



COMMONS REGISTRATION ACT 1965

Reference No. 255/U/29

In the Matter of (1) Dicks Mount and
(2) The Parish Pit, Burgh St Peter,
South Norfolk District, Norfolk

DECISION

This reference relates to the question of the ownership of land (two pieces) known as (1) Dicks Mount and (2) The Parish Pit, Burgh St Peter, South Norfolk District being the land comprised in the Land Section of Register Unit No. CL 421 in the Register of Common Land maintained by the Norfolk 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 Norwich on 6 December 1978. At the hearing Burgh St Peter Parish Council were represented by Mr A G Sutton, their chairman.

Mr Sutton said that this registration originally included not only the two pieces above mentioned but also a third piece known as Boons Heath. In the copy of the Register supplied for me by the County Council there is in the Land Section a note that Boons Heath was excluded from the registration pursuant to objections Nos 59B and 312B and the request of Burgh St Peter's Parish Council of 29 January 1971, and also notes showing that these objections were made by Loddon Rural District Council and by Mr Peter Robert Clarke of Shrublands Farm. Mr Sutton contended (in effect) that the registration should include Boons Heath because the Parish Council's consent to its exclusion was not for the reasons he outlined, binding on them, and that I should give some direction or take some action which would lead to this result. At the hearing I refused to pay any attention to this contention, being of the opinion (to which I adhere) that I have not on this reference (or as far as I know on any other reference which could be made to me) any jurisdiction to alter the registration in the Land Section.

From the County Archives, there was produced a copy of an undated plan apparently of some age, inscribed "Plan of the Parish of Burgh St Peter as referred to by our Award". The general appearance of this plan is similar to that often found annexed to or held with Inclosure Awards, in that it seems to show allotments by number and by name (presumably of the allottees). By comparing this map with the Register map, I identify "No. 43 Surveyors" and "Surveyors 56" on the old map as being the pieces referred to in the Register as "The Parish Pit" and "Dicks Mount" respectively.



- 2 -

Mr Sutton produced the Minute Book of the Parish Council from 1894 and currently in use. It records (1) at a meeting on 18 December 1925 "There being no gate to Poor Lands on Dicks Mount ... Mr S W Mowse of Adderley be asked to provide a new deal gate with iron (if necessary) and to provide and to fix the same"; and (2) a meeting on 20 July 1966, the purpose of which was to consider a letter from Loddon RDC requesting that they be allowed to purchase a portion of the Parish Pit as a sewage disposal plot to serve the development at Crossway and (3) at a meeting on 12 May 1967, the matter of the use of the Parish Pit by Loddon RDC was reviewed and correspondence read in which Loddon RDC suggested that due to lack of documentary evidence of ownership, the Parish agreed to a simple exchange of letters to the RDC for the construction of the required filterbed, and it was resolved that the Parish Council agree to the construction of the filterbed by the RDC with the proviso that the children be allowed to use that portion of the Pit not used for the installation.

Mrs D Tripp who has lived since she was married (42 years ago) in Burgh St Peter, said (in effect):- When she first knew it the Parish Pit looked (except for the filterbed) much as it does now, that is a derelict pit from which all the stone had been got. She understood from her husband's father who died about 30 years ago and who understood from his father who had died in about 1927 that the Parish Pit had always looked like this. As to Dicks Mount, all the sand there has been worked; the Poors Land Trustee own (? owned) the land adjoining.

Mr Sutton contended that on the above summarised evidence I should infer that these lands had been allotted to the Surveyors of Highways as parish pits, and that they had been worked out before 1894; with the result that they did not under the Local Government Act 1894 pass to the Rural District Council who then became the highway authority, but passed under such Act to the Parish Council. As to this being the effect of the 1894 Act, he referred me to C A Baker on Local Government Administration (1975): "Of the numerous exhausted quarries therefore those which were exhausted before 1894 were usually vested in the parish Council or representative body (where there was no parish Council)".

On 8 December 1978 I inspected the lands.

Since the hearing I have looked at the Wheatacre Burgh otherwise Burgh St Peter Inclosure Act 1811 (41 Geo. 3. c. 60: private) by which it is enacted (among other things): "that the said Commissioners are required ... in the first place to set out and allot such Parts or Parcels of the Commons and Waste Lands hereby intended to be divided and enclosed as they shall think proper as and for public Gravel Clay Sand Pits with convenient Roads to and from the same to be used by the Proprietors of Lands and Estates in the said Parish of Wheatacre Burgh otherwise Burgh St Peter and their respective tenants as well for their own necessary uses within the said Parish only in such manner and under such Rules and Regulations as the said Commissioners shall by their Award direct and appoint as in common for the Repairs of the public and private Roads within the said Parish, and that the said Allotments shall be vested in the Surveyors of the Highways of the said Parish in Trust for the purposes aforesaid, and shall as may by them the said Surveyors from time to time let (subject to the said Right of taking Gravel and Sand therefrom) for the best Rents that can be gotten for the same, to be applied toward the Repairs of the public Roads and Ways, and for such other purposes within the said Parish".



- 3 -

Notwithstanding that no copy of the Award made under the 1811 Act was produced, I presume that an award was duly made and that gravel, clay and sand pits were duly allotted in accordance with the words above quoted.

As regards the part of the land in this Register Unit, being the piece known as the Parish Pit:- Having regard to its present appearance (a pit), the said old parish plan, and the presence of the filterbed (a substantial fenced in work occupying a prominent and important part of the piece) made as a result of the 1967 discussion, it maybe supposed that this piece was allotted as a gravel, clay or sand pit under the award made pursuant to the 1811 Act. Whether under the relevant Local Government Acts and the orders made under them, on this supposition the County Council, the District Council, or the Parish Council are in relation to this piece the successors of the Surveyors of Highways is upon the information put before me, a difficult question, which I need not determine. For the purposes of this reference it is enough that on the evidence summarised above I conclude that either the Rural District Council or the Parish Council or both of them as the persons responsible for the filterbed (it being a substantial and in relation to the piece a dominant work) were in possession of the whole of the piece of land in such circumstances that one or other or both must then have been the owners. As between the Parish Council and the District Council (as successors of the Rural District Council), the indications in favour of the Parish Council are: the present situation of the piece (near a built-up area of the Village), the local use of the filterbed (for the drainage of the nearby houses on the other side of the road) and the local use of the remaining part of the piece by local children (as a play area with a climbing rope). In the absence of any claim by the District Council I think these indications are enough to exclude them and to prefer the Parish Council. For the above reasons I am satisfied that the Parish Council are the owners of this part of the land in this Register Unit, and I shall accordingly direct the Norfolk County Council's registration authority to register Burgh St Peter Parish Council as the owners of this part under section 8(2) of the Act of 1965.

As regards the part of this Register Unit being the piece known as Dicks Mount:- This piece is in a remote part of the parish; although there are some dwelling-houses nearby, it is some distance from any substantially built-up area. On the information given me I am unable to deduce who is now in possession or, even assuming, could properly conclude that it was allotted under the award made pursuant to the 1811 Act to the Surveyors of Highways who should now be properly regarded as their successor. Accordingly I am not satisfied that any person is the owner of this part of the registered land in this Register Unit and 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 13th — day of July — 1979

a. a. Baden Fuller

Commons Commissioner