



COMMONS REGISTRATION ACT 1965

Reference No 203/U/24

In the Matter of land adjoining
Nap Farm, Oakley, Aylesbury Vale
District, Buckinghamshire

DECISION

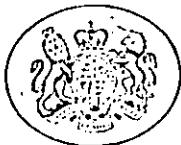
This reference relates to the question of the ownership of land containing about 0.47 of an acre, adjoining Nap Farm, Oakley, Aylesbury Vale District and being the land comprised in the Land Section of Register Unit No CL. 234 in the Register of Common Land maintained by the Buckinghamshire County Council 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 no person claimed to be the freehold owner of the land in question, although upon receiving notice of the hearing Oakley Parish Council claimed ownership. No other person claimed 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 Aylesbury on 4 October 1977. At the hearing (1) Oakley Parish Council were represented by Mr L Wright their clerk (Mrs J Edmund and Mr D Hawes two of their members also attended), (2) Mr Temby Keith Gordon Salter and Mrs Audrey Eleanor Salter (his wife) were represented by Mr J F B Stevens solicitor of Wilkins & Son, Solicitors of Aylesbury; and (3) Buckinghamshire County Council as registration authority were represented by Mr C D Durrant of the County Secretary and Solicitor's Department. Present also were Mrs M D Evans and Mr E Drover, two local inhabitants.

The land ("the Unit Land") comprised in this Register Unit is approximately triangular. Its south side is bounded by and open to the Thame-Bicester road (B 4011) which passes through the Village. On its west side there are three dwelling houses, at the south end Nap House (on land on the below mentioned conveyance plans called Darvill), near the middle The Nap (on the site of the old Nap farmhouse) and at the north end Nap Farm (on the site of what were farm buildings). On its east side it is bounded by a hedge with an entrance gateway to the Vicarage; a short distance to the east stands the Parish church of St Mary's. From the north end of the Unit Land there is or appears at one time to have been a track leading northward towards Brill but which is now much overgrown and (when I saw it) rather muddy although it could (I suppose) be used without much difficulty on foot.

Mr Durrant produced from the County Record Office the Oakley Inclosure Award dated 30 November 1821 made under the Oakley Inclosure Act 1819 (59 Geo 3 c. 78); on the Award map the Unit Land is coloured yellow being included among other lands so coloured and apparently they or some of them were highways; however the Unit Land



is not allotted by or otherwise particularly mentioned in the Award. Mr Durrant said that on the map annexed to the Tithe Apportionment Award for the parish of Brill (dated about 1850) the Unit Land and a strip to the north of it is in the Schedule to the Award separately numbered, described as "Green Lane" and shown as not tithable (being included with other numbers under a heading "Roads...").

Mr Stevens in the course of his oral evidence produced (1) a conveyance dated 8 August 1963 by which Mrs M D Evans conveyed to Mr and Mrs Salter (with other land) Nap Farm containing 28 acres 9 perches as described in the Schedule by reference to a plan on the conveyance next mentioned; (2) a conveyance dated 27 August 1959 by which Mrs M D Bunce conveyed to Mrs Evans the same Farm; (3) a conveyance dated 29 September 1903 by which Mr T Horwood and another conveyed to Mr J G, Mr F R, and Mr R Roadnight the same Farm by reference to the plan drawn thereon (being essentially the same as the 1959 conveyance plan); and (4) a plan ("The Track Plan") intended to show the recent history of the tracks across the Unit Land; (5) a plan ("the Claim Plan") showing with a red line how much of the land which was comprised in the 1963 conveyance and which fronts on the Unit Land is still now in the ownership of Mr and Mrs Salter; and (6) a copy of a plan which Mr Salter had obtained from the Bodleian Library entitled "Plat II part of Bernwood Forest (1590) with Royal Coat of Arms".

Mr G Rogers chartered surveyor of Aylesbury in the course of his oral evidence on behalf of Mr and Mrs Salter, described how the tracks on the Unit Land had been altered and the fences of the adjoining land on the west redone so as (among other things) to improve the line of vision of persons driving motor vehicles from the said three dwelling houses on to the B4011 road.

Mr Wright who has been clerk of the Parish Council for 11 years and lived in the Parish for 12 years, in the course of his evidence produced a letter dated 23 March 1970 from Mr Salter and a letter dated 12 May 1970 from the Clerk of the Buckingham County Council. He said (in effect):- The Unit Land is known as "The Nap". It is in a central part of the Village and the Parish Council are concerned to preserve it from the amenity point of view; if it came under private ownership there might be pressure to change it adversely. The Parish Council had "no legal papers" in support of their claim to ownership. The Village had been second in the "Best Kept Village Competition"; the Parish Council had allocated money to be spent on the maintenance of the grass verges of the Village and under this allocation The Nap had been maintained by the grass being cut with a rotary mower with a box; this had been going on for 5 or 6 years at least; last year the Parish Council had planted a Jubilee tree on the Unit Land.

