



In the Matter of Colchester Green,
Elmstead, Essex (No. 2)

DECISION

These disputes relate to the registration at Entry No. 1 in the Ownership section of Register Unit No. VG 14 in the Register of Town or Village Greens maintained by the Essex County Council and are occasioned by the conflicting registrations at Entry Nos. 2 and 3 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Colchester on 17 March 1981. The hearing was attended by Mr A Wilde, solicitor, on behalf of Mrs M E Betts, the applicant for the registration at Entry No. 2, and Mr A S Sayer and Ellison & Co (Trustees) Ltd the applicants for the registration at Entry No. 3. Mr C M D Gooch, the applicant for the registration at Entry No. 1, applied for leave to be represented by Mr R K Nabbet, a chartered surveyor, stating that he had been advised by a solicitor that Mr Nabbet was better qualified than he (the solicitor) to conduct the case. While I found this advice in a matter solely concerned with the title to land astonishing, I gave leave for Mr Gooch to be represented by Mr Nabbet in order to save the public purse the expense of another hearing: I say "the public purse", since if I had adjourned the matter for Mr Gooch to be represented by solicitor or counsel, I would have ordered him to pay to Mr Wilde's clients their costs of this hearing in any event, but there is unfortunately no provision of the payment of anything in the nature of court fees in connection with hearings of this nature.

Mr Gooch is the lord of the manor of Elmstead. The lordship was conveyed to Mr Gooch's father by a conveyance made 15 August 1919 between (1) Ernest Wythe Tompson (2) Charles Edward Gooch. Mr Gooch acquired the lordship from his father by a deed of gift in January 1933.

The land comprised in the Register Unit (hereafter called "The Green") is bounded on the north by Colchester Road and on the south by land which has been developed by housing, including a house known as "Nex-Tor" owned by Mrs Betts and a house known as "The Limes" owned by Mr Sayer and Ellison & Co (Trustees) Ltd. It is accepted that the whole of the Green was formerly waste of the manor of Elmstead, and the only question now in issue is whether the parts of The Green between "Nex-Tor" and "The Limes" and the road have been severed from the lordship and have become vested in Mr Wilde's clients. Mr Gooch's case was that there had been no such severance, and he relied on a deed of grant dated 28 July 1966 by which for the sum of £32 11s 0d. he granted to the Tendring Hundred Waterworks Company the right to lay a water main in the whole length of The Green. The main was laid without any objection from the owners of "Nex-Tor" and "The Limes".

So far as the part of The Green between "The Limes" and the road is concerned, Mr Wilde relied on a conveyance made 5 April 1965 between (1) Frederick Ernest Eusebius Betts (2) Arthur Sidney Sayer and Ellison & Co. (Trustees) Ltd. The parcels of this conveyance are "all that piece or parcel of ground with the messuage or tenement and other buildings erected thereon situate at Elmstead in the County of Essex and also all that piece of garden ground formerly forming part of the Waste of the Manor of Elmstead Hall in the said County containing in length from East to West one hundred and fifty feet and in breadth from North to South Seventy eight feet abutting South on the piece of land hereinbefore described and east west and north on the waste of the said Manor All which said premises are known as "The Limes". These parcels reproduce those in a



series of earlier conveyances, save only that the dimension of 78 feet appears as 28 feet in the earlier conveyances. Mr Nabbet pointed out that it appeared from old Ordnance Survey maps that the part of The Green to the north of "The Limes" was more than 28 feet wide. The land which is now the curtilage of "The Limes" was formerly copyhold and was enfranchised on 26 January 1884 without any reference to the part of The Green to the north, so that if this part of The Green is now in the same ownership as the former copyhold land it must be because a title to it has been acquired at some time by adverse possession.

Mrs Betts's claim to the part of The Green to the north of "Nex-Tor" is based solely on adverse possession. In a statutory declaration dated 1 October 1968 Mrs Betts stated that this land had been used and enjoyed as the curtilage of "Nex-Tor" ever since (to her own certain knowledge) the year 1936. This cannot be literally correct, since Mrs Betts also stated that her husband built "Nex-Tor" shortly after the land was conveyed to him by his father on 14 February 1949. The plan annexed to the conveyance of 14 February 1949 does not show any part of The Green as included in the Conveyance. Mrs Betts further stated that during her ownership of "Nex-Tor" from 2 May 1961 she and to the best of her knowledge and belief her husband and her father-in-law during their periods of respective ownership were in free open and uninterrupted possession of the rents and profits of "Nex-Tor" and the land to the north. In the absence of any more specific evidence, I find it difficult to believe that any rents and profits were received in respect of the part of The Green in question.

Mr Gooch said that access to "Nex-Tor" is obtained over the land to the north, that he had seen a car parked on it, and that he had seen a donkey or a pony grazing there, but he described this as part of the general communal use of The Green.

The evidence of adverse possession in Mrs Betts' statutory declaration is meagre in the extreme, while Mr Wilde relied solely upon the parcels of the conveyances so far as the land to the north of "The Limes" was concerned. If the owners of "Nex-Tor" and "The Limes" were in possession of parts of The Green, it is strange that they apparently raised no question when the water-main was laid in 1966.

After careful consideration I find myself not satisfied that there has been any adverse possession of any part of The Green so as to deprive Mr Gooch of his ownership of it as waste land of the manor.

For these reasons I confirm the registration.

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

31st

day of

March

1981

C. J. Wilde

CHIEF COMMONS COMMISSIONER