



COMMONS REGISTRATION ACT 1965

Reference No. 216/U/94

In the Matter of Broxbourne Recreation Ground
Hoddesdon

DECISION

This reference relates to the question of the ownership of land known as Broxbourne Recreation Ground being the land comprised in the Land Section of Register Unit No. VG. 108 in the Register of Town or Village Greens maintained by the Hertfordshire 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) The Broxbourne Trustees of Open Spaces and (2) The Hertfordshire County Council claimed to be the freehold owners of the land in question and the Borough of Broxbourne claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the ownership of the land at Hertford on 2nd February 1988.

The hearing was attended by Mrs R Pike Solicitor of Hertfordshire County Council Mr S Aley Solicitor of Broxbourne Borough Council and Mr J S Mould (Chairman) and Mr P Hickman of the Broxbourne Trustees of Open Spaces.

The land was registered as a Town or Village Green by Broxbourne Trustees of Open Spaces. There are no rights registered, and no entries in the ownership section of the register.

On the register map the upper part of the land is described as Recreation Ground, and the strip along the bottom as Allotment Gardens. I was told that the Allotment Gardens were incorporated in the recreation ground about 30 years ago.

None of the parties present could produce any deeds relating directly to the unit land, but I was supplied by the Broxbourne Borough Council and by the County Council with copies of various documents which were of considerable relevance. I was also supplied by the Borough Council with a list of the acts done by the Council in respect of the unit land since that Council was created in 1974.

The first document in order of date was a copy of the Broxbourne and Hoddesdon Open Spaces and Recreation Grounds Act, 1890. That was an Act promoted by the Bosanquet family to provide open spaces and recreation grounds for the parishes of Broxbourne and Hoddesdon. The following provisions of the Act are relevant for present purposes:-



Section 2. Interpretation: In this Act -

(3) The expression "the owner" means the person or persons for the time being entitled to the possession or to the receipt of the rents and profits of the Mansion House of Broxbornebury in the parish of Broxbourne in the county of Hertford or of the land which at the time of the passing of this Act is the site of such Mansion House:

(6) The expression "the Broxborne trustees" means the owner and the vicar for the time being of the parish of Broxborne together with seven elected ratepayers of the said parish in this Act referred to as elective trustees:

Section 6. Incorporation of Trustees.

The Broxborne Trustees and the Hoddesdon trustees shall by those respective names be bodies corporate with perpetual succession and a common seal and with power by those names to sue and be sued and to take hold and dispose of land without any license in mortmain for the purposes and subject to the provisions of this Act.

Section 7. Dedication of land in the parish of Broxborne as a recreation ground.

The piece of land reputed to be freehold containing ten acres or thereabouts situate in the parish of Broxborne and coloured yellow on the map and described in the first part of the First Schedule of this Act shall be and the same is from and after the passing of this Act (subject to any existing tenancies) hereby vested in the Broxborne trustees for all the estate and interest therein which the said Horace James Smith Bosanquet and Cecilia Jane Wentworth Smith Bosanquet or either of them have power to appoint or to convey but subject to the provisions of this Act and upon trust to permit the use thereof for all time by the inhabitants of the said parish and by such other persons as the Broxborne trustees may from time to time think fit as an open space and recreational ground.

Section 12. Power to trustees to exchange.

The Broxborne trustees as regards the land by this Act vested in them and the Hoddesdon trustees as regards the land by this Act vested in them shall at all times have power with the consent of the owner to give and convey in exchange such land or any part thereof for other land and the land so taken in exchange shall be held on the same trusts and be subject to all the rights and powers affecting the land given in exchange and the land so given in exchange shall be freed and discharged from all rights created by this Act.

Section 13. Restriction on power of sale or lease.

No sale or lease of the lands coloured yellow on the map or of any part of such lands shall be made without the consent in writing of the owner.



The map referred to in the Act was the deposited map of which a made-up copy is before me. The land coloured yellow thereon is at Baas Hill, some distance away from the unit land. The unit land was part of the land coloured blue on the map and was not vested in the Broxborne trustees. What appears to have happened is that in 1916 the yellow land was exchanged for the unit land by the Trustees, acting under the power conferred on them by section 12 of the Act.

It appears that this exchange was carried by two separate conveyances, one of the yellow land and one of the unit land. The Broxborne Trustees were unable to produce the conveyance of the unit land to them. Broxborne Borough Council however produced to me a duplicate Conveyance dated 5th February 1916 made between (1) The Broxborne or Broxbourne Trustees (2) George Richard Bosanquet Smith - Bosanquet (of Broxbornebury) and (3) the Trustees of the Will of the late James Smith - Bosanquet. This conveyance recites sections 7 and 12 of the 1890 Act and the definition of the owner in section 2 thereof; that George Smith-Bosanquet was the person then entitled to possession or receipt of the rents and profits of the Mansion House of Broxbornebury; that by a conditional agreement dated the 17th December 1914 and made between (1) George Smith - Bosanquet (2) the said Will Trustees and (3) the Broxborne Trustees the Broxborne Trustees agreed to exchange the yellow land for another piece of land therein described forming part of the residuary estate of the said testator and that by an Indenture of even dated therewith and made between (1) George Smith - Bosanquet (2) the Will Trustees and (3) the Broxborne Trustees the piece of land agreed to be given in exchange to the Broxborne Trustees had been conveyed to them in fee simple. The unit land is not identified in the body of that Conveyance, but the plan drawn thereon shows the land thereby conveyed coloured yellow, and the unit land (all but the south - west corner thereof) coloured blue. From this it may be assumed that the blue land was being exchanged for the yellow.

