



COMMONS REGISTRATION ACT 1965

Reference No 215/U/6

In the Matter of Elm Green
(Bridge), Ewyas Harold, South
Herefordshire District,
Hereford and Worcester

DECISION

This reference relates to the question of the ownership of land known as Elm Green (Bridge), Ewyas Harold, South Herefordshire District being the land comprised in the Land Section of Register Unit No CL. 221 in the Register of Common Land maintained by the Hereford and Worcester 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 no person claimed to be the freehold owner of the land in question and no person claimed 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 Hereford on 20 July 1977. At the hearing Mr John Ivor Rogers was represented by Mr W J H Davies solicitor of T A Matthews & Co, Solicitors of Hereford.

Mr Davies in the course of his oral evidence in support of his ownership claim on behalf of Mr Rogers produced:- (1) a conveyance dated 5 April 1966 by which Mrs M T Abbott, Mr D O Powell and Mr J Boys conveyed to Mr Rogers the Manor of Ewyas Harold; (2) a copy of the Court Rolls of that Manor from 10 May 1816 to 2 September 1871 (these Rolls record annual Courts up to 1836, but no Courts were held from 1840 to 1859 or in 1860, and only one Court after 1863); (3) a letter dated 3 November 1970 from the Treasury Solicitor, (4) a conveyance dated 31 December 1925 by which R W B Marquess of Abergavenny conveyed to Mr R G Virgo the Manor of Elwys Harold. Mr Davies said he could produce the intermediate title deeds to the Manor, and referred me to my decision dated 15 November 1976 relating to Lower Maescoed Common reference nos 215/D/141-142.

Two days after the hearing I inspected the land.

The land ("the Unit Land") comprised in this Register Unit is a triangular piece by the Elm Bridge; this bridge is a short distance to the east of the Village and carries a minor road over the River Dore. The shorter side (about 15 yards long) of the Unit Land is on the east bank of the River; one of the two longer sides (each about 60 yards long) is by the side of the said road. Much of the Unit Land is about 3 feet or more above the metalled surface of the road and is mostly covered with rough grass with some nettles, docks and similar vegetation.



The parcels of the 1966 conveyance are: "FIRST ALL THAT the Manor of Ewyas Harold... and rights and appurtenances whatsoever appertaining thereto (other than...) which said premises are more particularly described in Part I of the First Schedule hereto and are...delineated on the map or plan annexed hereto and thereon edged pink..." The First Schedule is a description of "common" in the Parishes of Dulas and Ewyas Harold containing 124.173 acres. The annexed map shows an area of land called Ewyas Harold Common.

Mr Davies conceded that the Unit Land is not part of Ewyas Harold Common so described and delineated (this Common is more than a mile away from the Unit Land), but contended that the Unit Land passed by the 1966 conveyance by virtue of section 62 of the Law of Property Act 1925; "a conveyance of a manor shall be deemed to include...all...wastes...commons...to the manor appertaining or reputed to appertain...or reputed or known as part or parcel or member thereof".

I shall assume ~~that~~ → that Mr Rogers did under the 1966 conveyance become entitled to the incorporeal hereditament known as the Manor of Ewyas Harold and also assume that the Unit Land is waste land. Even on these assumptions, the applicability of section 62 is not I think established by showing that the Unit Land is in the Parish of Ewyas Harold and is either waste land or common land; the boundary of a manor is not always coextensive with the boundary of the Parish of the same name.

The 1966 conveyance is I think evidence against the Unit Land "appertaining" to the Manor within section 62, because by it the "rights and appurtenances" are described and delineated, and they do not include the Unit Land. However Mr Davies relied on the following Entry in the Court Rolls:-

"The Court Leet and view of Frank Pledge together with the Court Baron held at the Dog in the village of Ewyas Harold in the County of Hereford on Friday the 25th day of April 1834 The Jury and Homage being sworn and charged on their Oath present as far as they respectively can or may and to them doth appertain That Mr John Gwilliam has put or otherwise placed a gate over and across a certain road leading from Ewyas Harold to Helm Green Common That the said John Gwilliam has encroached upon the Lord's Waste or Common Land adjoining the above mentioned road..."

He contended that I should identify Helm Green in this Entry with what is now called Elm Green, and treat the Unit Land as part of Elm Green Common; and also that the description in the 1966 conveyance of the "rights and appurtenances" should not be treated as exhaustive, because the 1970 letter showed that Mr Rogers was by the Ministry of Defence being treated as owner of Elm Green Common, and my 1976 decision proceeded on the basis of Mr Rogers being the owner of Lower Maescoed Common.

In the Maescoed case, Mr Rogers and another were provisionally registered as owners of the whole of Register Unit No CL. 56. If only one of them had been so registered, such registration would have become final under section 7 of the 1965 Act, merely as a result of a statutory declaration made in accordance with the form scheduled to the Commons Registration (General) Regulations 1966, →



that: "I have read the notes on the back of the application form and believe that I am entitled to apply for the registration...of a claim for ownership...". My decision was given under section 5 of the Act, and I was only concerned to give effect to an agreement made between Mr Rogers and his rival claimant. On this reference under section 8 of the Act, I have to be "satisfied" as to ownership of some person who has never been registered at all; a test quite different from that applicable to persons who before August 1970 applied for an ownership registration and were in consequence provisionally registered as owners.

I have no evidence as to the locality of Elm Green or as to the land now known as Elm Green Common. On my inspection, I wondered how anyone could want to own the Unit Land, and felt that anybody wishing to own it or keep it tidy was deserving of support. But contra, the only Ministry of Defence land that looked as if it was or might be known as Elm Green Common was some distance away, and it seemed unlikely that the gate of which the jury complained in 1834 could be anywhere near the Unit Land. Having regard to the information given to me at the hearing as summarised above, when looking at the Unit Land I felt it more likely that Mr Rogers does not, than that he does, own the Unit Land. It was not suggested that any other person could be the owner of the Unit Land. Accordingly I am not satisfied that any person is the owner of the land and it will therefore remain subject to protection under section 9 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 30th day of September — 1977

a. a. Baden Fuller

Commons Commissioner