



COMMONS REGISTRATION ACT 1965

Reference No.37/D/7

In the Matter of land adjoining No.4RP  
Cottage, Rodmell, Chailey R.D., East Sussex

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.CL.77 in the Register of Common Land maintained by the East Sussex County Council and is occasioned by Objection No.28 made by Mr. Peter Buck Glanvill Britton and noted in the Register on 30 July 1970.

I held a hearing for the purpose of inquiring into the dispute at Lewes on 6 March 1973. The hearing was attended by Mr. Britton in person and by Rodmell Parish Council ("the Council") who were represented by Mr. A. Floyd, one of their members. Mrs. R. Parker who is the Clerk of the Council was present.

The registration as Common Land of the land ("the Unit Land") comprised in this Register Unit was made pursuant to an application dated 15 June 1968 and made by the Council. The grounds of objection were in the Objection Form stated as follows:- "The land was not common land at the date of registration".

At the hearing oral evidence was given by Mr. H. J. Bartholomew on behalf of the Council and by Mr. Britton on his own behalf. In addition the documents below mentioned were produced. On the day after the hearing I inspected the land, it having been agreed that I might do so unattended.

No.4RP Cottages ("Cottage No.4") is the most northern of a row of four cottages facing east and fronting on "the Street" (a metalled road) through the village of Rodmell. A few yards north of Cottage No.4, the Street turns a corner to the west; straight on there is an unmetalled track leading to land between the Village and the River Ouse. The Unit Land is bounded on the south by the north wall (side wall) of Cottage No.4, bounded on the east and north-east by the edge (curved by reason of the corner) of the metalled carriageway of the Street and on the west first by a gate (in line with the west wall of Cottage No.4), next by the east wall of a pair of water closets, next by the north wall of the closets, and finally by part of the curved back wall of the garden belonging to some houses known as Navigation Cottages (accessible from the Street round the corner). The Unit Land is at its widest part (opposite the closets) about 7-10 yards wide, at its north end it tapers gradually to a point, where the edge of the metalled road meets the Navigation Cottages garden wall.

Along the southern boundary of and within the Unit Land is a concrete foot path leading from the Street to the gate (this opens into the garden behind Cottage No.4). The rest of the Unit Land (apart from a man-hole cover) is for the most part rough grass with in places, some nettles and other rough vegetation. The Unit Land slopes gently up from the edge of the metalled road towards Navigation Cottages garden wall.



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The Council consider that the Unit Land forms a pleasant green roadside fringe and is of significant amenity value to the Village. Mr. Britton did not disagree. He owns Cottage No.4 which is now unoccupied and in need of repair; it would be a better dwelling house if it or some of it, could be rebuilt so as to include a bathroom and a garage; to do this effectively and economically, vehicular access across the Unit Land is essential.

Mr. Britton produced the following documents of title (it was not disputed that he is the owner of Cottage No.4):- A statutory declaration made on 19 December 1960 by Mr. A. Squelch that for upwards of 12 years until December 1958 he occupied as tenant Cottage No.4. A conveyance dated 6 February 1961 by which Mrs. F. B. Byng-Stamper and Miss C.L. Byng-Lucas and their mortgagee conveyed Cottage No.4 to Mr. G. H. and Mrs. G. Edwards. A conveyance dated 12 February 1960 by which Mrs. G. Edwards and a newly appointed trustee (Mr. G. H. Edwards died on 10 May 1961) conveyed Cottage No.4 to Mr. R. H. G. Britton (the father of the Objector). An assent dated 2 December 1964 by which the personal representatives of Mr. R. H. G. Britton (he died in 1962) assented to Cottage No.4 vesting in Mr. Britton.

The matters in the said documents of title which appear to show that Mr. Britton is or might also be the owner of the southern and greater part of the Unit Land (it was disputed that he is the owner of any of the Unit Land) were:- The 1960 declaration contained this sentence:- "During the whole of the period (12 years until December 1958) I (Mr. Squelch) occupied the land coloured green on the said plan (annexed) as a garden as of right and in full free and undisturbed possession"; the plan annexed (apparently prepared carelessly) showed coloured green the land on which the closets now stand and the part (moreorless) of the Unit Land between them and the Street. The land conveyed by the 1961 conveyance to Mr. and Mrs. Edwards included "SECONDLY ALL THAT the estate and interest (if any) as they (the Vendors) have in the piece... of land immediately to the north... and coloured green on the said plan annexed..."; the plan so annexed was similar to that annexed to the 1960 declaration. The 1962 conveyance to Mr. A. H. G. Britton included words similar to those above quoted, but the plan annexed was more carefully prepared: it showed the land edged green as bounded on the west by the walls of the closets and a short part of the Navigation Cottages garden wall, so that the land so edged measures from the side wall of Cottage No.4 about 20 feet wide.

