



COMMONS REGISTRATION ACT 1965

Reference Nos. 225/D/1
225/D/2

In the Matter of four pieces of land,
two in the Village, one north of Littlemans
Way and one south of Littlemans Way, all in
Stoke Ferry, South Norfolk District, Norfolk.

DECISION

These disputes relate to the registrations at (D/1) Entry no.1 in the Land Section and (D/2) Entry no.1 in the Ownership Section of Register Unit no.CL.436 in the Register of Common Land maintained by the Norfolk County Council, and are occasioned by Objections nos. 342B and 343B respectively made by Stoke Ferry Parish Council and noted in the Register on 24 March 1971.

I held a hearing for the purpose of inquiring into these disputes at Norwich on 15 July 1975. At the hearing the Parish Council were represented by Mr M. B. Bonnett their clerk.

The land ("the Unit Land") comprised in this Register Unit is in four pieces:- (1) A piece ("the Larger Village Piece") bounded on the south for about 100 yards by Lynn Road, the main road (A.134) from Thetford to King's Lynn which passes through the middle of the Village, and on the northeast for about 200 yards by the side road from the Village to Boughton; (2) a piece ("the Smaller Village Piece") near the Larger Village Piece, triangular with sides about 80 yards long and bounded on its southwest side by the said Boughton road; (3) a piece ("the North Littlemans Piece") some distance east of the Village, triangular with sides about 400 yards long and bounded on its south side by the east part of Littlemans Way; and (4) a piece ("the Riverside Piece") bounded on the north for about 200 yards by Littlemans Way (being there opposite the North Littlemans Piece) and bounded on the south for about 500 yards by the River Wissey, and for a short distance (where the piece is irregularly shaped) by the south end of Greatmans Way. The Unit Land was registered as common land on the application of Mr Cyril Wood Sanders. The Rights Section is blank.

→ In the Ownership Section Mr Sanders is registered as owner of all the Unit Land. The grounds of Objection no.342B are: "That the land being part of register unit CL.436 was not common land at the date of registration". The grounds of Objection no.343B are: "That the person named as owner was at the date of his registration as such not the owner of that part of register unit no.CL.436 edged red on the attached plans", on these plans there has been edged red four pieces (a) A piece ("the Pit") being approximately rectangular, being the west corner (fronting on the A.134 road) of the Larger Village Piece and being O.S.no.92 containing 0.635 acres; (b) a piece ("the Town Piece") being the whole of the Smaller Village Piece and being O.S. no.98 containing 0.746 acres; (c) a piece ("the Fuel Allotment") being the northern and greater part of the Riverside Piece and being O.S. no. 146 and containing 25.188 acres; and (d) a piece ("the Bank and Wash") being most of the part of the Riverside Piece which lies between the Fuel Allotment and the River Wissey and being O.S. no.240 and containing 6.915 acres. Mr Bonnett explained that the Objections were not intended to extend to the north and west part (the remainder) of the larger Village Piece being O.S. nos. 95, 68 and a part of 13 (about 2 1/2 acres), or to any of the North Littlemans Piece (containing I would say about 15 ~~acres~~ acres) or to the remaining parts (being O.S.nos. 238 and 242 and containing together 1.764 acres) of the Riverside Piece.

Mr Bonnett who is 51 years of age, lived in the Parish for 48 years and been clerk of the Parish Council for the last 14 years, in the course of his evidence produced:



- 2 -

(1) A letter dated 17 June 1931 from the Charity Commission summarising the 1833 Report for inquiring into Charities so far as it related to "the Charity of a Donor Unknown", "the Fuel Allotment Charity" and another Stoke Ferry charity with which I am not concerned; (2) a Scheme dated 20 August 1915 and made by the Charity Commissioners for the charity known as "The Wash and Bank no.1"; (3) an agreement dated 18 November 1966 by which the Parish Council agreed with the Norfolk Naturalists Trust for the management of the Fuel Allotment as a nature reserve; (4) an agreement dated 12 January 1972 by which the Parish Council let to Mr I. C. A. Durrance the Wash and Bank; and (5) an agreement dated 25 August 1972 by which the Parish Council let to J. H. Waterfall and Sons (Farmers) Ltd. the Fuel Allotment.

Mr D. Cubitt, solicitor of the Norwich County Council's Secretary's Department, who was attending the hearing to represent the Council as registration authority, produced the award dated 16 July 1815 made under the Stoke, otherwise Stoke Ferry, Wereham and Wretton, and Winnold Inclosure Act 1815 (55 Geo.3.c.51).

Mr Sanders in his application dated 30 December 1969 writes in Part 3 of the Form: "Waste Land of the Manor mentioned in Part I (that of Kavenham, Stoke, Wereham and Wretton is so mentioned). No Common Rights Known ..." In a letter dated 26 June 1975 to the Clerk of the Commons Commissioners, he says:- "... I should however like to explain my position. As Lord of the Manor of Kavenham Stoke Wereham & Wretton I was approached at the time of Commons Registration by the Parish Council of Stoke Ferry who were anxious that where possible I should register land as common or manorial waste in order to maintain its open character. I accordingly did this basing myself on the enclosure maps & the tithe maps. This is my interest in the matter; it follows that I am not attempting to register as Common or Manorial Waste any land which the local Council are claiming as village Green or the Ministry of Transport as road verges. My concern is simply to maintain the land as common in the interests of the local inhabitants where it is evident that it has been open land".

