



## COMMONS REGISTRATION ACT 1965

Reference No. 212/U/135

In the Matter of Old House Lane  
Common, Roydon, Epping Forest  
District, Essex

DECISION

This reference relates to the question of the ownership of land known as Old House Lane Common (part south of the Lane), Roydon, Epping Forest District being the land comprised in the Land Section of Register Unit No. CL 174 in the Register of Common Land maintained by the Essex 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 Mr and Mrs R Lerner of Applegarth sent (letter dated 11 October 1979 from their solicitors) copies of conveyances dated 5 April 1935 and 13 July 1979; and (a) Mr A C and Mrs B J Howard of Chalcot, (b) Mr M G Wilders of Little Monkham, and (c) Mrs A Sortwell of Briar Wood sent letters describing the use being made 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 Chelmsford on 18 October 1979. At the hearing Roydon Parish Council were represented by Miss E Wells one of their members, and the persons whose names are set out in the second column of the Schedule hereto (their addresses being as stated against their names in the first column) attended as therein stated.

The land ("the Unit Land") in this Register Unit is a strip having a length from west to east of about 500 yards and a varying width of between about 25 and 10 yards. As I read the Register map the north boundary of the Unit Land is the made up carriageway of Old House Lane, being a side road which runs eastwards from Epping-Roydon road (B181) to end a little beyond the east end of the Unit Land, there becoming a footpath leading to the Pinnacles Industrial Estate; and its south boundary is the walls, hedges or other fences of the dwellinghouses (listed in the first column of the schedule hereto) which are on the south side of Old House Lane and whose main or only access is across the Unit Land.

At the beginning of the hearing I understood that it was generally agreed by those present that the use described in the said letters (a), (b) and (c) above-mentioned related to a piece of land which is on the north side of the carriageway of Old House Lane and which comprises Register Unit No. CL 338. I am not on this reference concerned at all with this piece of land.

Miss Wells said (in effect):- She remembered the Unit Land as it was before the 1939-45 war. At that time the houses now on the south side (or all except Old House, or nearly all of them) had not been built. The Unit Land was then "common land". The Parish Council do not claim to be the owners themselves and do not offer any evidence.

Oral evidence was given by: (1) Mr A C Howard of Chalcot, (2) Mr J M Evans of Cata, (3) Mr G A Carr of Kendal, (4) Mrs A E Lerner of Applegarth, (5) Mr T Willie of Micoud, and (6) Mr G R Harknett of Gable Cottage. Mrs A C Saunders of Penryhn made a statement. Each of them was concerned to establish ownership of the part of the Unit Land fronting on the property they owned.

On the day after the hearing I inspected the Unit Land. For all the houses on which it fronts, it is an amenity; for some more than others. Many parts of it appeared to have



- 2 -

been planted, mown or otherwise kept in order by the owners or occupiers of such houses with the result that these parts are agreeable to look at and no doubt provide pleasure not only for those who live in such houses but also for all who live nearby or have occasion to go along the Lane. Other parts appear to have received no such attention and although not unsightly seem to contribute comparatively little to the general pleasant appearance of the Lane.

The registration of the Unit Land as common land is against it being highway (as part of Old House Lane or otherwise); see definition of "common land" in section 22 of the 1965 Act; so any presumption there may be that highway land belongs to the owners of the lands on which the highway fronts is not applicable here. There was nothing in the appearance of the Unit Land on which I could conclude that it all necessarily belongs to the persons who own lands on which it fronts; although I gained the impression from the appearance of many parts that some of them probably did but others probably did not belong to such owners. So as regards ownership, I must consider separately the evidence particularly relating to each part.

