



COMMONS REGISTRATION ACT 1965

Reference Nos. 25/U/90
25/U/66 ✓
25/U/67
25/U/95
25/U/91

In the Matters of (1) The Recreation Ground,
(2) the Hulver Ground, (3) Upper Street Staithe,
(4) the Staithe, Lower Street, and (5) The path
to the river at Lower Street, all in Horning,
Smallburgh R.D., Norfolk

DECISION

These references relate to the question of the ownership of lands known as (1) The Recreation Ground, (2) the Hulver Ground, (3) Upper Street Staithe, (4) the Staithe, Lower Street, and (5) The path to the river at Lower Street, all in Horning, Smallburgh Rural District, being the lands comprised in the Land Section of Register Unit (1) No.VG.59, (2) No.CL.150, (3) No.CL.151, (4) No.CL.116, and (5) No.VG.61 respectively either in the Register of Common Land (CL) or in the Register of Town or Village Greens (VG) 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 these references Smallburgh Rural District Council claimed ownership of the Staithe Lower Street (CL.116) and Horning Parish Council provided some information as to the ownership of The Recreation Ground (VG.59) and the two Staithes (CL.150 and CL.151). No other person claimed to be the freehold owner of any of the lands in question or 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 Norwich on 19 March 1974. At the hearings Smallburgh Rural District Council were represented by Mr. C. Watson their deputy clerk and Horning Parish Council were represented by Mr. L. W. Mitchell their clerk. The hearings were consecutive, but because some of the evidence related to more than one of the lands, I am giving my decisions together.

Mr. Mitchell who has been clerk of the Parish Council for the last 7 years gave evidence.

The land ("the VG.59 land") comprised in Register Unit No.VG.59 is a recreation ground, contains (according to the Register map and if the footpath crossing it be included) 4.194 acres; and is divided into two pieces separated by the footpath. The east piece, approximately triangular in shape and comprising O.S.No.95b. and part of O.S. No.95a, has on it a pavillion as marked on the Register map. The west piece is much larger, comprises most of the remainder of O.S.95a and is bounded by four approximately straight lines, apart from the west corner which is cut off by an irregular boundary and apart from a small tongue shaped strip ("the Tongue") which projects south west and connects the VG.59 land with the main street a short



consideration of £300 conveyed to the Parish Council the part of the VG.59 land (being all except the Tongue) which is situated on the north east side of the straight line obtained by joining the south west boundary of O.S. No.95b and the greater part of the south west boundary of O.S. No.95a and prolonging the line so obtained towards the north west. Mr. Mitchell also produced an indenture dated 27 October 1925 by which in consideration of £25, the Parish Council were granted a right of way over the Tongue appurtenant to the Hornby Recreation Ground (meaning the remainder of the VG.59 land).

On the above evidence, I am satisfied that the Parish Council is the owner of the part of the VG.59 land which is situated on the north east side of the said straight line and I shall accordingly direct the Norfolk County Council as registration authority to register Horning Parish Council as the owner of this part under section 8(2) of the 1965 Act. But in the absence of any evidence that the Parish Council is owner of any greater interest than a right of way as granted over the Tongue by the indenture of 27 October 1925, I am not satisfied that they or anybody else is the owner of the part of the VG.59 land which is situated on the south west side of the said straight line, and I shall accordingly direct the Norfolk County Council as registration authority to register Horning Parish Council as the owner of this part under section 8(3) of the said Act.

The Hulver Ground, being the land ("the CL.150 land") comprised in Register Unit No. CL.150) contains (according to the below mentioned Award map) 30 acres 1 rood 33 perches, and is on the east side of and abuts on the River Ant, a little to the north of Ludham Bridge. Mr. Watson produced from the County Record Office the Inclosure Award dated 13 May 1818 made under the Horning Inclosure Act 1807 (47 Geo. 3; sess.2; cap xii). The 1818 Award contains an allotment: "... unto the Lord of the said Manor of Horning the vicar of the said vicarage of Horning and the Churchwardens and Overseers of the poor of the said parish of Horning as Trustees for the poor of the said parish one piece of land containing thirty acres one rood and thirty three perches bounded by the boundary line dividing the parishes of Horning and Irstead towards the north by the Dilham river towards the east ... And we do hereby certify and declare that the land comprised in the allotment hereinbefore made to the trustees for the poor of the said parish of Horning is in our judgment equal in value to the average value of twenty five acres of the said commons and waste grounds ...". Mr. Mitchell said (in effect):- He had never seen any order of the Charity Commissioners relating to this trust. He understood that the persons now acting as trustees were (i) Rev. W. Blathwyat (the Vicar), (ii) Mr. Sims (the Vicar's Churchwarden), (iii) Mr. Cole (Treasurer and member of the Parish Council) and (iv) Mr. Neble (member of the Parish Council). The land is now used to grow reeds for thatching and for this purpose is let at a yearly rent of £28 (the current letting having been made six years ago for ten years). The Trustees meet once a year before Christmas to decide how the rent received should be distributed among the poor. The Parish Council would like the trust to be recognised, but he, Mr. Mitchell did not at this hearing represent the Trustees.

