

*Cumbria*

COMMONS REGISTRATION ACT 1965

Reference No. 262/U/595

In the Matter of Bardsea Green, Urswick, Cumbria

## DECISION :

This reference relates to the question of the ownership of a small area of land forming part of Bardsea Green, Urswick being the part of the land comprised in the Land Section of Register Unit No. CL.112 in the Register of Common Land maintained by the Cumbria 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 Ian Brian Parry and Helen Parry claimed to be the freehold owners of the land in question and various other persons 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 Ulverston on 16th April 1989. The hearing was attended by Mrs Fiona Harrison of Cumbria County Council the registration authority, Mrs A Robley clerk to Urswick Parish Council, Miss M. Patch, Mr Warrel and Mr Hart Jackson of Hart Jackson & Sons, solicitors of Ulverston on behalf of Mr & Mrs Parry. I also held a view of the land on the day of the hearing accompanied by my clerk and most of the persons named above.

This inquiry relates to a very small piece of land having an area of 0.023 acres or thereabouts. It lies immediately to the west of a building known as Low Barn, which was formerly an old barn but which at some date prior to April 1982 had been converted into a dwelling-house.

The title to this small piece of land is straight-forward, but I felt it necessary to inquire further into the matter as it appears to have been subject to a series of mistakes or misunderstandings which have led to an unfortunate situation on the ground.

There have been two previous hearings before Commons Commissioners. Bardsea Green as a whole was the subject of three registrations under the 1965 Act. The part of the Green north of the main road was registered as common land as register unit CL.65 and the part south of the road as a village green as register unit VG.24. Both CL.65 and VG.24 also included Low Barn and the land and buildings adjoining it to the east. The part south of the road was also registered as common land as register unit CL.112. This registration did not include Low Barn, but it did include the small parcel which I now have to consider. There were no entries in the Rights Section of the Register in respect of any of these register units.

All three registrations came before Mr Commissioner Baden Fuller on 27th April 1978. By a Decision dated 27th November 1978 he refused to confirm the CL.65 registration, refused to confirm the VG.24 registration, and confirmed the CL.112 registration with various modifications giving effect to the objections which had been made. In that Decision however he differentiated between the bulk of the land remaining in the CL.112 registration (which he defined as "the Open Space Area") and the small parcel of land with which I am now concerned (and which he defined as and which I shall henceforward refer to as "the Green area").



The reason why Mr Commissioner Baden Fuller distinguished between these two areas was that the Open Space Area had been conveyed on the 23rd June 1964 by the Crown Estate Commissioners to a Mr Simpson, but for some reason the Green area was retained by the Crown. The Crown had held the land as Lord of the Manor of Muchland. The situation thus arose that, at the date of registration under the 1965 Act the Open Space area had ceased to be "waste land of a Manor" within the Section 22(1) (b) of the Act, whilst the Green area which remained vested in the Crown still fell within that category.

Notwithstanding this distinction (and notwithstanding that he specifically referred in his Decision to what was then the recent decision of the Court of Appeal in Re Box) Mr Commissioner Baden Fuller confirmed the registration in respect of both the Green area and the Open Space area.

The next hearing was an unclaimed land reference in respect of the land in CL.112 which came before Chief Commons Commissioner G D Squibb on 30th March 1982. In his Decision dated 6th April 1982 Mr Squibb said that the land remaining in this register unit was conveyed to Mr Simpson by the Conveyance dated 20th June 1964, that he was satisfied that Mr Simpson was the owner of the land, and that he would direct Cumbria County Council as registration authority to register him as the owner of the land.

It is clear that in his Decision the Chief Commons Commissioner made a mistake. The whole distinction which Mr Commissioner Baden Fuller had made between the Open Space area and the Green area was that the former had been conveyed to Mr Simpson whilst the latter (in 1978) remained vested in the Crown. Indeed it appears that the Chief Commons Commissioner discovered (or had his attention drawn to) this mistake before he issued his Direction dated 15th October 1982 to Cumbria County Council pursuant to section 8(2) of the Act, since by that Direction he directed the County Council to register Mr Simpson as owner of the land shown edged red on the plan annexed thereto (being a copy of the plan on the Conveyance to Mr Simpson). This left the Green area in limbo. Having discovered the mistake, one would have expected the Chief Commons Commissioner either to have corrected his Decision, or (if he was in doubt as to the ownership of the Green area) to have restored the hearing to inquire further into the matter. In fact he did, neither. Thus it happens that six years later the County Council referred to a Commons Commissioner the unclaimed land reference in respect of the Green area which is now before me.