Since the hearing I have looked at the 1815 Act and the 39th Report of the Commissioner for inquiry concerning charities 1833.

The Town Piece is delineated on the 1815 Award map as "Town 37", and by the Award plot 37 is allotted to the Churchwardens and Overseers of Stoke Ferry absolutely (in respect of copyholds which they held). The 1833 ("1833") Report, as indicated in the 1931 letter, treats this piece as land of the Charity "Donor Unknown", area 2r. 26a. Mr. Bonnett said the yearly rent (currently £2.00) was included in the Parish Council's Charity Account and applied for charitable purposes.

The Pit is delineated on the 1815 Award map as "Town": it does not appear to have been allotted by the Award. Mr Bonnett said it is now a pit, much overgrown, and used as a dump; but dumping is not now open to anybody.

The Fuel Allotment is delineated on the 1815 Award map as "No.21. Stoke Poor.25.3.06", and is by the Award allotted (as expressly required by the 1815 Act) on trusts (stating the effect of the allotment shortly) to purchase fuel for poor persons living in houses not worth more than £5.5.0 a year. It is mentioned in the 1833 Report and in the 1931 letter. Mr Bonnett said that it is now trees and shrubs and a haven for butterflies (hence the interests of the Naturalists Trust). The rent (currently £13.50) is included in the Parish Charities Account, and applied for charitable purposes.



- 3 -

The Wash and Bank was not allotted by the 1818 award. Mr Bonnett identified it as being the land described in the schedule to the 1915 Scheme, and said that its rent, currently £16.00 is included in the Parish Council Charity Account, and applied for charitable purposes.

On the evidence outlined above, I conclude that the parts of the Unit Land described in the preceding four paragraphs were not at the date of registration waste land of a manor. Although it may be that at sometime these parts were waste land of the manor, they must, I think sometime before 1968 have ceased to be such. The tithe maps were not produced to me, and I cannot from Mr Sanders' letter conclude that they contained anything decisively indicating the contrary. Accordingly in my opinion the objections of the Parish Council succeed.

As regards the remainder of the Unit Land, there are conflicting considerations.

In favour of my confirming the registrations as regards this remainder:- If they had been originally limited to the remainder, it seems likely that the Parish Council would not have made the Objections, and the registrations would have become final under section 7 of the 1965 Act without their ever having been any reference to a Commons Commissioner. As a general rule, when an objection to a registration of land as common land is limited to part of the land, it may be assumed that the objector concedes that there is a common such as has been registered, and that he is only concerned to exclude the part objected to; so that the applicant need not prove that the remainder was properly registered.

But against my confirming the registrations, I have in the particular circumstances of this case the following indications that the remainder was not in 1969 (the date of registration) waste land of a manor (the second part of the definition of "common land" in the 1965 Act):- The northwest part of the Larger Village Piece, being C.S. No.68 containing 1.177 acres, is now bungalow and gardens, was on the 1818 Award map marked as "68. Green", and was by the 1818 Award allotted to Thomas Green. The east part of the Larger Village Piece was on the 1818 Award map marked as "Green", but whether this was because it belonged to Mr Green or was a Village Green, I did not discover; Mr Bonnett said that the reputed owner was Mr Vine, and when I inspected it (from the road, there was no obvious public access), it appeared to be private property, with a deep and much overgrown pit at the back (geographically one piece with the Pit owned by the Parish Council). The part of the Larger Village Piece west of the Pit, being part of C.S.No.13 apparently comprises a garden or gardens of one or more dwelling houses. If the Wash and Bank, being the greater part of the Riverside Piece, was not in 1969 waste land of a manor, on inspection, it seems to me unlikely that the remainder could be.

Having regard to the above quoted letter of Mr Sanders, and the considerations set out in the preceding paragraphs, I conclude that when he made the registrations he was mistaken in thinking that the Award and Tithe maps considered by themselves and without regard to the subsequent use of the land, were sufficient to establish that the Unit Land was waste land of a manor within the 1965 Act definition. If I refuse to confirm the registrations, any claim by Mr Sanders to ownership will not be prejudiced. It is against the public interest that the Register of Common Land should include land not properly so described. Accordingly although my inspection of the North Littlemans Piece was inconclusive, I consider that I should in the absence of supporting evidence by Mr Sanders, conclude (as I do) that the registration^s of all the various pieces of



- 4 -

land which together make up the remainder of the Unit Land, ~~was~~^{was} made mistakenly.

For these reasons I refuse to confirm the registrations.

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 24th day of October — 1975

a. a. Baden Fuller

Commons Commissioner