



COMMONS REGISTRATION ACT 1965

Reference No.25/U/25

In the Matter of the Staithe,
 Rollesby, Blofield & Flegg R.D.,
Norfolk

DECISION

This reference relates to the question of the ownership of land known as the Staithe, Rollesby, Blofield and Flegg Rural District being the land comprised in the Land Section of Register Unit No.CL.120 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 13 June 1973. The hearing was attended by Rollesby Parish Council who were represented by Mr. D. G. Young articled clerk with Lucas and Wyllys Solicitors of Great Yarmouth.

On behalf of the Parish Council evidence was given by Sir Patrick I. H. Benn who is now and has been for the last 7 years their chairman. He is 51 years of age and Rollesby Hall has been his home all his life. He produced the Rollesby Inclosure Award dated 7 March 1816 and the Map referred to in it; and also a letter dated 9 May 1967 from Mr. C. T. A. Beevor a retired solicitor of Great Yarmouth, as being evidence by him.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register map) 0.317 acres. It is next to Ormesby Broad and fronts for (as I scale the map) about 132 yards the road (A.149) from Yarmouth to North Walsham just north west of the point where the road crosses Rollesby Bridge. The Unit Land on the north west is separated from the adjoining land ("Broadlands Garden") by a wall cement faced, between 8 and 10 feet high.

The 1816 Award, made under the Rollesby Inclosure Act 1813 (53 Geo. 3 cap. xxx), contains an allotment as follows:- WE ... do hereby award unto THE SURVEYORS OF THE HIGHWAYS of the said Parish of Rollesby for the time being and their successors the two several pieces of land hereinafter mentioned being part of the ... Waste lands in the said Parish ... as and for public clay gravel and sand pits to be used in common by the proprietors of lands and estates in the said Parish and their respective tenants as well for their own necessary uses within the said Parish only as for the repairs of the public and private roads in the said Parish viz ALL THAT piece of land No.22 containing ... AND ALSO all that piece of land No.29 containing by measure one acre and two perches bounded by land herein awarded to ... and by the firstly described public road set out by us the said Commissioners towards the northeast by Rollesby Broad herein awarded to John Ensor Esquire towards the southwest ... Except and always reserved unto John Ensor Esquire his heirs and Assigns and his and their tenants and servants a right of going unto and upon such part of the said piece of land number 29 as lies next the water for the distance of two yards at all times for ever hereafter for the purpose of bringing and laying nets and other



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materials for fishing thereon ... "

The Award map shows allotment no.29 as land which was quite different from what the Unit Land now is; the allotment land extends to a much greater distance from the Bridge and fronts on the road for only about half its length. Further if the Award map is compared with the Register map, it appears that since 1816 much of what was then water of the Broad is now land.

Mr. Beevor in his letter indicated how in relation to the Unit Land, the boundary of allotment No.29 would appear and said: "... there is still a small triangle with a road frontage of about 150' (meaning the northwest part of the Unit Land) which presumably the Parish retained when it sold the rest of the Allotment to Mr. Spall (meaning the owner of Broadlands) or his predecessor".

Sir Patrick Benn said:- The Parish Council have been in possession of the Unit Land all his life and such possession has never been disputed. The Parish Council have from time to time tidied it up; every 3 or 4 years a man has been there with a saw and a scythe; the Parish Council have cut trees 3 or 4 times at least since 1956. The sale described by Mr. Beevor was before his time.

Having compared the Award map (1/5,000 it seems to me) with the Register map (1/2,500), I find (as Mr. Beevor indicated) that either no part or only a small and insignificant part of the Unit Land is within the area of allotment no.29 as delineated on the Award map. I infer that the Unit Land has since 1816 assumed its present form as a result of gradual accretion of land from water and accordingly belongs to the owner of the land gradually added to, see Theobald, Law of Land (2nd edition 1929) page 238. If therefore allotment no.29 had ever since 1816 continued to be used as apparently contemplated by the 1816 Award, the Unit Land would now belong to the Rural District Council as successors of the Surveyors of the Highways under section 25 and 67 of the Local Government Act 1894, unless it had become vested in the County Council as highway authority under section 118 of the Local Government Act 1929. But in fact, allotment no.29 has almost entirely become part of Broadlands garden and the lands beyond. For many years no part of the Unit Land could sensibly be used as a pit as contemplated by the 1816 Award.

I must I think, notwithstanding the Award, presume a lawful origin for a state of affairs which has existed for so long. Neither the Rural District Council nor the County Council attended the hearing to claim ownership, and I can therefore as against them, give full weight to the evidence I have of the Parish Council having been and being now in possession of the Unit Land. I presume that in some circumstances now forgotten, the Surveyors of the Highways or their successors under some authority which cannot now be found, authorised the Parish (as stated by Mr. Beevor) to sell the land on the northwest side of the wall and to retain the land and all accretions thereto on the other side, so that the Parish Council are now the owners of such land, subject of course to such rights (if any) as the proprietors and tenants and other persons mentioned in the above quoted allotment may have (so far as such rights subsist; I am not concerned whether they do). For these reasons I am satisfied that the Parish Council are the owners of the Unit Land and I shall accordingly direct the Norfolk County Council, as registration authority, to register Rollesby Parish Council as the owner of the land under section 8(2) of the Act of 1965.



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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

7th

day of

August

1973.

a. a. Baden Fuller

Commons Commissioner