



In the Matter of Horstead Church Common,
Norfolk

DECISION

This reference relates to the question of the ownership of land known as the Common and the Loke leading to it near Horstead Church in the Parish of Horstead, Norfolk being the land comprised in the Land Section of Register Unit No. CL.240 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 Mrs P F C Conolly and Horstead with Stanninghall Parish Council each claimed to be the freehold owner of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Norwich City Hall and Horstead Tithe Barn on 28 March 1996 and at Norwich City Hall on 29 March 1996.

At the hearing Mrs Conolly was represented by Mr Edward Harris, Solicitor, Horstead Parish Council by its Chairman, Mr J W Neville and Norfolk County Council (the registration authority) by Mr J Richardson.

From an inspection of the Common itself which I conducted during the morning of 28 March I find that it is roughly rectangular in shape, about 1 acre in area and abuts the River Bure to the north, fields to the west and east and the Church yard along most of its southern boundary. Included in the common is a loke (or lane) leading from the southern boundary of the rectangle to the public highway. I am satisfied from various publications brought to my attention, for example Percy Millican's History of Horstead and Stanninghaall (1937) pages 83-84, that this has been the position since 1592 and probably for several centuries before that.

Millican (supra) traces the history of the Manor of Horstead as follows. In 1070 Horstead became an absolute possession of William the Conqueror. It was granted by William Rufus to the Convent of the Holy Trinity at Caen in Normandy, which was founded by his mother Matilda of Flanders. Upon the outbreak of war with France in 1339 the possession of alien priories in this country reverted to the Crown and in 1415 ownership thereof vested in the Crown. In 1461 Edward IV granted the Manor of Horstead to King's College Cambridge: in whom it appears to have remained vested for several centuries. Millican's account is



supported by several letters, publications and other documents produced by Mr Harris at the hearing including:
a letter from the Royal Commission on Historical Manuscripts to Edward Harris and Sons dated 29 February 1996.

- cl900 Victorian Cambridge History of England
Entry for the County of Norfolk
- cl800 Bloomfield's History of Norfolk vol X
- 1845 White's Norfolk Directory
- 1845 Kelly's Directory
- cl850 Tithe Map and Schedule (from the Norfolk
Record Office)
- cl880 Abstract of Title
- 1860 Reverend Joseph Thackeray's Enfranchisement
Abstract of Title
- 1859 Admission of Tenant re J. Thackeray
- 1925 Inland Revenue List - Return of all Manors
in the District of Norwich 2
- 1875 Kelly's Directory
- 1908 Kelly's Directory
- 1909-1910 Land Valuation Act (Lloyd George Survey)
Schedule and Map
Assessment numbers: 99; 100; 111; 279; 280;
281; 282; 283; 284; 317
- 1917,1925 Kelly's Directorys
and 1937
- 1899-1925 Copyhold Enfranchisement Awards Schedules,
Agreements, Acknowledgements and other
Documents
- 1925 Inland Revenue Return of Manors in the
District of Norwich 2

In the Land Valuation assessment numbered 317 referred to above,
there is the following reference to ownership of the Common:
"Owner L of M Sir E Birkbeck"



This is inconsistent with all the other documents mentioned above. Moreover it appears from the enfranchisement Awards referred to above (in particular an Award dated 3 July 1917) that the Birkbecks were in fact tenants of Kings College of substantial areas in and about Horstead and it is in law impossible that Sir E Birkbeck should have been tenant of himself as Lord of the Manor. I therefore find that the reference to him (in assessment No.317) as Lord of the Manor and Owner of the Common was made in error.

The Common was registered under the Commons Registration Act 1965 in 1968 on the application of the Parish Council. The registration became final on 1 August 1972. No rights were registered and Mr Harris submitted that the Common is in law manorial waste and falls within Section 22(1)(b) of the 1965 Act. This submission was not disputed and I accept it.

In 1976 the question of ownership of the Common was referred to the Commons Commissioners and a hearing was held in Norwich on 13 January 1977 by Mr C A Settle Q.C, Commons Commissioner. In his Decision, dated 21 February 1977, Mr Settle after recording that "Mr J H Grimsdale, Chairman of Horstead Parish Council appeared but had no information as to ownership of the land", said that in the absence of any evidence he was not satisfied that any person was owner of the land and that it would therefore be subject to protection under section 9 of the 1965 Act.

By a Conveyance on sale dated 14 August 1995 Kings College was expressed to convey to Mrs Conolly in consideration of £7,250 paid by her to the College "all such estate and interest as {the College} may have in the Lordship or Manor or reputed Lordship or Manor of Horstead, Norfolk together with all rights appertaining thereto including all rights (if any) which the College may have in or to that area of land known as Horstead Church Common except and reserving unto {the College} as specified in the Schedule hereto to hold the same unto {Mrs Conolly} in fee simple subject as mentioned in the schedule hereto".

The schedule confirms the intention of the parties to convey the common to Mrs Conolly as corporeal property but is otherwise irrelevant to this matter.

Mr Harris summarised Mrs Conolly's claim to ownership as follows:

1. At the date of the 1995 Conveyance the Common was vested in Kings College as Lord of the Manor of Horstead
2. It was waste land of the Manor and prima facie all such land belongs to the Lord - see Earl of Dunraven v Williams (1836) 7 Car. & P. 332
3. The 1995 Conveyance operated to convey the Common to Mrs Conolly by its express terms:
4. Further or alternatively ownership of the Common passed by the Conveyance of the Lordship



5. In the further alternative the 1965 Conveyance conveyed the Common by virtue of the general words (in particular "Commons") implied in a Conveyance of a manor by section 62(3) of the Law of Property Act 1925.

