



COMMONS REGISTRATION ACT 1975

Reference No. 267/U/2

In the Matter of The Pond, Pitt Lane,  
Bickenhill, Solihull District, West  
Midlands.

### DECISION

This reference relates to the question of the ownership of land known as The Pond, Pitt Lane, Bickenhill, Solihull District, being the land comprised in the Land Section of Register Unit No. VG.131 in the Register of Town or Village Greens maintained by the West Midlands County Council (formerly the Warwickshire 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 Bickenhill Parish Council claimed to be the freehold owner of the land in question and Mr Norman B. Cattell sent a letter to the Clerk of the Commons Commissioners giving information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Birmingham on 2 October 1975. At the hearing Bickenhill Parish Council were represented by Mr J. V. Vobe solicitor of J. V. Vobe & Co. Solicitors of Birmingham, and Mr Vincent McCutcheon attended in person on his own behalf and as representing his wife Mrs Sheila McCutcheon.

On behalf of the Council evidence was given by Mr G. Billingham who has been their clerk since 1971, by Mrs K. Blore who has lived in the Village for the last 23 years and been a member of the Council for 2½ years. Mr Norman Berry Cattell of Farm Cottage, Pitt Lane, Bickenhill volunteered to give evidence. Evidence was also given by Mrs McCutcheon on behalf of herself and her husband, they claiming to be the owners of the land.

The land ("the Unit Land") is on the northeast side of Pitt Lane, near where it joins Church Lane (a motor road leading from the A 45 Coventry-Birmingham road to Bickenhill Village). The Unit Land is open (unfenced) to Pitt Lane and is for the most part a pond. Adjoining the Unit Land on the northwest and on the same side of the Lane is Blythe Cottage and garden; further along the lane and on the other side is Farm Cottage and garden; by it the Lane ends but a footpath continues from it to the northwest.

The history of the Unit Land and its surroundings, as I piece it together from the evidence, is as follows:- For the last 25 years Mr Cattell has owned and occupied about 60 acres of land situate within the triangle formed by the A 45 road, Church Lane and Clock Lane, including all the land which surrounds the Unit Land and which is northeast of Pitt Lane and the footpath leading out of it, except Blythe Cottage and garden (0.48 acres; O.S. Nos. 9856 and 0161) and except two fields ("the Adjoining Fields"; 3.28 acres; O.S. Nos. 0160 and 0757); he never owned Blythe Cottage; he formerly owned the Adjoining Fields; he sold them to Mr J. E. Parker (the Land Certificate produced by Mrs McCutcheon showed that Mr Parker was registered as owner on 15 August 1959). Mr Cattell said that on his documents of title the Unit Land was left white, so he had always understood that he had not bought it, that nobody owned it, and that it was just common land. Mrs Blore said:- in about 1970 there was tipping in the Pond; Miss D. I. Main who then lived at Blythe Cottage



objected and applied under the 1965 Act for the registration (made 12 February 1970) which has led to this reference; the Parish Council approached (verbally probably) Mr Parker who stopped further tipping (I infer he was mostly responsible) and the Pond was cleared (Mrs Blore thought that Mr Parker must have done this himself). In 1971 Mr and Mrs McCutcheon bought the Adjoining Fields and their Land Certificate (produced, Title No.119403) shows that they were registered on 29 November 1971. In a letter dated 2 November 1972, Meriden Rural District Council set out their investigations into a complaint about the Pond; it was in its natural state and not causing a smell; if it was filled in, there might be a flooding problem; it should not be filled in but cleared out and all rubbish removed; since the County Council and the District Council had no responsibilities, this must be done by the owner. In January 1973 members of the Parish Council had a site meeting to discuss the possibility of tidying up this area; it was felt that the Parish Council should try and remove the rubbish, that had been deposited and decide how to overcome the problem of the area becoming a dumping ground; the members present decided that the ditch should be cleared of rubbish, hard core laid from the carriageway to an existing pipe approximately six feet below level of field; they hoped that the land would be landscaped and thus improve the entrance to Pitt Lane. Mr Billingham said that the Parish Council accepted that they were responsible for clearing out the Pond, but because an owner of one of the cottages offered to tidy it up, the Parish Council took no action about clearing the rubbish and putting down hard core. In 1973, Mr and Mrs McCutcheon submitted to Warwickshire County Council a plan for the reclamation of the Unit Land; take out sludge and over grown vegetable and refuse material; fill in with hard core and provide land drain to connect with existing, provide top soil to form uniformly graded surface to levels around perimeter, and provide a traditional rustic post and rail fence; the plan showed access across the north end of the Unit Land to the existing gates leading into the Adjoining Fields and the remainder of the Unit Land as fenced in.

As to the ownership claim of Mr and Mrs McCutcheon:- I am concerned, not with deciding whether their ideas about improving the Unit Land are better or worse than those of the Parish Council, or whether it is more expedient that they rather than the Parish Council should be the owners, but to determine whether the evidence put before me establishes their ownership or the ownership of any other person. The Land Certificate which by reference to a plan shows their title to the Adjoining Fields, clearly does not include the Unit Land. Mrs McCutcheon pointed out that there is now (and always has been) access leading into the Adjoining Fields across the north end of the Unit Land and suggested that the Land Certificate plan was mistaken. I am not persuaded that I can by appearance alone deduce any such mistake; the Unit Land and the Adjoining Fields are separated at most places by trees and vegetation, which, from the information put before me, I conclude, ~~is~~ although ~~is~~ not at all places continuous, are distinctive enough to indicate that the Unit Land is a piece of land distinct from the adjoining Fields. I have I think no good ground for concluding that the Land Registry made a mistake in their preparation of the Land Certificate. In my opinion Mr and Mrs McCutcheon are not the owners.

Neither in my opinion are the Parish Council. They have no documents of title; the things described to me as having been done on their behalf, in my view fall short of showing that they ever took possession. No other reason for my concluding that they are the owners was suggested.

It was not suggested that anyone other than the Parish Council or Mr and Mrs McCutcheon could be the owners. For the above reason I am not satisfied that any person is the owner of the land, and I shall accordingly (as Mr Vobe contended *R.C. (Shed)*) direct the West Midlands County Council, as registration authority, to register



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Bickenhill 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 8<sup>th</sup> day of October 1975

*a. a. Baden Fuller*

Commons Commissioner