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9 May 1996

Dear Mrs Sergeant

Commons Registration Act 1965 - Registration of Land as Village Green at Selside

I refer to previous correspondence in this matter.

Please find enclosed a copy Opinion of G. Ryan QC received by the Council in this matter.

I should be grateful to receive any representations you may wish to make in respect of this Opinion. This letter is being sent to both applicant and objector with observations invited. This consultation process will hopefully place the County Council in a better position to determine this application.

You should further note that, at its meeting on 15 March 1996, the Environmental Services Committee delegated the power to determine this application to the Economic Development and Environmental Issues Sub-Committee. This means that the Sub-Committee does not need to make a recommendation back to the main Committee and can decide the matter itself.

With the next meeting of the Economic Development and Environmental Issues Sub-Committee schedule for 6 June 1996, I look forward to hearing from you in the fairly near future.

I thank you for your assistance.

Yours sincerely

for Head of Legal Services

(i)
Mrs H C Sergeant
Clerk to the Horton in Ribblesdale Parish Council
Borrins Farm
Selside
SETTLE

BD24 OHX

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In the matter of an application to register
land known as 'The Green' Selside as a Village Green

OPINION

1. This case illustrates the problems of registering a small piece of land in the centre of a rural hamlet containing probably less than a dozen families. Selside forms part of the parish of Horton-in-Ribblesdale in North Yorkshire, though I have little doubt that for present purposes it comprises an identifiable 'locality'. The little piece of land in question, which cannot measure much over 20 yards from E to W and 25 yards from N to S is at the centre of the hamlet. Whatever bus service there is, or has been, stops by it and local people obviously have gathered there from time to time in groups to chat, whilst their children have played games on a scale dictated by its small size, no doubt extending onto the surrounding lane and tracks.
2. Land is eligible for registration as a village green under the Commons Registration (New Land) Regulations 1969 'where, after 2nd January 1970, any land ... becomes .. (a) village green' and an application for registration can be made so long as the land is not already registered. The question is whether the Selside 'green' qualifies. To do so it must come within that

part of the definition of 'town or village green' in s.22(1) of the Commons Registration Act 1965 which includes:

'.. land .. on which the inhabitants of any locality have indulged in .. (lawful) sports and pastimes as of right for not less than twenty years.'

3. Considering this set of qualifications in turn I have, as indicated above, no doubt that whatever use was made of this land was made by 'inhabitants of the locality', to some extent by adults but principally by children and teenagers.

4. Whether their activities have comprised 'lawful sports and pastimes' is more problematical. The numerous statements obtained in support of the claim to registration make it clear that village children have played various games and ridden their bicycles on this land for many years. It also has clearly performed the function of a teenage meeting place. As concerns adult activity, its small size has really ruled out any activity of communal significance. 'Chatting with neighbours' or 'relaxing with friends' appears to mark its extent. It is noticeable that statements from the long settled Selside families or former families - the Harrisons, Lamberts, Sedgwicks and Wilcocks - focus on the activities of their children, whether teenage or younger, or their own activities as children. Thus unless a court were to take the

view that use by children sufficed to establish lawful sports and pastimes, certainly contrary to some decisions of Commons Commissioners, the claim seems deficient in the absence of meaningful adult activities on the land.

5. Use 'as of right' means use which is neither secretive nor by use of force (e.g. breaking through a hedge) or with permission. (I recently advised my Instructing Solicitor on a claim in respect of land at Saxton and refer to my comments on this aspect of the law in that opinion). The practical considerations affecting this issue in the present case are these: the land was for many years occupied by Mr Morphet; a low stone wall, described as U-shaped (in plan) by Mr Cameron and so shown on the map extracts produced by Mr Morphet, has for years enclosed the greater part of the 'green'. For many years two 'Nissen Hut' type buildings stood on it, and in one corner there appears to have been a fertilizer store. In fact the aerial photograph produced by Mr Morphet suggests that at one time there was very little 'green' at all and that this little island of land was in use simply as an adjunct to the relevant farm (although it is not clear to me which farm this was). Such scope as there was for children to play there was then obviously limited. I note too that Mr Wilcock has commented that 'there may have been occasions when Mr. Morphet asked local children to leave when he thought they were causing a nuisance' suggesting, as does Mr Morphet, that

the latter was prepared to put up with village childrens' games on and around the land unless they get 'out of hand'. This evidence leads me to think it likely that any substantial use of the land was permissive, though I note that several deponents, including the Harrisons, Lamberts and Mr. S.R. Wilcock expressly deny that permission to use it was ever sought.

