



COMMONS REGISTRATION ACT 1965

Reference Nos. 43/U/1

43/U/2

43/U/3

43/U/4

In the Matters of (1) the Sand Pit,
Townside Road, (2) the Mires, (3)
The Becks, Beverley Road, and (4)
The Green all in North Newbald,
Beverley R.D. Yorkshire (East Riding)

DECISION

These references relate to the question of the ownership of lands known as (1) the Sand Pit on the north side of Townside Road (2) the Mires at the west end of the village (3) The Becks on the south side of Beverley Road and (4) The Green in the centre of the village all in North Newbald, Beverley Rural District being the lands comprised in the Land Section of Register Unit (1) No.CL.13 (2) No.VG.14 (3) No.CL.14 and No.VG.15 in the Registers of Common Land (CL) and of Town or Village Greens (VG) maintained by the East Riding 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 these references Newbald Parish Council claimed to be the freehold owner of the lands in question and no other person claimed to have information as to their ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the lands at Beverley on 11 July 1973. The hearing ^{were} attended by Newbald Parish Council who were represented by Mr. A. H. G. Purchas. At his request I held all these hearings together.

Mr. Purchas who has lived in the Village for 5 years and has for the purpose of this inquiry been coopted as a member of the Parish Council and Mr. G. A. Walker who is 65 years of age and has lived in the Village since 1918 gave evidence. After the hearing I inspected the lands it having been agreed that I might do so unattended.

The Green (VG.15) consists of seven pieces of grass land separated by roads, tracks or footpaths: together they form a square piece of open land in the centre of the Village. Mr. Walker produced the Bye-laws made with respect to North Newbald Village Green at a meeting of the Parish Council of North Newbald on 20 February 1907 and sealed as allowed by the Local Government Board on 5 April 1907. The general appearance of the Green is attractive and as a village amenity it is of great value. The Parish Council have for the last 12 or 15 years arranged for the regular mowing of the grass, the work being done by the County Council for a nominal fee. The Parish Council have given permission for the laying of cables by the Electricity Board.

The Mires (VG.14) consists of three pieces of open grass land through which flows a stream. Mr. Walker produced the Bye-laws made on 5 October 1961 by the Parish Council with respect to the open space known as the Mires. In 1961 before



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making the Bye-laws the Parish Council advertised, but could find no lord of the manor or other person claiming ownership. Up to about 15 or 16 years ago the grass was kept down by tended cows under lettings made by the Parish Council of this and other grass lands.

From the evidence outlined above and their appearance, I deduce that the Green (VG.15) and the Mires (VG.14) are and have been parish property in the popular sense of the expression for some time. The 1961 Bye-laws are expressed to be made under paragraph (d) of section 8(1) of the Local Government Act 1894 and could therefore only have been made by the Parish Council if the Mires was then "under their control". I infer that the 1907 Bye-laws were made under the same paragraph. In the circumstances, control can I think only be explained by ownership. I conclude therefore that the Green and the Mires were vested in the churchwardens and overseers and have by operation of law devolved on the Parish Council as their successors. Additionally the Parish Council have I think a title by possession. For these reasons I am satisfied that the Parish Council are the owners of these lands (VG.14 and VG.15), and I shall accordingly direct East Riding County Council to register Newbald Parish Council as the owners of the lands under section 8(2) of the Act of 1965.

Mr. Purchas produced a certified extract from the North and South Newbald Inclosure Award dated 10 December 1783: and also produced a copy of the map attached to and showing the effect of the Award. Mr. C. N. Snowden Acting Registrar of Deeds in the East Riding County Council produced the bound volume containing the enrollment of the 1783 Award.

The 1783 Award so far as relevant was as follows:- "WE do set out Assign Allot and Award the three several parcels of Common or Waste ground next hereinafter described for the several purposes hereinafter respectively mentioned (that is to say) Four Acres One Rood and eighteen perches in North Newbald aforesaid at the east end of the Town there bounded by the Beverley Road ... which said four Acres one Rood and eighteen perches shall be used as and for a Free and Common Watering place for Cattle for the use and Benefit of all the Inhabitants of the Township of North Newbald aforesaid for the time being and for Common Pitts for getting Sand and Gravel for Buildings and for repairing the Highways and private and other Roads within the said Township of North Newbald and Also for such other purpose as those Inhabitants or any of them shall have occasion to use the same in or about the Repairs or Improvement of their respective Estates therein and not otherwise AND also two Roods and five perches in North Newbald aforesaid bounded by the same Road towards the North the Water running from East to West and bounded .. as and for a Free and Common Watering place for Cattle for the use and benefit of all the Inhabitants of the said Township of North Newbald for the time being AND also three Roods and six perches in North Newbald aforesaid near the North side of the Town there bounded by ... to be used as and for Common Pitts for getting Sand or other Material, by the Inhabitants of the said Township of North Newbald for the time being or any of them for their own private use and not for sale ... AND we do direct appoint and Award that the Grass and Herbage Annually or otherwise coming and growing upon and from the three several Allotments hereinbefore Awarded shall be for ever hereafter used and enjoyed by the Inhabitants of the said Township of North Newbald for the time being in like manner as the Commons and Waste Grounds and that Township were heretofore used by them without prejudice to the several other purposes above expressed ... AND WE do also direct appoint and award that the five several Allotments or parcels of Land in North Newbald aforesaid first hereinbefore Awarded and described shall from henceforth for ever hereafter be vested in the Surveyors of the Highways of the said Township of North Newbald



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for the time being for the respective purposes aforesaid ..."

