

R (on the application of McAlpine Homes Ltd) v Staffordshire County Council [2002] EWHC 76 (Admin)

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

SULLIVAN J

17 JANUARY 2002

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Commons — Commons registration — Registration of village green — Claimant objecting to registration — Claimant arguing land not used by significant number of persons — Claimant submitting that registration authority not entitled to register lessor area than applicants applying for — Whether registration authority in error

H Wolton QC and R Green for the Appellant

C Mynors for the Respondent

Laytons; Staffordshire County Council

SULLIVAN J

[1] This is an application for judicial review of a decision by the Staffordshire County Council's regulatory committee at a meeting on 23 May 2001 to accept an application for the registration of land at Ladydale Meadow, Leek, as a town or village green for the reasons set out and in relation to the land defined in the report of an independent inspector, Mr Vivian Chapman of counsel, dated 25 April 2001.

The Statutory Framework

[2] The Commons Registration Act 1965 ("the Act") makes provision for the registration of common land or town or village greens. As amended by s 98 of the Countryside and Rights of Way Act 2000, s 22(1) of the Act defines a town or village green as follows:

"'Town or village green' means land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or which falls within subsection (1A) of this section.

(1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either --

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.”

[3] As at the date of the inspector's report no provisions had been prescribed but that is of no consequence since paragraph (b) of subsection (1A) has no relevance for present purposes.

[4] The council is under a duty as registration authority to maintain a register of common land and a register of town or village greens (see ss 1 to 3 of the Act).

[5] Section 13 deals with the amendment of registers:

“Regulations under this Act shall provide for the amendment of the registers maintained under this Act where --

(a) any land registered under this Act ceases to be common land or a town or village green; or

(b) any land becomes common land or a town or village green ... “

[6] The High Court has power to order rectification of registers under section 14.

“The High Court may order a register maintained under this Act to be amended if --

(b) the register has been amended in pursuance of section 13 of this Act and it appears to the court that no amendment or a different amendment ought to have been made and that the error cannot be corrected in pursuance of regulations made under this Act;

and, in either case, the court deems it just to rectify the register.”

[7] The relevant regulations are the Commons Registration (New Land) Regulations 1969, as amended (“the Regulations”). Reg 3(1) provides:

“Where, after 2nd January 1970, any land becomes common land or a town or village green, application may be made subject to and in accordance with the provisions of these Regulations for the inclusion of that land in the appropriate register and for the registration of rights of common thereover and of persons claiming to be owners thereof.”

[8] An application must comply with the requirements set out in reg 3(7). These include in paragraph (a) the requirement that an application must be:

“In Form 29, 30, 31 or 32 as appropriate.”

[9] Form 30 must be used where application is made for the registration as a town or village green of land which became so registerable after 2 January 1970. The form requires the applicant or applicants to describe the land which is the subject of the application. In Pt 3 of the form the applicant must give:

“Particulars of the land to be registered, ie the land claimed to have become a town or village green,”

[10] And must give the name by which the town or village green is usually known, the locality and the:

“Colour on plan herewith”.

[11] Reg 5 deals with the disposal of applications. Paragraph (4) provides:

“Subject to paragraph (7) below, a registration authority shall, on receipt of an application,--

(a) send a notice in Form 33, 34 or 35, as appropriate, to every person (other than the applicant) whom the registration authority has reason to believe (whether from information supplied by the applicant or otherwise) to be an owner, lessee, tenant or occupier of any part of the land affected by the application, or to be likely to wish to object to the application;

(b) publish in the concerned area, and display, such a notice as aforesaid, and send the notice and a copy of the application to every concerned authority;

(c) affix such a notice to some conspicuous object on any part of the land which is open, unenclosed and unoccupied, unless it appears to the registration authority that such a course would not be reasonably practicable.

(6) Every concerned authority receiving, under this regulation, notice and a copy of an application should forthwith display copies of the notice, and shall keep the copy of the application available for public inspection at all reasonable times until informed by the registration authority of the disposal of the application.

(7) Where an application appears to a registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (4) above, but where it appears to the authority that any action by the applicant might put the application in order, the authority shall not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action."

[12] Reg 6 relates to the consideration of objections and provides in paragraph (1):

"As soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority shall proceed to the further consideration of the application, and the consideration of statements (if any) in objection thereto, in accordance with the following provisions of this regulation."

[13] Those provisions require inter alia that copies of the objections to the application must be sent to the applicant, who must be given a reasonable opportunity of dealing with the matters contained therein.

