



COMMONS REGISTRATION ACT 1965

Reference Nos 225/U/21  
225/U/22

In the Matter of (1) Howe Green  
and (2) two pieces of land forming  
part of it, Howe, South Norfolk  
District, Norfolk

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DECISION

These references relate to the question of the ownership of (1) land known as Howe Green and (2) two pieces of land forming part of it, Howe, South Norfolk District being the land comprised in the Land Section of Register Unit (1) No CL. 140 and (2) No CL. 407 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 Mr J C Vale claimed ownership of one of the pieces (part of a pond) comprising the CL. 407 land. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Norwich on 9 June 1976. The hearing was attended (1) by Mr J C Vale, (2) by Mr B Burgess as representing (a) Ben Burgess and Company (an unlimited company) of 43 King Street, Norwich and (b) his daughter Mrs E A Turner of Howe Hall, Norwich, and (3) by Mr E R Roney of Howe Rectory.

The CL. 140 land according to the Register map comprises (without the road which crosses it) OS Nos 91, 99 and 101 containing together 4.518 acres; it is for the most part grassland, reasonably level and open to the road. The more easterly of the two pieces ("the Pond Piece") comprising the CL. 407 land is part (about two thirds) of OS No 89 which contains 0.113 acres, and which is a pond adjoining the CL. 140 land at its northeast end. The more westerly of the said two pieces ("the West Piece") is OS No 100 containing 0.223 acres and is for the most part pond with an island in it. The CL. 140 land is subject to rights registered at Entry No 1 in the Rights Section on the application of Mrs E A Turner, and attached to Howe Hall Farm, to graze 500 sheep or 25 cattle, to cut and take herbage, and to estovers. The CL. 140 land was registered in the Land Section in consequence of the application to register the said rights, but an application by the Norfolk Association of Amenity Societies is noted in respect of the registration. The CL. 407 land was registered pursuant to the same application of this Norfolk Association, and is not subject to any rights of common.



Mr Burgess said (in effect):- His family for four generations have maintained Howe Green, but they do not wish to claim ownership. The island in the pond being part of the West Piece was formerly a promontory shown in the title deeds as part of Howe Hill Farm; to protect it (from motorists and others) he had made it into a island.

Mr Vale in the course of his evidence produced: (1) a conveyance dated 15 October 1974 by Pine View Developments Limited ("the Company") and their mortgagees and receivers to him of "part of OS 65, part OS87 and OS 89 and comprising 0.539 acres...edged red on the plan annexed," (2) a conveyance dated 11 October 1972 by Mr H and Miss Tooley to the Company of lands (Church Farm) comprising 188.237 acres including the said OS Nos, (3) Particulars of an auction sale on 30 June 1972 of Church Farm with plan, and (4) an examined copy of a conveyance dated 9 March 1928 by Mr W, Mr H and Miss E Tooley of farmhouse and lands (Church Farm) comprising 210a 1r 19p.

On the day after the hearing I inspected the lands.

It is clear that the Pond Piece is comprised in the lands expressed to be conveyed by the 1974 and 1972 conveyances and described in the 1972 Particulars, which all include the whole of OS 89 containing 0.113 acres, and which all show the whole of the pond (including the Pond Piece) on the relevant plans. Mr Vale said when he made his purchase, the Pond Piece was separated from the north part of the pond by a barbed wire (sufficient to keep cattle from the north part of the pond straying onto the road) and was open to the CL. 140 land, not surrounded (as now) by a low wire <sup>rec</sup> ~~mesh~~ (to prevent the ducks wandering onto the road). From his description of the Pond Piece as he first knew it, I inclined to the view that the only part of the pond which belonged to Church Farm was that north of the barbed wire and that the Pond Piece belonged (as regards ownership) to the CL. 140 land; and I was inclined therefore to consider the documents of title made in 1972 and 1974 as not enough (being too recent) to establish ownership.

Some confirmation of this view was given by Mr Burgess who said that for as long as he had known it the pond had been divided as described by Mr Vale and Mr Roney who said that he had in his possession a copy of a copy of the Brook Hall Estate showing the original farms lettings on which the south part of OS 89 was excluded from any letting. Mr Vale said that he had since he had become owner under the 1974 conveyance dredged and generally cleaned out the Pond Piece and fenced it from the road for the protection of his birds, and Mr Burgess said that what Mr Vale had done had effected considerable improvements to the pond, although he regretted that the edge of the ~~wire mesh~~ fence came right up to the public road.

The 1928 conveyance throws a different, but also a somewhat obscure light on the ownership position. On the one hand the land thereby conveyed is described as including:- "89 (number on Ordnance Sheet): Pit (Description): Howe (parish): -:-:18:(Quantity A.R.P.)", which indicates the whole of the OS89 (18 perches = 0.1125 acres) was then thought to be part of Church Farm; on the other hand on the plan annexed to the 1928 conveyance only the north part of the pond is coloured (on such plan the boundary of Church Farm is shown as a straight line in continuation of the line of the front of the adjoining buildings, so the Pond Piece is excluded).



In my opinion the description in the 1928 conveyance of OS 98 as being "Pit" is important. Although where a pond is seen on the boundary between agricultural land and land subject to rights of common the natural inference may be to divide the ownership between the two lands by a line across the pond, so that each owner could enjoy the water, a similar inference in relation to a pond is not so natural. Indeed I incline against drawing it at all. I think that I can properly infer that in 1928, when the Tooleys bought the Pond Piece then appeared to be part of a pit or was reputed to have been part of a pit, and that the Tooleys allowed the Pond Piece <sup>in 1972</sup> to be included in the land they were offering for sale, because they believed (having been owners of Church Farm for more than 40 years) that it was part of it.

Having regard to the foregoing consideration, and notwithstanding the contrary indications mentioned by Mr Burgess and Mr Roney, I am satisfied that Mr Vale is the owner of the Pond Piece, and I shall accordingly direct the Norfolk County Council as registration authority under section 8(2) of the Act of 1965 to register Mr John Charles Vale of The Old Barn, Shotesham, Norwich as the owner of ~~the part of~~ the more easterly of the two pieces of land which together comprise Register Unit CL. 407.

In the absence of any evidence as to the ownership of the remainder of the CL. 407 land or as to any of the CL. 140 land, I am not satisfied that any person is the owner of these lands, and they 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 16<sup>th</sup> day of June 1976

a. a. Baden Fuller

Commons Commissioner