



In the Matter of the Parish Pit,  
Little Horwood, Aylesbury Vale  
District, Buckinghamshire

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry No 1 in the Ownership Section of Register Unit No CL. 160 in the Register of Common Land maintained by the Buckinghamshire County Council and are occasioned by Objection Nos 87 and 88 respectively made by Winslow Rural District Council and noted in the Register on 4 May 1971.

I held a hearing for the purpose of inquiring into the disputes at Aylesbury on 23 June 1976. At the hearing (1) Little Horwood Parish Council (in the Ownership Section they are provisionally registered as owners) were represented by Mr W Bull their clerk, and (2) Aylesbury Vale District Council were represented by Mr S D Wadsworth solicitor of the Council's Legal Department.

The land ("the Unit Land") comprised in this Register Unit is approximately rectangular, is about 140 yards long and 50 yards wide, and contains (according to the Register map) 1.489 acres. It is about 50 yards west of the road from Winslow to Little Horwood, and is approached from this road by a track.

Both registrations were made on the application of the Parish Council. The grounds of objection are (O/87) "1. That the land was not common land at the date of registration. 2. That the land has never been common land", and (O/88) "that the Little Horwood Parish Council are not and never have been the owners of the land".

The Unit Land is the same as (or included in) that allotted by the Little Horwood Inclosure Award dated 30 May 1767 in these words: "WE DO hereby set apart Allot and Appoint as and for a Publick Stone or Gravel Pit All that Lot Plot Piece or Parcel of Land or Ground lying in the Middle Field by the said Act intended to be divided and inclosed as aforesaid containing One Acre two Roods and Twenty Perches ...BOUNDED...which said last described Allotment so set apart and allotted for a Publick Stone or Gravel Pit We do Order and direct shall be fenced by a Gate... and shall...be marked or bounded with sufficient Meer Stones or otherwise by Hedges Ditches and Fences...AND WE DO hereby award order direct and appoint that the said Lot Plot Piece or Parcel of Land or Ground so by Us set apart and allotted as and For a Publick Stone or Gravel Pit as aforesaid shall pursuant to the Purport and Directions of the said Act be from henceforth used and Enjoyed in Common by all and every the Owners and Proprietors of the Lands and Grounds by the said Act intended to be divided and inclosed and their Tenants for Materials for Repairing the Roads of the parish of Little Horwood aforesaid..."



Mr Bull produced (1) extracts from the minutes of the meetings from 21 May 1895 to 8 October 1937 of the Winslow Rural District Council (2) extracts from the minutes of the meetings from 31 January 1898 to 13 October 1937 of Little Horwood Parish Council and (3) the Minute Book of the meetings from 1894 to 1964 of the Parish Council. He drew my attention to the observations on the legal position made (a) in an advice dated 13 February 1964 given by the National Association of Parish Councils, (b) in a letter dated 26 February 1968 from Mr R E Millard, clerk of the County Council, and (c) in an advice dated 15 March 1968 by the said Association.

Mr Wadsworth read an affidavit sworn on 22 June 1976 by Mr R G Brown who was clerk of Winslow Rural District Council from 1 April 1947 to 31 March 1974, and addressed me on the legal position, conceding that he could not support paragraph 2 of the grounds of objection (O/87).

The said extracts and the statements in the said affidavit were agreed. Mr Bull said that there is a very strong feeling in the Parish that the Unit Land has belonged to the Parish Council for years. Both he and Mr Wadsworth said that their Councils would like a decision on the legal position.

There was no evidence about the use made of the Unit Land after the 1767 Award and before 1895.