[14] Reg 7 determines the method of registration and provides in paragraph (1):

"Where a registration authority accepts an application, it shall make the necessary registration, following as closely as possible whichever of the Model Entries 4 and 7 to 12 may be applicable, with such variations and adaptations as the circumstances may require ... "

Factual Background

[15] The factual background is set out in some detail in the inspector's report. It can be summarised as follows. The town of Leek has a population of about 20,000. Open country comes close to the centre of the town in the southeast sector. Within that sector is Pickwood Hall, a mansion which stands on a hill, surrounded by trees. To the west of the hall there is a large field of about 20 acres, known to local people as Ladydale Meadow. The meadow was formally part of the parkland of the hall. It slopes steeply down to a valley on the west and streams run down the west and south sides of the meadow to meet at the southwest corner. Two public footpaths, numbers 26 and 27, run down from the centre of Leek to meet near the northwest corner of the meadow, and at that point just outside the meadow there is an ancient well known as Lady of the Dale, or Ladydale Well. From there a public footpath runs from the well in a southerly direction on the west side of the stream down the valley. Also near the well there is a stile which gives access to Ladydale Meadow. From the stile a private right of way crosses the meadow in an east-west direction and passes through a pair of stone gateposts at the edge of the woodland surrounding the hall. At the southwest corner of the meadow there is a pair of stone gateposts, from which a disused carriage drive climbs up and across the meadow to the hall. The meadow consists of rough, unimproved grassland and is wet towards the bottom of the valley.

[16] To the west of the valley there is a housing estate known as the Ladydale Estate. There are 71 houses within the estate, with a population of some 200. The meadow was allocated as part of a proposed housing site in the Staffordshire Moorlands local plan, which was adopted in 1998. In 1999 Alfred McAlpine Homes (Northwest) Limited applied for planning permission to build 24 houses on the meadow. The council failed to determine the application within the prescribed period and so McAlpine appealed to the Secretary of State. Following a public inquiry the inspector allowed the appeal and granted planning permission on 30th June 2000.

[17] The application under the Act was made on 27th October 1999 by a Mr Brown and a Ms Kerr. The application described the land claimed to have become town or village green as follows:

"Name by which usually known: Ladydale Meadow.

Locality: as shown on map. Exhibit (A).

Colour on plan herewith: outlined in yellow."

[18] The plan had attached to it explanatory notes which said that:

"The area in question is outlined in neon yellow.

It is marked on the northern boundary by a marked public footpath and a dotted black line.

To the east, we would like the area registered to be as far as the line marked in red on the map.

To the south, again, following the black dots and public footpath to the junction with the line marked in red.

To the west, still following the dotted line alongside the stream, back northwards to the footbridge near the Ladydale Well."

[19] The description said that the area comprised a gently sloping meadow and near the bottom of the slope there was an area of wetland encompassing a seasonal pond.

[20] The inspector described the boundaries of the application. He noted that the obvious intention of the applicants was to try to trump the outstanding planning application, but continued:

"However, it appears to me that the motive of the applicants is legally irrelevant to the question whether the application land has become a town or village green, although it is a factor to be taken into account when assessing the credibility of the witnesses who gave evidence in favour of the application."

[21] He then dealt with procedural matters.

[22] One of the applicants appeared in person on behalf of those who supported the registration of the meadow as a town or village green. He called witnesses and submitted numerous written statements. Mr Wolton QC appeared for the objectors and called a witness and submitted a written statement. The inquiry ran over two days and the inspector received final submissions in writing, having held an accompanied site view.

[23] In Pt 4 of his report the inspector set out both the old and the new definition of town or village green. By the new definition, I mean the definition as amended by s 98 of the Countryside and Rights of Way Act 2000 (see above). At the inquiry there was some debate as to whether the old or the new definition should be applied. The inspector's view was that he should apply the new definition and for the purposes of this hearing the parties are agreed that he was right to do so.

[24] The inspector then set out the evidence for the applicants. He noted by way of introduction that 16 witnesses gave oral evidence for the applicants and in addition the applicants relied on numerous written statements. The inspector set out the evidence in considerable detail and analysed it with meticulous care. Mr Wolton very fairly accepts that he cannot challenge the inspector's summary of the witnesses' evidence nor the inspector's assessment of the credibility of the witnesses. He does challenge the conclusions that the inspector drew from the evidence.

[25] It is unnecessary for present purposes to rehearse all the evidence for the applicants in detail. The inspector concluded that two of the 16 witnesses were really of no assistance in relation to the matter that he had to decide. Of the remaining 14 witnesses, six were able to give evidence covering the whole of the 20-year period. The remaining eight witnesses were able to give evidence which dealt with varying periods. One witness, for example, was able to give evidence going back to late 1980. Another witness was able to speak of what had occurred in the 1930s. Another had not moved to Pickwood Hall until November 2000. Since the inspector referred, in particular, to the six witnesses who were able to give evidence in relation to the whole of the 20-year period, it is sensible to refer very briefly to what he said about those witnesses.

