

COMMONS REGISTRATION ACT 1965



Reference No. 212/U/173.

In the Matter of  
Henham Green, Henham,  
Uttlesford District,  
Essex

DECISION

This reference relates to the question of the ownership of land known as Henham Green, Henham, Uttlesford District being the land comprised in the Land Section of Register Unit No. VG79 in the Register of Town or Village Greens maintained by the Essex 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:- (1) Henham Parish Council claimed (their Solicitors' letter of 27 November 1979) ownership of nearly all the land in question, the title deeds being in their possession; (2) Mr and Mrs J W Smith claimed (their Solicitors' letter of 4 February 1980) part (a small plot) of the said land as forming part of Lodge Farm, and later produced (letter of 20 February 1980) a copy of a statutory declaration made on 19 February 1980 by Mr Smith in support of such claim; and (3) Mr and Mrs M J C Fiddler said (their Solicitors' letter of 8 April 1980) that part of their property might be affected. No other person claimed to be the freehold owner of the land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Chelmsford on 27 January 1981. At the hearing (1) Henham Parish Council were represented by Mrs G F M Parkin their clerk; (2) Mr James Wisbey Smith and his wife Mrs Davina Smith both of Henham Lodge were represented by Mr G M Bradley a member of the Institute of Agricultural Secretaries who has for many years worked for Mr Smith as his secretary and adviser; and (3) Mr Martyn John Charles Fiddler and Mrs Jean Mary Fiddler both of Elsmere Starr Road Henham were represented by Mr J W J Wallace-Jarvis, solicitor of Stansted.

Mrs Parkin in the course of her oral evidence produced the documents listed in Part I of the First Schedule hereto. Mr Smith in the course of his oral evidence produced the said 1980 statutory declaration and the documents listed in Part II of the said Schedule. After the hearing the document specified in Part III of the said Schedule was on behalf of Mr Smith sent to the office of the Commons Commissioners.

The land ("the Unit Land") in this Register Unit comprises numerous pieces of open grass land on both sides of Church Street, High Street and Crow Street including some open land near St Mary's Church at the west end of the Village, but it does not include Woodend Green which is at the east end of the Village and is separately registered (VG76). From the OS maps I have, I estimate the area of the Unit Land as about 2 acres or more.

By the 1929 deed of gift (DFM/3) nearly all the Unit Land (as to the words "nearly all" see below) was together with Woodend Green and possibly together also some other comparatively small pieces, expressly conveyed to the Parish Council. It was not disputed except as hereinafter particularly mentioned, that the Parish Council are now the owners under the said 1929 deed of nearly all the Unit Land or that I should either under sub-section (2) or sub-section (3) of section 3 of the 1965 Act direct the registration of the Parish Council as owner except as aforesaid of all the Unit Land. By far the greater part of the hearing was taken



up with the ownership claim of Mr Smith to the part of the Unit Land which is north of and has a frontage of about 20 yards to High Street, is west of Clematis Villa and east of a nearby pond. After the hearing I inspected the Unit Land, particularly the said part of it. I define the expression "the Decision Land" as hereinafter used as meaning that described in the Second Schedule hereto. As I understood Mr Smith his ownership claim is to all the Decision Land and to so much if any of the land to the north of it as is included in the Unit Land as now registered.

At the hearing doubts were expressed as to whether the Unit Land included all or only part of the Decision Land and whether it included a comparatively small area ("the Pump Area") which adjoins the east part of the north boundary of the Decision Land and on which there now stands an iron pump. Because the registration in the Land Section has become final, I have no jurisdiction in these proceedings or in any other which could now come before me to determine the true boundary of the Unit Land as now registered. I have a plan enclosed with the November 1979 letter from the Parish Council claiming ownership of all the Decision Land except the triangular area at its north-east corner and I have a map enclosed with a letter dated 11 December 1979 from the County Council which shows the Unit Land as including all the Decision Land and also the Pump Area. Since the hearing, the County Council in a letter dated 12 February 1981 refer to an allegation that the copy Register map used by me at the hearing may be incorrect and request to have it back for checking. I have not yet complied with this request because I can and think I should give a decision on the evidence put before me at the hearing on the understanding that my decision may be of no effect to the extent that it relates to land which upon investigation may be agreed or found to be not included in the registration.

