



In the Matter of (1) The Village Green, (2) the area of Green between Dolphin Public House and Jessamine Cottage, (3) the Gravel Pit in Paper Mill Lane, (4) land formerly a pond near the Parish Church, and (5) the land on which the pump stands, all in Stoke Hammond, Aylesbury Vale District, Buckinghamshire.

DECISION

These references relate to the question of the ownership of lands known as (1) The Village Green (containing about 0.35 of an acre), (2) the comparatively small area of Green between the Dolphin Public House and Jessamine Cottage (containing about 0.09 of an acre), (3) the Gravel Pit in Paper Mill Lane (containing about 0.94 of an acre), (4) the site of a former pond near the Parish Church (containing about 0.04 of an acre), and (5) the site at the junction of Newton Road and Church Road on which the pump stands (containing about 0.02 of an acre), all in Stoke Hammond, Aylesbury Vale District, being the lands comprised in the Land Section of Register Unit (1) No. CL175, (2) No. CL176, (3) No. CL177, (4) No. CL178 and (5) No. CL179 respectively in the Register of Common Land maintained by the Buckinghamshire 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 no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Aylesbury on 18 June 1979. At the hearing Stoke Hammond Parish Council were represented by Mrs P M Murphy their vicechairman.

Mrs Murphy who has lived in the Parish since 1949 and been a member of the Parish Council since 1961, of the CL177 Land ("the Pit Land") said in effect:- It used to be a large hole from which all the gravel had been taken, the gravel having been used so she thought in the construction of the nearby Grand Junction Canal (made perhaps 200 years ago). When she first came to the Parish, the Pit Land was being used by Wing Rural District Council as a rubbish dump. It became full, so the RDC covered it with top soil and seeded it and in about 1967 or 1968 "handed it back to the Parish". The public road which forms the north boundary of the Pit Land leads from the Village (on the west) to a bridge over the Canal (on the east) and so far is a County road; thereafter it becomes a private road and a (? public) bridlepath. Although this road is little used, the Register map is as to the surrounding land misleading, in that between the Pit Land and the Village, there are now a number of dwellinghouses and a school, so the Pit Land is convenient for children. Further the Parish Council have since about 1950 held the adjoining 4 or 5 acres on the south side of the Pit Land as a recreation ground under a lease (originally for 21 years) granted by Mr Kessler; this ground is sublet by the Parish Council to the Stoke Hammond Sports Club. Since the Pit Land was handed back to the Parish Council, they have planted trees on the west end (part of the Jubilee Scheme), and erected some garages (near and within the south boundary of



the Pit Land); about these, there has been very considerable correspondence between the Parish Council and the Aylesbury Vale District Council as to the maintenance of the track to the garages (from the said public road). The rest of the land has been kept mown by the Parish Council, and children play there. Since about 1972 the annual village bonfire has been held on the land. The Parish Council minute book records that the meeting on 9 October 1967 considered a letter from Mr D F Kessler asking permission to place a pole on the Old Gravel Pit to carry a supply of electricity to a building on OS No. 230 (northeast of the Pit Land) and "it was agreed to raise no objection". Afterwards (so Mrs Murphy said) Mr Kessler built a milking parlour and for it erected the pole and electricity wires.

Mrs Murphy of the CL179 Land ("the Pump Land") said in effect:- The Parish Council own the pump. It is an old country pump, with a wood casing. The Parish Council 10 or 12 years ago decided to do the whole thing up, and spent about £10. During a water shortage about 3 years ago, it was primed but it only produced brackish water. In 1977, Mr (?) S Potter rearranged the posts around it.

Mrs Murphy of the CL178 Land ("the Pond Land") said in effect:- As she first knew it, there was a pond there. About 20 years ago or in the early 1960's, Mr S Dancer with the permission of the Parish Council filled it in, so that it could be grassed over and kept tidy; and so he kept it for a number of years, and afterwards others did this. Recently there have been building operations on some nearby land, and the Pond Land is now an eyesore.