Mr Howard claiming the Chalcot fronting part produced an epitome of his title to Chalcot which included certified copies of the documents referred to in it as sent to him by Stanley Tee & Co, Solicitors of Bishops Stortford with an explanatory letter dated 10 October 1979. From these documents it appears that he and Mrs B J Howard own Chalcot under a conveyance dated 23 October 1972 as successors of Mr F J and Mrs D M Taylor, who under a conveyance dated 13 May 1971 acquired it in two parts: first from Mr J W and Mrs J E Barber all the land coloured pink and blue on the plan annexed to a conveyance dated 1 December 1955; and secondly from Mr J W Barber all the land coloured pink on the conveyance dated 24 March 1971. As to the first land (being by far the greater part of that now occupied as Chalcot) the title commences with said 1955 conveyance from Mr A E Baker to Mr H A Sidwell and continues with a conveyance dated 10 January 1963 by him to Mr J W and Mrs J E Barber. The second land, being a strip having a frontage to the Unit Land of 3 feet 6 inches and a depth of 103 feet situate on the southwest side of the first land is as regards Mr Howard's claim to the Chalcot fronting part of very minor importance. The 1955 conveyance expressly and the 1966 conveyance by reference to the 1955 conveyance includes the part of the Unit Land fronting onto part of Chalcot thereby conveyed subject "to all such rights (if any) as the public may have in or over the same". The 1971 and 1974 conveyances (also by reference) include such fronting part.

Mr Howard first knew the Chalcot fronting part when he bought it from Mr and Mrs Taylor. It was then mowed grass with a drive through it with shrubs, a weeping willow and 2 other trees. It was then (as now) open to the east and west and open to the carriageway of Old House Lane; and it was not then (as it is not now) crossed by any footpath for the convenience of those wanting to walk from one end of the Lane to the other.

On the 1953 and 1966 conveyances, I find that Mr and Mrs Howard are the owners of the part of the Unit Land which fronts onto so much of Chalcot as they claim under the such conveyances, that is all except that fronting on the 3 feet 6 inches strip above-mentioned. As to this part, there is nothing in the documents produced by Mr Howard suggesting that it was conveyed with the strip by the 1971 or 1972 conveyance or by any of the earlier title deed which in connection with the possible claim of Mr Carr of Kendal are more particularly below-mentioned; nevertheless practically it is I think impossible to apportion the ownership of the Chalcot fronting part of the Unit Land between that fronting on the 3 feet 6 inches and the rest. My conclusion is therefore that Mr and Mrs Howard have proved their ownership of the whole.



- 3 -

Mrs Larner claiming the Applegarth fronting part relied on the said 1935 and 1979 conveyances of which I had copies certified by her solicitor, Martin Arthur & Co, Solicitors of Welwyn Garden City. By the 1935 conveyance Mr C A Brace conveyed to Mr E Brace first a piece of land part of a field containing 25 a. 2 r. 39 p. known "as Great Field and formerly forming part of the Tylors Cross and Old House Farms" as coloured pink on the plan annexed and second a piece of land adjoining coloured blue on the said land, subject as regards to the blue land "to all such rights (if any) as the public may have in or over the same". By the 1975 conveyance Mr N K and Mrs M C Reinelt conveyed to Mr and Mrs Larner land by reference to that coloured pink and blue on the plan annexed to the 1935 conveyance.

The plan on the 1935 Applegarth conveyance is (apart from the colouring) the same as that annexed to the 1955 Chalcot conveyance; each shows 4 building plots having a frontage of 30, 40 and 60 feet (being now Chalcot, Gable Cottage, Micoud and Applegarth). The land coloured blue on the 1935 conveyance is the Applegarth fronting part of the Unit Land.

Mrs Larner said that they had only just moved in but they understood from the previous owner that as regards the Applegarth fronting part they would be liable to keep it tidy.

Notwithstanding the absence of any title to Applegarth between the 1935 and 1979 conveyances, having regard to the value of Applegarth (obviously very much greater than the value of the Applegarth fronting part), by the acceptance of the title by Mr and Mrs Larner I infer that all is in order. Accordingly I conclude that Mr and Mrs Larner are the owners of the Applegarth fronting part.

Mr Willie claiming the Micoud fronting part produced a copy of a conveyance dated 31 August 1977 by which Mr R L Clark conveyed to him and Mrs C Willie pieces of land delineated on the plan annexed thereto and thereon coloured pink and blue. Such plan is in all essential respects, apart from the colouring, the same as the annexed to the 1935 Applegarth conveyance and the 1955 Chalcot conveyance; Micoud is on the building plot next to Applegarth and one away from Chalcot.

Mr Willie said the copy conveyance had been sent to him by his solicitors Wade Gerry & Brackenbury of St Neots, Huntingdon and that the Micoud fronting part has some very large evergreen trees on it and since they had bought in August 1977 he had kept the lawn mowed.