The Becks (CL.14) consists of a long strip of rough marshy land fronting for about 170 yards on Beverley Road. A stream runs through the middle. The Becks is shown on the Register map in two parts (joined by a narrow strip); one (the eastern part approximately a rectangle) containing 4.886 acres and the other (the western part approximately an obtuse triangle) containing 1.061 acres. By an agreement dated 23 August 1935, in consideration of Beverley Rural District Council offering no objection to the placing of hydraulic rams in the Becks to lift water to seven farms mentioned in the schedule, the signatories being owners and mortgagees of the farms, undertook (among other things; paragraph 7) that in respect of each of the farms an annual acknowledgment rent of 1/- would be paid to the Parish Council. The rams were constructed, and are still there. The water for the collecting wells (as also for the stream) comes from springs in or near the east part of the Becks.

Notwithstanding the slight difference in the areas, I conclude that the two parts of the Becks above mentioned are the same as the lands in the above quoted extract from the 1783 Award described as containing 4a. 1r. 18p. and 2r. 5p. The Award was made under the North and South Newbald Inclosure Act 1777 (17 Geo. 3. cap. cxii), and the allotments were within the powers conferred by the Act. By sections 25 and 67 of the Local Government Act 1894, land vested in any highway authority devolved on the appropriate rural district council (stating the effect of the section shortly) so as to be held by the rural district council for the same estate and purposes as the land was held prior to the Act. The 1935 agreement in effect recognises the title of the Rural District Council. I conclude therefore that the Beverley Rural District Council are now the owners of the Becks.

The Sand Pit (CL.13) consists of a strip of rough ground (approximately a rectangle) about 90 yards long and containing (according to the Register) 0.901 acres. At one of its shorter sides, it fronts on Townside Road, where this Road joins Westgate and Galegate. It is currently used as a lorry park.

Mr. Walker remembered the Sand Pit in 1918 when it was still a disused sand pit. After that it was used for dumping rubbish. On several occasions before Mr. Walker was on the Parish Council and also afterwards, the Parish Council paid a man to level the rubbish. About 3 years ago, the Parish Council put up a notice forbidding the tipping of further rubbish. The Sand Pit (CL.13) is the same land as that in the above quoted extract from the 1783 Award described as containing 3 r. 6p. The Parish Council for a rent allows certain lorry drivers to park their lorries there. The Village Hall Committee, assuming that the land is owned by the Parish Council, have a project (which the Parish Council will not oppose) to build a village hall there.

Mr. Purchas said that as regards this land (CL.13), the Parish Council were more concerned to negate any claim there might be (at the hearing there was none) that it was in private ownership, rather than to ~~make~~^{establish} any distinction between ownership by the Rural District Council and ownership by the Parish Council. However he contended that the land is parish property owned by the Parish Council and accordingly is vested in the Parish Council, referring me to an extract from the New Land and Practice of Parish Administration, which set out (with references) the general effect of the legislation dealing with the devolution of land allotted



under Inclosure Acts to provide materials for road making. Paragraph (b) of the definition of "parish property" in section 305 of the Local Government Act 1933 (which closely follows the now repealed definition in the Sale of Exhausted Parish Lands Act 1876) certainly includes some exhausted parish quarries and may include the Sand Pit (CL.13). But I am concerned not with whether the Sand Pit is for the purpose of the 1933 Act parish property but with who is the owner of the legal estate in fee simple; see section 22 of the 1965 Act. Section 166 of the 1933 Act contemplates that for the purposes of that Act, land may be vested in a rural district council and at the same time ~~the~~^{be} parish property; thus showing that land within the definition of "parish property" is not necessarily, and certainly does not by virtue of the Act become, vested in the Parish Council as owners.

In my opinion the Sand Pit (CL.13) is now vested in the Beverley Rural District Council under the same sections of the Local Government Act 1894 as are applicable (as above stated) to the Becks.

For these reasons, I am satisfied that the Rural District Council are the owners of the Becks (CL.14) and the Sand Pit (CL.13) and I shall accordingly direct the East Riding County Council as registration authority to register Beverley Rural District Council as the owners of the lands under section 8(2) of the Act of 1965.

I record that nothing in this decision must be read as determining that the Rural District Council do not hold the lands for the purposes set out in the 1793 Award or on such trusts as may be applicable by reason of such purposes having become impracticable, or as determining that these lands are not parish property to which section 166 of the Local Government Act 1933 (proceeds of sale of parish property applicable for the permanent benefit of the parish) is applicable.

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 9th

day of August

1973.

a. a. Baden Fuller

Commons Commissioner