Mrs Pike on behalf of the County Council produced to me a Conveyance dated 1st September 1947 made between (1) Herbert Francis Smith William Kyrle Percy Ffrench and Hugh Grenville Leveson Dudley Ryder and (2) the County Council, whereby Broxbornebury House was conveyed to the County Council in fee simple. She submitted that the County Council was now "the owner" within the meaning of section 2(3) of the 1890 Act; and that as such the County Council should be registered as the owner of the unit land in the ownership section of the register.

Section 7 of the 1890 Act vested the yellow land in the Broxborne Trustees for all the estate and interest therein which Horace James Smith-Bosanquet and Cecilia Jane Wentworth Smith-Bosanquet had power to appoint or convey. At that date it appears (from the opening recital of the Act) that there was some doubt as to whether they had power to convey the fee simple. I am however no longer concerned with the title to the yellow land, but with the title to the land which was taken in exchange for it. According to the recital in the Conveyance of 1916 in respect of the yellow land, the piece of land to be given in exchange to the Broxborne Trustees had been conveyed to them in fee simple.



The effect of the 1890 Act was that no sale, lease, exchange or other dealing with the lands vested in the Broxborne Trustees was to take place without the consent of the owner for the time being of Broxbornebury House. Whatever may have been the position with regard to the title to the yellow land in 1890, it seems to me clear that the legal estate in fee simple in the land taken in exchange for the yellow land became vested in the Broxborne Trustees.

Broxborne Borough Council put in evidence that its Parks section had been responsible for the maintenance of the recreation ground since the creation of that Council in 1974. Prior to that similar works were done by the Hoddesdon Urban District Council. Works carried out on the land were as follows:-

- (i) Maintenance and replacement of all boundary fences, all arboricultural works, including the replacement of trees, turf culture works including cutting on a 10 day cycle during the growing season, fertilising, weed killing, aeration, rolling and treating fungal attack.
- (ii) Maintenance of footpaths, including repairs, sweeping and edging back of encroaching grass. The maintenance of the war memorial which work has involved the use of skilled stone masons. The sweeping and washing down of the war memorial.
- (iii) Full maintenance and repair of the sports pavilion (but not cleaning) including the installation of showers, toilets and rewiring.
- (iv) Provision and maintenance of playground equipment including weekly visual and monthly physical inspections.

The cost of these works for 1987/88 was £6,555 and the estimated cost for 1988/89 was £6,855.

There were thus before me three possible contenders for registration as owners under the 1965 Act:-

- (i) The County Council, claiming as "the owner" defined in the 1890 Act;
- (ii) The Broxborne Trustees under a Conveyance made in 1916 which they were unable to produce, but of which secondary evidence was contained in the recitals to the Conveyance of 5th February 1916 produced to me by the Borough Council;
- (iii) The Broxborne Borough Council by virtue of the acts of management enumerated above.

I reject the claim of the County Council. So far as the paper title goes, the evidence before me tends to show that the legal estate in fee simple in the unit land with the exception of the small parcel in the south-west corner was vested in the Broxborne Trustees in 1916. As to the small parcel in the south-west corner no-one present at the hearing suggested that this should be dealt with in any way different from the remainder of the unit land.



The evidence of the Borough Council tends to show that for upwards of 25 years the effective management and control of the unit land has been carried out, not by the Broxborne Trustees, but by the Borough Council. In most cases such evidence would be sufficient to establish a title by adverse possession under the limitation acts.

There is however one other provision of the 1890 Act which may be relevant, viz:- Section 10. Power of Vestries to defray costs out of rates.

The vestry of Broxborne as regards the land vested in the Broxborne trustees and the vestry of Hoddesdon as regards the land vested in the Hoddesdon trustees shall from time to time defray all costs and expenses properly incurred by the trustees of the respective lands for the purpose of laying out planting draining maintaining and improving the said lands respectively as open spaces and recreation grounds and generally in carrying into effect the purpose of this Act and the overseers of Broxborne as regards costs and expenses incurred by the Broxborne trustees and the overseers of Hoddesdon as regards costs and expenses incurred by the Hoddesdon trustees shall from time to time when the vestry of Broxborne or the vestry of Hoddesdon as the case may be shall so require raise and levy the sum required for the said purposes together with and as part of the poor rate of their respective parishes and pay the sum required and so raised to the trustees for whom the same is required to be levied and those trustees shall apply the sums so paid to them for the purposes for which the same were raised and not otherwise.

I assume (although there was no evidence before me to that effect) that the Acts done and expenditure incurred by the Borough Council were done and incurred in their capacity as successors to the vestry of Broxborne and overseers of the rates. If this assumption is correct, no question can arise of the Borough Council having acquired a possessory title by reason of such acts and expenditure.

The case was not fully argued before me, because none of the contenders was aware in advance of either of the opposing contentions. Indeed Mrs Pike said that the County Council did not appreciate it had a claim until the hearing commenced, but nevertheless wished to have a legal decision as to whether it was the owner for the purposes of the 1965 Act. Rather than grant an adjournment for further argument, I said that I would give a Decision but allow any party 4 weeks from receipt of that Decision in which to apply for a hearing for further argument, if so advised.

Note. In the various documents Broxbourne or Broxborne is spelt in some places with a "u" and in some places without it. In this decision any variations should be disregarded.

On this evidence I am satisfied that the Broxbourne Trustees are the owners of the land, and I shall accordingly direct the Hertfordshire County Council, as registration authority, to register them as the owners of the land 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

11th

day of

March

1988

Mati Kote,

Commons Commissioner