In support of Mr & Mrs Parry's application for registration as owners of the Green area Mr Hart Jackson produced:-

1. A Conveyance dated 23rd March 1982 between (1) H.M. The Queen, (2) Crown Estate Commissioners and (3) Helen Parry;
2. A Conveyance dated 16th April 1982 between (1) Helen Parry and (2) Ian Brian Parry and Helen Parry.

The first of these was a conveyance of 0.023 acres of land at Bardsea Green shown on the plan thereto (which corresponds with the Green area) - subject (inter alia) to all rights of common. The second was a deed of gift by Mrs Parry to her husband and herself jointly of (1) the dwelling-house and land known as Low Barn and (2) the Green area.



As the first conveyance was one made by the Crown, no further title was or is now required.

On this evidence I am satisfied that Mr & Mrs Parry are the owners of the Green area, and I shall accordingly direct Cumbria County Council to register them as owners of the Green area pursuant to section 8(2) of the 1965 Act. Having reached this conclusion, there is strictly speaking no necessity for me to add anything more. I feel however that it is proper for me to record the following facts which became known to me as a result of my inquiries.

Before Mrs Parry purchased the Green area from the Crown her Solicitors made the usual searches under the Land Charges Acts. I was told by Mr Hart Jackson (and the County Council's representative confirmed) that they received a clear Search Certificate, i.e one which failed to disclose that the Green area was registered as common land.

The sequence of events at about the time of Mr & Mrs Parry's acquisition of the Green area in 1982 was therefore as follows:-

3rd March: Clear Search Certificate given not disclosing that the Green area was common land.

23rd March: Conveyance of the Green area by the Crown to Mrs Parry.

30th March: Hearing before Chief Commons Commissioner.

6th April: Decision of Chief Commons Commissioner to the effect that the whole of the land remaining in CL.112 belonged to Mr Simpson.

16th April: Conveyance of Green area by Mrs Parry to Mr & Mrs Parry jointly.

15th October: Direction by Chief Commons Commissioner to County Council under section 8(2) by reference to a plan which did not include the Green area.

Lulled into a sense of false security, Mr & Mrs Parry thereafter sought and obtained detailed planning permission for the erection on the Green area of an extension to their dwelling-house, Low Barn, comprising an additional five rooms. They then caused the whole of the Green area to be excavated to a considerable depth, throwing up several tons of excavated rock onto the immediately adjoining part of the Open Space area. It was, I was told, the Parry's intention to use this rock for wall building on completion of the development.

Local protests ensued, as a result of which Mr & Mrs Parry's proposed development was brought to a halt. The situation as it now exists on the ground is that the Green area resembles an open quarry, with the excavated rock lying on the adjoining part of the Open Space area. I would judge it impracticable to restore the Green area to its former condition at any reasonable expense, as it is hardly feasible to fit the rock back into the ground from which it has been taken.

I have no jurisdiction as a Commons Commissioner to do anything other than direct the County Council to register Mr & Mrs Parry as the owners of the Green area. The situation as it exists is however entirely unsatisfactory for all concerned, and as it appears to result from a series of mistakes or omissions for which Mr & Mrs Parry are not responsible I feel it proper for me to suggest that every endeavour should be made to resolve the problem by agreement between all concerned including in particular the County Council and the Parish Council.



Finally I would draw the attention of all concerned to the appeal in the case of Hampshire County Council v Milburn which is due to be heard by the House of Lords later this year, and which will it is hoped give some guidance on the circumstances in which an application may be made to a registration authority under section 13 of the Act for the amendment of the registers where land has ceased to be common land since registration.

I shall accordingly direct the Cumbria County Council, as registration authority, to register Mr Ian Brian Parry and Mrs Helen Parry as the owners 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 12<sup>th</sup> day of May 1989

Marti Rott.

Commons Commissioner