There is now no visible boundary between the part of the Unit Land so comprised in the said documents of title and the remaining part, the grass and other vegetation being apparently continuous.

The evidence of the Council was apparently almost entirely directed to showing that Mr. Squelch's declaration that he "occupied" some part of the Unit Land "as a garden", was incorrect. Mr. Bartholomew who has resided in the village since 1925 (except from 1940 to 1952 when he visited the village frequently) said in a statutory declaration made by him on 9 June 1968 that the Unit Land had never been used "as a garden nor was the said piece of land fenced or enclosed by any ... tenant occupier or owner until the year 1960 or 1961". In his oral



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evidence (amplifying this) he said:- The only use made by Mr. Squelch from 1925 to 1961 of the Unit Land was to carry a dog kennel (in a sheltered corner) to house a black and white Collie. In 1961 Mr. Edwards made the gate by knocking a hole in the wall which was previously there; Mr. Squelch had no access to his garden from the Street except through the front door of Cottage No.4. About the same time Mr. Edwards laid down a concrete strip to form the now existing foot path above mentioned. He also erected a fence, a poor temporary type of fence of wire netting and poles, right on the edge of the metalled roadway and planted some flowers and shrubs within; there was practical reason for erecting a fence because a milking herd went up this part of the Street every day. Mr. Bartholomew considered the fence to be an interference with the rights of the village and dangerous because it might catch in the pedal of a bicycle being ridden along the Street; so some months after it had been erected (during the lifetime of Mr. Edwards) he pulled up the fence.

Mr. Floyd produced in support of the Council's case:- (1) A statutory declaration made on 8 June 1968 by Mr. Leonard Sidney Woolf (since deceased) that he had resided in the Village for forty-nine years since 1919 and was clerk of the Parish Council from 1946 to 1965 and that "at no time ... was (the Unit Land) used by any tenant occupier or owner of (Cottage No.4) as a garden, nor was the said piece of land fenced or enclosed ... until the year 1960 or 1961". (2) A letter dated 26 February 1973 from the hospital secretary of the Newhaven Downs hospital stating that according to his records Mr. Squelch after about three months in hospital in 1955 was readmitted in 1958 and died in hospital on 5 April, 1963 and was born on 27 July 1873.

Mr. Bartholomew with a view to showing the history of the Unit Land and its surroundings produced (1) a map which he said was a photograph made by the County Record Office of the Village Tithe map based on a map made by "Figg" in 1829, but as it did not show RP Cottages it must have been copied from an earlier map because the Cottages bear an inscription in stone "Rodmell Poor Erected 1810"; (2) a copy of a plan which he said was made by the County Record Office of a map attached to an auctioneers catalogue dated 1882 relating to the sale of Navigation Cottages; (3) a copy of a plan of freehold properties (a large part of the village) for sale in Lots in 1919 (Lots 7 and 16 included Cottage No.4 and Navigation Cottages; the Unit Land is not distinguished from the Street); (4) an abstract dated 1959 of the title of Mrs. F. B. Byng-Stamper and Miss C. R. Byng-Lucas to No.2 Stile Cottage (a conveyance dated 27 October 1927 therein abstracted also related to Cottage No.4); (5) a like abstract dated 1962 to No.4 Stile Cottage.

At the conclusion of the evidence Mr. Floyd submitted that the evidence established from time immemorial the Unit Land had been "Village Waste" at least up to the temporary enclosure made by Mr. Edwards and that the enclosure made by Mr. Edwards had been irregular. In this submission he summarised I think very well the case of the Council as it appeared while the evidence was being given.

In my view Mr. Squelch during the time he was in occupation of Cottage No.4 never occupied any part of the Unit Land as a "garden" in the sense of cultivating it as a lawn or for flowers or shrubs or in any other ordinary sense of the word.