6. The period of 20 years is claimed to have accrued on 1 February 1994. I have little doubt that the evidence assembled by the Clerk to the Horton-in-Ribblesdale P.C. covers the requisite period. However some evidence, in particular that of the Lambert family and of Mrs Jackson, suggests that much the same use has been made of 'the green' for a far longer period. There is also a reference to it in the (undated) handwritten paper about constructing the village school. It is necessary to note that in the recent High Court decision in R v. Suffolk C.C. ex p. Steed (now reported at 70 P & CR 487) Carnwath, J. held that the provisions of s.13 of the 1965 Act, which govern amendment of the register where any land becomes a village green, could not be applied in the case of land the status of which had not in reality changed over many years and which would have been eligible for registration during the principal registration periods between 1967 and 1970 (see 70 P & CR at page 504 and pages 505-6). Such a situation looks distinctly likely to emerge in relation to

this Selside 'green'. Mrs Sergeant's letter of 7 September 1995 clearly accepts the point. (However the Suffolk decision is under appeal).

7. The owner of the green is said to be Dr J.A. Farrer who appears to be the proprietor of the Ingleborough Estate. His claim is put on the basis 'if there is no other legitimate claim to ownership'. But I infer from Mr Morphet's statement that he claims to be the owner of this land, otherwise his proprietorial interest in it is unexplained.

8. Having regard to these considerations I would recommend the County Council not to accept the claim to register this piece of land. In essence I consider the claimed activities inadequate to constitute 'lawful sports and pastimes' of the inhabitants of the locality and I have some doubt whether twenty years use 'as of right' can be claimed. There is in addition, the difficulty generated by the R v Suffolk decision to which I have referred. My principal reason for so advising is however the inadequacy of the 'lawful sports and pastimes' claimed both as to their nature and having regard to the physical condition of the land.



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IN THE MATTER OF AN APPLICATION
TO REGISTER LAND AT SELSIDE,
HORTON-IN-RIBBLESDALE, NORTH
YORKSHIRE AS A VILLAGE GREEN

O P I N I O N

David Parrish
Acting County Secretary
County Hall
Northallerton
North Yorkshire DL7 8AD

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11. The concept of use or enjoyment 'as of right' has been the subject of somewhat blurred considerations in recent cases, happily rectified by the leading judgment of Dillon L.J. (supported by Parker and Stocker L.JJ.) in Mills v Silver [1991] Ch. 271. Rejecting the contention 'that there is an established principle of law that no prescriptive right can be acquired if the user by the dominant owner of the servient tenement in the particular manner for the appropriate number of years has been

tolerated without objection by the servient owner',
Dillon L.J. continued, at p.279H:

'But there cannot be any such principle of law because it is, with rights of way, fundamentally inconsistent with the whole notion of acquisition of rights by prescription. It is difficult to see how, if there is such a principle, there could ever be a prescriptive right of way ... If each case is looked at on its own and regarded as a whole, none lays down any such far reaching principle'.

12. Mills v Silver concerned a private right of way. Yet the judgments deal with the principles of prescription, and prescription forms the basis of a claim of the kind under consideration here. It is worth noting that the Court of Appeal referred to the leading statement of the law in Sturges v Bridgman (1879) 11 CH.D 852 and Gardner v Hodgson's Kingston Brewery Ltd [1903] A.C. 229. The significance of Alfred E. Beckett Ltd v Lyons [1967] Ch. 449 was related by the judgments in Mills v Silver to the peculiarities of the law governing the foreshore (see pp. 282E-284B, 290F and 291B-F

respectively). It was also noted that the formulation of use 'as of right' had been treated by Lord Lindley as the equivalent of 'claiming right thereto' (the Prescription Act 1832 phrase) and to have the same meaning as 'the older expression nec vi, nec claim, nec precario' in Gardner's case: see [1903] A.C. p.239.