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030



Richard T Daly MA (Oxon)
Head of Legal Services

Contact: Ian Ross
Ext: 2231

Your ref:
Our ref: IPR/SER
10 January 1997

Dear Mr Webster

Selside Village Green

I refer to previous correspondence in this matter and to the meeting of the County Council's Economic Development and Environmental Issues Sub-Committee which took place on 7 January 1997.

I enclose a copy of the report and documentation, which Members agreed to debate and determine in public.

Members resolved to accede to the application for registration of the land at Selside as Village Green.

I shall contact you again in due course with an indication of the steps the Council will now be taking to put into effect the registration of this land as village green.

Please contact me should you wish to discuss any aspect of this matter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'I. Ross'.

for Head of Legal Services

PHOTOGRAPHS DEC. '96.
ALSO CONSIDERED.

Mr Webster
Selside Residents Association
The Old School
Selside
SETTLE
North Yorkshire BD24 0HZ



NOT FOR PUBLICATIONNORTH YORKSHIRE COUNTY COUNCILENVIRONMENTAL SERVICES COMMITTEEECONOMIC DEVELOPMENT AND ENVIRONMENTAL ISSUES SUB-COMMITTEE7 January 1997Commons Registration Act 1965Application for Land at Selside to be Registered as Village Green

This report contains exempt information of the description contained in paragraph 12 of Part 1 of Schedule 12A to the Local Government Act 1972.

1.0 BACKGROUND

- 1.1 The County Council, as Registration Authority, administers the Register of Common Land and Village Greens for North Yorkshire.
- 1.2 An application has been received in respect of land at Selside alleging that land has become village green and should be included on the Register as such.
- 1.3 On 19 September 1995 the Property and General Purposes Sub-Committee gave preliminary consideration to the application. The procedures for registration have now been underway for some time. The application has been given publicity and objections have been received. In addition, Counsel has been instructed to advise on the law and the merits of the application. Counsel's advice has now been received.
- 1.4 On 15 March 1996 the Environmental Services Committee delegated power to this Sub-Committee to consider the merits of this application and to determine whether or not it should be acceded to.
- 1.5 On 6 June 1996 this Sub-Committee considered the matter - copy report attached - and resolved to defer dealing with it pending clarification of the legal position.

2.0 THE LEGAL POSITION

- 2.1 Land is eligible for registration as a village green under the Commons Registration (New Land) Regulations 1969 "where, after 2 January 1970, it has become village green. The question is whether the Selside "Green" comes within that part of the definition of "Town or Village Green" in Section 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 20 years."
- 2.2 Section 13 Commons Registration Act 1965 enables the Register of Village Greens to be amended where land has become a town or village green.

2.3 The legal position in relation to claims made under the 1969 Regulations has changed in consequence of the decision of the Court of Appeal in R -v- Suffolk County Council Ex P Steed (11 July 1996). The fact that land might have been claimed as a Green under the principal provisions of the Commons Registration Act 1965, but was not so claimed, was held by the Court not to be a bar to a claim under the new Land Regulations. Therefore, Selside Green could have been registered immediately pursuant to the 1965 legislation, the fact that it wasn't does not prevent the County Council considering this fresh claim.

2.4 The essential criteria are as follows:-

- used by the inhabitants of the locality;
- for lawful sports and pastimes;
- as of right;
- for not less than 20 years since 2 January 1970.

The task of this Sub-Committee is to consider the evidence and determine whether the requirements for registration have been satisfied.

3.0 THE APPLICATION

3.1 The application has been made by the Horton-in-Ribblesdale Parish Council in respect of an area of land known as "The Green" at Selside shown hatched black on the attached plan accompanying this report.

3.2 It is claimed that the land at Selside became a village green on 1 February 1994 by virtue of it having been used by local habitants for lawful sports and pastimes as of right for more than 20 years.

3.3 The application was accompanied by 17 statements/letters of support from residents and former residents of Selside giving evidence of activities on the land.

3.4 The land is believed to be owned by the local Lord of the Manor, Dr J A Garrer of the Ingieborough Estate Office, Clapham, Lancaster.

3.5 An objection to the application has been made by Mr J H Morphet of Acre Lands Farm, Grindalton, Lancashire, who has included the Green in the particulars of sale of the neighbouring house known as "Penyghent Cottage".

4.0 THE EVIDENCE

4.1 The application itself and representations in support of the application are attached to this report at Appendix A.

4.2 Representations objecting to the application by Mr J H Morphet are attached at Appendix B.

5.0 ASSESSMENT OF THE EVIDENCE

5.1 In order to advise Members, with the benefit of Counsel's Opinion, I have commented on the submissions both in support of and objecting to the application with reference to the criteria to be met before the application can succeed.

5.2 "Use by the Inhabitants of a Locality"

Selside is a rural hamlet containing only a small number of residents. It forms part of the Parish of Horton in Ribblesdale in North Yorkshire though Counsel has advised that it would comprise an identifiable "locality" for the purposes of the above legislation. It further appears that, whatever use was made of the land, it was made by the inhabitants of the "locality", to some extent by adults, but principally by children and teenagers. Having said this, there is some doubt about whether the whole area of the claimed land has in fact been physically available for use for the required period. In this respect I refer Members to a photograph provided by Mr Morphet taken, he says, in about 1970 which shows clearly two corrugated iron nissan huts on the area of land in question. There are also walls and other physical structures on the site. The blue bags shown on the photograph are, apparently, fertiliser bags on top of railway sleepers. The Parish Council, in their submissions, have commented that these bags came and went. However, the photograph confirms that structures of some substance were on the site in 1970.

The relevant period is, of course, 20 years prior to the date of the application which was 2 March 1994. In his letter dated 7 November 1995, Mr Morphet confirms that the nissan huts were removed when Penyghent Cottage was converted into a home for letting. This, he says, took place after 1979. As Counsel has pointed out, this is well into the 20 year period and would mean that the nissan huts and possibly the other various unidentified items occupying space would have had an impact on the availability of the land in question for use. It has been pointed out by the Parish Council that the nissan huts were open and therefore available for use. Of course, the law demands use for lawful sports and pastimes with some social focus. The presence of the nissan huts and other structures on this small site is evidence against the application as it indicates that the land is unlikely to have been physically available for such use.

Aerial photographs taken show that the nissan huts were on site in 1968 but had gone in 1980. They also show that most of the land in question was bare ground and not grass covered. Mr Morphet states that the land was used for agricultural purposes and the photographs support this type of use rather than use as a village green.

5.3 "Lawful Sport and Pastimes"

Given its normal meaning, this phrase could be interpreted very widely. However, a series of judicial decisions have clarified what can constitute lawful sports and pastimes.

The use must be capable of involving the local community as a whole or at least a wide cross-section of it, whether as participants or spectators, eg, Maypole dancing, village cricket, horse racing, village dancing. There must be some social focus for the activities which must involve the inhabitants of the locality.

From the evidence submitted in support of this application there appears to be a good deal of use of the land by inhabitants of the locality for various purposes but little indication of much activity which involved the local community as a whole. Organised events held on the land appear to be restricted to the brief reference to a village bonfire. The evidence submitted indicates that the land has been used by villagers primarily for informal recreation and as a communal meeting place for small groups and for agricultural purposes.

As stated above, the limited size of the land is once again relevant when considering whether lawful sports and pastimes have taken place over the required period.

Although the land does not appear to have been totally enclosed, the photographs indicate the presence of structures on it and, in view of its size, as Counsel confirms, "... the presence of various enclosures on the small piece of land is ... an indication that the land was not generally available for lawful sports and pastimes."

Mr Morphet has stated that the land was used for farming activities. The aerial photographs and the 1970 photograph referred to above appear to confirm that it was used by farm machinery.

Counsel bears in mind these physical features and notes that the evidence in support of the application does not reveal any substantial indication of sports having been pursued on this land and the pastimes recorded are mainly for general play of children or individual activities of adults on or around it. He points out that inhabitants may well have stopped on the land to have a chat or wait for a bus or may have crossed the land and generally used part of it as open ground in the middle of the hamlet. However, such uses do not, in his opinion, comprise lawful sports and pastimes in view of the judicial interpretation of this criteria.

5.4 "As of Right"

The recent case of R -v- Suffolk County Council Ex P Stead attached a degree of significance to the words "as of right". It means use which is neither with permission, nor in secret, nor achieved through force, ie, people must have used the land in the manner described by believing they had a right to do so.

Representations have been received by Mr Morphet indicating that he has granted permission for certain types of use on the land. The Parish Council and the Selside Residents Association have consistently stated that users have done so in the belief that they had a right to do so.

Evidence in support of this application indicates that the activities described have taken place freely and without hindrance. Mention has been made that permission was granted for activities on the land rather than it being used as of right. However, as Counsel has said, it appears clear that those who support the claim almost certainly do so by virtue of living near or having lived in Selside and that, were any of them interviewed, they would each claim to have used the land as of right as a local inhabitant.

In the circumstances, this part of the test appears to have been satisfied.

5.5 "More than 20 Years"

It is established that generally the relevant period for consideration is the 20 years immediately preceding the application.

Evidence submitted in respect of this application relates to years preceding the 20 year period. However, the only relevant evidence is that which indicates whether the relevant criteria have been met during the 20 year period.

The reason why this application has yet to be determined was the fact that decision in the R -v- Suffolk County Council Ex Parte Stead case was awaited. As I have already said, this decision clarified that, notwithstanding the fact that use had been made of the Green for a far longer period than the required 20 years does not prevent a claim such as this.

When tying in the physical circumstances of the land, together with the alleged exercise of lawful sports and pastimes, one does so with reference to the 20 year period. Aerial photographs available are dated 14 June 1968, 12 May 1980 and 16 May 1988. We also have the 1970 photograph provided by Mr Morphet. The aerial photographs are on a small scale but show the existence of the nissan huts and other physical structures in 1968. They continued to exist in 1970 when Mr Morphet's colour photograph was taken. The nissan huts had gone by 1980 but some structures remain. In accordance with Counsel's advice, objectors and supporters have been requested to clarify when they believe the nissan huts and other physical structures were removed. The best evidence presently available is Mr Morphet's statement that the huts still existed in 1979 which means that sizeable structures co-existed with alleged use as a village green. At all times covered by the less recent photographs the area does not appear to have been grassed to any large extent. Photographs taken recently of the claimed land are self explanatory.

6.0 COMMENT

- 6.6 The decision whether to accede to this application for registration of land as a village green is one for Members to take.
- 6.7 Counsel's advice is that this application does not justify registration of the land in question. He does not consider that the decision whether or not to register the land turns on whether or not use was made prior to 1970 or whether or not users did so "as of right". He confirms that it does turn on the nature of the land, in particular it's potential to have accommodated "lawful sports and pastimes" for the 20 years ending on 1 February 1994 (the date stated in the application), and on the nature and extent of the sports and pastimes claimed to have been exercised.
- 6.8 It has been suggested that Members of the County Council ought to view the land. Counsel has advised that there is no obligation for such a site visit to take place. More recent photographs of the site will be available for Members to view at this meeting.
- 6.9 In order to seek finality on the aspects of whether or not the nissan huts existed during the 20 year period, Counsel advises that objectors and supporters be requested to clarify this point. A letter was sent on 20 December 1996 and responses received will be reported to Members at the meeting on 7 January. If it remains the case that the physical circumstances during the 20 year period were as shown in the 1970 photograph submitted by Mr Morphet, Counsel advises "it is hardly sensible to conceive of the land shown in the photograph as a "village green" ".
- 6.10 Counsel advised in March and December 1996. His Opinion has not changed. Further evidence has been received from both objectors to and supporters of the application. He remains of the firm opinion that this application does not justify registration of the land in question.

7.0 RECOMMENDATION

- 7.1 Members are requested to determine whether to accede to this application for the registration of land at Selside as village green.

