

In the Matter of West Green Common. (Part) Hartley Wintney

DECISION

REFERENCE

This reference relates to the question of the ownership of a piece of land of about 0.014 acres known as West Green Common, being the land comprised in the Land Section of Register Unit No. CL.112 in the Register of Common Land maintained by the Hampshire County Council of which no person is registered under Section 4 of the Commons Registration Act 1965 as the owner.

THE REGISTER

The land was registered as common land on 23 February 1968 by the registration authority without application. The registration being undisputed became final on 1 October 1970. There are no entries in the Rights Section of the Register, and none in the Ownership Section save for a note that the piece of land coloured brown on Plan A has been registered under the Land Registration Acts as Title No. HP 6265. There is also a note on the Land Section that the rights of public access under Section 193 of the Law of Property Act, 1925 over the land comprised in this Register Unit are subject to the limitations and conditions mentioned in an Order made under proviso (b) to sub-section (1) of that section by the Minister of Agriculture and Fisheries on 25 January 1929.

PREVIOUS OWNERSHIP INQUIRY

An inquiry into the question of ownership of the land was held before a Commons Commissioner at Winchester on 17 October 1974. In his Decision dated 4 November 1974 the Commissioner said that in the absence of any evidence he was not satisfied that any person was the owner of the land, and that it would therefore remain subject to protection under Section 9 of the Act of 1965.

CLAIM TO OWNERSHIP

In October 1993 The National Trust for Places of Historic Interest or Natural Beauty ("the National Trust") made a claim to ownership of that part of the Register Unit which is not registered at H M Land Registry. On 26 October 1993 this claim was referred by Hampshire County Council to the Commons Commissioners.

HEARING

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Fleet on 1 February 1994.

ATTENDANCE AT HEARING

The hearing was attended by Mr D Pryke and Mrs Homewood of Hampshire County Council (the Registration Authority) Mr R C Auty of Hart District Council and Ms Amanda Burdge Land Agent of the National Trust.



TITLE DEEDS

Ms Burdge produced to me the originals of two deeds;

- (i) A Deed of Gift dated 10 April 1957 between Far Eastern Nominees (England) Limited (1) General Properties Limited (2) Sir Victor Sassoon (3) and The National Trust (4)
- (ii) A Conveyance dated 17 August 1928 between the Duchess of Wellington (1) and National and Foreign Banking Corporation (2).

CONTENT OF DEEDS

The Deed of Gift comprises West Green House and a total of about 76 acres of land delineated on the plan annexed thereto. The Conveyance of 1928 comprises the same property, although the details of the land are set out in a slightly different order, and the colouring on the plan (which is otherwise identical) differs slightly. I was told that the approach to the House has altered slightly over the years. Taking this into account I am satisfied that the whole of the Register Unit (other than the small part which is registered at the Land Registry) falls within the property conveyed to The National Trust by the Deed of Gift.

TITLE INCOMPLETE

A Deed of Gift however is never a good root of title. One has therefore to go back to the earlier deeds. The Conveyance of 1928 was a conveyance on sale, and is a good root. Unfortunately however intermediate deeds between 1928 and 1957 were not produced to me, and there was no explanation how the property passed from the National and Foreign Banking Corporation to Far Eastern Nominees (England) Limited and General Properties Limited. The title is therefore incomplete.

APPARENT UNDERVALUE

Perusal of the Deed of Gift shows that (although expressed to be a deed of gift) it did contain some elements of a conveyance on sale, since it records that Sir Victor paid General Properties Limited the sum of £5000. It is however open to question whether £5000 was the full value of the property in 1957, having regard to the fact that it had been sold for £16000 in 1928, and that the Trust has recently received well over a million pounds for a 99 year Lease of it.

NO OTHER CLAIMANT

I am nevertheless prepared to overlook these apparent defects in title, having regard to the following facts:-

- (i) The Deed of Gift is now well over 30 years old;
- (ii) The National Trust has (as I was informed) been in occupation of the property for many years;
- (iii) No adverse claimant has come forward.

CONCLUSION

On this evidence I am satisfied that the National Trust is the owner of the land, and I shall accordingly direct the Hampshire County Council as Registration Authority, to register the National Trust as the owner of the land under Section 8(2) of the Act of 1965.



APPEAL

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

²
4th

day of

February

1994

Mati Rotts

Chief Commons Commissioner