[26] First there was Mr Yates, who had been born in Leek in 1931 and lived there all of his life. For the last nine years he had lived on the Ladydale Estate. The inspector said that he gave evidence that, for 20 years or more, he had regularly walked in the meadow and in more recent times with his dog. He had seen other people walking on the meadow.

"Since moving to the Ladydale Estate he sees people walking on the meadow on most of his visits. He recognises up to 15 of the people as from the Ladydale Estate, although some come from further afield."

[27] The inspector said that Mr Yates's evidence was not wholly consistent, but he accepted the broad thrust of his evidence, to the effect that he had been using the meadow for informal recreation without the permission of the landowner on a frequent basis for more than 20 years and that many others had been doing the same.

[28] Mr Northcott was born in 1967 and had lived in Leek all his life. Since 1990, he had lived on the Ladydale Estate. He said that he had used the meadow for informal recreation for well over 20 years. As a child, he

remembered playing hide and seek all over the meadow. He acquired a dog, or possibly a dog acquired him, in 1990 and he walked it twice a day in the meadow until it died in 1998. The inspector records him saying:

“On many occasions he had seen other people in the meadow, adults walking with or without dogs, and children playing. He recognised some as his neighbours.”

[29] Mr Fisher was born in 1946 and had lived in Leek since 1974. He lived in another part of the town but he walked through Ladydale Meadow five or six times a year and in the 1980s he and a friend, together with their children, used to go sledging in the meadow. He said, when walking up the hall footpath he had seen other dog walkers, usually to the right of the hall footpath. The inspector refers to the hall footpath as the footpath that leads from the stile across the meadow towards the hall.

[30] Mr Malkin was born in 1933. He was away from Leek for some years but returned in 1957, married and had children, and he regularly walked in the meadow with his children and subsequently his grandchildren. He had retired seven years previously and since then he had walked in the meadow five to seven days a week, before then ten to 20 times a year. He had picnicked on the meadow, but not in the last 20 years. He said he had seen many other people using the meadow, mostly walking and exercising dogs. He had seen children and adults sledging on the meadow in the snow.

[31] Mr Hobson was born in Leek in 1962. He moved in 1990 to Ladydale Close on the Ladydale Estate. He gave evidence that he had used the meadow for recreation since he was seven or eight years old. He had used it more as a child and as an adult, and rather less as a teenager. On about half of his visits there were other people walking with or without dogs.

[32] Mr Allen was the last of the six witnesses whose evidence covered the whole of the 20 years. He had moved to Leek in 1979, lived in the Ladydale Estate, and since 1979 he said he had used the meadow for walking his dog every other day and also for golf practice. He said he saw other people on the meadow about twice a week and usually they were walking with or without dogs. He thought that the general use of the meadow had not changed much over the last 20 years, except that there were more dog walkers.

[33] In addition to the evidence of those witnesses, other witnesses gave evidence of their use of the meadow over a relatively long period, for example Mr Lloyd, who had lived at Pickwood Cottage since October or November 1980. Since he had a private right of way to go across the meadow, the inspector quite rightly concluded that his evidence could not prove the use of the meadow by himself or his family.

“However [he added], Mr Lloyd's evidence does show frequent use of the lower half of the meadow for informal recreational use by other people back to late 1980.”

[34] A Mr Gilman had in 1939 been taken to Ladydale Well by his aunt and he said that the aunt, who was a head mistress took children annually to the well and they ate their picnic in the meadow. The inspector said that this tended to show that the meadow was accessible to the public before the war, but it was not evidence of use by local people. Mr Gilman also gave hearsay evidence about what he had been told by local people as to what the workers from the mills used to do in their breaks from work.

[35] In addition, there was, for example, a Mrs Lee, who had moved into the Ladydale Estate in 1983. Her house overlooked the meadow and she said that, when she moved in she saw people using the meadow. She talked to her neighbours and they expressed general views to her about how the meadow could be used. She used the meadow for walking the dog, walking with her family, picnics, blackberrying and sledging in the snow. When she used the meadow, there was usually somebody else using it as well, and she had seen people every day from her windows using the meadow.

[36] The applicants submitted written evidence. The inspector said that evidence had to be approached with considerable caution. Much of it was very vaguely expressed. It was unclear what period it covered or precisely to what land it related and it had not been tested by cross-examination. He added:

“However, even giving full weight to these qualifications, it can be said that the written evidence is largely consistent with and supportive of the oral evidence given by the applicants' witnesses, to the effect that many local people from Leek have been using the Meadow for informal recreation for more than 20 years without permission or objection.”

[37] The inspector referred to two videos, which he did not consider threw any light on the issues in the application. He then dealt with the evidence for the objectors. One witness gave oral evidence, a Mr Deaville. It is unnecessary to do more than say that the inspector was not particularly impressed by Mr Deaville's evidence. A written statement by Mr Watson, a landowner, was put by Mr Wolton. As to that, the inspector said:

"As it was not possible for the applicants to test Mr Watson's evidence by cross-examination, or for me to see and assess the demeanour of Mr Watson as a witness, I prefer the evidence of the applicants' witnesses, whom I had the opportunity to see and hear, and who were fully and properly tested by Mr Wolton's robust but fair cross examination."

