



COMMONS REGISTRATION ACT 1965

Reference No. 216/U/20

In the Matter of Rush Green,
Langley, North Hertfordshire
District, Hertfordshire

DECISION

This reference relates to the question of the ownership of land known as Rush Green, Langley, North Hertfordshire District being the land comprised in the Land Section of Register Unit No. CL 276 in the Register of Common Land maintained by the Hertfordshire 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 no person claimed to be the freehold owner of the land in question and no person claimed 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 Hertford on 15 January 1981. At the hearing Mr George Herbert Totty of Rush Green, Langley was represented by Mr A Laing solicitor of Balderston Warren and Co. Solicitors of Baldock. On the application of Mr Laing I adjourned the proceedings.

I held the adjourned hearing in London on 10 June 1981. Mr Totty was represented by Mr Laing as before. At this hearing oral evidence was given by Mr H A S Neave, and there were produced: (1) a conveyance dated 30 September 1958 by which Mr George Howard and others conveyed lands therein described to Mr Totty, (2) a deed of exchange dated 11 February 1953 by which Mrs Margaret Neave conveyed land to trustees (including Mr George Howard) for Geo. Howard & Sons; (3) an abstract dated 1958 of the title of Mr G Howard and others to freehold property in Langley; and (4) an extract from the OS map 1/2,500. On 1 July 1981, I inspected the land in the presence (for most of the time) of Mr Laing.

The land ("the Unit Land") in this Register Unit is approximately triangular, its southwest boundary (about 130 yards nearly straight), being the edge of the well made up carriageway ("the Main Roadway") of the road from Welwyn to Hitchin, its southeast boundary being a straight line (about 25 yards) corresponding (a little more or less) with that of the garden of the dwelling house near a petrol filling station. Near to and within the southeast boundary is a well made track leading from the Main Roadway to the east corner of the Unit Land, and afterwards taking a right hand turn to become Dyes Lane (leading to Dyes Farm). The northeast boundary of the Unit Land is on the Register map (based on the OS map 1/10,560) shown as a line (also about 130 yards slightly curved with some irregularities at the north end) extending from the line of the hedge on the north side of Dyes Lane to the Main Roadway.

Mr Laing contended that I should be satisfied as to the ownership of Mr Totty of the Unit Land because it was by the 1958 conveyance conveyed to him and he relied particularly on the words "abutting ... Southwards on the high road from Welwyn to Hitchin" and "having a frontage to the said high road ...".



- 2 -

On the Register map (OS, 1/10,560) north of the Unit Land there are marked four distinct pieces of land, which on my inspection were in relation to the Unit Land easily identifiable and which I call (1) "the Track Piece", (2) "the Sperrin Villa Piece", (3) "the Scrub Piece", and (4) "the Grass Piece". The northeast boundary of the Unit Land abuts on and is the same as the southwest boundary of all these four pieces, except that the boundary of the Unit Land only corresponds with the boundary of the Grass Piece for about 1/10th of its length (the other 9/10ths being Dyes Lane). The parcels of the 1958 conveyance are expressed in three parts, and as I understood Mr Laing he contended (rightly I think) that by the conveyance undoubtedly the whole of the Sperrin Villa Piece, the Scrub Piece and the Grass Piece were conveyed to Mr Totty; however the Track Piece being part of the land belonging to the adjoining property known as Rush Green Farm, was not so conveyed.

By far the greater part of the Unit Land abuts on the Scrub Piece. The description of this piece in the 1958 conveyance (so far as now relevant) is (a) "containing two acres more or less", (b) "having a frontage to the said high road" (from Welwyn to Hitchin), and (c) "a depth therefrom four hundred and fifty feet", and (d) "forms the northernmost part of a larger piece of land ... Numbered 48 on the Ordnance Survey". The OS map (1/2,500) produced by Mr Laing, appears to be somewhat older than the Register Map OS 1/10,560 in that it does not separately mark the Scrub Piece and the Grass Piece. It is clear that the above quoted description as regards items (a), (c), and (d) is wholly apt to describe the Scrub Piece exclusive of any part of the Unit Land in front of it, but the description as regards item (b) is on the assumption that the words "high road" can be equated to made up carriageway is apt to describe the Scrub Piece including the part of the Unit Land fronting on it. So on this assumption I have to consider the applicability of the rules of law conveniently summarised in the legal maxim: *falsa demonstratio non nocet*.

The present appearance of the Unit Land does not accord with what might be imagined from its name "Rush Green", in that it appears generally neglected, over much of it there is scrub with some trees; not easily penetrated and the grass part (less than one quarter of the whole) is uncared for. Exceptionally, at its north end is some hard surfaced land providing a good entrance to the Track Piece and to the west corner of the Sperrin Villa Piece, and also exceptionally near the southeast boundary is the said track leading to Dyes Lane. I walked along the boundary between the Unit Land and the Scrub Piece; although much overgrown and not easy going, it is distinct enough and might easily have been in former times a straight line continuation of the hedge north of Dyes Lane. Quite apart from its registration under the 1965 Act, I conclude that the Unit Land is a piece of land distinct from the Scrub Piece. Clearly and obviously the Scrub Piece is part of OS No 48, and the part of the Unit Land fronting on it is part of OS No 92 and the depth of the Scrub Piece exclusive of the Unit Land is about 450 feet and with the Unit Land is much more than 450 feet. So even on the assumption that the words "high road" above quoted from the 1958 conveyance meaning the made up carriageway, applying the said maxim I conclude that such words are a false description of the land by the 1958 conveyance intended to be conveyed being part of OS No 48.