Mr Smith said (in effect):- Mr B W Smith named in the 1946 conveyance (JWS/2) was his father; Messrs G R and R L Smith named in the 1951 conveyance (JWS/3) are his brothers; his father died in 1973. The fence shown in the photograph (JWS/5) has been there ever since 1946; there used to be a gap between the gateposts (mentioned in the Second Schedule thereto). The use made by them (meaning the occupiers of the ~~the~~ <sup>Lodge</sup> farm, about 410 acres north of the Decision Land) has been virtually nil except for vehicles coming with cattle and by men coming from the Village to work on the Farm; the cattle would come on a lorry which would either stop on the Decision Land and let its tail board down so the cattle could go through the said gap to the farm fields to the north or alternatively drive onto the Farm with the cattle; the men coming to work would use the footpath marked on the plan. Nowadays the normal entrances to the Farm are a short distance to the west and east of the Decision Land (private roads made up for vehicular traffic); these entrances were those being used in 1946. The access to and from the Farm across the Decision Land from and to High Street is now only used (except as aforesaid) by walkers or when snow blocks the normal entrances.

The land dealt with by the 1946 conveyance is expressed to be conveyed by reference to a Schedule which includes "(OS No.) 228: pasture: 4.307 (area)" and to a plan "for the purposes of identification only .... coloured pink". OS No. 228 is for by far its greater part, part of the Farm immediately to the north of the Decision Land. This greater and not controversial part was at the hearing called Lambert's Field.

So far as I am concerned, the substantial question between the Parish Council and Mr and Mrs Smith is where for ownership purposes is the boundary between



Lambert's Field and the Green; and on this both Mrs Parkin and Mr Bradley relied on one or more of the maps produced. As such maps do not all show the same boundary, I classify them as follows:- (1) A nearly straight line ("the Dividing Fence Line") from the pond on the west to the Clematis Villa land on the east. This line appears ~~to~~ <sup>in the</sup> extract Tithe Map (GFM/2), the 1929 deed of gift map (GFM/4) and the 1960 OS map (GFM/5). I identify this line with the line of the fence mentioned in the Second Schedule hereto, and therein also called the Dividing Fence Line; and I identify it too with the line shown on the most recent OS map enclosed in a letter dated 29 January 1980 from the County Council to Mr Smith and copied by Stanley Tee & Co (his solicitors) for the use of the Commons Commissioners. (2) A U shaped line ("the U Line") which Mr Bradley contended was shown clearly enough on the plan referred to in Mr Smith's 1922, 1946 and 1951 conveyances. The east side of the U corresponds with the west boundary of the Clematis Villa land and the west side of the U with the parallel dotted lines marking the footpath which passes through or near the gap (mentioned in the Second Schedule hereto) in the Dividing Fence Line and ends at the southeast corner of the Decision Land. Whether the bottom of the U corresponds with the north ~~side~~ <sup>edge</sup> of the High Street footpath is not clear. And (3) an irregular line ("the Pump Area Line") from the pond on the west following the Dividing Fence Line to a point in or near the said gap, and then turning north for about 3 yards (perhaps a little more) and then turning sharply east so as to end at the Clematis Villa Land. This line would make the Pump Area and the Decision Land into one piece of land. <sup>Line</sup> The Pump Area ~~is~~ corresponds with the south boundary of OS No. 283 as marked on the 1897 OS map (GFM/6).

Although the colour on the 1946 and 1951 conveyance plans could include the north-east part of the Decision Land, the parcels of these conveyances are by reference to OS No. 283 which does not include this part and the conveyances expressly state that the plans are for identification purposes only. In my opinion these conveyances do not support Mr and Mrs Smith's claim to any part of the Decision Land. The colour on the 1922 conveyance as abstracted does not end in a black line (so apart from the colours stopping, there is no distinct map boundary); from the Schedule Plan, Lambert's Field can be identified with plot No. 165, but from what this number 165 was taken does not appear from any document produced to me (the Tithe Map number of Lambert's Field is 194). In my opinion the U shape on this plan is too vague to be of any significance in this case.

