



COMMONS REGISTRATION ACT 1965

Reference No 2/U/63

In the Matter of Old Chalk Pits,  
Hodgedale Lane, Hurley, Cookham R.D.  
Berkshire

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DECISION

This reference relates to the question of the ownership of part of land known as Old Chalk Pit, Hodgedale Lane, Hurley, Cookham Rural District being the land comprised in the Land Section of Register Unit No CL.18 in the Register of Common Land maintained by the Berkshire County Council. The said part is that which is not under the Land Registration Acts 1925 to 1971 registered at H M Land Registry freehold under Title No BK 34923 and of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Berkshire, Buckinghamshire and Oxfordshire Naturalists' Trust Limited ("the Trust") in a letter dated 15 January 1973 from their solicitors claimed to be the owners of the land and Mr R A Jarman in a letter dated 12 January 1973 said that the Trust are now the owners. No other person claimed to be the freehold owner of the land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Reading on 21 March 1973. The hearing was attended by the Trust who were represented by Mr B R Baker, their Berkshire County Secretary.

Mr Baker in the course of his evidence produced the following documents which he had obtained from The Trust's Solicitors and which were held by them on behalf of The Trust:- a Land Certificate showing The Trust to have an absolute title to land delineated on the plan annexed and registered under the said Title No. on 8 July 1964; (2) a Deed of Transfer dated 23 June 1964 of the same land to the Trust; (3) an Agreement dated 16 April 1964 on the National Conditions of Sale form by which Messrs J B Albot and H Beevor agreed to sell the same land to the Trust; and (4) an Abstract dated 1964 of the title of the late Dame S L Clayton East relating to freehold land at Ashley Hill, Hurley.

The register map and other documents provided for me by the County Council as registration authority show:- The land ("the Unit Land") comprised in this Register Unit is triangular in shape, two of the sides (running approximately north and south) being between 550 and 600 yards long and the other side (running east and west) being (from corner to corner; it is not straight) between 80 and 100 yards long. The Unit Land is traversed by two public rights of way ("the Brown Land") one running the whole length of the west boundary and the other running from the south east corner to the centre of the west boundary. The remainder ("the Pink Land") of the Unit Land is the same as that registered under the said Title No. The two public rights of way are: Bridle Way No 15 Hurley which runs from Hodgedale Farm northwards to the Henley/Haidenhead Road and Bridleway No 19 Hurley which runs from Hodgedale Farm south and eastwards to Honey Lane at Hallplace Farm.



On this reference, I am concerned only with the Brown Land: a very small part of the Unit Land.

The Plans annexed to the Land Certificate, the Deed of Transfer, and the Agreement produced by Mr Baker all delineate the Pink Land to the exclusion of the Brown Land. The Abstract shows a title regularly deduced from a vesting deed dated 5 January 1926; but apart from a Deed Poll dated 4 March 1937 contains no plan or description indicating whether or not the Brown Land is in the same ownership as the Pink Land. The Deed Poll is a declaration made under section 193 of the Law of Property Act 1925 applicable to 170 acres, being common land and roadside wastes of the Manor of Hurley (including the Pink Land); but the copy of the plan annexed to the Abstract left me in some doubt as to the part if any, of the Brown Land intended to be included in the declaration.

Mr Baker submitted that The Trust were the owners of the Brown Land because it is highway and there is nothing to rebut the presumption at Common Law that the owner of land adjoining a highway is owner also of the soil of one half of the highway. He had never seen the Unit Land.

The non-registration of the Brown Land under the Land Registration Acts is no indication that the presumption is inapplicable, see rule 278 (as to general boundaries) of the Land Registration Rules 1925. But the non-inclusion of the Brown Land in the 1964 Agreement and in the 1964 Deed of Transfer does I think show that those responsible for these documents either thought that the presumption could be rebutted or were uncertain whether it could be. By section 8 of the Act of 1965, I have to consider whether I am "satisfied" that the Trust is the owner of the Brown Land. It is not I think enough that there was no evidence before me rebutting the presumption; in the absence of any evidence of the reasons for the uncertainty in 1964 as to the applicability of the presumption or of any events which have since removed this uncertainty, I am unable to conclude that the presumption is applicable.

There is another difficulty in the way of the claim of the Trust. The definition in section 22 of the Act of 1965 of "common land" provides that it does not "include any land which forms part of a highway". Many large pieces of land have been registered under the Act as common land without regard to the possibility that some comparatively small part may be highway, probably because it would be troublesome and expensive to exclude precisely the part which is highway, and such precision would serve no obviously useful purpose. It may be that the Unit Land is one of these pieces; however this may be, it is I think clear from the Act that a Commons Commissioner should not determine the ownership of any piece of land which is highway except so far as such a determination is necessary for or incidental to the determination of some other matter within his jurisdiction. Accordingly I cannot I think conclude that The Trust is the owner of the Brown Land for a reason which is wholly dependent upon the Brown Land being highway.

For the above reasons, so far as I have jurisdiction to consider the matter, I am not satisfied that The Trust or any other person is the owner of the Brown Land. It will therefore, remain subject to protection under section 9.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

7<sup>th</sup>

day of

May

1973.

A. A. Baker - Fuller