

1st draft

SELSIDE RESIDENTS ASSOCIATION

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"our legal advice"

014

16th May 1996

Withdrawal procedure
+ in confidence

Dear Sir,

Registration of Land as Village Green at Selside

With reference to your letter of 9th May 1996, your reference 1876 IPR/SER, I should like to submit the following observations which were prepared after close consultation with Selside residents.

1. Introductory Remarks

1.1 In all the discussions and representations about Selside Village Green we must not lose sight of the reason why Horton in Ribblesdale Parish Council felt it necessary to apply for registration. The present residents of Selside have used the Green for many years without hindrance. However, some years ago Mr Morphet (the only objector to the registration) moved away from Selside and later decided to put on the market a house near Selside Green. He instructed his estate agent to include the village green in the offer although he has no legal title to this piece of land.

Ample A.V.I.

1.2 Selside residents were alarmed by a possible sale of their village green and asked the local Parish Council to act on their behalf. Knowing the extent of use Selside residents make of this part of their hamlet Horton Parish Council agreed to apply for registration of this land as Village Green.

Miss
Moss (B)

1.3 A decision for registration would ensure that all local residents retain the rights they have enjoyed for more than twenty years. Everybody could continue to enjoy their pastimes on the green.



A decision against registration would be followed by attempts by one party to exclude all others from the green. This would be the first time that this has ever happened. Selside residents would vigorously contest such attempts. We are informed that our rights to use the green will not necessarily be affected by not registering the land as Village Green. However, the legal uncertainty which would be created in such a case would make the life in the hamlet very unpleasant.

2. "Lawful sport and pastimes"

2.1 Counsel's opinion as to whether our activities on the village green amounted to "lawful sport and pastimes" is focused on his apparent conviction that such rights can only be exercised by adults (item 3 of Opinion). Our advice is that he may well not be right in that opinion. **Should this particular point be of any importance in the deliberation of the Council's Committee we request that this opinion be tested, in court if necessary.**

Selside
Moss
Coun

2.2 In any case, we do not feel that we have failed to demonstrate adult exercise of the user rights in the relevant period. This point should be strongly made to the Committee who can see clearly from our previous submissions that - taking into account the time used for pastimes on the green - it is mainly adults who have used the green in the period in question. The conclusion that the village green is used "principally by children and teenagers" (item 3 of Opinion) cannot be sustained either

Should
Council take
any case

It would endow Mr Morphet's successor with property right to which Mr M has no title.

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Conquering Ma, Market

on the basis of the documentary evidence provided by Horton Parish Council nor by looking at the actual situation in Selside.

- 2.3 Our "meaningful adult activities on the land" (item 4 of Opinion) included everything which could be carried out on the green as normal part of village life. In this context, the following point is of considerable importance:

The green is the centre of our hamlet. We cross it every day. We use it every day. It is right in the heart of Selside. As most of the local property has no garden or play area adults and children alike use it as if it were their front garden. It is too small for organised sports, etc. but of crucial importance for the social cohesion of our hamlet. Here we can and do meet. Taking it out of common use would be like taking the heart out of Selside.

None but

This, together with the actual activities carried out on the green, should make it clear that our claim is certainly not deficient in that respect.

3. Use as "of Right"

- 3.1 Item 5 of Counsel's Opinion is, unfortunately, based on an incomplete or wrong understanding of the facts of the matter. The walls which partly surround the green are part of the green and not part of anybody's border; they leave wide spaces everywhere so as not to interfere with the use of the green. The so-called "Nissen Hut" type buildings were only there in the very beginning of the period in question and were removed more than twenty years ago. But even when they were there nobody in Selside objected as we always felt that every one (including Mr Morphet) has the right to use the green as long as it does not interfere with the rights of others. In any case, the structures were only open shelters but could be used (and were used) as shelter against rain, for example, by local residents like Mr Wilcock when using the green.

*"Laws
Fane -"*

- 3.2 The "fertilizer store" is simply a platform of stacked railway sleepers (ideal for sitting on by adults or climbing over by children).

*Mr M
Exclaves
Ret Inds*

There always remained, in the period in question, plenty of scope and space for using the green in the way described.

- 3.3 Counsel misunderstood Mr Wilcock's remark about local children being asked to leave (item 5 of Opinion). This happened, according to Mr Wilcock, as children strayed from the village green on to the road adjacent to Mr Morphet's property.