RICHARD DALY

Head of Legal Services

County Hall
NORTHALLERTON
31 December 1996
IPR/ALS

ENVIRONMENTAL SERVICES COMMITTEEECONOMIC DEVELOPMENT AND ENVIRONMENTAL ISSUES SUB-COMMITTEE

6 June 1996

Application for Registration of Land at Selside as Village GreenReport of the Head of Legal Services

This document contains exempt information of the description contained in paragraph 12 of Part 1 of Schedule 12A to the Local Government Act 1972.

1.0 PURPOSE OF THE REPORT

- 1.1 To enable Members to give further consideration to an application under the Commons Registration Act 1965 for the registration of an area of land at Selside as Village Green.

2.0 THE LAW RELATING TO APPLICATIONS FOR THE REGISTRATION OF LAND AS VILLAGE GREEN

- 2.1 The Commons Registration (New Land) Regulations 1969 state that where, after 2 January 1970, any land becomes Village Green, an application may be made in accordance with the Regulations for the inclusion of that land in the appropriate Register of Village Greens.
- 2.2 In this application it is alleged that land has become Village Green by the actual use of the land by the local inhabitants for lawful sports and pastimes as of right for not less than 20 years. With this being the basis of the application the land can only become Village Green where certain criteria are satisfied. These criteria can be usefully set out as follows:
- used by the inhabitants of the locality;
 - for lawful sports or pastimes;
 - as of right;
 - for not less than 20 years.

In addition, the land must have become Village Green since 2 January 1970 which was the date upon which all Register of Village Greens had to have been registered.

3.0 THE ROLE OF THE REGISTRATION AUTHORITY

- 3.1 Pursuant to the 1969 Regulations, unless the application is to be rejected after a preliminary consideration, the County Council must consider it further in the light of any objections which may have been received after public notice of the application has been issued. The applicant will be supplied with copies of all objections which are to be considered and will have an opportunity of answering. The applicant will be given all reasonable opportunity to put his application in order should such be necessary. If it is accepted, the land will be registered as Village Green. If it is rejected, then the applicant will be notified of the reasons for the rejection.
- 3.2 The Head of Legal Services has delegated power to reject applications for the registration of Village Greens if appropriate after preliminary consideration. However, in view of the nature of the application on 19 September 1995, it was reported to the Policy and Resources Committee's Property and General Purposes Sub-Committee where the application was given preliminary consideration.

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4.0 THE APPLICATION

- 4.1 This application has been made by Horton in Ribblesdale Parish Council in respect of an area of land known as "The Green" at Selside shown hatched black on the plan accompanying this report.
- 4.2 It is claimed that the land at Selside became a Village Green on 1 February 1994 by virtue of it having been used by local inhabitants for lawful sports and pastimes as of right for more than 20 years.
- 4.3 The application was accompanied by 17 statements/letters of support from residents and former residents of Selside giving evidence of activities on the land.
- 4.4 The land is believed to be owned by the local Lord of the Manor, Dr J A ^FGarrar of the Ingleborough Estate Office, Clapham, Lancaster. However, a Mr J H Morphet of Acre Lands Farm, Grindleton, Lancashire has included the Green in the particulars of sale of a neighbouring house known as "Penyghent Cottage".

5.0 THE PROCEDURE

- 5.1 On 19 September 1995 after giving the application preliminary consideration, the Property and General Purposes Sub-Committee resolved as follows:

- (i) That the County Secretary's intention to obtain Counsel's Opinion on the legal position relating to such applications for registration of land which may have become Village Green and to advise the Council on the merits of this application be noted.
- (ii) That the applications for registration of land at Selside be given publicity in accordance with the Commons Registration (New Land) Regulations 1969.
- (iii) That the applicant be invited to submit further representations in support of the application.
- (iv) That this application be the subject of a further report to this Sub-Committee.

- 5.2 On 21 September 1995 notice of the application was published in a local newspaper and served on appropriate parties in accordance with the 1969 Regulations. In response, an objection was received by Mr J H Morphet of Acre Lands Farm, Grindleton, Lancashire. This objection took the form of a letter accompanied by photographs.
- 5.3 Gerard Ryan QC was instructed to advise the County Council. He was forwarded copies of both the application and the objection.

6.0 DELEGATED POWER

- 6.1 On 15 March 1996 the Environmental Services Committee resolved that the Economic Development and Environmental Issues Sub-Committee be delegated with power to consider the merits of, and determine, this application under the Commons Registration Act 1965 for the registration of land at Selside as Village Green.

7.0 CONSULTATIONS

- 7.1 Gerard Ryan QC, advising the County Council, has taken into account Mr Morphet's submissions when drawing his conclusions. As in the Saxton case, he feels that the Selside application is vulnerable to falling foul of the Suffolk County Council principle. However, he concludes his opinion as follows:

"... 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 20 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."

8.0 FURTHER CONSULTATION

8.1 On 8 March 1996 the applicant was sent a copy of the objection, together with documentation.

8.2 On 9 May 1996 both the applicant and the objector were sent a copy of Gerard Ryan QC's Opinion and their comments invited.

9.0 APPEAL AGAINST SUFFOLK COUNTY COUNCIL CASE DECISION

9.1 Gerard Ryan QC confirms that the Suffolk County Council case is now under appeal which is scheduled for hearing before the Court of Appeal at the end of June 1996. The County Council could defer determination of this application for registration of the land as Village Green pending the outcome of the Court of Appeal's determination.

10.0 OFFICER COMMENT

10.1 The spirit of the legislation appears to be one of encouraging registration authorities such as North Yorkshire County Council to give applicants opportunity to put their applications in order should it be appropriate to do so. In view of the evidence and the legal advice it is unlikely that, at this stage, Members would be inclined to accede to this application. However, in all the circumstances, it is considered appropriate to defer final determination of this application pending further consultation with the applicant: the Horton in Ribblesdale Parish Council. In particular, it appears that the Parish Council must obtain further evidence in support of their assertion that "lawful sports and pastimes" as defined have in fact taken place on this site.