On the day after the hearing I inspected the Unit Land. Its appearance is attractive and having regard to its situation it is obviously a valuable Village amenity.

As to the ownership claim of Mr and Mrs Salter:- Clearly no part of the Unit Land was by any of the 1903, 1959 or 1963 conveyances expressly conveyed. Mr Stevens contended that the Unit Land was highway and that in accordance with the well-established presumption, the owners of the adjoining land were owners also up to the middle line of the made up part of the highway. Two parts of the



Unit Land are now made up for vehicular traffic; first, a short length on the south side of the Unit Land providing vehicular access to the Vicarage; and secondly, a track which runs near the west side of the Unit Land providing vehicular access to the three dwelling houses above mentioned. This track does not appear to be made up beyond the minimum necessary for the convenience of these houses, and as a made up track, it ends a little short of the north boundary of the Unit Land. Beyond to the north there appears to be little more than the remains of what may at one time have been a track.

As I understood Mr Stevens, the ownership claim of Mr and Mrs Salter is limited to the part of the Unit Land east of the red line on the Claim Plan up to the middle line of the made up part of the adjoining track, that is they claim an area forming only a small part of the Unit Land, being I suppose not more than and perhaps less than 5 per centum of the whole. Of this 5 per centum, all is track except a small strip between the west edge of the made up part and the east edge of the fence of and the entrance way to the land of Mr and Mrs Salter, a strip for the most part rough grass, not more than or much more than 2 feet wide anywhere, being I suppose about $\frac{1}{2}$ per centum of the whole of the Unit Land. Superficially the claim appears to be somewhat trivial, although it may I suppose be of some local importance, because if it be right, the whole of the Unit Land might have been claimed by the several owners of the other parts of the adjoining land.

There was no evidence as to any use for highway purposes by the public of the Unit Land and I reject the suggestion that the colouring on the 1821 Award map shows that the whole of the Unit Land was then highway; the colouring is consistent with its then being all Common Land not subject to any highway → rights. Further, I had no evidence as to the use made of the track by the owners and occupiers of the three dwelling houses, although from the appearance of the Unit Land and its surroundings, I think I ought to assume in favour of the claim that there is appurtenant to these houses and to the Vicarage a general right of way over the visible tracks. The layout and the appearance of the Unit Land is against it being highway as belonging to and being part of the B4011 road. So on the evidence before me, I conclude that no part of the Unit Land is highway.

However the maps produced suggest that evidence might have been given of public use which would have established that there is a public right of way of some kind across the Unit Land leading from and to the B4011 road and to and from somewhere north of the Village. So I will consider whether the claim would have succeeded if I had been satisfied that the north-south track across the Unit Land was at least a public highway on foot.

On this basis I must consider whether the east and west fences of the Unit Land must be considered as marking the limit of the highway, in accordance with the principles set out in Attorney General v Beynon 1970 1 Ch 1. In another case considered the applicability of the presumption that the fences do mark the boundary of the highway when the land in question had been registered under the 1965 Act as common land and in my decision dated 7 February 1977 set out the legal principles which seemed to me to be applicable, see re Cliffe Marshes reference 19/U/39. All I need say in this case is that in accordance with such principles the presumption is in my opinion rebutted by reason not only of the registration of the Unit Land as common land under the 1965 Act but also from the appearance of the Unit Land itself as it now is and as I can infer it was in the past from the maps produced to me; in my opinion the Unit Land so far as it is not a made up track which is or might be a public highway is a distinct piece of land.



For the above reasons I reject the claim put forward by Mr Stevens on behalf of Mr and Mrs Salter.

The acts done by the Parish Council on the Unit Land as described to me by Mr Wright although they indicate that they are now in possession and also indicate some degree of reputed ownership, are I think of too recent origin by themselves to establish the ownership of the Parish Council. However I have the 1821 Award map which shows the land substantially as now, that is an open space which can only then have been such because it was of some importance having regard to the relative positions of the Church and the rest of the Village. I have also the 1590 copy map on which although it shows the layout of the rest of the Village to be rather different from what it is, now describes the Unit Land and the land to the north as "churche waye" and delineates open spaces between the Church and the Village far larger than now exist. It seems to me the only possible explanation of the continued existence of the Unit Land as an open space as it now is over this very long period is that it has always been reputed to belong to the Parish within the popular meaning of these words; this conclusion provides grounds enough for my now inferring that the land was formerly vested in the churchwardens and overseers and is now vested in the Parish Council as their successors under the Overseers Order 1927, see Poor Relief Act 1819, Doe v Hiley (1830) 10 B&C 885, Doe v Terry (1835) 4 A&E 274 at page 281 and Haigh v West (1893) 2 QB 19 at page 31.

For the above reasons I am satisfied that the Parish Council are the owners of all the Unit Land and I shall accordingly direct the Buckinghamshire County Council as registration authority to register Oakley Parish Council as the owner of the land under section 8(2) of the Act of 1965.

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 25th day of October — 1977

a. a. Bader Fuller

Commons Commissioner