



COMMONS REGISTRATION ACT 1965

Reference No.25/U/46

In the Matter of Aldborough Green,
Aldborough, Erpingham R.D., Norfolk

DECISION

This reference relates to the question of the ownership of land known as Aldborough Green, Aldborough, Erpingham Rural District being the land comprised in the Land Section of Register Unit No.VG.45 in the Register of Town or Village Greens maintained by the Norfolk 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 the Hon. Doris Harbord and Aldborough Parish Council each claimed to be the freehold owner of the land in question and no other 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 Norwich on 14 June 1973. The hearing was attended by (1) the Hon. Miss Doris Cecilia Harbord, (2) Mr. Gerald A. Whately and (3) Mr. Roger Thompson who were all three represented by Mr. N. C. D. Craig solicitor with Lee & Pembertons Solicitors of Grays Inn, London and by (4) Aldborough Parish Council who were represented by Mr. G. D. Fisher their chairman.

Mr. Craig said that Miss Harbord claimed ownership as tenant for life of the settlement upon the trusts of which the Gunton Estate is now held. Mr. Whately and Mr. Thompson are the trustees of the settlement and support her claim.

The land ("the Unit Land") comprised in this Register Unit is (according to the Register map) divided into four pieces separated by roads and contains about 5 acres. It is situate in the centre of the Village, and is and always has been (as its name and the registration suggests) the Village Green of Aldborough.

On behalf of Miss Harbord evidence was given (1) in writing by Mr. R. J. Wortley (letter dated 7 June 1973 to Irelands) who is a Chartered Surveyor and was the agent of the Gunton Estate from 1939 to 1965, (2) in writing by Mr. E. J. T. Impson (statement dated 11 June 1973 and a copy letter dated 23 February 1973 to Irelands) who until March 1973 was the clerk of the Parish Council, (3) orally by Mr. C. Pull who is employed by Irelands, auctioneers and estate agents of Aylsham (they have acted as agents for the Gunton Estate since 1965; Mr. Pull has as their employee personally looked after Miss Harbord's affairs for 3½ years) and (4) orally by Mr. Craig; Lee & Pembertons have for many years acted as solicitors for the Gunton Estate.

On behalf of the Parish Council evidence was given (1) by Mr. E. C. Lilley who has lived all his life (58 years) in Aldborough, now represents the Parish on the Rural District Council and was a member of the Parish Council for 20 years up to 3 years ago, and (2) by Mr. Fisher who has lived in the Village since 1948, has been chairman of the Parish Council since 1955 and been a member of the Rural District Council for 20 years.



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By the production of a vesting deed dated 3 May 1927 and made in favour of the Rt. Hon. V. A. C. Lord Suffield, the probate dated 30 October 1944 of his will, and a deed of assent and discharge dated 1 February 1948, I am satisfied that Miss Harbord is the owner of the land described in the 1927 deed (so far as not since disposed of) as: "All and singular the Manors of Lordships reputed Manors or Lordships Mansion House Park Pleasure grounds messuages farms lands and other hereditaments constituting the Gunton Estate in the county of Norfolk".

None of the above mentioned documents of title referred to the Unit Land particularly. However Mr. Craig stated that over the years, there had been a travelling fair that went onto the Unit Land for three or four days in June: he contended that I should infer from the payments made to the Gunton Estate in respect of this fair that the Unit Land was part of the Gunton Estate within the words above quoted from the 1927 deed.

Mr. Fisher (adopting the evidence of Mr. Lilley) contended that there were was a distinction between payments received in respect of the ownership of the soil of the Unit Land and those received in respect of manorial rights over the Unit Land, and that as the Lord of the Manor had a right to hold a market or fair on the Unit Land the payments should be attributed to such right and not to the ownership of the soil.

As to these payments:- Mr. Wortley said "The Green was let to the Erpingham R.D.C. and the Estate received I think a rent of £5. per annum. Later on, I think after the war, the Council relinquished their tenancy and as a result, one half of the Fair tolls was paid to the Estate, the Parish Council keeping the other half ..." Mr. Impson said "For many years prior to the 1939-45 war Aldborough Green was rented from the Gunton Estate and the Parish Council received all rents etc. After the war the Green reverted the Estate and the late Mr. J. T. Brown collected tolls from the fair on behalf of the Estate. I continued in this and after the renovation scheme agreement was reached between the Parish Council and the Estate that the Estate should retain the fees or rent from the two official fair days June 21 and 22nd the council having any other income ..." Mr. Pull produced an account prepared by Mr. Impson in respect of "Aldborough Fair 1972", rendered to "Irelands, Agents to the Gunton Park Estate"; this account showed that "4 days Fair Tolls" amounting to £53 after deducting expenses £7 were divisible "Two days to Parish Council £23.00 And balance to you £23.00". Mr. Pull said the accounts for the preceding years showed a division under which the Parish Council took two days, so if the Fair lasted three days they took two thirds and if lasted four days they took one half. Mr. Craig produced Estate Accounts which showed receipts in 1945 and 1946 from J. T. Brown (Mr. Impson's predecessor) in respect of "Fairtolls, Aldborough Green".