Mrs Murphy of the CL175 Land ("the Main Green") and the CL176 Land ("the Small Green") said in effect:- Both these Greens belong to the Parish Council. The County Council have the Stoke Hammond Inclosure Award dated 1775 made under an Act of 1774, but there was (so she understood) no map attached to the award. As regards the surrounding land, the Register map is misleading in that recently the land to the north has been much built over (dwellinghouses) and the road on which the Greens front (B488) has near the junction been straightened. The Greens have been used for Church Fetes and Jubilee celebrations. The roads across the Main Green are maintained by the County Council; the Small Green and the rest of the Main Green are maintained by voluntary labour, the Parish Council paying for the upkeep of the mower and the petrol. There are white posts on the Main Green to stop people parking and these have been (at least since 1961) painted and renewed as needed by the Parish Council.

Two days after the hearing I inspected the lands. Although Mrs Murphy of all of them said that they are reputed to belong to the Parish Council, their situation and appearance are so different that each requires separate consideration.

The Pit Land appears to be public land; the fence against the road on its north side is insubstantial and is no hindrance to public access. Although convenient for users of the nearby recreation ground, Mr Kessler's 1967 application shows that he did not regard the activities of the Parish Council as associated with it so as to bring the Pit Land within the lease he had granted. Mrs Murphy said that the general feeling was that Wing Rural District Council tipped rubbish under licence from the Parish Council so that when the Parish Council asked for it back, they were merely getting what they already owned. In the absence of any claim by the Aylesbury Vale District Council as successors of the RDC, I can I think on the information summarised above accept this view and conclude that the Parish Council are the owners.



As regards the Pump Land, the pump itself would have vested in the local authority by section 64 of the Public Health Act 1875. The reputed ownership mentioned by Mrs Murphy of the Parish Council is consistent with this vesting and the general appearance of the land (its surrounding white posts) supports this view. As an old village water supply it must have of former times been of importance and I infer therefore that it has always "belonged to the Parish" within the popular meaning of these words and is therefore now vested in the Parish Council as successors of the Churchwardens and Overseers in accordance with the principle set out in ~~Ex v~~ Terry (1835) 4 A&E 274 at page 281 and Haigh v West 1893 2 QB 19 at page 31.

On the Pond Land, the line of the old edge of the pond is still visible. Its situation (close to the Church) and general appearance indicates that it too belongs to the Parish within the popular meaning of these words, and I conclude for the reasons set out in the preceding paragraph that it is now owned by the Parish Council.

The Main Green is in an important position in the Village, open to the said public road (B488). The grass is well kept; there is a public seat and some attractive trees. There are two prominent boards showing its name as "THE GREEN". The general appearance is very attractive and it is obviously a valuable amenity for those who live nearby and for many others. Mrs Murphy's evidence about it was very short ~~and~~ she produced no documents; it is I suppose likely that it is mentioned often in the minute books of the Parish Council which she had not got with her. As to this she explained that she had not realised that at this inquiry I had to be "satisfied" as to ownership; it had not occurred to her that anyone would dispute the ownership of the Parish Council. Bearing in mind the period of time over which Mrs Murphy's knowledge of local affairs extends and having regard to the present appearance of the Main Green, I can I think give full ^{effect} ~~to~~ ~~her~~ ~~statement~~ ~~that~~ ~~the~~ ~~Parish~~ ~~Council~~ ~~is~~ ~~the~~ ~~reputed~~ ~~owner~~, and ~~conclude~~ ~~that~~ ~~they~~ ~~are~~ ~~the~~ ~~owners~~.

The ownership of the Small Green is perhaps not so obvious. When I inspected this land the grass on it was somewhat neglected. However although it is nearer the Dolphin Public House, it is separated from it by a stream and a substantial stone wall and can I think be regarded as distinct from any lands of theirs. Along and within the northwest boundary there is a footpath leading across a bridge over the stream to some houses beyond; the grass near this path has been kept tidy by (?) occupier of the adjoining cottage; this activity is not I think enough to make the Small Green part of the Cottage Land. In the middle a tree has recently been planted, but apart from Mrs Murphy's statement that the Parish Council maintain all these lands, I have no evidence as to who did this. Notwithstanding the somewhat vague information I have about the Small Green, there being no contrary claim, and I with some hesitation conclude that my decision about it and the Main Green should be the same.

For the above reasons (slightly different in the case of each of the lands) I am satisfied that the Parish Council are the owners of all the lands and I shall accordingly direct Buckinghamshire County Council, as registration authority, to register Stoke Hammond Parish Council as the owners of all the lands 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 24th — day of July — 1979.

a. a. Baden Fuller

Commons Commissioner