



COMMONS REGISTRATION ACT 1965

Reference No. 234/U/121

In the Matter of Depden Green, Depden,
Suffolk

DECISION

This reference relates to the question of the ownership of land known as Depden Green, Depden, being the land comprised in the Land Section of Register Unit No. VG 35 in the Register of Town or Village Greens maintained by the Suffolk 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 Blewburton Farms Limited claimed to be the freehold owner of the land in question and no other 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 Bury St Edmunds on 19 January 1982.

At the hearing Blewburton Farms Limited, the Trustees of the Bristol Settled Estates, and Earl Jermyn were represented by Miss Sheila Cameron, of Counsel, and the Depden Parish Council were represented by Mr A D Shirreff, Solicitor.

On the tithe apportionment map of the Parish of Depden, dated 1839, the land the subject of the reference is marked "The Green" without any number.

On 20 July 1870 the Depden Estate was put up for sale by auction. In the particulars of sale it is stated that the entire property, containing 809 a.Or.21p. of land and 34 "Commonages" would first be offered together in one lot, and if no sufficient bidding was obtained, the Estate would immediately be put up in 14 separate lots. On the plan accompanying the particulars, the Green is not shown as forming part of any lot, but lot XIV is stated to consist of the manor or lordship of Depden and "also the Lords' interest in the Common at Depden, which is of considerable value". There is no land marked "Common" on the plan, but since a number of the lots are stated to include "Rights of Commonage upon Depden Green" it appears that what was being offered in lot xiv was the lords' interest in the land the subject of the reference.

The property comprised in lots I, II and XIV was conveyed to the then Marquess of Bristol by an indenture made 6 May 1871 between (1) Walter Tyrell and Thomas Lyon Thurlow (2) Frederick William John, Marquess of Bristol. Lot I consisted of Depden Hall Farm with eight rights of commonage upon Depden Green, and Lot II consisted of the Gate Farm with six rights of commonage. It appears from an abstract of an indenture made 6 December 1899 between (1) F W J, Marquess of Bristol (2) Frederick William Fane Hervey that the Marquess also acquired most, if not all, of the remainder of the property offered for sale in 1870.

Depden Hall Farm, together with other land, was conveyed to Lady Marjorie Erskine by a conveyance made 3 March 1956 between (1) Alice Frances Theodora, Marchioness of Bristol (2) The General Accident Fire and Life Assurance Corporation Limited and



- 2 -

Mereline Mary Phyllis MacRae, (3) Marjoire Erskine (commonly called Lady Marjorie Erskine). The parcels of this conveyance did not mention any part of Depden Green, but the parcels of a conveyance made 8 February 1957 made between (1) M Erskine (commonly called Lady M Erskine) (2) Percival Lawrence Smith repeated the parcels of the 1956 conveyance together with "such rights as are vested in the Vendor over the common land known as Depden Green", and the conveyance was made subject to the right of the Clare Rural District Council to maintain and use a water main across the green and the farm free of any wayleave rental, the right of the Electricity Board to maintain and use two poles on Depden Green free of any wayleave rental and the right of the Post Office to maintain and use various telephone poles on the farm and on the Green.

By a conveyance made 8 October 1975 between (1) Gladys Mary Smith, Ronald Percival Lawrence Smith and Peter Lawrence Smith (2) Blewburton Farms Limited there was conveyed to Blewburton Farms Limited the property described in the parcels of the 1956 conveyance together with the right of common appertaining to that property over the part of Depden Village Green coloured green on the annexed plan (which part comprised most of the land the subject of the reference)" which were described in a conveyance dated the Eight day of February, One thousand nine hundred and fifty seven and made between the Right Honourable Marjorie Erskine of the one part and the said Percival Lawrence Smith of the other part as 'such rights as are vested in the Vendor (meaning the said Marjorie Erskine) over the common land known as Depden Green' and the particulars of the registration whereof by the West Suffolk County Council under the Commons Registration Act 1965 under the reference.....VG 35 entries 2 and 10.....appear from the copy extract from the Register which is annexed hereto". Entry No. 2 in the Rights Section of the Register Unit is of a right to depasture stock limited to 84 head over a part of the land comprised in the Register Unit which is identical with the land coloured green on the plan annexed to the 1975 Conveyance and Entry No. 10 states that the registration at Entry No. 2, being undisputed, became final on 1 October 1970.

The lordship of the Manor was surrendered to the Trustees of the Bristol Settled Estates by a deed of surrender and disentailing assurance made 2 April 1965 between (1) Victor Frederick Cochrane, Marquess of Bristol (2) William George Hervey, Baron Hylton and the Public Trustee. The lords' interest in the Common at Depden is not mentioned in the parcels of this deed, but any such interest would pass with the lordship of the Manor by virtue of Section 62 of the Law of Property Act 1925.