[38] In the light of all that evidence the inspector reached the following findings of fact:

"7.1. Substantial use has been made of Ladydale Meadow for informal recreation for more than 20 years before the application and still continues. A number of the applicants' witnesses were able to give evidence covering the whole of the 20-year period, ie Mr Yates, Mr Northcott, Mr Fisher, Mr Malkin, Mr Hobson and Mr Allen.

7.2. Informal recreation has mostly been walking with or without dogs and children's play.

7.3. The persons who have enjoyed informal recreation on the Meadow have almost always walked to the Meadow from their homes in Leek. Inevitably, more have come from parts of Leek close to the Meadow, and in particular the Ladydale Estate, than from parts of Leek which are further away, but there was evidence of users from all over Leek. This is not surprising because the Meadow is within easy walking distance from the centre of Leek and is situated beside the Ladydale Well, which is a well known local attraction.

7.4. The majority of recreational users have entered and left by the stile, although some people have used the Carriage Drive Gate, which was rarely locked and sometimes open.

7.5. Recreational users have not confined themselves to particular routes on the Meadow but have wandered all over the Meadow, although they have tended to use the application land more than other parts of the Meadow.

7.6. There have been no signs forbidding entry to the Meadow and no one has turned recreational users off the application land.

7.7. Recreational use of the Meadow has been open and users have not sought or obtained permission to use the Meadow.

7.8. The reason why the Meadow has been used for informal recreation to a substantial extent for a long period is based upon a combination of a number of factors:

- (a) an absentee landowner,
- (b) land of little agricultural value,
- (c) an agricultural licensee with limited interest in the land under a succession of seasonal grazing licences,
- (d) its situation close to Leek on the edge of a residential estate and beside the local attraction of Ladydale Well,
- (e) inviting access over what looks like a stile for public use, and
- (f) the absence of signs or any other action to dissuade entry."

[39] The inspector concluded that:

"On the above findings of fact, the applicants have proved that the land falls within the new definition of town or village green."

[40] He then went through the various elements of the definition, starting in para 8.1 with "land". He said that:

"Although the plan accompanying the application is imperfect, I think that it is easily possible, giving the benefit of any inaccuracy to the objectors, to identify the land which is both subject to the application and is proved to have been used for recreation by local people for more than 20 years.

The northern boundary will be the northern edge of the Hall Footpath, which is easily identifiable on the ground.

The southern boundary will be the fence or stream bank, whichever is the more northerly at any point.

The western boundary will be the fence or stream bank, whichever is the more easterly at any point.

The eastern boundary will be a line drawn due south from the gateposts at the eastern end of the Hall Footpath.

It seems to me irrelevant whether the applicants might have been able successfully to apply for registration of a larger area. The registration authority has simply to consider the land which is the subject of the application."

[41] He concluded that the land had been used for informal recreation for not less than 20 years, and that conclusion is not subject to challenge. He then dealt with the question of "a significant number of the inhabitants of any locality", saying:

"Significant' is rather an imprecise word but it is an ordinary word in the English language and there is little help to be gained from trying to define it in other language. It seems to me that it is really a matter of impression. In my view, the evidence shows that the recreational use of the application land has been by a significant number of the inhabitants of Leek."

[42] He then concluded that Leek was a locality for the purposes of the Act. That conclusion is not challenged. He went on in para 8.4 to consider the test, "... any neighbourhood within a locality", saying:

"Further, it seems to me that there has been 20 years' recreational use of the application land by a significant number of the inhabitants of the Ladydale Estate.

In my view, the Ladydale Estate is a 'neighbourhood'."

[43] He set out his reasons for reaching that conclusion, which is not challenged.

[44] He then dealt with the question of whether the informal recreation spoken of by the applicants fell within the statutory description, "... indulging in lawful sports and pastimes ...", and concluded that it did. He dealt with the question of whether it had been "... as of right ...". He said that the use of the meadow for informal recreation by local people continued. He recommended that:

"... The registration authority should accede to the application in relation to the land defined in para 8.1 above but should reject the application in relation to the rest of the application land."

[45] That recommendation was accepted by the regulatory committee of the council.

[46] On behalf of the claimants, Mr Wolton QC described the effect of the Act as draconian. Registration would result in the landowner in the present case being unable to use his land in a beneficial manner. Not merely the planning permission obtained for residential development on part of the meadow, but also the ability to use the meadow to obtain access to other land with residential planning permission to the south would be frustrated by registration. Such interference with a landowner's rights required the most careful scrutiny and could be justified only upon the basis of the most cogent evidence.