10.2 Such a deferral referred to above would also enable your advisors to have the benefit of the Court of Appeal Judgment in respect of the Suffolk County Council case which is due at the end of June 1996. At a future meeting, Members will be presented with all the evidence and legal argument to decide whether to accede to this application.

11.0 RECOMMENDATION

11.1 It is recommended that Members resolve as follows:

- (i) To note that the Head of Legal Services will bring the consultation process to an end with a view to gathering together available evidence and legal argument for presentation to Members at a future meeting of this Sub-Committee at which this application shall be determined.
- (ii) Members to note that deferral of determination of this application will hopefully leave Members with the benefit of the Court of Appeal Judgment in the case of R -v- Suffolk County Council Ex Parte Steed due to be decided at the end of June 1996.

RICHARD DALY

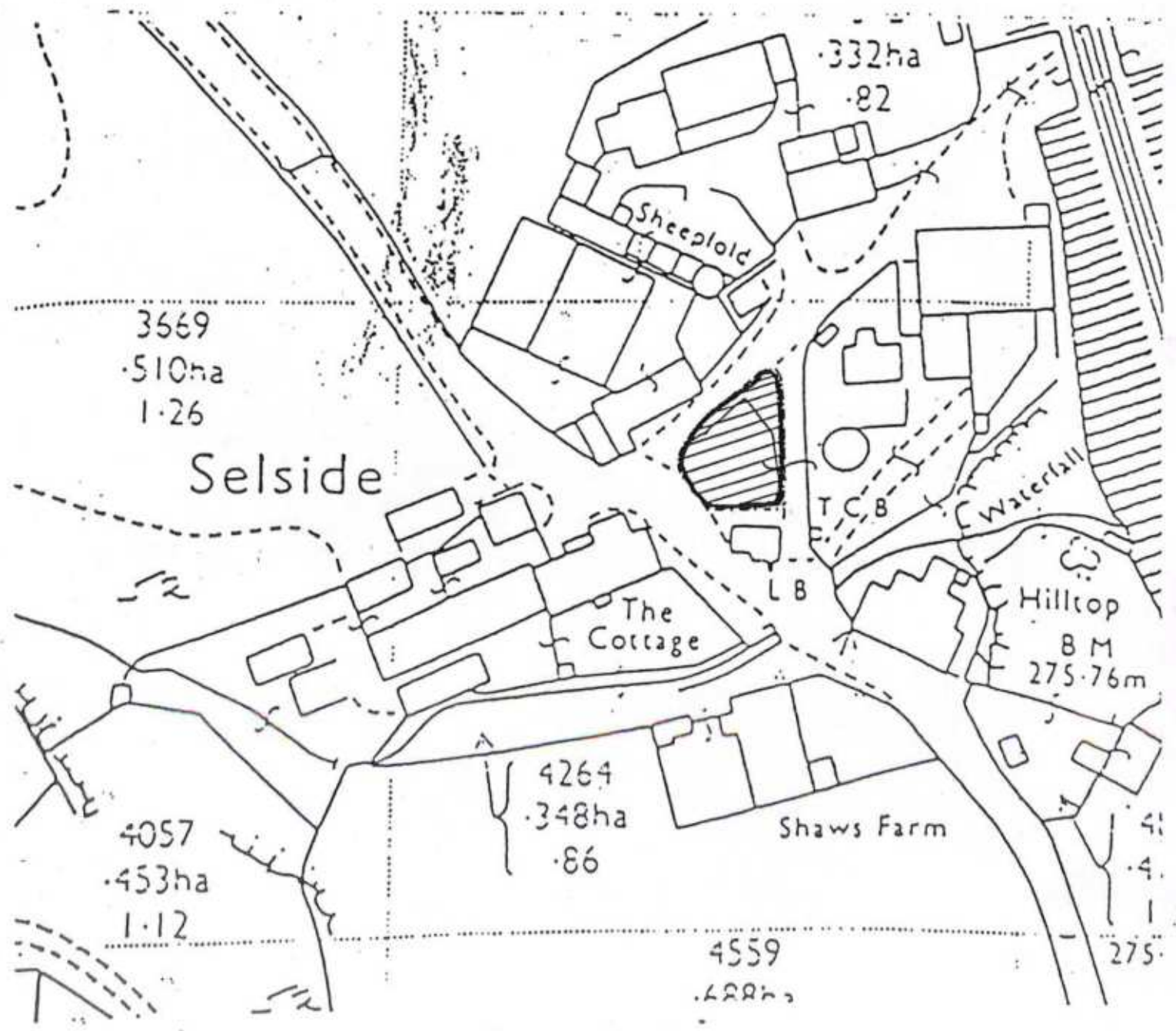
Head of Legal Services

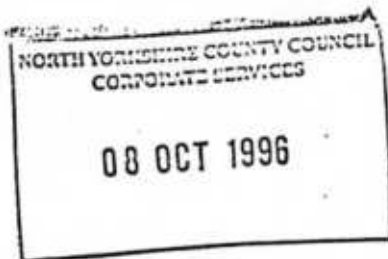
County Hall
NORTHALLERTON
30 May 1996
IPR/ALS

Village Green
marked



A





K. Jowett Esq.
Vice-Chairman
Horton Parish Council
Horton-in-Ribblesdale
Stable Cottage
Horton-in-Ribblesdale
BD24 OEX

Ian Ross
Legal Services
County Hall
North Allerton
North Yorkshire
DL7 8AD

Dear Mr Ross

Selside Village Green

Re your letter dated 25th September 1996, in response to comments made by Mr J Morphet regarding the Clerk to Horton Parish Council. All correspondence reflect the views of the Parish Council not the Parish Clerk.

The suggestion that the views made by Mr J Morphet are endorsed by our Chairman Mr D Morphet are misguided as Mr D Morphet has at all times remained totally neutral in this matter.

A copy of this letter has been sent to Mr J Morphet.