From the Rural District Council 1895-1897 minutes it appears:- In 1895 the Clerk produced an opinion that unexhausted Parish Gravel Pits vested in the District Council, and it was resolved that "the Little Horwood Parish Gravel Pit be taken over by the Council". After this in 1895 and 1896 there were discussions at this Council's meetings about fencing the Unit Land. On 3 December 1897, the Surveyor having reported that he had caused trial holes to be dug at the Little Horwood Gravel Pit but had been unable to find any gravel, it was resolved that the consent of the Local Government Board to the sale of the Pit be requested; its approximate value was then £40. On 28 January 1898, the Clerk read a letter from the Board stating that the property could be sold by the Little Horwood Parish Council with the consent of the Parish Meeting; the Clerk was instructed to reply that the Council considered that the Pit passed to them by virtue of the Local Government Act 1894. On 11 March 1898, the Clerk read a letter from the Board stating that the land was saleable under the Sale of Exhausted Lands Act 1876, which enacted that such property should be dealt with as land falling within section 3 of 5 & 6 Will 4 c.69, under the last named section the land would prior to the passing of the Local Government Act 1894 have been saleable by the guardians of the Winslow Union; by section 6(1)(d) of the Act of 1894, the powers of the guardians as to sale etc of Parish Property were transferred to Parish Councils by section 52(1); as a Parish Meeting held on 4 February 1898 refused to consent to a sale, the Board could proceed no further in the matter. On 9 September 1898, the Clerk read a letter from the Board stating that there was nothing in the Board's March letter inconsistent or which would interfere with the holding and the management of the allotment by Winslow Rural District Council as highway authority. The Council apparently took no further action about the sale, proceeding at the September and later meetings in 1898 to consider complaints about the dangerous and disgraceful state of the Pit, and ultimately arranging for "the bite of the Gravel Pit" to be let for £1 for one year only.

An extract from the Rural District Council Minutes records briefly that during 1899 to 1936 Little Horwood Gravel Pit was let on a number of occasions as "grasskeeping". During this period, the only mention in the Parish Council Minutes is of the possibility of obtaining from the Parish Pit gravel for the repair of "the plank in School Close" and "the footpath in Hollow Close".



From the 1936 and the 1937 Minutes of the Rural District Council and the Parish Council it appears:- In March 1936 the Parish Council suggested to the Rural District Council that the Pit would be an excellent place for the disposal of Parish rubbish. The Rural District Council resolved in April 1936 that the Pit be used as a refuse tip and in April 1937 that the Ministry of Health be asked for permission; meanwhile the Parish Council resolved in February 1937 to protest against the Pit being used by the District Council for their "District Scheme" and to claim that as the Ground was awarded to the Parish for the purpose of obtaining materials for the repairs of the roads in the Parish and now that the District Council was not using the Pit for this purpose, its control should revert back to the Parish Council. In October 1937 the Rural District Council resolved that the question of the ownership of the Pit be not further considered, and the Parish Council considered a letter which the Rural District Council had received from the Ministry of Health stating that, as the Gravel Pit could not be used by the Council for their Scheme for the collection and disposal of house refuse, it would now revert "to the Lord of the Manor to whom it belonged previous to the Parish Award Act of 1843 (sic)".

I had no evidence as to what happened between 1937 and 1947.

From the said affidavit it appeared that from 1947 to approximately 1971 the Unit Land was used by the Winslow Rural District Council as a refuse disposal site, that in 1971 the pit became full, and the tipping of refuse ceased and between 1971 and 1974 the land was intermittently used for the tipping of top soil.

On 23 June 1976 I inspected the Unit Land.

As I understood Mr Bull and Mr Wadsworth the substance of the matter is that both Councils would like to know whether the Unit Land is "District" land or "Parish" land. I cannot except indirectly and incompletely deal with this question because my jurisdiction in these proceedings is limited to determining: (i) whether the land is within the definition of "common land" in the Commons Registration Act 1965, and (ii) if it is, whether the Parish Council is "the owner" within the meaning of that Act (ie owner of the legal estate in fee simple). Although my jurisdiction as to ownership is conditional upon the land being common land, in determining whether any land is common land within the definition, I may (and in this case I think I must) form some conclusion as to the ownership (legal and beneficial) from time to time.

The 1767 Award was made under the Little Horwood Inclosure Act 1766 (6.Geo 3.c.xxv). The Act recites that there were in Little Horwood open and common fields etc containing about 960 acres, that certain named persons and others were the Proprietors of the said fields etc, and the Lands and Grounds of the several Proprietors "lie intermixed and dispersed". The Act (among other things) enacts that the Commissioners thereby appointed are to allot part of the said lands and Grounds for the "improprate or great Tythes", and "a Quantity of Land not exceeding Two Acres Part of the Lands and Grounds hereby intended to be divided and inclosed for publick Stone and Gravel Pits for the use of the Proprietors of the said Lands and Grounds and their Tenants and for getting material for the repairing of the Roads of the Parish of Little Horwood", and for the remainder to be allotted among the Proprietors.