I am satisfied that the CL.150 land is subject to the trust established by the allotment above quoted, but I am not satisfied that it is now vested in the persons now acting as trustees as above mentioned for a legal estate in fee simple (being the only form of ownership with which I am concerned, see section 22 of the 1965 Act); I have no evidence as to how they were appointed and even assuming (as is likely) that they have been properly appointed to manage the trust, it does not follow that the legal ownership is in them. However, as the persons who ever they may be in whom the land is vested must hold it on the said trust and the law provides for the appointment of new trustees in the place of trustees who cannot be found or who will not act and



for the resolution of all difficulties which may arise from any uncertainty as to the identity of trustees, I am satisfied that the trustees next below mentioned and described are the owners of the CL.150 land and I shall accordingly direct the Norfolk County Council as registration authority to register the trustees of the land subject to the trust declared by the Horning Inclosure Award dated 13 May 1818 of and concerning the land containing 30 acres 1 rood and 33 perches thereby allotted to the Lord of the Manor of Horning, the Vicar of the vicarage of Horning and the churchwardens and overseers of the poor of the parish of Horning as Trustees for the poor of the said parish as the owners of the CL.150 land under section 8(2) of the 1965 Act.

Upper Street Staithe being the land ("the CL.151 land") comprised in Register Unit No. CL.151 is a narrow strip of land at its south end dividing into two strips, north of and at right angles to the River Bure, shaped like a two pronged fork with a handle about 400 yards long and two prongs each about 50 yards long, ending on the north bank of the River. The said 1818 Award contains an allotment: "... unto the Surveyors of the Highways within the said parish of Horning the three pieces of land next hereinafter described that is to say ... Second One other piece of land containing twenty four perches bounded by an ancient lane called old Staithe Lane and land late belonging to John Say deceased towards the north ... by the river Bure towards the south ... And we do hereby certify and declare that the allotments hereby made to the Surveyors of the Highways in the said parish of Horning are by us so made as and for public staithes and to the intent that the same allotments shall for ever hereafter be used by the Surveyors of the Highways and by the proprietors of lands and estates within the said parish of Horning and their tenants for the time being for the laying and depositing therein of the corn manure and other things belonging to them respectively which shall have been conveyed or shall be intended to be conveyed by means of the common rivers in Horning aforesaid ..."

Mr. Watson referred me to a Memorandum (Commons Commissioner's file 25/U/95) on the Horning Parish Staithes dated 4 January 1956 and prepared by Mr. A. E. Crisp (the then clerk of the Rural District Council) at the request of the Coast Protection and Broads Committee and also to the Smallburgh Rural District (Expenses of Staithes) Order 1956 made under section 190 (3) of the Local Government Act 1953; the Memorandum sets out in a very helpful way some of the legal considerations applicable to these Staithes and the Order provides in effect that expenses incurred in respect of the Staithes shall be chargeable to the Parish.