During World War II Depden Green was requisitioned and ploughed up. After it was derequisitioned Mr P L Smith laid it down to grass and the grass was cut for hay once a year until Mr Smith died in 1970, after which his son and namesake continued to do so. The hay was sold. After the Green had been put down to grass nobody put any animals on it. Mr S J Ashman, who has worked on Hall Farm for the last thirty years, said that Mr P L Smith, senior, bought the rights of the Marquess of Bristol's tenants, but there was no written evidence of this, and it would appear to be unlikely, since Mr Smith did not object when a number of other people applied for the registration of rights over the Green.

After Mr P L Smith purchased the farm he granted further electricity and telephone wayleaves and received the rentals due in respect of such wayleaves.

It is arguable that Mr P L Smith, senior, took possession of the Green by laying it



down to grass, cutting the grass for hay, and receiving the wayleave rentals. However, he applied for the registration of a right of common over the Green which was inconsistent with his ownership of it, and when his successors in title, who were members of his family, came to sell the farm the only interest in the Green which they claimed to have was the right for the registration of which he had applied. The proper inference to draw from these facts is that, although Mr Smith, senior, was in possession of the Green for a sufficiently long time to acquire a possessory title, his possession was not adverse, but with the permission of the owner, so that he did not acquire such a title. It has further to be borne in mind that by virtue of Section 10 of the Commons Registration Act 1965 the registration at Entry No. 2 in the Rights Section of the Register Unit is conclusive evidence that a right of common over the part of the Green coloured green on the plan attached to the 1975 conveyance is attached to Depden Hall Farms, which could not be if the farm and the Green were in the same ownership.

It is therefore necessary to consider whether there is evidence that the ownership of the Green has passed with the lordship of the Manor. If I am not satisfied as to this, the Parish Council will have to be registered as the owner of the land.

In 1870 certain of the lots were offered for sale with right of commonage upon Depden Green, such rights amounting to 34 in all. Mr Shirreff cited the decision in Whits v Taylor (No. 2), (1969) 1 Ch. 160, which is authority for saying that if the Green and the lots were in the same ownership before the sale, there could in law be no existing rights of common attached to the land comprised in the lots. Therefore Mr Shirreff argued, if there were rights of common existing at the time of the sale, the Green could not have been in the ownership of the vendors, who were the lords of the Manor. The validity of Mr Shirreff's argument thus depends upon whether rights which were being offered for sale were pre-existing rights to which the vendors were entitled or rights which the vendors were proposing to create.

The earliest available evidence relating to rights of common over the Green is an agreement dated 3 May 1794 made by the proprietors and occupiers of land to which pasture rights upon the common land of Depden were attached. A schedule shows that there were 80 rights divided unequally among 21 properties, one of them being the blacksmith's shop. The schedule to a similar agreement dated 10 February 1837, also shows 80 rights divided among 20 properties.

After the Marquess of Bristol purchased the lordship of the manor, Mr Joseph Farrow of Depden Gate Farm (which had been Lot II in the 1870 auction) attended the General Court Baron and Customary Court of the Marquess of Bristol held on 14 October 1884 and produced an old list of common rights upon Depden Green and requested that a revised list should be made, but it does not appear whether any such list was made. There is, however, a list made in 1892 showing the 80 rights attached to 17 properties together with one for the Pinner (the manorial officer responsible for the pinfold or pound). Another list made in 1905 shows the 80 rights attached to 21 properties, again with one for the Pinner. In the 1905 list the Marquess of Bristol is shown as the owner of 42 of the rights then attached to seven properties, and there is an entry for land near the mill to which 8 rights had been attached which had been sold with the common rights reserved to Lord Bristol.

It is thus apparent that the grazing on the Green was divided into 80 parts for the whole period for which there are records available. It is also apparent that such division was a manorial matter, from which I draw the inference that the 34 rights offered for sale in 1870 had been attached to the land with which they were offered



- 4 -

at some time in the past when the land had been copyhold of the manor, and that the land had later been taken in hand by the lord of the manor and let on the annual tenancies referred to in the particulars of sale with contractual rights to graze the same number of animals as had been attached to the former copyhold tenements. This process was continued by the Marquess of Bristol after he became lord of the manor, thereby increasing his rights from the 14 which he bought with Lots I and II in 1870 to 50. When a copyhold tenement was taken in hand the rights of common attached to it were extinguished by unity of possession, but it was good estate management when letting the tenement on an annual tenancy to include in the tenancy rights quantified by reference to the rights of common formerly attached to the tenement. This is a much more probable explanation of the evidence than that the lords of the manor in 1870 were entitled to rights of common over Depden Green then in the ownership of some person unknown. The inclusion of rights in the particulars of some of the lots was thus an offer by the vendors to create a new right of common on the sale of each lot.

For these reasons I am satisfied that the present Trustees of the Bristol Settled Estates are the owners of the land in their capacity as lords of the manor, and I shall accordingly direct the Suffolk County Council, as registration authority, to register them as the owners of the land under section 8(2) 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

17th

day of

March

1982

Chief Commons Commissioner