Although the Act mentions the Manor of Winslow, and contains indications that some of the Proprietors were copyholders of that Manor, the Act makes no provision for the Lord except in his capacity as Improprator of all the Great Tythes; and I conclude



therefore that the "Lands and Grounds" by the Act intended to be divided were not then considered as then being owned in fee simple by the Lord of the Manor of Winslow or of any other manor.

Neither the Act nor the above quoted allotment of the Unit Land made under it, expressly states who is or are to be the owners, nor does it clearly state (as a modern Act might do) whether the land is to be held on a public charitable trust, or on trust for private individuals, or partly on a public charitable trust and partly on a private trust. In 1767, the need for any such statement may not have been felt by anyone. In re Christchurch (1888) 38 Ch D 520, Lindley LJ said, at page 530: "Now, although it is competent for the Legislature to create trusts unlike any previously known, we do not think that a trust of that kind ought to be held to have been created if it is equally consistent with the object and words of the statute to hold the trust to be one with which lawyers are familiar and which there is no difficulty in executing. If therefore this trust can properly be regarded as a charitable trust, it ought in our opinion to be so regarded". I do not overlook that there are indications both in the Act and the Award that the Owners and Proprietors and their Tenants are as individuals to have rights, but a trust for such a numerous body of persons is not one with which lawyers are familiar and there are difficulties in executing it. Contra, there are indications in the Act and Award that the Unit Land is to be held for the benefit of the persons in the locality (being the Parish of Little Horwood) generally; such a public charitable trust is familiar to lawyers and there is (having regard to the Charities Act 1960 and the High Court jurisdiction over charity land) no difficulty in executing it. Further there are indications in the Act and the Award that any such public charitable trust is not to be particular (so that if the trust fails, the persons entitled before the 1766 Act are to become owners), but is general and applicable to every estate and interest in the land and therefore incapable of failure; the Legislature could not have contemplated I think that the Unit Land when it was exhausted as a stone or gravel pit should once again become "intermixed and dispersed". I disregard the contrary view expressed by the Ministry in their 1939 letter because it appears to be based upon an 1843 Act of which I know nothing. My conclusion is therefore that under the Act and Award the Unit Land became subject to a public charitable trust as therein described for the benefit of the Parish of Little Horwood, being a trust which in law could never fail for want of charitable objects.

By section 17 of the Poor Act 1819 (59 Geo 3.c.12) the churchwardens and overseers of the Parish were empowered to "accept and take and hold in the nature of a body corporate for and on behalf of the Parish all lands belonging to the Parish". In Doe v Hiley (1830) 10 B&C 885, Lord Tenterden CJ held that this section had the effect of vesting in the churchwardens and overseers all land belonging to the Parish notwithstanding that it was not acquired for purposes relating to the poor, and this decision has since been treated as applicable to all lands "belonging" to a parish in the "popular sense of that expression", see Doe v Terry (1835) 4 A&E 274 at p.281 and Haigh v West (1893) 2 QB 19 at p.31; this last case although distinguished from the facts was recognised as stating law still applicable in Wylde v Silver (1963) 1 Ch 243 at p.271. In my opinion under the 1776 Act and the 1767 Award the Unit Land was land belonging to the Parish in "the popular sense of that expression".

I agree with the opinion expressed in 1898 by the Local Government Board, that the Unit Land was subject to the Sale of Exhausted Parish Lands Act 1876.



Mr Wadsworth contended (in effect) that the ownership of the Unit Land under the Local Government Act 1894 was vested in and still is vested in the Rural District Council (or its successor the District Council), and also contended that whatever might be the ownership position under the 1894 Act, the Rural District Council being in possession from 1947 to 1974 acquired a title to the land under the Limitation Act 1939, and could therefore treat the Unit Land as applicable for District purposes generally (see the resolution passed on 22 February 1974 and recorded in the said affidavit).

No doubt a District Council like any other person can take advantage of the Limitation Act 1939. But like any other person it is subject to the rule that a person who takes possession as trustee of an identifiable trust holds any land he acquires under the 1939 Act subject to the trust, see Halsbury Laws of England (3rd edition) volume 24 paragraph 566, and re Ingleton (1956) 1 Ch 585.