As to the use made of the Decision ~~Area~~ Land as described by Mr Smith:- I infer that the parallel dotted lines on the map ~~marked~~ the footpath (shown as such on GFM/5). And I also infer from the gap between the two gateposts mentioned in the Second Schedule hereto that to the High Street there is and always has been a right of way of some kind appurtenant to at least the adjoining part of Lodge Farm; indeed so much was conceded by Mrs Parkin. Against Mr and Mrs Smith having any interest greater than a right of way I have the 1929 deed (GFM/3); unfortunately the plan attached to this deed is difficult to follow because, so it was said, it has been immersed in water, but I have the 1962 copy (GFM/4) which shows the Decision Land (but not the Pump Area) as included in the land thereby expressed to be conveyed, that is the boundary was then considered to be the Dividing Fence Line. So on the basis that the Parish Council have some sort of, and Mr and Mrs Smith have no "paper title" to the Decision Land, I must consider whether its use as described by Mr Smith supports a claim by him and Mrs Smith, a possessory title. As regards the west grass covered part of the Decision Land, nothing described by Mr Smith relates to it. As regards the middle part of the Decision Land in front of the said gap, its use as so described is more consistent with the use made by servants agents and suppliers of the occupier of land to which a right of way is appurtenant than to use made by a person in possession of land claiming as owner;



so the circumstances that such use was without any permission by any other person is not relevant. As regards the east part of the Decision Land which include some hard standing shown on the photograph (JWS/5), its use by a lorry delivering cattle would not amount to taking possession; and even if it was used for the regular parking of a motor car or other vehicle (eg a visit to the Village) such a use could not amount to taking possession of land which could easily be used for the same purpose by any member of the public who wanted not too obtrusively park on the Green. For these reasons I conclude that Mr and Mrs Smith have not got a possessory title to any part of the Decision Land, and accordingly, no other ground for supporting the ownership claim of Mr and Mrs Smith having been put forward by Mr Bradley, I reject it altogether. to the Decision Land

As regards the Pump Area:- Mrs Parkin in her statement describes it as an "enclave" and says that "it has been fenced off by Mr Smith and is also part of the grant to the Parish". As to it being part of the grant, as above stated it is not included on the plan (GFM/4) annexed to the 1929 deed of gift. The existence of the iron pump on the Pump Area and the ~~Pump Area~~ <sup>parallel</sup> lines shown on the 1897 OS map ~~show~~ <sup>is</sup> it likely that the Pump Area was before piped water was introduced to the Village, generally considered to be part of the Village. But Mr Smith was not questioned about his general statement that the fence shown in the photograph (JWS/5) had been there since 1946, I ~~therefore~~ therefore consider this statement as applicable to the whole of the Dividing Fence Line which now forms the distinctive north boundary of the Decision Land. Although it is ~~impossible~~ impossible altogether to equate the two conveyances made by Mr W F Maitland in 1922 (JWS/1) and 1929 (GFM/3), my conclusion is that the Pump Area at least since 1946 has been fenced off so as to be part of Lambert's Field (admittedly owned by Mr and Mrs Smith or their predecessors), and I consider that I ought therefore to presume that under some grant now lost there was an adjustment in the boundary resulting in the Dividing Fence Line throughout its whole length being the boundary between the ownership of the Parish Council to the south and the ownership of Mr and Mrs Smith or their predecessors in title to the north.

For these reasons I am satisfied that Mr and Mrs Smith under the 1967 conveyance and the documents he produced at the hearing are the owners of so much (if any) of the land in this Register Unit as is north of the Decision Land and I shall accordingly (unless in the meanwhile I am satisfied that none of such land could be within this Register Unit) pursuant to sub-section (2) of section 8 of the 1965 Act direct Essex County Council to register Mr James Wisbey Smith and Mrs Davina Smith of Lodge Farm Hensham as owners of so much (if any) of the land in this Register Unit as is north of the Decision Land in this decision defined.

