



COMMONS REGISTRATION ACT 1965

Reference NO. 234/U/171

In the Matter of St. Michael's Green,
St. Michael, South Elmham, Waveney D

DECISION

This reference relates to the question of the ownership of the land described above being the land comprised in the Land Section of Register Unit No. CL.30 in the Register of Common Land 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 claims to ownership of parts of the land in question ("the unit land") were made by (1) Mr D A J Smith (2) Mr and Mrs R E Colbear.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Southwold on 29 July 1987.

At the hearing Mrs J M Smith, Solicitor, appeared on behalf of Mr D A J Smith, and Mr R J Winyard, Solicitor on behalf of Mr and Mrs Colbear. No other claimant appeared. A number of local residents appeared in person, and the Registration Authority was represented by Mr I Rands.

The unit land has an area of upwards of 20 acres. The respective parts of which ownership is claimed are small strips adjoining each other in or near the boundary of a property known as Three Ashes Farm, which is situated at the north-western end of the unit land. By a Conveyance on sale dated 30 May 1972 this farm was conveyed to Derek Smith, the premises of some 24 acres being described by reference to the O S Map and to the plan on an earlier Conveyance of 1941. Included in the premises so described were O S Part Nos 40 and 69, No. 41, No. 71 and No. 68, but they do not on the plan include the two strips now claimed, and Mrs J M Smith did not contend that they were included.

By a Conveyance on sale dated 28 August 1984 Derek Aubrey John Smith conveyed to Mr and Mrs Colbear the Three Ashes Farmhouse and land being enclosures O S Nos. 41 and 69, edged red and coloured green on the plan annexed to the Conveyance. The land coloured green is the strip now claimed by Mr and Mrs Colbear. The Conveyance/seisin of the Vendor in fee simple of the property, and reserves certain rights to the Vendor as owner of the land edged blue on the plan. The land edged blue comprises O S Nos. 68 and 71 and also the strip of common now claimed by Mr D A J Smith: This strip includes a tract leading up from the roadway which crosses the unit land on its western side.

Evidence was given by Mr Stephen J Smith, now aged 26, who said that he lived at Three Ashes Farm during the first twenty-two years of his life. He remembered as a little boy getting from the roadway to the farm both on foot and with vehicles. The strip is not fenced all round, but there is a single wire fence at its southern edge, which was put up by a Mr Jordan, the owner of land on the other side of the fence. The tract, he said, was not used except by members of his family going to and from the farm.



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As regards the strip included in the 1984 Conveyance to Mr and Mrs Colbear, they told me that the strip is grass with daffodils growing in season, and in parts adjoins the roadway and in parts is wider than the roadway verge. Mrs Molineaux, the Chairman of the Parish Council, told me that there was a flower bed on the strip, which was planted some time after 1966, probably by Mr D Smith.

Conclusion. I find the two claims somewhat difficult to evaluate. The paper title of Mr D Smith to the farm does not appear to comprise either strip, yet in the 1984 Conveyance by him to the Colbears he purports to include the strip which they now claim, and in the reservation of rights in his favour to include the other strip as in his ownership. Mr Stephen Smith's evidence supports the existence of rights of access across the strip whose ownership Mr D Smith claims, but in regard to neither strip was there any evidence of acts of ownership to support the apparent belief as to its ownership indicated by the provisions of the 1984 Conveyance.

In the result I am not satisfied that either claim has been made out, or that any person is the owner of any part of the unit land, and it 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

19 November

1987

L. J. Morris Smith

Commons Commissioner