In my view so far as living memory extends, the Unit Land has been unfenced and open to the Street except as described by Mr. Batholomew for the few months of Mr. Edwards occupation. There was no evidence that the Council or before them the church-wardens and overseers of the Parish were owners of any part of the Unit Land. Nor was there any evidence that any persons acting on behalf of the Village were ever in possession of the Unit Land; Mr. Batholomew when he pulled up the fence as above described was acting on his own initiative.

"Village Waste" is an expression without any precise legal meaning, and save as above stated I cannot I think usefully record any view as to whether the Unit Land is or ever has been within any of its various possible meanings. Under the 1965 Act, I am in this case concerned to consider three categories of land:- (a) land subject to rights of common; (b) waste land of a manor; and (c) land which forms part of a highway. By the Act, "common land" (stating the effect of the definition in section 22 shortly) means either (a) or (b) but does not include (c).

As to (a) the Unit Land being subject to rights of common:- Mr. Floyd said that the milking herd which went daily up this part of the Street must have grazed on the Unit Land and suggested that the owner must have had a right of grazing. Apart from the casual reference by Mr. Bartholomew to this herd, there was no evidence about it. I know nothing of its owner or of the land owned by him. The Unit Land regarded as grazing is isolated from any other grazing land (there is a hedge or fence on the other side of the Street); and it is unlikely that it was ever subject to any grazing rights. Having regard to my observations below about highway, I conclude that the owner of the herd drove it along the Street because it was a highway and not in exercise of any right of grazing. It was not suggested that the Unit Land could be subject to any other right of common. I conclude that the Unit Land has never at any relevant time been subject to any right of common.

As to (b) the Unit Land being waste land of a manor:- During the course of the inquiry it was agreed that the Marquess of Abergavenny was the Lord of the Manor; but there was no evidence as to the extent of the lands forming part of the Manor or of the Lord of the Manor ever having by himself or his steward or other agent exercised any right over or done anything in relation to the Unit Land or anywhere else in the Village. The 1882 map produced by Mr. Bartholomew has the words "waste" written over what is now the Unit Land; but I think this map is not now cogent because it delineates the piece of land now called Navigation Cottages (somewhat carelessly drawn I think) and nothing else, and because the 1829 map shows in detail the whole Village and in particular the Unit Land as part of the Street (not on this map so called), but appearing to continue, broadening out somewhat along what is now a track to the north and also continuing as now round a corner to the west. However, if the Unit Land was waste land of a manor before Cottage No.4 was purchased by Mr. and Mrs. Edwards, it did, I think not cease to be such by reason of the fence he erected or anything else he did.

As to (c) the Unit Land forming part of a highway:- It is I think obvious that the whole of the Street and particularly the metalled carriageway near the Unit Land is highway. Where a highway runs between two fences or walls put up by reference to the highway a rebuttable presumption of law arises, that the highway extends to the whole space between the fences or walls; and in deciding as a preliminary question whether any particular wall has been put up by reference to the highway, it is to be taken as having been so put up in the absence of a contrary indication, see Attorney-General v. Beynon 1970 Ch. 1. The same case



shows that irregularity in the width of the verge is not of itself a contrary indication. So in this case the presumption is not rebutted merely because if the Unit Land is all part of the highway, the width of the verge would gradually increase from nil at the north to more than 20 feet by the side wall of Cottage No.4 and then abruptly become nil or very small by the front wall of Cottage No.4 and the adjoining cottages. On looking at the land I thought it obvious that the Navigation Cottages garden wall was put up "with reference to the highway", within the meaning of this expression as used in Attorney-General v Beynon supra and the cases there cited. At the hearing there was no evidence to rebut the presumption, and some evidence to support it in that one of Mr. Bartholomews objections to the fence put up by Mr. Edwards was that it interfered with bicycles using the Street and in that nobody objected to Mr. Edwards erecting the gate (access to which he had no right unless he owned the site of the concrete path or the site was part of the highway).

Having regard to the presumption of law above mentioned, I consider the indications above mentioned that the Unit Land is part of a highway are far stronger than the indications (if any) that it is waste of a manor, and I accordingly conclude that the whole of the Unit Land is part of a highway.

Having regard to the definitions of "common land" in section 22 of the Act, it follows from this conclusion that no part of the Unit Land is common land, and I accordingly refuse to confirm the registration.

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

6<sup>th</sup>

day of

June

1973

a. a. Baden Fuller.

Commons Commissioner