[47] He referred to *R v Suffolk County Council, ex parte Steed* [1997] 10 EG 146, 75 P & CR 102. Lord Justice Pill, giving the leading judgment of the court, observed at page 111:

"I approach the issue (of registration of a town green created by prescription) on the basis that it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ... The test for considering whether the rights are established is a stringent one as stated earlier in this judgment. That provides protection for those with an interest in the land. The registration procedure, as laid down in the regulations, provides further protection by imposing duties upon a registration authority to send, publish and affix notices (regulation 5.4) and conferring the right to object (page 115)."

[48] Although the decision in *Steed*, that there must be a subjective belief in the prescriptive right, was overruled in *R v Oxfordshire County Council, ex parte Sunningwell* [2000] 1 AC 335, [1999] 3 All ER 385 Lord Hoffmann, who gave the leading speech in that case, did not suggest that a more relaxed approach to the determination of applications for registration under the Act was appropriate.

[49] Against this background Mr Wolton challenged the council's decision to accept the inspector's recommendation on two grounds. Firstly, whilst there was no issue that a number of inhabitants of Leek and of the Ladydale Estate

had used the meadow for informal recreation for 20 years, there was no evidence to support the inspector's conclusion that the number of inhabitants so doing was significant. His conclusion to that effect was really no more than speculation. Secondly, there was no power to accept an application for registration in relation to part only of the land included in the application. The registration authority had power to accept an application in respect of the whole of the land applied for or to reject an application.

[50] In relation to the first point, it is submitted on behalf of the claimant that, in the context of the Act, the words "significant number" of the inhabitants of any locality or of a neighbourhood meant that the number had to be considerable or substantial. The inspector had fixed the population of Leek at 20,000 and that of the Ladydale Estate at around 200. Only six witnesses were able to give evidence covering the whole of the 20-year period. All of the six had lived in the locality of Leek for that period but only one of them had lived on the Ladydale Estate for the full 20 years. Thus, one had the position of six witnesses out of a town with a population of 20,000; alternatively, one witness out of a neighbourhood with a population of 200. These numbers simply could not be regarded as being in any way significant.

[51] Mr Wolton analysed the evidence of these six witnesses in some detail, as indeed he did in his written closing submissions before the inspector. He submitted in essence that, although these witnesses gave general evidence about the use of the meadow, none of them condescended to the number of people from Leek or from the Ladydale Estate who had actually used the meadow over the full 20-year period. Other witnesses had given evidence but they had not been able to speak as to the full period of 20 years. Plainly there had been an increase in dog walking over recent years but as to what had occurred in earlier years, that was really pure speculation.

[52] So far as the written evidence is concerned, that had to be approached with considerable caution. The inspector had been correct to say that much of it was vaguely expressed and it was unclear what period it covered or to what land it related. Moreover, it had not been tested in cross-examination. Mr Wolton accepted that, in principle, such evidence could corroborate other oral evidence but, he submitted, there was nothing of substance or significance to corroborate. It simply was not possible to derive from the totality of the oral or written evidence the proportion of people from Leek or the Ladydale Estate who, for the past 20 years, had been using the meadow for recreation, let alone to determine whether that proportion was significant or not. The inspector's conclusion that the statutory definition had been met was therefore *Wednesbury* unreasonable.

[53] Mr Wolton referred to Lord Hoffmann's speech in the *Sunningwell* case. At page 168 of [1999] 3 WLR Lord Hoffmann had said this:

"My Lords, I pause to observe that Lord Blackburn does not say that there must have been evidence that individual members of the public using the way believed there had been a dedication. He is concerning himself, as the English theory required, with how the matter would have appeared to the owner of the land. The user by the public must have been ... 'openly and in the manner that a person rightfully entitled would have used it... '."

[54] Thus, the question had to be asked: how would the user described by the witnesses before the inspector have appeared to the owner of the land? The picture here was of occasional or casual use, largely for dog walking. It was not a picture of use by a sufficient number of persons to be representative of the inhabitants either of Leek or of the Ladydale Estate.

[55] Turning to the second matter, the inspector's recommendation that a reduced area of land be registered, it was submitted on behalf of the claimant that, where an application is defective because, for example, the land to which it relates is not shown on the evidence to be wholly common land or town or village green, then the registration authority may either reject it or invite the applicant to amend it. The registration authority has no power itself to amend an application. The registration authority's sole function is to consider the application and the objections to it. If, having done so, the application satisfies the relevant statutory requirements, then the registration authority may accept the application, but if the statutory requirements are not made out, the registration authority has no option but to reject the application. There is no power in either the Act or the Regulations for the registration authority to approve a different area of land from that which appears in the application.