Yours sincerely

Vice-Chairman

K Jowett

Chairman

David A Morphet

Copy to Mr J Morphet

Mr Richard T. Daly MA (Oxon)
Head of Legal Services
County Hall
Northallerton
North Yorkshire
DL7 8AD

NORTH YORKSHIRE COUNTY COUNCIL
CORPORATE SERVICES

- 4 SEP 1996

The Shaws
Selside nr. SETTLE
North Yorkshire
BD24 0HZ

Tel.: 01 729 860 313
Fax: 01 729 860 350

29th August 1996

Dear Mr Daly,

Selside Village Green

At a recent meeting of Horton-in-Ribblesdale Parish Council (19/8/96) a letter which you received from Mr J. H. Morphet regarding Selside Village Green was discussed. As Mr Morphet did not raise any new arguments the Parish Council decided to reply only to Mr J. H. Morphet's remarks questioning unfairly the role of the Clerk to the Parish Council in this matter.

However, I have been asked by Selside residents to reply a little bit more fully to his letters and to recent incidents mentioned by Mr Morphet.

1. All the current and former Selside residents who supplied the original depositions regarding the Village Green stand by their comments which are as true now as they were then.
2. We still feel that the case of R. v. Suffolk County Council has no bearing on the Parish Council request for registration. The rights we claim are based on our use of the Village Green since the early 70's.
3. In their letter of 16th May 1996 the Selside Resident Association underlined that Mr Morphet holds no legal title to the Green and only began to object to our use of the land after he had decided to put a house near the Green on the market. It is this change of attitude which has led to a lot of tension between Selside residents on the one hand and Mr Morphet on the other.

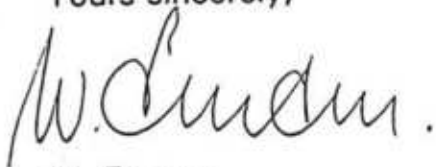
A good example of this tension were the recent events to which Mr Morphet alludes in one of the letters you sent to Horton Parish Council. Residents had planned a party on the Village Green in early June. A day before the event Mr Morphet placed an old tractor, a slurry wagon and a trailer on the Village Green blocking our way across it and making it difficult to hold a party which was to be followed by a barbecue the next day. Nevertheless, the party went ahead and was joined by a good number of people from Horton village, some 2 1/2 miles from Selside. During the party somebody (not a Selside resident) discovered a key which fitted Mr Morphet's tractor and drove it away, without any damage, back into Mr Morphet's. As far as we are aware, nobody let down any tires. Whilst we are very keen to keep the Village Green open to all we will not agree to any vandalism.

A few days later the Village Green was obstructed again. It was then when the skeleton of another old trailer was dragged away from the main crossing point of the Green and turned on its side. Since then the above mentioned items have been cleared from the Green by Mr Morphet and is now accessible again. Although we continue to use it we cannot say that we enjoy it as we are aware of the tension caused.

4. Finally, we want to repeat that we are only interested in keeping the Village Green in perpetuity open for all, without personal or financial gain to any of the residents.

We therefore ask the Subcommittee to support the Parish Council's registration in the interest of the whole Parish.

Yours sincerely,



W. Fenten

HORTON-IN-RIBBLESDALE ARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc., M.Sc.

Borrins, Selside, Settle, North Yorkshire BD24 OHX
Telephone Horton-in-Ribblesdale (01729) 860379

Your Ref. 1876

August 27th 1996

Dear Mr Daly,

Selside Village Green

Thank you for your letter of August 16th with
enclosures.

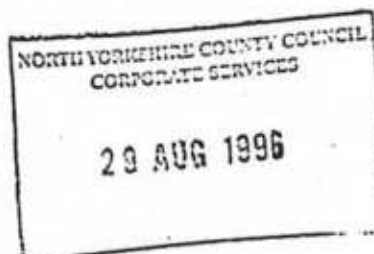
The matter was discussed at the recent meeting of
the Parish Council, where it was agreed that the Council had nothing new
to add to the points it had made in previous letters to your department.

The only comment the Council would make regarding
J H Morphet's letters to you is that the Clerk to the Parish Council
has acted solely on the instructions of the Parish Council. Any comments
made are not by the clerk, but by the majority of councillors, on behalf
of its parishioners. The draft of any letter to you written by the
clerk of a serious or complicated nature in connection with Selside
village green has always been approved by the Chairman of the Parish
Council before being posted to you.

Yours sincerely,

Helen C. Sergeant

Parish Clerk

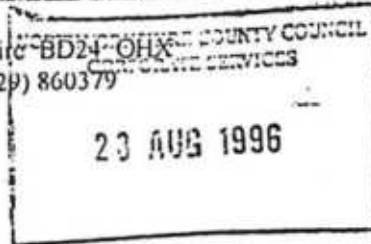


Richard T Daly MA
Head of Legal Services
North Yorkshire County Council
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HORTON-IN-RIBBLESDALE PARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc, M.Sc.

Borrins, Selside, Settle, North Yorkshire
Telephone Horton-in-Ribblesdale (01729) 860379



Your Ref. 1876 IPR/JD

August 16th 1996

Dear Mr Daly,

Thank you for your letter of 10th June 1996,
enclosing a photocopy of a letter you have received from Mr J H Morphet.

My Parish Council have no particular comments to make about Mr Morphet's letter which have not been made already. The basis of his comments about residents' usage of the Green seems to be, as he says in his last paragraph, that "ownership of the land in question is claimed by my wife and myself". As has been pointed out previously, Mr Morphet's claim to ownership of the Green only came to light when he attempted to sell it as the garden for Penyghent Cottage. The Parish Council wrote to Mr Morphet's solicitor, asking him to confirm or otherwise Mr Morphet's title to the Green. Despite writing three times, no response was ever received. The Parish Council then invited Mr Morphet himself to demonstrate his title to the Green. He failed to do so, so the Parish Council concluded from this, and from other information available, that Mr Morphet had no title to the Green. His only claim to ownership, therefore, could be if he had used the Green exclusively, which is clearly not the case.

