



## COMMONS REGISTRATION ACT 1965

Reference Nos. 25/U/29  
25/U/30  
25/U/31

In the Matters of (1) Mill Common and Coles Common, (2) Plough Common, and (3) Ridlington Heath, all in Witton, North Norfolk, Norfolk

DECISION

These references relate to the question of the ownership of lands known as (1) Mill Common and Coles Common, (2) Plough Common, and (3) Ridlington Heath, being the lands comprised in the Land Section of Register Unit Nos. (1) CL.129, (2) CL.130 and (3) CL.131 in the Register of Common Land 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 these references no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held hearings for the purpose of inquiring into the question of the ownership of the lands at Norwich on 19 March 1974. At the hearings, Smallburgh Rural District Council were represented by Mr. C. Watson their Deputy-Clerk and Witton Parish Council were represented by Mr. A. J. Smith their Chairman (accompanied by Mr. G. R. D. Brunson, who is a member).

Evidence was given (i) by Mr. Smith, who was born in the Parish 70 years ago, lived there until 1953 and afterwards at Bacton (the adjoining parish on the northeast) and has been a member of the Parish Council ever since it was formed in about 1934, and (ii) by Colonel R. G. Cubitt who was born in Honing (a nearby parish on the southwest), has (apart from his army service) lived there all his life, and used to be the owner of the Honing Estate (comprising a large portion of the land in Ridlington; a parish which for parish council purposes is combined with Witton).

The land ("the CL.129 land"; Mill Common and Coles Common) comprised in the Register Unit No. CL.129, is a strip of land about two thirds of a mile long and of varying width, through or by which runs the road ("the Bacton Road", unclassified) from Witton to Bacton. For the purposes of this decision, I treat the CL.129 land as divided into two parts; the part ("the Northeast Part") which is southeast of the Barton Road and east of the vehicular entrance to the Common Farm, and the remaining part ("the Southwest Part"), being Coles Common and the west part of Mill Common.

Mr. Smith said (in effect):- When he first remembered the CL.129 land, it was open common grass land used for grazing horses, cattle, goats and ponies, with a few gorse bushes, and not inclosed from the road. In about 1942, it was requisitioned by the War Agricultural Committee, and the Northeast Part (except a lowlying strip on the east side) about  $6\frac{1}{2}$  acres was cleared and brought into cultivation (he thought Mill Common and Coles Common together contained about  $16\frac{1}{2}$  acres); he produced a Notice dated 6 August 1942 under which possession was taken under the Defence Regulations 1939



representations made by the Parish Council in accordance with a notice dated 28 November 1952, which he produced. The 1942 notice was addressed to "Ridlington Parish Council"; Ridlington then had no such Council; in respect of the requisition no compensation was paid (presumably because no owner was known). By an agreement (produced) dated 17 October 1952 the Parish Council let land, which I identified as the same as that I have called the Northeast Part (except the said low lying strip) at a yearly rent of £12; ever since then the land so let has been cultivated and the rent (since increased and now £30) paid to the Parish Council. The said low lying strip is very wet and not usable (apart from skating in the winter). The Southwest Part is waste land, mostly overgrown with scrub and no longer any use for grazing goats or ponies.

Colonel Cubitt said that although he owned land round the lands in question at these hearings, he did not claim ownership. He understood that the Lordship of the Manor of Witton at one time belonged to Mrs. Black of Crosswight (a nearby parish) who had been dead many years; he thought the Lordship had become extinct; nobody had claimed it. Over the years before the war, he remembered the CL.129 land as having been grazed with goats and ponies by the parishioners generally.

The land ("Plough Common") comprised in Register Unit CL.130 is a strip of land about 500 yards long and of varying width (in places about 100 yards but mostly much narrower) on the side of the road between Ridlington and Witton. The land ("Ridlington Heath") is a strip about one third of a mile long and 80 yards wide on the east side of Crosswight Heath; across the middle runs a road from the east which just before it leaves the registered land divides into two roads, one continuing west to Crosswight and the other turning north to Ridlington Street and thence to Ridlington. Both Plough Lane and Ridlington Heath are rough waste with scrub, gorse and rough grass; on the south part of Ridlington Heath there are some trees. Plough Common and Ridlington Heath (or parts of them) were included in the requisition above mentioned and during such requisition they were in part cultivated; they have not been cultivated since 1954.