[56] Mr Wolton referred me to a report by Mr Gerard Ryan QC on another non-statutory public inquiry into Spring

Common, Huntingdon. In that case it seems that a property known as Spring House had been included in the application. Mr Ryan said this in his report:

"It is also objected that if a claim for registration of a green is not supported by evidence justifying the claim in respect of the whole green, but possibly only as to a part or parts, the registration must be rejected. I find nothing in the 1965 Act or the New Land Regulations which justifies another view. In this context a somewhat technical but nevertheless important issue stems from the inclusion within the boundary of the claimed green of a property at the northern of the Eastern Meadow known as Spring House. This is, I understand, owned by a local authority and is currently being renovated to fulfil either a social services or an educational function. Extensive work was being carried out there on the day I inspected Spring Common. It was conceded at the end of the Applicant's case that the inclusion of this property was an error."

[57] Mr Ryan then referred to the dicta of Lord Justice Pill in the Steed case, which I have quoted above. He continued:

"An implication of the learned Judge's observations must be that the unjustified and admittedly erroneous inclusion of a separate substantial property within the boundary of a claimed green becomes a serious issue. Moreover a commons registration authority is not in my view empowered by the legislation to amend a claim to accord with the evidence put forward to support it. I conclude that the erroneous inclusion of Spring House and its curtilage in this claim comprises an incurable defect which is fatal to it. It is obviously important that both a claim form and accompanying plan are prepared with great care: the inclusion of Spring House on this plan seems attributable to carelessness."

[58] A little later on in his report he said that the power of the registration authority under the Regulations:

"is then to accept or to reject the application on the basis of the material before it; that must mean the application as presented and objected to. A modified application might not, for example, attract an objection which is otherwise relevant. It is the applicant who decides what to claim.

The limit of the Authority's power in the context of the perfecting of an application is contained in Regulation 5(7) which enables it to reject, at the outset, an application which does not comply with the New Land Regulations. Although the error made here may be regarded as leading to a small defect in this application in terms of the area claimed, it is nevertheless a significant and in my view an incurable defect which is fatal to the application."

[59] It is fair to note that in that case Mr Ryan also concluded that the evidence tendered was not sufficient to establish use for lawful sports and pastimes for the whole of Spring Common throughout a 20-year period.

[60] On behalf of the defendant Mr Mynors submits that, in respect of the first ground of complaint, it is inevitable in cases of this kind that much, if not the whole of the evidence available is going to be assertions, whether made orally or in writing, as to what has taken place in the past, possibly many years earlier. It will be very rare indeed to find anyone who has been present upon the relevant land for the whole of the 20-year period or who has direct knowledge of what occurred every day on the land over that period. Inevitably, people will be saying what they remember doing themselves and what they remember seeing other people doing many years ago. Whether a significant number of the inhabitants of a locality are said to be engaging in activities on a particular piece of land must be very much a matter of impression. It is for that reason that registration authorities, confronted with contested applications of this kind, regularly cause non-statutory inquiries to be held by inspectors who are experienced in this branch of the law. In the present case Mr Chapman's very considerable experience in this branch of the law is not in dispute.

[61] Mr Mynors points out that inspectors, in assessing the quality of evidence, will be perfectly well aware of the underlying motives of many of those supporting an application for registration; that is to say that they wish to prevent development from taking place. The inspector in the present case expressly acknowledged that fact. He points to para 7.1 of the inspector's report, where the inspector referred to the six named witnesses who were able to deal with the whole of the relevant 20-year period, but submits that the evidence of those witnesses was supplemented by the evidence of other witnesses, who could give evidence, not over the whole of the 20-year period, but in respect of a greater or lesser part of it. He acknowledges that such evidence of itself could not be conclusive as to the use of the land over the whole period but submits that, taken together with the evidence of the six named witnesses, it was strongly corroborative.

[62] Moreover, he points out that there was no evidence of change of ownership of the land or of some other change, for example the erection of fences, the pulling down of a stile, the falling into disrepair of a bridge, which

might have suggested that the pattern of use of the land would be likely to have altered at any time over the 20-year period.

[63] He points to the general location of the land, its accessibility by footpath from the centre of Leek, and its proximity to a local attraction. He submits that, on the totality of the evidence, it was not in the least unreasonable for the inspector to conclude that those using the meadow were from a locality, Leek, or from a neighbourhood within the locality: Ladydale Estate.

[64] It being acknowledged that the inspector was perfectly entitled to conclude that a number of the inhabitants, whether of Leek or the Ladydale Estate, had been using the meadow for informal recreation over a 20-year period, in considering whether that number was a significant number, the inspector rightly declined to define the word "significant" in other terms. The inspector correctly pointed out that "significant" was an ordinary word in the English language and that what was significant in any particular case was very much a matter of impression. The council did not accept that "significant" in this context necessarily meant considerable or substantial. Even if it did, expressions of that kind were equally imprecise. He submitted that what matters is that the number of people using a piece of land is sufficient to indicate that their use of the land signifies that the land is in general use by the local community for informal recreation, rather than, for example, occasional use by individual persons as trespassers.

