



## COMMONS REGISTRATION ACT 1965

Reference No. 212/U/184

In the Matter of Braintree Green,  
Braintree District, Essex

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") of the land which is known as Braintree Green, Braintree District, and which is the land comprised in the Land Section of Register Unit No. CL31 in the Register of Common Land maintained by the Essex County Council. The Referred Part is the part of the said land 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 (1) Mr E J Dickie of Pear Tree Cottage referred (letter dated 24 May 1980) to an ownership claim he had made to the County Council; (2) Mr S G Brown of Tyeponds Cottage said (letter dated 30.5.80) that he had taken a great deal of time to ensure that the grass had been cut and refuse removed; (3) Mr W N Thompson of Green Shutters said (letter dated 9 June 1980) that he had since he acquired his property on 1 September 1978 looked after the frontage of his garden between his property and Longacre; (4) Mr Frank L Smith of Quillbury said (letter dated 1.11.81) he was under the impression that he owned the land outside his property; and (5) Smith Bros. (Rayne) Ltd made and withdrew (their solicitors letters of 4 June 1980 and 26 October 1981) an ownership claim. 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 Chelmsford on 10 November 1981. At the hearing Mr E J Dickie, Mr S G Brown, and Mr F L Smith attended in person, Mr Robert Mortier and Mrs Violet Mortier of Lakes Farm were represented by Mr B J Hood solicitor of Winckworth & Pemberton Solicitors of Chelmsford; and Essex County Council as registration authority were represented by Mr S Gardner administrative officer (Countryside) in their Chief Executive and Clerk's Department.

The land ("the Unit Land") in this Register Unit is a short distance southeast of Rayne and comprises two pieces; one ("the West Piece") extending for about  $\frac{1}{4}$  of a mile on the west side of and open to Queensborough Lane, and at its north part being about 30 yards wide and at its south part being about 80 yards or more wide; and the other ("the East Piece") extending for about 300 yards on the east side of and open to Queensborough Lane and being about 25 yards wide. In the Rights Section there is one registration of a right attached to Pear Tree Cottage to cut and take tree loppings and peat or turf and to graze 1 horse or pony, 3 goats and 20 head of poultry. In the Ownership Section there are 4 registrations, three relating to the part of the West Piece fronting on the dwellinghouses Kenella, Eastleigh and Sunningdale (being together about 100 yards of the northern and narrower part of the West Piece) and one relating to the part of the East Piece between the Lane and the front garden of the dwellinghouse Longacre (being about 30 yards near but not extending up to the north end). All these registrations being undisputed have become final.



Mr Brown said that he did not claim ownership although he was interested in the development of the Unit Land and as having a right of way over it without which he could not get access to his land, and also a water right. Mr Hood said that neither Mr nor Mrs Mortimer were claiming ownership.

Mr Dickie gave oral evidence in support of his claim to be the owner of the part of the East Piece south of a line approximately east-west passing through a point on the east boundary 60 feet north of the southeast corner of the East Piece; in the course of this evidence he produced some correspondence he had with the County Council between 29 August and 25 October 1973. Mr Smith and his wife Mrs R L Smith gave oral evidence in support of his claim to be the owner of the part of the East Piece fronting on the land held with Quillbury ("the Quillbury Land"), being the part south of the part fronting on Longacre and north of the entrance to the track leading to Naylinghurst. Two days after the hearing I inspected the Unit Land.

Mr Dickie said his claim was prompted by the success of the claim made by Mr A J George as owner of Sunningdale, and contended (in effect) that this success established a precedent which I ought to follow.

As to it being a legal precedent:- The registration in respect of the land fronting on Sunningdale was made pursuant to an application made on 14 June 1969 under section 4 of the Commons Registration Act 1965; all such applications had to be made before the day prescribed by the Regulations made under the Act (that is before 31 July 1970); if (as happened) no objection was made before the day prescribed (31 July 1972) by section 7 of the Act the registration became final; the result followed under the Act notwithstanding neither the County Council nor anyone else had investigated whether the application was based on any good reason. Th reference I am now considering is made under section 8 of the Act; by this section I am required to hold an inquiry and then to record whether I am (or am not) "satisfied that any person is the owner". In my opinion the County Council by registering the finality of the Sunningdale registration (an administrative act which they under the Act were obliged to do) established no legal precedent on binding a Commons Commissioner concerned with a different part of the Unit Land under a different section of the Act.

As to the Sunningdale registration (with or without the other now final Ownership Section registrations) being possibly relevant, the land fronting on or near Pear Tree Cottage, as showing a local rule that persons who own land fronting on Unit Land also own so much of it up to the Lane as adjoins their land:- Even assuming that Mr George had for his ownership application some good reason (the contrary is of course possible), I decline, in the absence of any evidence, to conclude that he and the other persons who applied for these registrations had available to them reliable evidence of the existence of some such local rule. Further the appearance of the parts of the Unit Land on which Sunningdale, Kenella and Eastleigh front is such that these parts could as regards ownership perhaps sensibly be considered as going with the gardens of these houses; these parts are roadside verges, narrow when compared with the parts near Pear Tree Cottage. The appearance of the parts of the Unit Land on which Pear Tree Cottage acquired by Mr Dickie in 1945 and the adjoining land acquired by him in 1961 front, is against there being as regards ownership any such local rule applicable to them; such rule would not operate sensibly between 1945 and 1961, if the Unit Land were treated as being then



divided into parts for ownership purposes by east-west lines; and the nature of the boundary between the Unit Land and the 1961 acquired land is against these being in one ownership at any time.