From the Award map and the evidence of Mr. Mitchell I identify the 28 perches mentioned in the above quoted staithe allotment with the south west part of the CL.151 land (the south west prong) and with the adjoining water on the east (the space between the prongs). In my view this part under sections 25 and 67 of the Local Government Act 1894 passed to the Rural District Council as successors of the Surveyors of the Highways for the purpose set out in the above quoted allotment; and notwithstanding that under the Local Government Act 1929 the Council ceased to be Highway Authority for main roads, is still vested in them for the same purpose. For these reasons I am satisfied that the Rural District Council was at the date of the hearing the owner of the part below specified of the CL.151 land, and I shall accordingly direct the Norfolk County Council as registration authority to register Smallburgh Rural District Council (or their successor under the Local Government Act 1972) as the owner of the part of the CL.151 land (considered as a strip divided into two strips, like a



two pronged fork with a handle about 400 yards long and two prongs each about 50 yards long, both of which end on the north bank of the River) which is bounded on the north by a straight east and west line through the point where the east boundary of the land turns from approximately a north and south line to a line almost due east (so as to form the south east prong of the fork) and which is bounded on the east by the water of the Staithe (between the two prongs of the fork) and by a line joining the north west corner of such water to the said point. In the absence of any evidence, I am not satisfied that any person is the owner of the remaining part of the CL.151 land and it will therefore be subject to protection under section 9 of the 1965 Act.

The Staithe, Lower Street being the land ("the CL.116 land") now comprised in Register Unit No. CL.116 consists of a wide strip of land on the north east side of the River Bark, just below where the River takes a right angled bend in front of the Swan Inn. The CL.116 land as it is now registered includes two comparatively ~~very~~ narrow strips which are at right angles to the River and which connect the north west end and ~~the~~ south east end of the wide strip with the main Street (here running approximately parallel with and not far from the River) of Horning Lower Street. The registration was made on the application of Mrs. I. J. B. Lant and originally conflicted with a village green registration (VG.60) of part of the CL.116 land and of some adjoining land on the south east made on the application of the Parish Council. This conflict was resolved by two consent decisions dated 28 July 1972 and made by the Chief Commons Commissioner (reference 25/D/1 and 25/D/2) under which the village green registration became void and the land south of the south face of the buildings shown on the Register map as being situate to the west of the post office were excluded from this Register Unit No. CL.116.

Mr. Watson said he did not now wish to contend that any part of the CL.116 land was comprised in the land thereby described in the above quoted allotment of staithe (this had been suggested in a letter dated 24 August 1973 sent by his predecessor to the Clerk of the Commons Commissioners) as he was satisfied (rightly I think) by comparing the Award map with the Register map that the land so allotted had all (so far as it ever was within this registration) been removed from the Register by the above mentioned exclusion consequent on the 1972 decisions.

Mr. Mitchell produced a conveyance dated 26 November 1927 and a conveyance dated 6 May 1935. By the 1927 conveyance in consideration of £1,500 a piece of land containing 1 rood 8 perches was conveyed to Mr. L. H. Storey, Mr. E. Bullard and Mr. H. N. Holme; the land so conveyed comprised the CL.116 land and the land between it and the said main street. By the 1935 conveyance, Messrs. Storey, Bullard and Holme after reciting that they were desirous of vesting the land comprised in the 1927 conveyance in the Parish Council to the intent that the same may be held as a public pleasure ground, conveyed the same to the Parish Council in fee simple and the Parish Council on their part covenanted to maintain and improve the land as and for the purpose of a public pleasure ground. Mr. Mitchell said (in effect): that on the part of the land comprised in the 1927 and 1936 conveyances which lies between the CL.116 Land and the said main street, there were when the 1927 conveyance was made some almshouses and malthouses, that Mr. Storey arranged for these to be pulled down and that all or some of the money needed for the purchase and clearance was raised by public subscriptions. Since the 1936 conveyance all the land comprised in it (including the CL.116 land) had been ~~and~~ is now used as a pleasure ground for the Village.



On the evidence summarised above I am satisfied that the Parish Council is the owner of the CL.116 land and I shall accordingly direct the Norfolk County Council as registration authority to register Horning Parish Council as the owner of the land under section 8(2) of the 1965 Act.

The path to the River at Lower Street, being the land ("the VG.61 land" comprised in Register Unit No.VG.61) is a narrow strip of land a short distance to the south of the CL.116 land and is a grassy footpath leading from the said main street to the north east bank of the River Bure. Mr. Mitchell could offer no evidence as to its own ownership.

In the absence of evidence, I am not satisfied that any person is the owner of the VG.61 land, and I shall accordingly direct the Norfolk County Council, as registration authority, to register Horning Parish Council as the owner of the land under section 8(3) 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 11th day of April 1974.

a. a. Baden Fuller

Commons Commissioner