[65] So far as the area to be registered is concerned, Mr Mynors submitted that it was plain from para 8.1 of the inspector's report that, however the land was to be defined, the inspector did not intend to allow any land outside the application land to be included. He was seeking:

"... to identify the land which is both subject to the application and is proved to have been used for recreation by local people for more than 20 years."

[66] Later on in that paragraph the inspector said that the registration authority had simply to consider the land which is the subject of the application and that it was irrelevant that an application might have been successfully made in respect of a larger area. In any event the council had no intention of registering any land that was outwith the boundaries of the application land. The council did, however, intend to cut down the area to be registered by drawing in the eastern boundary. In summary, the council contended that it was entitled to register less than was applied for.

[67] Mr Mynors accepted that there is no explicit power, either in the Act or in the Regulations, for the registration authority to register as a town or village green only part of the land which was the subject of an application, but he submits that such express authority is not necessary because an application for the inclusion of an area of land within the register must of necessity involve a claim that each and every part of that land is eligible to be registered. He submits that it would be wholly artificial if, in order to be on the safe side, an applicant had to split up the land which he wished to see registered into a number of smaller areas and apply separately for the registration of each of those smaller areas. There would appear to be no good reason why a registration authority, having considered the evidence on behalf of the applicant and the objector, should not be able to say that it accepted that part of the land that was the subject of an application was registerable, but had concluded that the remainder was not. That would not be contrary to the purpose underlying the Act and the Regulations, which was that the land the subject of the application should be defined so that proper notice could be given to owners, lessees, tenants or occupiers so that they could object to the application, if they wished to do so. If all such persons had been notified and had an opportunity to state their view, then no one could be prejudiced if the registration authority, in the light of all the evidence, registered a lesser area. He accepted that, if the registration authority sought to go outside the area applied for, prejudice might arise because those who might wish to object would not have had or might not have had notice of the application.

[68] By way of analogy he referred to the fact that planning authorities regularly grant permission for a lesser form of development than that which has been applied for. In the case of *Wheatcroft v Secretary of State for the Environment* 43 P & CR 233, [1982] JPL 37, Mr Justice Forbes had endorsed such a practice, provided what was permitted was not substantially different from that which was applied for. Mr Justice Forbes added that, in deciding whether or not what had been permitted was in substance not that which was applied for, one had to consider the

extent to which those who might wish to object to a lesser form of development had been consulted and had an opportunity to express their views.

[69] Mr Mynors has pointed out that the court is permitted by s 14(b) of the Act to rectify the register where it appears to the court that no amendment or a different amendment ought to have been made. He submitted that, whilst the court in such cases might simply be rectifying an error made by the registration authority, the words would be equally apt to cover a case where a different amendment to the register was found to be appropriate on the evidence.

[70] Finally, on a practical note, he submitted that there would be little sense in preventing the registration authority from registering a smaller area. Inevitably, the inspector's report would be released to the applicants for registration and to the objectors. If the registration authority was compelled to say that, as a result of the inspector's conclusion that a lesser area should be registered, it had no power to accept the registration, the practical consequence would be there would thereupon be a fresh application for registration of the smaller area. The inspector's report would be evidence in any further inquiry into that fresh application and, absent any material change of circumstances, precisely the same result would be reached, save that a great deal of time, trouble and money would have been expended. He submitted that, as a matter of discretion, the court should not quash the council's decision, since it would cause no prejudice to the claimants.

My Conclusions

[71] Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of s 22(1) as amended means a considerable or a substantial number. A neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in saying that "significant", although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

[72] The inspector concluded in para 7.1 that substantial use had been made of the meadow for informal recreation for more than 20 years before the application. He referred specifically to six of the witnesses who could give evidence covering the whole of the 20-year period. Mr Wolton's criticisms of the inspector's conclusions are not well founded. It is quite unrealistic to refer simply to the six witnesses or to deal with the matter on the basis that they are only six out of 20,000 or one out of 200, and that such numbers are not significant. I accept that, if all of those six witnesses had said that they had not seen others on the land over the 20-year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the fact of the matter is that they did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the meadow over the 20-year period.

[73] It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period. In the present case, however, the evidence of the six witnesses who were able to cover the whole 20-year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20-year period, some of them going back almost 20 years, some going back to times before the 20-year period began.

[74] If there had been anything to suggest circumstances might have changed -- a change of ownership, a change in the physical condition of the land, fences erected, bridges broken down, gates locked -- then there might have been some substance in Mr Wolton's submissions. But there is no evidence to suggest that there was any relevant change that might reasonably lead to the conclusion that evidence about what was happening, say, 15 years ago was not relevant for the purpose of deciding what was happening 20 years ago.