From the time that the Parish Council applied to register Selside Village Green, contact has been maintained with the legal adviser of the Yorkshire Local Councils Association, Mr Jukes. My Council feel that it would be helpful if you were to have a copy of the most recent letter from Mr Jukes, and I therefore enclose a photocopy.

Yours sincerely,

Helen C. Sergeant

Parish Clerk

Richard T Daly
Head of Legal Services
North Yorkshire County Council
County Hall
Northallerton

P183

YORKSHIRE

LOCAL COUNCILS ASSOCIATIONS

William House, Shipton Road, Skelton, York YO3 6XW Tel No: York (01904) 645271
Fax No: York (01904) 610985
VAT Reg No: 500 950S 73



JJ/ALW

29 May 1996

~~_____~~ ~~_____~~

Mrs H Sergeant
Clerk
Horton-in-Ribblesdale Parish Council
Borrins
Selside
Settle
North Yorkshire
BD24 0HX

Dear Mrs Sergeant

SELSIDE VILLAGE GREEN

Thank you for your letter of 24 May 1996 regarding the above.

Having read carefully through the opinion provided by North Yorkshire County Council these Associations are of the view that the conclusions reached by G Ryan QC are based either on an unduly harsh interpretation of the law or upon evidence provided by Mr Morphet which is at best misleading.

It is quite clear that Mr Ryan is under the impression that the physical nature of the land has prevented lawful sports and pastimes being exercised over the whole area for the extent for which such use is being claimed. There is certainly substantial evidence from the local residents that this view is incorrect and therefore this is not a valid ground for rejecting the application to register the land as village green. It is disturbing that North Yorkshire County Council are prepared to accept counsel's opinion based on evidence provided by an objector to the application without checking the situation on the ground themselves and advising counsel accordingly. Mr Morphet is perfectly entitled to produce evidence which casts doubt on whether the land can have been used in the way which is claimed but for the County Council to apparently accept this without considering whether it forms a proper basis on which to seek legal opinion seems contrary to natural justice and failure to properly consider this when deciding the application could well leave the County Council open to further legal proceedings regarding the validity of any refusal they may make based on Mr Ryan's opinion and the evidence on which that opinion is based.

The second point which surprises these Associations is that Mr Ryan differentiates between children and teenagers' activities and those of adults. Whilst some of the

Commons Commissioner's decisions may well support this artificial differentiation we are not aware of any decisions reached in court which would do so. Children and teenagers are clearly inhabitants of the locality and therefore use by them of land for the purpose of village green should be acceptable within the intent of the legislation. Although I am not familiar with the specific instances which Mr Ryan is presumably referring to it will be necessary to look at these more closely and to ask whether applications were rejected on the grounds that the use was by children and teenagers or whether it was the nature of the use of the land which was actually the grounds for rejecting those applications.

As far as the case of R v. Suffolk County Council is concerned these Associations continue to hold the view that the correct interpretation of the law is that where land was not registered before 1970 then any evidence of use which was in itself sufficient to justify registration on that date is no longer eligible to support any future claim for registration. However use prior to 1970 which was not by itself sufficient to support registration or use since 1970 should be treated as a separate matter. There is certainly a significant possibility that the appeal in this case will produce a different interpretation and it would therefore be rash of North Yorkshire County Council to make a decision based on that case before the appeal is heard and a judgment given.

In summary these Associations consider that the County Council would be unwise to rely on the present opinion given by Mr Ryan as he appears to have not been provided with comprehensive information on which to base his views and that a principal which has an important effect on this case is subject to appeal and therefore any decision to reject the application on those grounds would be premature. A site visit by the committee would certainly be a positive step and would at least demonstrate on the part of North Yorkshire County Council to ensure that the committee do clearly understand the nature of the land and the circumstances in which the application is being made. Without such a step these Associations would consider that the matters which are likely to be put to the committee are flawed and would therefore call into question any refusal of the application at this time.

Yours sincerely



JOHN JUCKES
Assistant Secretary

HORTON-IN-RIBBLESDALE PARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc., M.Sc.

Your Ref

Borrins Selside Settle North Yorkshire BD24 0HX
Telephone Horton-in-Ribblesdale (01729) 860379

1876 IPR/SER



May 24th 1996

Dear Mr Daly,

Thank you for your letter dated May 9th 1996, enclosing a copy of the Opinion of G Ryan QC in relation to the Parish Council's application to register the Green at Selside as village green under the Commons Registration Act 1965.

The Council has seen a copy of the letter sent to you by the Selside Residents Association dated May 16th 1996, and wishes you to know that the Parish Council fully endorses the contents of that letter.

In addition the Council would like to emphasise several points. From reading his Opinion, it is apparent that G Ryan QC does not have a clear picture in his mind's eye as to what the Green and the hamlet of Selside looks like. We would like you to recommend to the Economic Development and Environmental Issues Sub-Committee that they should hold a site meeting before reaching any decisions on this application. The Council feels that this is very important as only then could the Committee appreciate the nature of the use of the Green by the residents of Selside, and how this use is determined by the size and location of the Green.

G Ryan QC refers to an aerial photograph of Selside submitted by Mr J H Morphet. This photograph was taken by the company concerned to show the house Penyghent Cottage (then a barn), not to show Selside village green. Had the photograph been taken from the other side it would have clearly have shown the open space, this would not have been obscured by intervening buildings. The "fertiliser store" has never been more than a pile of till in plastic bags resting on railway sleepers. Sometimes it was there; sometimes it wasn't, all depending on the Morphets' farming activities. It was never a building. The Parish Council has already pointed out in its letter to you, addressed to Mr Pennell, in March this year, that the nissen huts were open-ended and available for children to play hide and seek. G Ryan QC seems to have missed this point. Was the Parish Council's letter of March 1996 shown to Mr Ryan? I see that the Parish Council has not received an acknowledgment of the receipt of this letter by the County Council; could you please confirm that it has been received.

G Ryan QC is mistaken when he says on page 3 that "a low stone wall----- has for years enclosed the greater part of the green". The Green has NEVER been enclosed either by Mr Morphet or anyone else. There are part walls on two sides of the Green only. This illustrates the problem of trying to come to a decision about something without seeing it, and we would like to ask again that the Sub-Committee holds a site meeting.