On the evidence outlined above, I conclude that the Parish Council (by their tenant) is and has been for at least 20 years in possession of the Northeast Part of the CL.129 land and has therefore acquired a good possessory title to it. I also conclude that the Parish Council by letting the land which is now cultivated under the 1952 agreement has taken possession not only of such land but also of the low lying land on the east; the side road which forms the east boundary of the Northeast Piece, can I think be regarded as the natural boundary of this part of the CL.129 land. But I cannot, I think, ascribe such possession to the Southwest Part of the CL.129 land; most of the Southwest Part is quite distinct and separate from the land let by the 1952 Agreement; in my view such possession cannot properly be regarded as extending to the other side of the Bacton Road, or to the east of the vehicular entrance to the Common Farm.

The Parish Council wish to be the owner of these two commons and also of the Southwest Part of the CL.129 land so that they can be put in order and kept tidy. Under the 1965 Act I have to determine whether I am "satisfied that any person is the owner" see section section 8; I have no jurisdiction to vest land registered under the Act as Common Land in the Parish Council merely because it is or may be expedient. On my expressing some doubt as to whether I could on the evidence as outlined above be satisfied that the Parish Council is the owner of any land not let under the 1952 Agreement, Mr. Smith said that the parishioners had free access to all three commons,



(they cut the gorse, they walked over them, and their children played on them) and that the Parish Council had prevented dumping of refuse (he mentioned a No Dumping Notice at the southeast corner of the Northeast Part of the CL.129 land), and had kept down vermin; he also said that on Plough Common there were holes indicating that gravel had been taken. Colonel Cubitt said that over the seventy years during which he had known these commons they had been open to the parish. Mr. Brunson said that he had seen a Tithe Award or a copy of it and the lands listed in the schedule included the Commons but the column headed "Ownership" was in respect of them blank.

On the evidence given at the hearing, I am unable to conclude that the Parish Council is or ever was in possession of Plough Common, or Ridlington Heath or the Southwest Part of the CL.129 land. It was not suggested that the Parish Council at any meeting ever authorised the doing of anything to prevent the dumping of rubbish, to keep down the vermin or any other thing on these lands; the general statements of Mr. Smith as to these matters were I think much too imprecise for me to conclude that the members of the Parish Council (and I understood him to be referring to members) were doing these things on behalf of the Parish Council in such a way that their action could properly be regarded as acts of possession by the Parish Council. There was no evidence that the use made of the lands by Parishioners (presumably those who live near) was of such an extent or of such a character as to show that these lands were being treated by parishioners as waste lands owned by the Parish rather than waste lands the ownership of which was unknown.

For the above reasons I am satisfied that the Parish Council is the owner of the Northeast Part of the CL.129 land as above described and more precisely hereinafter defined, and I shall accordingly direct the Norfolk County Council as registration authority to register Witton Parish Council under section 8(2) of the Act of 1965 as the owner of the part of the land comprised in Register Unit CL.129 which is southeast of the road from Witton to Bacton and east of an imaginary north-south line passing through the middle of the vehicular entrance to the Common Farm where such entrance joins the said road and near ~~where~~ a side road leading to Rookery Farm <sup>(to the west)</sup> leaves the said road. I am not satisfied that the Parish Council or any other person is the owner of any part of the lands comprised in Register Unit Nos. CL.130 (Plough Common) and CL.131 (Ridlington Heath) or of any other part of the land comprised in Register Unit No. CL.129 (Coles Common and the west part of Mill Common) and these lands will therefore be subject to protection under section 9 of the Act of 1965.

After the hearing I inspected the lands and found the conclusion that I reached at the hearing, confirmed by what I saw; a small area of the Southwest Part of the CL.129 land has been ploughed but I had at the hearing no evidence about this; a small area at the north end of Ridlington Heath has been tidied up apparently by the occupier of the nearby cottage; in all other respects Plough Common, Ridlington Heath and the Southwest Part of the CL.129 land are waste and neglected lands which cannot I think on the evidence given at the hearing be properly regarded as lands now in the possession of the Parish Council. But I record that I am not surprised that the Parish Council wish to be the owner of these lands; the village seems to have become or be becoming more populated (possibly as a result of the building not far away of the Bacton North Sea Gas terminal); although it may be difficult to determine how these lands could be entirely put in order and tidied up, parts could perhaps be dealt with for the benefit of all if the owner was certainly known. By section 1(3) of the 1965 Act, the ownershi



of these lands (except the Northeast Part of the CL.129 land about which I shall be giving a direction as above) will vest in such person "as Parliament may hereafter determine"; as regard these lands, an early determination of their ownership under the section could be advantageous.

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 24<sup>th</sup> day of April 1974.

a. a. Baden Fuller.

Commons Commissioner