[75] In addition to the oral evidence, the inspector had the written evidence. Clearly, he had to treat that evidence with caution because it was not subject to cross-examination but, having looked at the totality of that evidence, he was entitled to conclude that it was largely consistent with and supportive of the oral evidence given by the applicant's witnesses to the effect that many local people from Leek had been using the meadow for informal recreation for more than 20 years without permission or objection.

[76] In addition, the inspector was entitled to have regard to the matters set out in paras 7.3 to 7.8 of his report; that is to say, the meadow is within easy walking distance from the centre of Leek. There are footpaths leading to it. It is beside the Ladydale Well, which is a well-known local attraction. It is very easy to get into the meadow from Ladydale Well over the stile. There is also the Carriage Drive Gate, which the inspector concluded was rarely locked and sometimes open. There were no signs forbidding entry and generally the surrounding circumstances were entirely consistent with the contentions of the applicant's witnesses that people were using it for informal recreation: there was an absentee landowner; the land had little agricultural value; the agricultural licensee had a limited interest; and so forth.

[77] In short, all of the pieces of evidence referred to above fitted together and pointed in the same direction. That is to say that there had indeed been use for 20 years or more by a significant number of the inhabitants of Leek and of the adjoining estate. Far from being a unreasonable conclusion based upon speculation, the inspector's conclusion is in my judgment amply supported by a painstakingly careful analysis of all the evidence before him.

[78] Turning to the second matter, following discussions between the parties, it is clear that the council does not propose to register any land that is outwith the application site. It proposes to register a smaller area than was applied for. It is plain from para 8.1 of the inspector's report that he did not intend that additional land, ie land outwith the application site, should be registered. As he said, what he was trying to do was to identify land which was both the subject of the application and proved to have been used for recreation by local people. So the concerns expressed by the claimant that land outwith the application site might be registered are not made out.

[79] Does the council have power to register a smaller area than applied for? It is perfectly true that there is no express power in either the Act or the Regulations to register a smaller area of land. I have set out the relevant enactments above. The Regulations require that the application must be in a particular form, and that form requires that the land the subject of the application should be identified. However, it has to be recognised that those who make applications for registration are not necessarily expert cartographers. Plainly, they will not have the benefit, as the inspector did, of being able to consider all of the relevant evidence for and against registration of a particular parcel of land.

[80] What is the purpose of identifying the land in the application? The answer is, so that the registration authority can give appropriate notice to owners, lessees, tenants or occupiers, or to others who might wish to object to an application to register. It seems to me that, provided the boundary is not altered in such a way as to defeat that purpose of defining the land in the application form, for example by including land which might be owned, tenanted or occupied by others, there can be no sensible objection to the registration authority cutting down the extent of land to be registered.

[81] Mr Ryan's decision is readily understandable on the facts. In that case it would appear that a significant building which, on any basis, could not form part of a town or village green, had been carelessly included in an application. One can well understand that such an egregious error might have been fatal to that particular

application, but that is very different from the facts of the present case. The applicants sought the registration of Ladydale Meadow. There was debate as to the extent to which they had used the whole of the 20 acres of the meadow. The inspector found that they had not used the whole of it. There is no question of carelessness or of the inclusion of a parcel of land that could not on any basis form part of a town or village green. Moreover, what is of importance is that no prejudice to the claimant in the present case has been suggested.

[82] Mr Wolton submits that the *Wheatcroft* case 43 P & CR 233, [1982] JPL 37 is not analogous to the present case because a planning permission will generally confer benefits upon the landowner, whereas a registration as a town or village green will be detrimental to an owner's interests. Provided the registration authority does not step outside the boundary of the application and provided the landowner, tenant and occupier have had ample opportunity to make their representations, it is difficult to see why, as a matter of common sense, the registration authority should not be able to register a lesser area, provided it is not substantially different from that which has been applied for. There is no substantial difference here, only a more accurate definition of the boundaries in the light of all of the evidence. I accept Mr Mynors' submission that it is implicit in an application to register an area of land that the applicant is saying that each and every part of that land is registerable as a town or village green. It would be quite artificial to require an applicant to split up the application site into a number of smaller parcels.

[83] Even if I am wrong about this and the registration authority does not have power itself to register a lesser area than that applied for, this court has a discretion as to whether or not to grant relief. As a matter of discretion I can see no useful purpose being served by quashing the council's decision to register a lesser area. The only consequence would be that the applicants for registration would be able to put in a fresh application to register the lesser area. The inspector's report recommending registration of that lesser area would be public knowledge and would plainly be evidence that could be put forward at any further inquiry, if there were to be one, and, absent any material change of circumstances or new evidence, precisely the same conclusion would be reached. Thus it seems to me, absent any prejudice to the claimant on the facts of the present case, it would be pointless to grant relief on such a limited basis.

[84] For these reasons, this application for judicial review is dismissed.

Application dismissed.