When G Ryan QC says that "the land was for many years occupied by Mr Morphet" it is misleading, because Mr Morphet did not occupy the land exclusively; it was used by the rest of the inhabitants of Selside at the same time as well.

The implication by Mr Ryan that the evidence of children and teenagers is invalid is disturbing. The Parish Council would agree with the Selside Residents Association that this part of the Opinion should either be ignored or tested in a court of law.

Similarly, the Parish Council does not feel that the County Council should include in its deliberations the judgement in the case of R. v Suffolk C.C., as this is subject to an appeal. The Parish Council has consulted with the legal advisor to the Yorkshire Local Councils Associations on this issue, who has written, "As far as we are aware other cases of land becoming registered as village green subsequent to 1970 have not had to face the test set out by the Honourable Mr Justice Carnwath. The normal interpretation and the one these Associations have always held is that under Section 1(2)(a) of the Commons Registrations Act 1965 land not registered by 2 January 1970 is deemed not to be a town or village green."

Please will you ensure that the members of the Sub-Committee see the contents of this letter in full rather than a summary, and would you kindly do likewise with previous letters on this matter written to you by the Parish Council. The Council feels that this is important, in view of the changes in the structure of the County Council, and the fact that this is a "new" sub-committee.

Yours sincerely,

Helen B. Sergeant

Parish Clerk

Richard T Daly MA (Oxon)
Head of Legal Services
North Yorkshire Legal Services
County Hall
Northallerton

17 MAY 1996

SELSIDE RESIDENTS ASSOCIATION

C/O THE OLD SCHOOL, SELSIDE NR. SETTLE • NORTH YORKSHIRE BD24 0HZ
TEL.: (01729) 860 465 • FAX: (01729) 860 350

Mr Richard T. Daly MA (Oxon)
Head of Legal Services
North Yorkshire Legal Services
County Hall
Northallerton
North Yorkshire
DL7 8AD

Copy to
Horton in Ribblesdale
Parish Council

16th May 1996

Dear Sir,

WITHOUT PREJUDICE Registration of Land as Village Green at Selside

In your letter of 9th May 1996, your reference 1876 IPR/SER, to the Clerk to Horton in Ribblesdale Parish Council you asked for representations regarding the above matter. Selside residents were shown a copy of this letter and decided to reply directly to you as time is short. I therefore should like to submit the following observations which were prepared after close consultation with Selside residents. A copy of this letter has been given to the Clerk to Horton P.C.

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 a house near Selside Green on the market. He instructed his estate agent to include the village green in the offer although he has no legal title to this piece of land.

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.

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 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.

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 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.

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

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 ever 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 a 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.

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 changed and 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 legal 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 that the County Council Committee 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. Advice given to us leads us to the conclusion 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.
- 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

HORTON-IN-RIBBLESDALE PARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc., M.Sc.

Your Ref

Borrins Selside Settle North Yorkshire BD24 OHX
Telephone Horton-in-Ribblesdale (01729) 860379

1876 IPR/SER



May 24th 1996

Dear Mr Daly,

Thank you for your letter dated May 9th 1996, enclosing a copy of the Opinion of G Ryan QC in relation to the Parish Council's application to register the Green at Selside as village green under the Commons Registration Act 1965.

The Council has seen a copy of the letter sent to you by the Selside Residents Association dated May 16th 1996, and wishes you to know that the Parish Council fully endorses the contents of that letter.

In addition the Council would like to emphasise several points. From reading his Opinion, it is apparent that G Ryan QC does not have a clear picture in his mind's eye as to what the Green and the hamlet of Selside looks like. We would like you to recommend to the Economic Development and Environmental Issues Sub-Committee that they should hold a site meeting before reaching any decisions on this application. The Council feels that this is very important as only then could the Committee appreciate the nature of the use of the Green by the residents of Selside, and how this use is determined by the size and location of the Green.

G Ryan QC refers to an aerial photograph of Selside submitted by Mr J H Morphet. This photograph was taken by the company concerned to show the house Penyghent Cottage (then a barn), not to show Selside village green. Had the photograph been taken from the other side it would have clearly have shown the open space, this would not have been obscured by intervening buildings. The "fertiliser store" has never been more than a pile of till in plastic bags resting on railway sleepers. Sometimes it was there; sometimes it wasn't, all depending on the Morphets' farming activities. It was never a building. The Parish Council has already pointed out in its letter to you, addressed to Mr Pennell, in March this year, that the nissen huts were open-ended and available for children to play hide and seek. G Ryan QC seems to have missed this point. Was the Parish Council's letter of March 1996 shown to Mr Ryan? I see that the Parish Council has not received an acknowledgment of the receipt of this letter by the County Council; could you please confirm that it has been received.

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When G Ryan QC says that "the land was for many years occupied by Mr Morphet" it is misleading, because Mr Morphet did not occupy the land exclusively; it was used by the rest of the inhabitants of Selside at the same time as well.

The implication by Mr Ryan that the evidence of children and teenagers is invalid is disturbing. The Parish Council would agree with the Selside Residents Association that this part of the Opinion should either be ignored or tested in a court of law.

Similarly, the Parish Council does not feel that the County Council should include in its deliberations the judgement in the case of R. v Suffolk C.C., as this is subject to an appeal. The Parish Council has consulted with the legal advisor to the Yorkshire Local Councils Associations on this issue, who has written, "As far as we are aware other cases of land becoming registered as village green subsequent to 1970 have not had to face the test set out by the Honourable Mr Justice Carnwath. The normal interpretation and the one these Associations have always held is that under Section 1(2)(a) of the Commons Registrations Act 1965 land not registered by 2 January 1970 is deemed not to be a town or village green."

Please will you ensure that the members of the Sub-Committee see the contents of this letter in full rather than a summary, and would you kindly do likewise with previous letters on this matter written to you by the Parish Council. The Council feels that this is important, in view of the changes in the structure of the County Council, and the fact that this is a "new" sub-committee.

