



COMMONS REGISTRATION ACT 1965

Reference No.25/U/35

In the Matter of Study Common
Land, Study, Erpingham R.D.,
Norfolk

DECISION

This reference relates to the question of the ownership of land known as Study Common Land, Study, Erpingham Rural District being the land comprised in the Land Section of Register Unit No.CL.137 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 14 June 1973. The hearing was attended by Study Parish Council who were represented by Mr. E. J. Crawley, their chairman and by Erpingham Rural District Council who were represented by Mr. A. Marson their clerk.

Mr. Marson produced an Inclosure Award dated 16 May 1807 (held by the Norfolk County Council) relating to land in Briningham, Study and Brinton. This Award contained an allotment as follows:- "And we do hereby assign set out and allot unto the Surveyor of the Highways within the said Parish of Study one piece of land in Study aforesaid containing by measure One Acre and two roods bounded by land hereby allotted to the said .. south and west and by the said fourth Public Road in Study aforesaid north east and we hereby certify and declare that this land Allotment is set out and allotted as and for a Public Sand Gravel and Stone Pit". The Award map showed a triangular piece of land marked "Surveyors: 1.2.0.". Mr. Marson giving evidence identified the land so allotted with that comprised in this Register Unit.

Mr. Crawley said:- The land is a small copse, containing some mature trees. The Parish Council control the timber planting and felling, the proceeds of which are considered the property of the Parish Council; they had recently felled an oak tree which was dangerous. However, if under the Award the Rural District Council were in law the owners, the Parish Council would not he thought wish to compete.

The Award was made under the Briningham Study and Brinton Inclosure Act 1805 (45 Geo. 3 cap. lxxi), by which it was enacted:- "That the said Commissioners shall (after they shall have set out and appointed the public carriage Roads and Highways through and over the Lands and Grounds hereby directed to be divided and allotted) assign, set out, and allot unto the Surveyor of the Highways within the said Parishes of Briningham Study and Brinton respectively, such Parts of the Lands and Grounds hereby directed to be divided and allotted as the said Commissioners shall think necessary, not exceeding Two Acres, in each of the said Parishes for the Purposes hereinafter mentioned; and it shall and may be lawful for the Surveyor of the Highways and the Proprietors of Lands and Estates within the said Parishes



respectively and their Tenants for the Time being respectively, to use the said Allotments respectively as and for public Sand, Gravel, Stone, Clay and Chalk Pits, in such Manner and under such Rules and Regulations as the Churchwardens and Overseers of the Poor, and Surveyor of the Highways in the said Parishes respectively for the time being or the major part of them shall from time to time direct or appoint".

By sections 25 and 67 of the Local Government Act 1894 (stating their effect shortly on land subject to an allotment such as that above quoted), there was transferred to the district council of every rural district all the powers of any highway authority in the district and all property held for the purposes of such powers became vested in the district council for the same purposes for which the property would have been held if the Act had not been passed. Notwithstanding that under the Local Government Act 1929, County Councils became highway authorities, land subject to such an allotment remained vested in the district council, see sections 117 and 118.

For the above reasons I am satisfied that the Rural District Council is the owner of the land, and I shall accordingly direct the Norfolk County Council, as registration authority, to register Erpingham Rural District Council as the owner of the land under section 8(2) of the Act of 1965.

I record that I am concerned only with ownership of the legal estate in fee simple in the land, see section 22(2) of the 1965 Act; and accordingly this decision does not establish that the Rural District Council own the land free from the purpose set out in the above quoted allotment or from any trust or obligation which may result from or be a consequence of such purpose having become impracticable.

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

27th

day of

July

1973.

a. a. Baden Fuller.

Commons Commissioner