- 3.4 Although only some of the deponents mentioned expressly that no permission was ever sought or given for the use of the green we should like to point out that this applies also to all of the other deponents. They would be happy to write to the Committee stating that they have always used the green without seeking permission from anybody, without ever being granted such permission and without ever having been hindered in exercising their rights over the period in question.

4. Reference Period for Registration

- 4.1 Counsel in his Opinion gives some weight to the case of R v Suffolk CC ex parte Steed (70 P & CR487). Whilst this case is not the predominant factor it could nevertheless be seen as being of some importance.

- 4.2 Our legal advice makes it quite clear that this particular case does not apply in the case of Selside. We hope that the documentary evidence provided shows clearly that new common user rights have been created within the period in question and within the twenty-seven years since the enactment of The Commons Registration (New Land) Regulations 1969. Indeed, the creation of such new rights seems to be the underlying principle behind the "late" registration procedure.

cut

~~Most of the residents did not exercise their rights earlier (although some did). The earlier evidence submitted by the Clerk to Horton in Ribblesdale Parish Council was only provided as background material to the Parish Council's application. The use of the land has substantially changed and~~

The fact that some residents might not have -

cut

20/21

{perhaps wrong}

I have been informed that Mr Morpet's
attended sale of The Village Green is not
the first occasion ~~on~~ which he has sought

to dispose of land to which his title

is questionable.

+ in these circumstances

+ set under a duty to disclose

I am led to believe that

~~To the best of my belief~~ [although I

~~stand to be corrected~~ in 1997, Mr Morpet

"sold" a ^{similar} parcel of land in silence to whom
he had no absolute title

intensified since the 70s and it is on the basis of the new way of using the green that the Parish Council made its application.

- 4.3 Should the Committee, despite of the facts as mentioned under 4.2, attach any importance to the case of R v Suffolk CC we feel that the Committee cannot come to a final decision on this point as the appeal on this point is still to be heard. The decision of the appeal court could then affect the outcome of this application. Although our advice leads us to believe that this case has no bearing on Horton P.C.'s application we must point out to the Committee that **reasonable grounds exist for a deferment of any adverse final decision until such time as the appeal on this point is finally heard.**

5. Conclusions

- 5.1 We recommend to the County Council Committee to accept the application for registration as Village Green.
- 5.2 Bearing in mind the size and geographical situation of the green as well as the composition of local residents it is clear that Selside residents use the green constantly and fully. It is our advice that these certainly constitute "lawful sports and pastimes" within the meaning of the Act.
- 5.3 All Selside residents except the objector claim a use of the green "as of right". They strongly object to the idea that they have used the green by tacit or expressed approval. The use of the green has in no way been "permissive".
- 5.4 a) The case of R v Suffolk CC should be ignored in the case of Selside. The application is sought on the basis of new rights over the period in question. Although some residents have used the land before it is felt that this would not have been sufficient for registration. The use made of the green by new residents, however, provides a solid base for such a claim.
- b) Should the County Council Committee, nevertheless, attach any importance to that case we submit that reasonable grounds exist for a deferment of any adverse final decision until such time as the appeal on this point is heard. + Selside's use
- 5.5 We also request that the Committee - should it be in any doubt about the merits of a registration - agrees to a site visit to Selside. We conclude that it was Counsel's lack of knowledge of the physical condition of the land and the nature of the pastimes claimed that led Counsel to the opinion that our claim is deficient.

We strongly urge the Committee to accept the application.

Yours faithfully,
On behalf of Selside Residents Association

Colin Webster
Secretary

have been
I ~~am~~ ~~reliably~~ informed that Mr. Moplet's
^{recent}
~~proposed~~ attempted sale of The Village Green

is not the first occasion on which he
has sought to ~~dispose~~ ^{extend + sell} land to which
a point

~~he had no absolute title~~ ... was debatable
questionable
To the best of my belief in 199 —?

Mr. Moplet ~~purported to dispose of the~~ ~~field~~
said a parcel of land in Selkirk, ~~the~~ to

~~purchase of which the land~~ ~~belong~~ ~~that~~ ~~he~~
~~had agreed to~~ ~~transfer~~ ~~the~~ ~~field~~ ~~was~~
~~disregarded to~~ ~~take~~ ~~an~~ ~~interest~~ ~~to~~ ~~which~~ ~~he~~
had no absolute title: