is essential to the identification of a locality. As for any playing being as of right, I am not satisfied that casual playing on a piece of land left unbuilt on as a town planning amenity can properly be said to be as of right.

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 6th day of December 1972

Chief Commons Commissioner