Notwithstanding the absence of any documents or title relating to Micoud before the 1977 conveyance, upon consideration of the documents produced to me in relation to Chalcot and Applegarth the probability of such documents being in all essential matters the same is so great that I think I can properly infer that Mr and Mrs Willie are, for the same reasons as I have set out above in relation to Chalcot and Applegarth the owners of the Micoud fronting part of the Unit Land.

Mr Harknett claiming the Gable Cottage fronting part produced letters dated 6, 10 and 14 February from his solicitor Curwen Carter & Evans of Hoddesdon with one of which is a plan. These letters were apparently written in connection with the then intended contract by him to purchase Gable Cottage and from the plan it seems likely that such purchase would have included the Gable Cottage fronting part. On the documents produced as above-mentioned in relation to Chalcot and to Applegarth, it seems likely that upon the completion of this contract Mr and Mrs Harknett would have acquired ownership of such part. However the evidence of Mr Harknett in my view falls short



- 4 -

of showing his ownership accordingly I am unable as a result of what he said to come to any conclusion about it.

However in view of the probability that he either alone or with his wife, could establish if he took sufficient trouble, I will adjourn these proceedings for his benefit at least so far as they relate to the Gable Cottage part.

Mr Carr claiming the Kendal fronting part produced a letter dated 26 October 1978 from his solicitors, Bernard Pearce & Co of Enfield, Middlesex with which was enclosed a copy of replies dated 15 September 1978 to enquiries before contract, a (? draft) agreement for sale by Mrs O G M Barber to Mr and Mrs G Carr of "Kendal" (title to commence with a conveyance of 8 July 1946) and a copy of a conveyance dated 12 December 1968 by Mr F W Martin to Mrs Barber, being of land "forming part of the garden of the property known as Hawthorns". Mr Carr drew my attention to a plan annexed to the agreement which indicates the land now held with Kendal and has marked on it a line suggesting that the Kendal fronting part or some of it may have been intended to be included in the sale. This marking appears to be an addition to the document after it was originally made such as might be made by someone who wished to know how the Kendal fronting part would, under the contract and the conveyance to be made pursuant to it, be dealt with. I am unable from the documents produced by Mr Carr to conclude that he under the contract in October 1978 in the course of negotiation has since become the owner of the Kendal fronting part. As I understood Mr Carr ~~was~~ he considered that his claim could be supported from what I saw on my inspection, in that it would be strange if the Chalcot fronting part was in the same ownership as Chalcot and the Kendal fronting part was not in the same ownership as Kendal. However the documents produced by Mr Howard as showing his title to the second Chalcot land include an abstract of a conveyance dated 21 January 1935 by Mr C H Brace and his mortgagees to Mrs B E Charter by which a corner site (being that on which Hawthorns and Kendal now stand) was conveyed without any express reference to any part of the Unit Land; and in the abstract this conveyance is followed by successive conveyances dated 25 May 1943 to Mr J Kewley, on 1 January 1946 to Mr J R S Reach, and May/July 1946 to F W Martin all of which were of the "before abstracted premises"; so it is possible and indeed probable that this corner site was never treated as including any part of the Unit Land.

Notwithstanding that I think that on the information given to me at the hearing it is unlikely that Mr and Mrs Carr will be able to establish ownership of the Kendal fronting part, because I am adjourning these proceedings for the benefit of Mr Harknett, I give no decision as regards the Kendal fronting part so Mr and Mrs Carr will be at the adjourned hearing be able to produce additional or other evidence in support of any claim they may then wish to make.

Mr Evans claiming the Cata fronting part produced letters dated 13 May, 14 June, 12 July, 12 (two) and 20 September 1974 from his solicitors, Attwater & Liell of Harlow with one of which was enclosed a copy (draft) contract dated 5 July 1974 for the sale by Mr K H L and Mrs P R Cook to Mr J and Mrs D M Evans of Tanga and with another copy conveyance dated 12 September 1974 by Mr A E and Mrs A E Baker to Mr and Mrs Cook. Mr Evans drew my attention to the words in the agreement "secondly all such right title or interest which the vendors may have in any land in front of that identified by and coloured pink on the plan annexed" he also produced a 3 page document one of which pages dated 12 September 1974 was apparently the back sheet of a conveyance by Mr and Mrs Cook to Mr and Mrs Evans, another of which pages apparently the schedule to a deed executed by Mr D M J King and Mr W A Kennedy and a third of which pages was a map.