Mr Brown in his affidavit gives no indication as to how the District Council in 1947 then came to be using the Unit Land as a "refuse disposal site", although he does say that the Unit Land was known as "The Parish Pit". It would I think be unrealistic to suppose (and Mr Wadsworth did not suggest that I should) that the District Council came into possession of the Unit Land for any reason other than because it was a Parish Pit allotted as above stated. The 1876 Act was repealed by the Local Government Act 1933, but the wording of the 1876 Act is repeated in the definition of "parish property" in section 305 of the 1933 Act; so in and after 1947, the Unit Land was "parish property" for the purposes of the 1933 Act; this Act recognises that notwithstanding that parish property is vested in a rural district council, the parish may nevertheless have a beneficial interest, see section 166. Further I infer that the use made of the Unit Land by the District Council between 1947 and 1974 was of some benefit to the Parish, and could reasonably be regarded as a use cy pres to the public charitable use described in the 1776 Award. In these circumstances I am of the opinion that time under the Limitation Act 1939 never ran in favour of the District Council against the public charitable trust established by the 1776 Award.

I need not consider whether under the 1894 Act or otherwise the Unit Land ever passed to the Rural District Council as being highway land (as Mr Wadsworth contended) or passed to the Parish Council as seems in 1898 to have been assumed by the Local Government Board, because on either view it would remain subject to the same trusts as were applicable to it before 1894, see section 67.

My conclusion is therefore that however the highway and local interests under the 1776 Award may have devolved from time to time as between the Parish Council and the Rural District Council, the Unit Land has continued from 1776 up to the present day to be subject to the public charitable trust established by the 1776 Award.

Considering first paragraph (a) of the definition of common land in the 1965 Act which so far as relevant is: "(a) land subject to rights of common...". Although under an allotment contained in an Inclosure Award of land as a public gravel pit, individuals may have a right of common, in my opinion neither the Owners, nor the Proprietors nor the Tenants under the 1776 Act and 1777 Award have any such right; the Unit Land is to be "a Public...Pit"; there is nothing in either the Act or the Award limiting or quantifying the amount of stone or gravel an Owner, Proprietor or Tenant may take, and they could therefore only take as beneficiaries under a public charitable trust. Although under a public charitable trust individuals (eg the freemen of a Borough) may have individual rights which could



be rights of common, under the 1776 Act and the 1777 Award, neither the owners nor the proprietors nor the tenants had in my opinion any such rights. I conclude therefore that the Unit Land is not within paragraph (a) of the definition.

Considering next paragraph (b) of the definition which is: "waste land of a manor..." Many parish pits may have been allotted out of waste lands of a manor and may for this reason still be waste land of a manor within this paragraph. But in the 1776 Act the lands and grounds then intended to be divided are (as above stated) described as "intermixed and dispersed", and treated as land in which the Lord of the Manor of Winslow had no particular interest, ~~is the Act indicates that they were not~~ then thought to be waste land of a manor. Such evidence as I had as to the subsequent use of the Unit Land in no way supports the view that it has ever been considered waste land of a manor; I conclude therefore that it is not within paragraph (b) of the definition.

For the above reasons I am of the opinion that the Unit Land is not properly registrable under the 1965 Act as common land and accordingly I refuse to confirm the registration in the Land Section. By section 6(3) of the 1965 Act where the registration of any land as common land is cancelled, the registration authority shall also cancel the registration of any person as the owner thereof. Accordingly I express no opinion as to whether the registration in the Ownership Section would have been valid if contrary to my opinion the Unit Land were properly registrable as common land.

I can only add that having walked over the Unit Land and observed how much trouble and expense have been taken to make it the same as (or appear to be the same as) the surrounding land, I hope that those concerned will find some lawful way of using it (or the proceeds of the sale of it) for some worthwhile purpose. They may have to determine whether it is "Parish" or "District" land; I decline to express any opinion about this question because in my view (except to the limited extent set out above) it is a question which does not arise under the 1965 Act.

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 25<sup>th</sup> — day of October —

1976

a. a. Baden Fuller

Commons Commissioner