I have a letter dated 20 November 1981 from Mr Dickie saying (in effect):- He has among his papers ~~his~~ deed of enfranchisement (an indenture) dated 24 May 1917 reciting that Herbert John Cunnington was then entitled to the Manor of Braintree. It appears that his property and also Bay Tree Cottage opposite was at one time part of the Manor and so possibly was the Unit Land itself. In the 1917 deed the Unit Land is referred to as "Pond Green"; in an earlier deed dated 9 May 1906 it is referred to in one place as Braintree Green otherwise Bartholomew Green ... and in another place as "Tye Pond Green". Should it transpire that the Unit Land was part of the Manor, this could have a bearing on the "hypothesis" that he (Mr Dickie) having acquired the freehold of his land might also have become entitled to the part of the Unit Land fronting on it.

I accept that the deeds and other documents held by Mr Dickie might establish that the Unit Land was at one time and may still be manorial. But I refuse to reopen the hearing for the purpose of enabling such deeds and documents to be produced for my inspection, because in my view the chance of Mr Dickie being then able to establish from them any such local rule (or hypothesis) such as is above mentioned is not sufficiently large to justify the expenditure of public time (and therefore public money) involved. Nevertheless I thank him for taking the trouble to write the letter because ~~of~~ information set out ~~it seems~~ to me, and may also ~~be~~ to others of some interest.

For the above reasons I am not satisfied that Mr Dickie is the owner of the part of the Unit Land which he claimed.

Mr Smith said (in effect):- The Quillbury Land was before 1930 part of a larger area known as Naylinghurst. He was born in 1906 and had known the area as long as he could remember; shortly after his father's death in 1930 he became the owner of Naylinghurst and farmed it up to 1961, when he sold all the larger area except the Quillbury Land. In 1961 on this land he built a dwellinghouse which now stands there and in which he has lived ever since. The Quillbury Land is about 3 acres and includes a garden and tennis court adjoining Queenborough Lane. In 1962 to 1978 on the Quillbury Land he carried on the business of poultry farmer. In 1978 he finally retired continuing to live in the dwellinghouse but letting off the poultry house (about 50 to 70 yards behind the dwellinghouse). For the 19 years he had lived in the dwellinghouse he had cut the grass on the part of the Unit Land between the Quillbury Land and the Lane with a machine which deals with long grass; he had done this about once a month; this was accepted by the County Council under an arrangement he had made by telephone (there was no written agreement). In addition shortly after he moved into the house finding that a ditch along the outside of his front hedge was blocked up he constructed a tile drain in its place then filled up and turfed over the ditch.

I deal with Mr Smith's claim on the assumption that if I had adjourned the proceedings to enable him to produce his title deeds he would (as seems likely) have been able to prove by them his ownership of the Quillbury Lane, I also assume (as Mr Smith agreed was the case) that there is nothing in such deeds to suggest that he is the owner of the part of the Unit Land which he now claims; so I can only be "satisfied" as to his ownership if upon what he told me I can properly infer that he has since 1961 been in possession.



The Unit Land is an attractive place; although it was raining during my inspection and not the best time of year, the Unit Land obvious to those who live near and possibly to others too is a valuable amenity; many would therefore consider the present beautiful appearance of the Unit Land well worth preserving. A person who works on public land near his home with a view to preserving its appearance for the benefit of everyone cannot I think be regarded as taking possession of such land for his own benefit. The work done by Mr Smith over the last 19 years has contributed to the present beautiful appearance of the Unit Land; nevertheless he did not in my opinion take possession of the part of the Unit Land in which he did the work.

The contentions put forward by Mr Dickie are in relation to the part of the Unit Land near Quillbury more cogent than they are in relation to the part near Pear Tree Cottage in that the Quillbury part appears very like the part near Longacre on the same side of the lane. But under the sections of the 1965 Act above mentioned, I am not on this reference concerned to determine whether the Longacre registration or the Sunningdale, Kenella and Eastleigh on the opposite side of the Lane registrations were properly made. All I can say is that from them I cannot for the purposes of the jurisdiction conferred on me by the said section 8 could reach any conclusion for the benefit of Mr Smith different from that set out above in relation to the claim of Mr Dickie.

For the above reasons I am not satisfied that Mr Smith is the owner of the part of the Unit Land he claimed.

In the absence of any evidence that anyone else could be the owner of the Referred Part of the Unit Land I am not satisfied that any person is the owner of it and it will therefore remain subject to protection under section 9 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 18<sup>th</sup> day of December 1981

a. a. Baden Fuller

Commons Commissioner