



COMMONS REGISTRATION ACT 1965

Reference No. 212/U/173

In the Matter of Henham Green, Henham,
Uttlesford District, Essex.

SECOND DECISION

This decision is supplemental to my decision in this Matter dated 18 May 1981 and given after a hearing at Chelmsford on 27 January 1981 relating to the ownership of the land comprised in the Land Section of Register Unit No. VG 79 in the Register of Town or Village Greens maintained by Essex County Council.

At such hearing Mr M C and Mrs J M Fiddler of Elsmere, Starr Road, Henham were represented by Mr J W J Wallace-Jarvis. It being then doubtful whether the piece of land of which Mr and Mrs Fiddler then claimed to be the owners was or was not included in this Register Unit, I adjourned the proceedings for a further hearing about this claim if upon consideration Mr and Mrs Fiddler desired to pursue it.

In letters dated 1 June, 4 August and 6 August 1981 sent to the Clerk of the Commons Commissioners, Mr Wallace-Jarvis indicated that they wanted a further hearing.

On 19 October 1981, I held the adjourned hearing in London. Mr and Mrs Fiddler and Henham Parish Council were represented respectively by Mr Wallace-Jarvis and Mrs Parkin as before.

Mr Wallace-Jarvis in opening said his clients were concerned with two pieces of land which I shall hereinafter call "Elsmere Back Garden" and "Triangle at the front of Elsmere". In the course of his evidence he produced (1) a certified copy of the conveyance dated 17 August 1953 by which Mrs E Smith conveyed to Mr H A Judd "piece of land situated near the Common at Henham in the County of Essex together with the cottage and premises erected thereon on some part thereof ALL which said premises are more particularly delineated and coloured pink on the plan drawn hereon" (2) a certified copy of a conveyance dated 26 May 1978 by Mr Judd to Mr and Mrs Fiddler of the same piece of land therein described by reference to the 1953 conveyance; and (3) the contract dated 23 May 1978 which preceded the 1978 conveyance. He explained the original conveyances were with a Building Society. The copy of the said 1953 conveyance plan (the part coloured pink appearing thereon all black) is at page 2 of this decision).

Basing myself on the description given by Mr Wallace-Jarvis, I define Elsmere Back Garden for the purposes of this decision in the Schedule hereto. I need not define precisely Triangle at front of Elsmere, it being enough for the purposes of this decision to say that I understood from Mr Wallace-Jarvis that it is a small triangular area north-east of the house not included in the 1953 conveyance.

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Re: Henham Green, Henham, Uttlesford District, Essex