- 5 -

The evidence of Mr Evans in my view falls short of showing his ownership, and accordingly I am unable as a result of what he said to come to any conclusion about it. It may be that Cata (formerly Tanga) was built on part of the above mentioned Great Field: but this does not I think make it likely that some part of the Unit Land was expressly conveyed to a predecessor in title of his, as apparently happened in the case of the Chalcot, Micoud and Applegarth group of houses; this group and the parts of the Unit Land fronting on them, are too remote from Cata for any conclusion I have reached as regards the group to be necessarily applicable to Cata. However although it may be unlikely that Mr Evans will be able to prove ownership, because I am adjourning the proceedings for the benefit of Mr Harknett, he will be able at the adjourned hearing to produce evidence in support of any claim he may then wish to make.

Mrs Sanderson, who at the hearing was not prepared with any evidence about Penryhn will at the adjourned hearing be similarly able to produce evidence in support of any claim she may then wish to make.

And any other person interested in any of the other lands listed in the Schedule hereto will at the adjourned hearing be able to produce evidence likewise.

So in the result, I am satisfied (1) that Mr and Mrs Howard are the owners of the Chalcot part of the Unit Land, (2) that Mr and Mrs Willie are the owners of the Micoud part of the Unit Land, and (3) Mr and Mrs Larner are the owners of the Applegarth part of the Unit Land, and I shall accordingly pursuant to section 8(2) of the 1965 Act direct Essex County Council (1) to register Mr Arthur Charles Howard and Mrs Brenda Janice Howard of Chalcot, Old House Lane, Roydon as the owners of the part of the land in this Register Unit to which fronts the land now occupied with Chalcot (formerly Worthwhile); (2) to register Mr Timothy Willie and Mrs Carol Willie of Micoud, Old House Lane, Roydon as the owners of the part of the land in this Register Unit on which fronts the land now occupied with Micoud (formerly Lintel House) and (3) to register Mr Roy Arthur Larner and Mrs Anne Elizabeth Larner of Applegarth, Old House Lane as the owners of the part of the land in this register unit now occupied with Applegarth; and for the purpose of this direction the land in this register unit shall be considered as divided into parts by a straight line being as near as may be a continuation across such land of the now existing boundaries of the said land occupied with Chalcot, Micoud and Applegarth. And as regards all the other parts of the land in this register unit, I adjourn the proceedings to a day and place to be fixed by the Commons Commissioner.

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.

## SCHEDULE

| Houses by the Unit Land                      | Claimants attending or represented.                               |
|--|---|
| Hawthorns (at corner, fronting on Bl81 road) | - - -   |
| Kendal                                       | Mr Graham Alan Carr and Mrs Doreen Lilian Carr present in person. |



- 6 -

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| Chalcot (formerly Worthwhile)                                  | Mr Arthur Charles Howard and<br>Mrs Brenda Janice Howard present in person.  |
| Gable Cottage  | Mr Graham Raynor Harknett present in person<br>on his own behalf and as representing<br>Mrs Dorothy Harknett.          |
| Micoud (formerly Lintel House)                                 | Mr Timothy Willie and Mrs Carol Willie<br>present in person.   |
| Applegarth   | Mrs Anne Elizabeth Larnar present in person<br>on her own behalf and as representing<br>Mr Roy Arthur Larnar.          |
| Little Monkshams   | - - -  |
| Kasama   | - - -  |
| Ty Newydd  | - - -  |
| (Lane to back)   | .  |
| Pair of semi-detached houses<br>being Willow Trees and Quinton | - - -  |
| Seven pairs of semi-detached<br>houses being Nos 14 to 1       | - - -  |
| Nos 1 and 2 Oakleigh Villas                                    | - - -  |
| Penryhn  | Mrs Ann Christine Sanderson present in person<br>on her own behalf and as representing<br>Mr Alan Frederick Sanderson. |
| Cata (formerly Tanga) and before<br>that Hilary                | Mr John Morris Evans present in person on<br>his own behalf and as representing<br>Mrs Diana Millar Evans.             |
| (Road to South View Nurseries and<br>Oakleigh Nurseries)       | .  |
| Old House and Barn (Game Farm Nursery)                         | - - -  |

Dated this 18<sup>th</sup> - day of December 1979

a. a. Baden Fuller

Commons Commissioner