



COMMONS REGISTRATION ACT 1965

Reference No. 211/U/9

In the Matter of The Village
Green, Barningham, Teesdale
D., Durham

DECISION

This reference relates to the question of the ownership of land known as The Village Green, Barningham, Teesdale District being the land comprised in the Land Section of Register Unit No. VG.74 in the Register of Town or Village Greens maintained by the Durham 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 Sir Mark Vane Milbank claimed ownership of the land as Lord of the Manor of Barningham and Mr. E. W. Vincent claimed to own part of the land. No other person claimed to be the freehold owner of the land in question 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 Bishop Auckland on 30 April 1975. At the hearing (1) Mr. J.F. Smith, solicitor of Smith, Roddam & Co., Solicitors of Bishop Auckland attended as representing Sir Mark Milbank and the Rt. Hon. James Edward Ramsden and on his own behalf; and (2) Mr. E.W. Vincent attended as representing his wife, Mrs. E.A. Vincent and on his own behalf.

The land ("the Unit Land") comprised in this Register Unit is in three pieces, by the side of the road which runs through the middle of the Village. The largest ("the South Piece") is (as I scale the Register map) a little over 400 yards long, and has for the most part a width (from the south side of the road) of between 40 and 50 yards. The two other pieces on the other side of the road are comparatively small. The Unit Land is nearly all grass land with some trees. It is a valuable amenity for those who live in the houses fronting on it and for others of the Village.

Mr. and Mrs. Vincent own and reside at Newby House (formerly called Terrace House) which (and the land held with it) abuts on the south side of the South Piece. They claim the part ("the Newby House part") of the Unit Land which is south of the line (nearly straight) which starts at the northwest corner of the School plot numbered 237 on the O.S. map, goes to the east end of, and then follows the line of the wall which supports the terrace or drive way in front of Newby House (which wall is marked on the O.S. map with a short black line), and then from the west end of the wall continues to and ends at the northeast corner of the building on the O.S. map called "Smithy".

Mr. Vincent in the course of his evidence produced: (1) a conveyance dated 8 June 1971 by which Sir Mark Milbank, Mr. Ramsden and Mr. Smith conveyed to Mr. R.G.G.



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English the property known as Terrace House, (2) a conveyance dated 3 January 1973 by which Mr. English conveyed Newby House to Mr. & Mrs. Vincent and (3) some photographs of the Newby House part.

Mr. F.E. Beadon who is the Agent of the Milbank Estate, in the course of his evidence, produced: (1) a copy (certified as having been examined on 16 July 1830) of an indenture dated 12 January 1761, (2) an authorisation dated 19 October 1887, (3) an indenture dated 1 July 1895 by which lands were conveyed to Sir P.C.J. Milbank, (4) probate of his will (he died 30 January 1918), (5) a vesting deed dated 11 January 1926 by which all hereditaments and premises by any means subject to the limitations or trusts of his will were declared to be vested in Sir F.R.P. Milbank, (6) probate of his will (he died 29 April 1964) granted to Mr. Ramsden and Mr. Smith, and (7) a vesting deed dated 1 April 1965 in favour of Sir Mark Milbank.

Notwithstanding that the most recent express mention of the Manor of Barningham in any of the documents produced is that at page 6 of the 1895 indenture, I conclude that Sir Mark Milbank is now entitled to the Lordship. By the 1895 indenture it was expressed to be conveyed to Sir P.C.J. Milbank, and in my view it passed either by operation of law or under the general words in the events or under the later documents above mentioned. That the Lordship has been in the Milbank family for a long time is apparent from the 1761 indenture which in many places states expressly or impliedly, that Mark Milbanke is owner of the Manor.

I also conclude that the Unit Land has at all relevant times belonged or been reputed to belong to the Manor, so as to pass with it under section 62(3) of the Law of Property Act 1925. By the 1761 indenture it is agreed that the Manor "comprehends and contains in it the whole Township of Barningham". By the 1887 authority, Sir F.M.A. Milbank authorises the Vicar and Churchwarden "to plant, fence, protect and preserve ... a tree (in commemoration of our beloved Sovereign Queen Victoria's Jubilee) on October the 20th 1887 ...". The authority nowhere states where the tree is to be planted although the endorsement on it mentions "Barningham Green" so I infer that the tree must have been on the Unit Land. Mr. Beadon in his evidence pointed out on the Register map numerous pieces near to or ~~surrounding~~ the Unit Land which now form part of the Milbank Estate. There was no evidence or suggestion that the Unit Land could be Parish property, and its appearance (I walked over it two days after the hearing) is consistent with it being waste land of the Manor.

Accordingly I am satisfied that the Unit Land except so far as it is now owned by Mr. & Mrs. Vincent, is now owned by Sir Mark Milbank. Mr. Smith said that the Estate supported the application of Mr. & Mrs. Vincent. Having regard to this concession, and to the circumstances that Mr. & Mrs. Vincent trace their title to Newby House through Sir Mark Milbank, Mr. Ramsden and Mr. Smith, I need not, I think, determine or even discuss whether the 1971 and 1973 conveyances would if strictly construed pass any part of the Unit Land. Having looked at the Newby House part, the concession made by Mr. Smith seems very reasonable, and I shall give effect to the 1971 and 1973 conveyances accordingly.

For the above reasons I am satisfied that Sir Mark Milbank and Mr. & Mrs. Vincent



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are the owners of the Unit Land as set out above, and I shall accordingly under section 8(2) of the Act of 1965 direct the Durham County Council as registration authority, to register Mr. Edgar Wilson Vincent and Mrs. Elizabeth Ann Vincent of Newby House Barningham as the owners of the Newby House part of the land and to register Sir Mark Vane Milbank Baronet K.C.V.O. of Barningham Park, Barningham as the owner of the remaining part of the land, and I shall in my direction define the Newby House part as set out above in this decision.

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 8th — day of May — 1975

a. a. Baden Fuller.

Commons Commissioner