Ref No:- 212/U/173

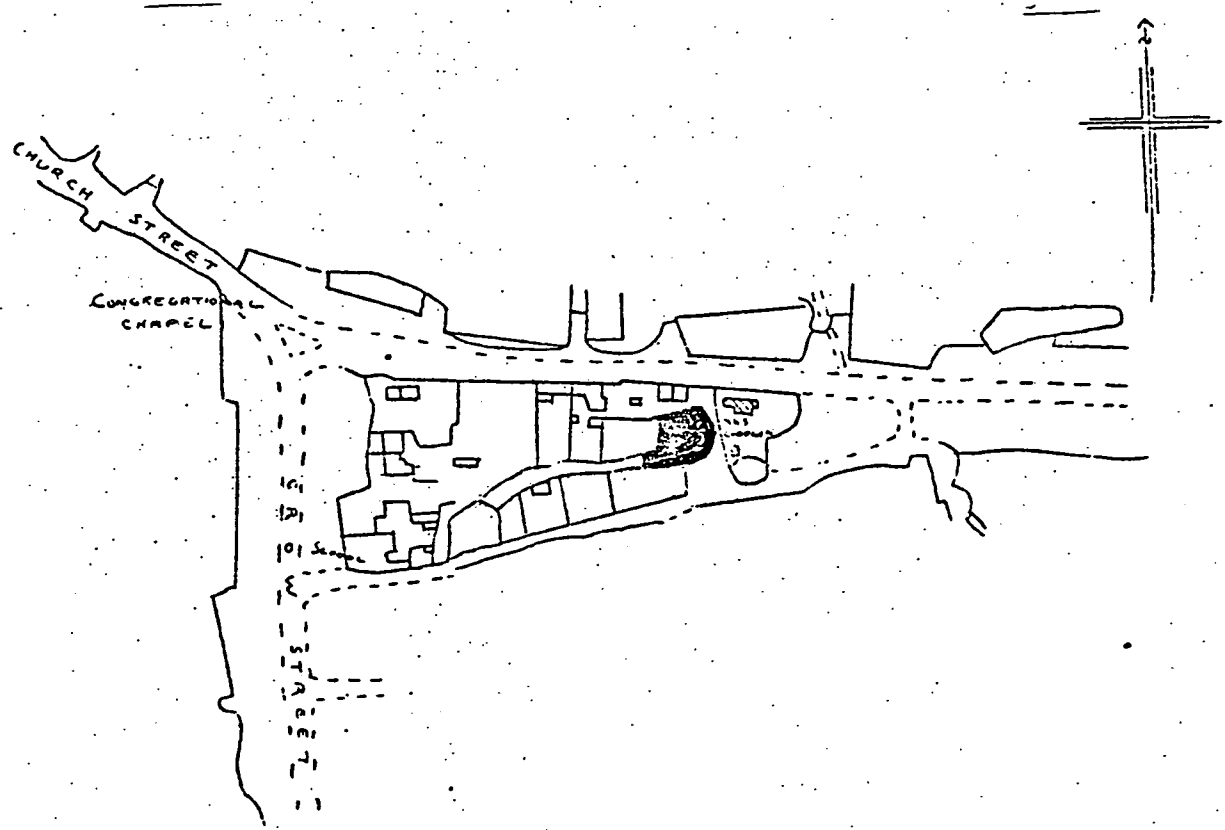
This copy plan is page 2 of the decision dated 16 November 1981 and made by the Commons Commissioner in this matter

a. a. Baden Fuller

Commons Commissioner

The Vendor is seized in fee simple of the hereditaments hereinafter described and the Vendor has agreed with the Purchaser the said hereditaments for an estate in fee simple absolute at the price of nine hundred pounds

1. In pursuance of the said agreement the Vendor has received from the Purchaser a sum of nine hundred pounds on or before the date of the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchaser ALL THAT piece of land situate near the Common at Henham in the County of Essex Together with the cottage and premises erected thereon or on some part thereof ALL which said premises are more particularly delineated and coloured pink on the plan





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I am not concerned with, and indeed have no jurisdiction to determine, the ownership of any land not included in this Register Unit. And it is at least doubtful whether any part of Elsmere Back Garden is so included, in that (a) the descriptive words in the Land Section registration: "the pieces of land called Henham Green" do not appropriately include a back garden, and (b) in that the County Council with a letter dated 1 October 1981 sent to the Clerk of the Commons Commissioners enclosed "a certified copy of the inset map which has been prepared showing the site which is finally registered as a town or village green. The six inches to one mile map accords with this, so far as is possible on its scale". On this inset map Elsmere Back Garden is omitted from the Register Unit.

However Mr Wallace-Jarvis said on the Register Map as originally drawn the Elsmere Back Garden was (so he understood) included.

Mrs Parkin made it clear that the Parish Council did not contend that Elsmere Back Garden ought to be included in the land in this Register Unit; but I have on this reference no jurisdiction to give any direction to the County Council about any additions or alterations they should make to the Register by reference to any inset map or otherwise; it is for them to decide whether the registration as originally made contains some error or omission which they can as registration authority properly correct. Even so, it being I suppose possible that Elsmere Back Garden is (contrary to the wish of Mr and Mrs Fiddler) included in the registration, and Mrs Parkin not objecting, my decision is: I am satisfied that Mr and Mrs Fiddler are the owners of so much (if any) the land in this Register Unit as is part of the Elsmere Back Garden as defined in the Schedule to this decision and I shall accordingly (unless in the meanwhile I am satisfied that none of such land could be within this Register Unit) pursuant to sub-section (2) of Section 8 of the 1965 direct Essex County Council to register Mr Martin John Charles Fiddler and Mrs Jean Mary Fiddler of Elsmere, Starr Road, Henham as owners of so much (if any) of the land in this Register Unit as is part of Elsmere Back Garden in the said Schedule defined.