On behalf of the Parish Council Mr Neville said that the Council relied on two grounds for the purpose of establishing its claim to ownership:

- (a) Neither Kings College nor Mrs Conolly had any title to the Common itself
- (b) The Parish Council had enjoyed possession of the Common for a great many years, certainly exceeding the 12 years prescribed by Limitation Act 1980 section 15 (extended to 30 years by Schedule 1 Part II para 10 if the owner was Kings College or any other Corporation Sole).

As to the first point Mr Neville relied on;

(i) a letter dated 16 May 1975 from the College Estate Bursar to the Parish Council in which it was stated that "according to our records it would appear that the College does not own or have any interest in any land in the Parish of Horstead"

(ii) a letter dated 31 October 1995 from the College's First Bursar to Mr G H P Duckworth in which it was stated: "We have not been able to find any evidence in our records that the College retained any interest in the land at the time we sold the Lordship of the Manor of Horstead. It seems that the College sold the land some considerable time ago and that only the bare Lordship remained in the College's ownership".

(iii) the reference to Sir E Birkbeck as owner of the land in 1915 (see above)

(iv) the words "if any" in the parcels to the 1995 Conveyance to Mrs Conolly.

As to the two letters from the Bursars mentioned above I do not consider that these significantly weaken a claim based on the College's title. College Bursars certainly cannot be presumed to know the law as to what rights belong to a Lord of the Manor. It is significant that when in 1966 the College was approached by F G Harmer & Son Ltd for the grant of an easement for drainage of surface water through a ditch on the Common the College referred the matter to solicitors (Messrs. W J and J G Taylor) who in a letter of 8 August 1966 asserted the College's right to make the grant.

As to the words "if any" in the Conveyance, Mr Harris said that in his wide experience in preparing Conveyances of Lordships these words were inserted as a matter of course. He also said that it was normal practice not to insert any covenants for title by the vendors of Lordships. I have found nothing to cast doubt on these statements by Mr Harris in any of the following Precedents in Conveyancing namely Key & Elphinstone (15th Edition)



Prideaux (25th edition), Encyclopedia of Forms and Precedents (5th edition) or Hallett.

I have already stated my finding that the reference to Sir E Birkbeck as owner was made in error. I do not therefore accept it as sufficient, or indeed any significant, evidence that the College ever conveyed the Common to any member of the Birkbeck family.

I would mention that there was no other evidence that the College alienated its title at any time prior to 1995.

On the issue of the Parish Council's possession of the Common Mr Neville called the following witnesses:

Barry David Benton
Alan Robert Spinks
Reginald Charles Dearsley
Dr Bernard Richard Watts
Charles Thacker
Stephen Coman
Mrs Peggy Shapland Duckworth and
Mr George Henry Paul Duckworth

Mr Harris called Anthony William Judd on this issue.

On the evidence of these witnesses (supplemented by the Parish Council Minute Books for the periods 15 April 1936 to the present day which were produced by Mr Neville) I find the following facts:

- (1) the Parish Council has looked after the Common since about 1960. Thus it has seen to the mowing of grass and cutting of nettles during the Spring and Summer, the removal of rubbish and dead wood, the repair of a bridge across a ditch, the prevention of the deposit on the Common of soil dredged from the River and in other ways kept tidy, protected and supervised the Common
- (2) No other person or body has during this period done any physical act on the Common indicating ownership or an intention to possess the Common
- (3) The Council has never intended to exclude the public from the Common
- (4) The east and west boundaries of the Common have in the past been fenced by the respective owners of the adjoining land to prevent their animals straying on to the Common. These fences are now delapidated and probably no longer stock-proof. The river abuts the northern boundary and the bank is and has for many years been used by members of the public to moor boats and to land and walk



along the bank

(5) The Common is and has at all material times been open to free, unhindered public access on foot along the loke leading to the public highway. The loke has not ever been obstructed by any sort of gate. The Common is and has also been open to such access from the Churchyard.

On the above facts the Parish Council in my view fail to establish that they have in law acquired title by adverse possession. Until about 2 years ago there was no intention on the part of the Council to claim ownership, no intention to exclude or dispossess any owner there might have been and no intention to exclude any member of the public. In these circumstances the Council had no animus possidendi and its possession was not adverse - Powell v McFarlane 1977 P & C R 452, 471-2, 478: Buckinghamshire County Council v Moran 1989 2 ALLER 225: Pwllleyn v Hall Aggregates (Thames Valley) Ltd 1992 EGCS 102.

I also find that the Council's acts in relation to the land have been motivated by its powers and duties as a local authority, especially under Section 9 of the 1965 Act. I also have regard to the fact that in 1968 the Council omitted to claim ownership when it applied for registration of the Common: and at the hearing in 1977 its then Chairman either expressly or impliedly denied any claim by the Council to ownership.

On the above evidence and findings I am satisfied that Mrs Conolly is the owner of the land, and I shall accordingly direct the Norfolk County Council, as registration authority to register Patricia Fardell Caroline Conolly as the owner of the land under section 8(2) of the Act of 1965.

At the conclusion of the hearing Mr Harris invited me to order that his client's costs should be paid by the Council. In my view however, there were various points taken on the Council's behalf which called for investigation, I do not consider the Council has acted unreasonably and I therefore decline to make the order sought.

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 17th day of April 1996

Commons Commissioner