Mr Wallace-Jarvis said that the part of the land in this Register Unit of which the ownership was claimed by Mr and Mrs Fiddler was if it existed ~~small~~ comparatively very small and he thought that a further enquiry of the County Council ~~was~~ show that the land of which they claimed to be the owners was not in fact in this Register Unit at all. Accordingly with the agreement of Mrs Parkin I adjourned the proceedings in London for a date to be fixed by a Commons Commissioner for a hearing about this claim if upon consideration Mr and Mrs Fiddler desire to pursue it. As regards all the Decision Land so much of the remainder of the Unit Land of which Mr and Mrs Fiddler at the adjourned hearing are not proved to be the owners, I am satisfied that the Parish Council are under the 1929 deed of gift the owners of all or nearly all of it, ~~and~~ will after such adjourned hearing give a second decision giving such precision as I then think necessary to the expression "nearly all" saying that I shall pursuant to sub-section (2) of the said section 3 direct the registration of the Parish Council as the owner of all or nearly all the Unit Land and pursuant to sub-section (3) of the said section 8 direct the registration of the Parish Council as the owner of all the remainder.



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.

FIRST SCHEDULE  
(documents produced)

Part I: on behalf of Parish Council

GFM/1	- -	Statement about Mr Smith's declaration.
GFM/2	- -	Extract from Tithe map.
GFM/3	22 April 1929	Copy of 1962 examined copy of deed of gift by William Fuller Maitland to Henham Parish Council of land shown by "the colour green on the plan annexed".
GFM/4	2 November 1962	Copy certified in 1962 by Mr H Stanley Tee of plan attached to the 1929 deed of gift, it having been apparently immersed in water.
GFM/5	1970	Map based on OS 1960 survey showing Henham Parish boundary, footpaths and bridleways used as footpaths.
GFM/6	- -	Map of village green based on OS map of 1897.

Part II: by Mr Smith at the hearing

JWS/1	29 September 1922	Examined abstract <del>1945</del> <sup>1945</sup> of title of J P Holinshead Esq to Lodge Farm Henham being a conveyance dated 29 September 1922 by William Fuller Maitland with the concurrence of A Ball (purchaser) to J P Holinshead (sub-purchaser) of Lodge Farm 521a or 1p described in Schedule (OS Nos): green on plan.
JWS/2	25 March 1946	Conveyance by Mr Holinshead to Mr Bertie Wisbey Smith of Lodge Farm by reference to schedule and plan.
JWS/3	2 August 1951	Conveyance by Mr B W Smith to Mr G R Smith, Mr J W Smith and Mr R L Smith of the Lodge Farm as described in the Schedule and by reference to a plan subject to a lease dated 13 June 1951 as varied by a deed dated 13 July 1951 for the benefit of Mr J W Smith.



JWS/4 26 January 1962

Conveyance by Messrs G R Smith, J W Smith and R L Smith to Mr B W Smith of the Lodge Farm by reference to the said 1951 conveyance subject to the said 1951 lease and varying deed.

JWS/5 26 January 1981

Colour photograph (3" x 3") all Decision Land showing the Dividing Fence.

Part III: sent after hearing on behalf of Mr Smith to Commons Commissioners

- - 29 September 1967

Copy (certified 2.2.81 by J W Wallace-Jarvis) deed of gift by Mr B W Smith to Mr J W Smith (son of the donor) and Mrs Davina Smith (his wife) of the Lodge Farm by reference to the said 1951 conveyance subject as above mentioned.

SECOND SCHEDULE  
(the Decision Land)

The land bounded on the south by the north edge of the made up footway on the north side of the High Street, bounded on the west by the edge of a pond, bounded on the east by the hedge (being mostly between about 15 yards or 20 yards from the said edge) which is the west boundary of the land occupied with Clematis Villa and used as an entrance-way to the garage held therewith, and bounded on the north side by a line (in this decision called "the Dividing Fence Line") which starting from the said hedge is for a short distance scrub or brambles, then an old gate post, then a gap of about  $3\frac{1}{2}$  <sup>paces</sup> ~~paces~~, then another gate post (such gap during my inspection on 29 January 1981 being closed by a movable iron hurdle on wheels) then for about  $1\frac{1}{2}$  paces a railing fence easily crossable (now or formerly usable as a stile), then for about 5 paces impenetrable scrub and bramble ending at the edge of the said pond.

Dated the 18<sup>th</sup> day of May — 1981.

*a. a. Baden Fuller*

Commons Commissioner