After short adjournment Mr Wallace-Jarvis and Mr and Mrs Parkin said they were agreed that I should give no decision about Triangle at the front of Elsmere, on the basis (as I understood them) that if (as seems likely) the Triangle at the front of Elsmere is on the County Council map enclosed with their said October 1981 letter within this Register Unit, I could properly proceed on the basis that the Parish Council own it as they do the rest of Henham Green.

As regards the expression "nearly all" in the penultimate paragraph of my May 1981 decision, I consider that I can properly treat 1929 deed of gift as relating to all the land in this Register Unit except so much (if any) as I shall pursuant to such decision and to this decision direct the County Council to register Mr and Mrs Smith and Mr and Mrs Fiddler as owners. I am therefore satisfied that the Parish Council are the owners of the land except as aforesaid, and I shall accordingly pursuant to sub-section (2) of section 8 direct Essex County Council to register Henham Parish Council as the owner of all the said land (except as aforesaid).



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Mr Wallace-Jarvis submitted that I should order the County Council to pay the whole or some part of the cost incurred by Mr and Mrs Fiddler in these proceedings because such costs would not have been incurred if the County Council as registration authority had when they made the registration (1968) provided a map (or inset map) clearly defining the boundary of the registered land so far as it adjoins Elsmere. In the course of his evidence he stated in some detail the history of the events leading up to the original registration. Mrs Parkin said that this history was correct so far as it related to the acts of the Parish Council.

In my opinion I ought not in the absence of any representation of the County Council at the October 1981 hearing, make an order for costs against them unless they had been given some notice in writing stating that such an order would be applied for and stating also the grounds on which such application would be made. So the substance of the matter is whether I should once again adjourn the proceedings to enable such a notice to be given.

Under the 1965 Act Commons Commissioners have jurisdiction to determine the questions therein specified which might arise out of registrations made by the County Council as registration authority; they have no general jurisdiction to consider everything or anything which may have been done or omitted by a County Council as registration authority. As regards this Register Unit the Land Section registration has become final and I have no jurisdiction to consider whether the registration should have been done differently. If either the Parish Council or Mr Judd as predecessor in title Mr and Mrs Fiddler had wished me to consider any such matter they should in due time have made an Objection to the Land Section Registration in accordance with the Regulations; any such Objection if made now would be out of time. I am now concerned to determine the ownership of whatever land is comprised in this Register Unit, and for that purpose must I think take the Register as I now find it. Any claim by Mr and Mrs Fiddler may have against the County Council for their alleged negligence in their performance of their duty to make a proper registration in the Land Section is I think too remote from any ownership determination I have to make to be a proper basis for an order for costs. For this reason I refuse to adjourn the proceedings.

For the benefit of the officers of the County Council who have in their absence been charged with negligence, I record that nothing in this decision should be taken as reflecting on them; such information as I have about their activities suggests that if any such charge were pursued elsewhere they might well be able to refute it, and ~~indeed~~ ^{Such} information as I now have suggests that they have taken considerable trouble since the inadequacy of the registration was brought to their attention to do their best to put it right and to reach a solution which would be agreeable to all concerned.

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.

TURN OVER
FOR SCHEDULE



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SCHEDULE

In this decision "Elsmere Back Garden" means the part of the land shown all black on the plan being page 2 of this decision being the back garden of the dwellinghouse known as Elsmere (for this purpose the south side of the said dwellinghouse shall be treated as its back). The south boundary of the Elsmere Back Garden is the hedge between 4 and 6 ft high and the larch lap wooden fence about the same height or perhaps a little higher.

Dated this 16th _____ day of November _____ 1981

a. a. Baden Fuller

Commons Commissioner