Yours sincerely,

Helen C. Sergeant

Parish Clerk

Richard T Daly MA (Oxon)
Head of Legal Services
North Yorkshire Legal Services
County Hall
Northallerton

HORTON-IN-RIBBLESDALE PARISH COUNCIL

1996
Clerk HELEN C. SERGEANT B.Sc., M.Sc.

Borrins Selside Settle North Yorkshire BD24 OHX
Telephone Horton-in-Ribblesdale (01729) 860379

Your Ref
RGP/MWB VG-HORTON

March 8th 1996

Dear Mr Pennell,

Thank you for your letter of 28th November 1995, in which you included a copy of an objection made by J H Morphet of Acrelands Farm, Grindleton, Lancashire, to the Parish Council's application to register the Green at Selside as a Village Green. The purpose of this letter is to answer the points made by Mr Morphet. All the residents and past residents of Selside whose evidence was contradicted by Mr Morphet have seen his remarks, and their individual responses are summarised on a separate enclosure.

Horton-in-Ribblesdale Parish Council and Selside residents have never questioned the use of the Selside Village Green by Mr J H Morphet. However, Mr Morphet has never had exclusive use of the Green. It is our contention that the Green has been used regularly by all local residents, and that this use by all should continue indefinitely.

Mr Morphet is not correct when he states that the area in question has never been a Village Green. There is good documentary evidence that it has always been considered to be a Village Green. As far back as the 1870s notes regarding Selside School clearly refer to "the Village Green" (copy enclosed). Hiring fairs were a regular event. Bill Mitchell in his book "High Dale Country" says on p122, "It was a surprise to learn from Mrs Alice Sunter that such a small place as Selside had a Midsummer Fair when stalls were set up on the green". Also in the 1930s Mrs Sedgwick, who lived in the Old Reading Room, kept a pig on the Green which she won in the "Greasy Pig" competition.

There is no question that "the plan submitted to the Parish Council has been tampered with". The sketch map which accompanied the original application by the Parish Council shows the Village Green as it was at the time of the application and for most of the period before. It would have been misleading if the Council had submitted an earlier map.

Over the years residents have guarded jealously their right to continue using the Green. Mr Morphet used the Village Green at times for storing some farming equipment. This was always tolerated by residents as long as it did not hinder their use of the Green. Anything which could have impeded their way across the Green or stopped them from using the Green in the way they wanted to was always pushed aside or removed from the Green. Had residents suspected that any party would derive any exclusive rights from their activities on the Green, they would have taken appropriate action much earlier.

G Ryan QC is mistaken when he says on page 3 that "the stone wall----- has for years enclosed the greater part of the green". The Green has NEVER been enclosed either by Mr Morphet or anyone else. There are part walls on two sides of the Green only. This illustrates the problem of trying to come to a decision about something without seeing it, and we would like to ask again that the Sub-Committee holds a site meeting.

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Yours sincerely,

Helen G. Sergeant

Parish Clerk

Richard T Daly MA (Oxon)
Head of Legal Services
North Yorkshire Legal Services
County Hall
Northallerton

Note on Paragraph 7.

1. The regular type of an Elementary Day School is a separate department (room) for
Boys under a Master;
Girls " " Mistress;
Infants " " Mistress.

For every 5 boys in such a School there will commonly be 4 girls and 6 infants. In other words, two-fifths of the whole number of children will be under 7 years of age, and will require a different method of instruction from the rest.

2. No department for boys or girls should contain more than 150 children, nor for infants more than 200. If the infants exceed 40 they should be treated as a separate department, and not as a mere class.
3. Although the size and means of a School admit of only one Principal Teacher, it will require for its accommodation two rooms of unequal size. The object of the smaller room is to separate the infants from the other children.
4. If the one Principal Teacher be a Master, a woman will be wanted for the girls' sewing, and she should be a person able to teach the infants also.
5. If the one Principal Teacher be a Mistress, she should have an intelligent girl, not less than 15 years old, to assist her.
6. If this application be entertained, the Promoters will receive detailed instructions to guide them respecting the number, dimensions, and furniture of the rooms needed.

*Note. We have not sent a plan of the proposed
Delaware School, as he intended to build a school
room similar to the proposed new rooms
at Horton, except that portions marked in
the plans as a "cloak room" will be a little
larger & furnished with a fireplace to be
used as a class room for infants if
required, & in that case the inner porch
might serve as a cloak room.
The site is ample, although only about 130
square yards for the school & 130
of space in front, beside the village green
which is also very near to & more
than equivalent to 1/4 of an acre of land & offers
abundance of space for recreation.*

HORTON-IN-RIBBLESDALE PARISH COUNCIL

Clerk HELEN C. SERGEANT B.Sc., M.Sc.

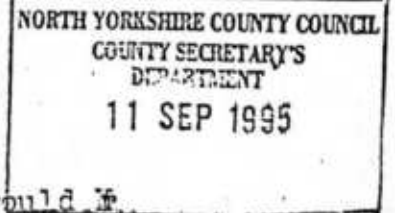
Your Ref
RGF/JD VG/HORTON

Borrins Selside Settle North Yorkshire BD24 OHX
Telephone Horton-in-Ribblesdale (01729) 860379

Sept. 7th.1995

Dear Mr Bramhall,

Selside Village Green



I would be grateful if you would bring the contents of this letter to the attention of the Property and General Purposes Sub-Committee when it meets on September 19th.

There has been a village green at Selside since time immemorial; it has been referred to in the literature in times past. The failure to register it as a village green under the Commons Registration legislation of 1965 was a regrettable omission. There is now an opportunity to correct that omission.

Selside is not the main village in this parish. It is a small hamlet of half a dozen to a dozen households with a tiny village green. The "lawful sports and pastimes" carried out on it in the 20 years preceding the date of application reflect the nature of the hamlet and are appropriate to the size of the green.

Yours sincerely,

Helen C. Sergeant

Parish Clerk