As to the "renovation scheme agreement" mentioned by Mr. Impson, Mr. Lilley and Mr. Fisher could only say that the Gunton Estate had never made any direct contribution towards the renovation or maintenance of the Green and that in 1948 a Village Green Committee was started (Mr. Fisher was one of the original members), as a result of which a letter (produced by Mr. Lilley) dated 20 August 1948 from the Erpingham Rural District Council was received. With this letter was enclosed a draft of a form of scheme to be made under the Commons Act 1899 for Aldborough Green. It was agreed between Mr. Craig and Mr. Fisher that I should proceed on the basis that the scheme shortly afterwards was duly approved under the Act and that Bye-laws for the regulation and management of the Green were made pursuant to it.



I infer that at the time the scheme was made an agreement was made between the Parish Council and the Gunton Estate for the division of the tolls as stated by Mr. Impson in his written evidence.

As regards the ~~Unit Land~~ the status of the Unit Land (apart from money payments in respect of it):- Mr. Wortley said that "we the Gunton Estate were always consulted by the Eastern Electricity Board regarding any wayleaves over the Green". Mr. Impson said: "So far as I know there has never been any question regarding the ownership of the soil of the Green it has always been accepted that the Estate is the owner", and "Aldborough Green has been accepted as being the property of the Gunton Estate although with Common right to the Village". Mr. Lilley said (in effect):- He had never heard anybody say that Miss Harbord or the Gunton Estate owned the Green; he (Mr. Lilley) is Lord of the Manor of Aldborough and knows that the Manor does not include Aldborough Green; Miss Harbord is Lady of the Manor of Hanworth, of which Aldborough Green is a part; he (Mr. Lilley) had always understood ownership was vested in the persons who occupy the houses which surround the Green and the Lady of the Manor has manorial rights to the tolls of the two charter days. These rights go back to a charter granted in 1290 or 1300 in respect of fairs or markets held on the Green; up to about 1920 there had been an annual cattle market; after the 1914-18 war it was not successful and it was stopped but the pleasure fair associated with the market continued. Mr. Fisher said he had never heard that Miss Harbord was the owner, although he understood she had manorial rights and knew Mr. Impson collected the tolls.

I cannot I think from the evidence above summarised conclude that the owners of the surrounding houses own the Unit Land as suggested by Mr. Lilley. I had no evidence about such houses and I can only reach such a conclusion under some presumption of law. There is a rebuttable presumption (stating its effect shortly) that the soil of a highway up to the centre of the crown of the made up road belongs to the owner of the land on which the highway fronts; see Halsbury Laws of England (3rd edition 1957) volume 19 para 65 and 67. Such presumption is not in my opinion applicable to land which is a town or village green and which is not a highway.

There was no evidence that any part of the Unit Land was (as is legally possible) both a green and highway; and I incline to the view that the presumption would be rebutted in respect of any part of a highway which was also a green.

Miss Harbord and her predecessors have received payments in respect of the Unit Land; she is and they were Lord of the Manor of Hanworth; the Unit Land is within the Manor. These facts in my opinion establish the ownership of Miss Harbord in the absence of special circumstances because as a general rule the lord of any manor was before 1926 the owner of the legal estate in fee simple of all land within the manor, and he and his successors are still owners of all such land except the copyhold (including the customary freehold) land which was on 1 January 1926 enfranchised by the Law of Property Act 1922.

The circumstances that Miss Harbord and her predecessors may under some charter be entitled to hold a market on the Unit Land is not any evidence that she is not the owner. Whether or not a person could hold a market on land not owned by him, it is advantageous and convenient that the owner of the market franchise should also own the land.



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I reject the suggestion that I should infer that the payments made to Miss Harbord and her predecessors were manorial incidents such as were extinguished (compensation being payable) on 1 January 1926. This extinguishment was effected by the Law of Property Act 1922 in respect of copyhold land thereby enfranchised. There is no evidence indicating that the Unit Land was ever copyhold land. If (as I understand is the case) the Unit Land has always (as far as is known) been a village green, it is I think unlikely that it was ever copyhold.

The receipt of money in respect of land is some evidence of possession. But as both the Parish Council and Miss Harbord and her predecessors received money by agreement with each other, neither can as against the other acquire a title under the Limitation Act 1939.

The only circumstance supporting the ownership claim of the Parish Council is their receipt of the net tolls in respect of two Fair days. Although I have no direct evidence of the terms of the agreement made when the Village Green Committee arranged for the Green to be renovated and for a scheme under the 1899 Act to be made, I infer from the evidence I have that such agreement was made on the basis that the Gunton Estate was the owner.

I conclude therefore that there are no special circumstances which could prevent the application of the general rule above mentioned.

For these reasons I am satisfied that Miss Harbord is the owner of the Unit Land and I shall accordingly direct the Norfolk County Council as registration authority, to register the Hon. Miss Doris Cecila Harbord of Gunton Hall, Hanworth, near Norwich as the owner of the Unit 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 5th day of October 1973.

a. a. Baden Fuller.

Commons Commissioner