However in my view the words "high road" as used either in a legal document or in ordinary speech do not necessarily mean ^{the} made up carriageway; they may equally mean the land between the hedges or other fences between which the carriageway lies; and indeed there is in law a presumption that the verges are included in the highway. The Unit Land appears to be one of those pieces of land which falls on the



- 3 -

border line between land properly described as very wide highway verge and land properly described as waste land of a manor. As a result of the registration, it is now deemed to be the latter. On the map drawn on the 1953 deed of exchange (this deed is mentioned in another part of the parcels of the 1958 conveyance) the words "Rush Green" are marked and the Unit Land is delineated as if it was part of the Welwyn to Hitchin highway. I think the 1958 conveyance maybe read as showing that the parties were treating (in a way which I must as a result of the 1965 Act regard as mistaken) the Unit Land as being part of the high road and therefore never intended the part fronting on the Scrub Piece to pass under it.

On similar consideration, I conclude that they never intended the part of the Unit Land fronting on the Sperrin Villa to pass under the conveyance. It was not suggested that the part fronting on the Grass Land could be included in the parcels of the 1958 conveyance.

The above being my conclusions upon a consideration of the 1958 conveyance, the OS maps and the present appearance of the Unit Land and its surroundings, I next consider whether the history of the land as revealed by the documents produced and the oral evidence of Mr Neave could be significant.

From the documents it appeared:- The Sperrin Villa Piece in 1926 belonged to Mr E T Huggins and was known as Stoney Field; he mortgaged it to finance the building on it of a house, and in 1927 sold the land with the house on it (then known as Sperrin Villa) to Mr George Howard. By a conveyance made at the same time, Mr E T Huggins conveyed the Scrub Piece to Mr George Howard. The Grass Piece was in 1951 conveyed to Mrs Margaret Neave (the wife of the witness) and she under the 1953 deed of exchange conveyed it to trustees (including Mr George Howard) for Geo Howard and Sons.

Mr Neave first came to live in the area in 1940 (he had known it in 1937). In the course of his evidence he said (in effect):- As he first remembered the Sperrin Villa Piece there was on it, between the dwelling house and the Unit Land, a bungalow or chalet which Mr George Howard used as a tea room; on the grass in front of this tea room he placed tables for the use of his customers; he ended this business between 1939 and 1940. Mr Howard also used to mow the grass in front of the tea room and he had 2 cows which used to tether there. Dyes Lane was as far back as he (Mr Neave) remembered always approached (as now) by the track near the southeast boundary of the Unit Land. He (Mr Neave) bought Rush Green Farm (meaning the land to the north of Sperrin Villa and including the Track Piece). Mr Totty on nearby land had a commercial vehicle business (carried on on land between 150 and 200 yards north of the Unit Land). For this business he (Mr Totty) has for many years parked vehicles on the Unit Land.

During my inspection I noted marks on a small part of the Unit Land alongside the made up carriageway which showed that one or two (end to end) heavy commercial vehicles might have been parked there from time to time; there was no visible indication that vehicles were parked elsewhere on the Unit Land. Even if Mr Totty for his business purposes regularly left on the said small part commercial vehicles he was intending to process as part of his business, such activity could not in my opinion be ascribed to the whole or any other part of the Unit Land. In the course of his evidence Mr Neave mentioned that Mr Totty's activities had led to some town planning controversy; without some information about them town planning permission (none was given), I decline to infer from anything done by him that he took possession



- 4 -

of even the said small part of the Unit Land. In opening the matter Mr Laing did not suggest that Mr Totty had a possessory title, and in my view Mr Neave's evidence when considered in relation to the Unit Land as I saw it during my inspection provided no basis for any such title.

Mr Howard's tea tables and tethered animals in my view fall short of taking possession by him. However this may be connected to ~~such~~ possession ~~as~~ proved was for too short a period to form the basis of a possessory title even to the land immediately in front of the bungalow or chalet now no longer there. I record that during my inspection it did appear to me that there had in front of the Sperrin Villa been some encroachment, in that the line of the boundary of the Scrub Piece (on the register map continuous with the boundary of the Sperrin Villa Piece did not on my inspection appear to be continuous; however at the hearing no ownership claim was based on this encroachment (it did not amount to more than a few yards) nor indeed was anything said about it at all.

with what happened after 1960, any

So even in the light of the documents produced from the evidence of Mr Neave, I find it impossible to ascribe to the persons who made the 1958 conveyance or to any of their advisers any intention to pass the ownership of the Unit Land or any part of it. And I reject the contention of the reference in it "high road" as any indication of any such intention. On the information put before me at the hearing and what I saw on my inspection, I am satisfied that Mr Totty is not the owner of the Unit Land or any part of it.

In the absence of any evidence that any other person could be the owner, I am not satisfied that any person is the owner of the land, 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 24th — day of August — 1981

a. a. Baker J. J. J.

Commons Commissioner