



COMMONS REGISTRATION ACT 1965

Reference No.35/D/6

In the Matter of Land in Upper North Street.Hundon, West Suffolk

Reference No.35/D/7

In the Matter of Land in Lower North Street.Hundon, West Suffolk

Reference No.35/D/8

In the Matter of two pieces of Land inNorth Street, Hundon, West SuffolkDECISION

These disputes relate to the registrations at (in each case) Entry No.1 in the Land Section of Register Units No.V.G.69, No.V.G.70 and No.V.G.71 in the Register of Town or Village Greens maintained by the West Suffolk County Council and are occasioned by Objections numbered respectively O/13, O/14 and O/15 and made by the West Suffolk County Council and noted in each register on the 28th May 1969.

I held a hearing for the purpose of inquiring into the disputes at Bury St.Edmunds on the 26th April 1972. The hearing was attended by the West Suffolk County Council ("the County") who were represented by Mr. Wright (a member of their staff) and the Hundon Parish Council ("the Parish") who were represented by Mrs. W. Armstrong (one of their members). During the hearing, the County and the Parish requested me to view the land (agreeing that I should do so unattended) and this I did on 28th April 1972. At the request of the County and the Parish I heard all these references together.

The land in these three units comprises 8 pieces of grass land situate in or around North Street and its continuation Lower North Street, being the street which runs north and south through the Village. The Parish Church, the Congregational Church, the Primary School, two Inns and numerous shops and dwelling houses abut on or adjoin the Street. The width of the Street between the fences, hedges, walls and buildings (the "fences etc") on either side varies considerably. The carriageway is well made up throughout the whole length of the Street. There is a footway on each side; these footways are in part tarmac (so that throughout the whole length of the Street one or other side is and for a short stretch both sides are tarmac) and part unsurfaced. On the plan put in evidence by the County, 17 pieces of grass land were considered to be large enough to be worth delineating: the 8 pieces with which I am concerned are the larger of these 17. An extraordinary feature of the Street is that a plot ("plot 8159") of land is situate as it were in the middle of the Street, and this plot comprises a cottage with gardens, and is (as I have scaled it up on the plan I have) between 20 and 25 feet wide and between 250 and 300 feet long. The two pieces of land comprising units V.G.70 ("the south unit") and the two pieces of land comprising unit V.G.71 ("the middle unit") each form a thin triangle the apex of which points to the south and north respectively, so that the south unit, plot 8159 and the middle unit together form a cigar shaped piece of land (of which plot 8159 is as it were



-2-

the band) lying lengthwise along the Street and separating the west footway from the carriageway. Of the four pieces of land comprising Unit V.G.69 ("the north unit"), three are between the carriageway and the east footway and the fourth forms a sort of "intake" to the west of the west footway, the land in it sloping upwards towards the Hall.

On behalf of the County evidence was given by Mr. A. Bertie and Mr. F. Pledger. Mr. Bertie said that in 1970 the carriageway had been asphalted and the footway tarmaced by the County as they are now; he produced from the County Archives an instrument of apportionment of the rent charge in lieu of tithes dated 23rd January 1847 and approved by the Tithe Commissioners; from the map annexed to it it appeared that North Street and Lower North Street were included in the Summary annexed as "Roads: 66.2.15" and were treated as not tithable. Mr. Pledger is aged 71 years, has lived in the Village all his life and has worked for the County from 1945 until his retirement in 1968. From 1948 until his retirement as part of his job he helped with the maintenance of grass verges in the County. Every year for a distance of two feet from the carriageway and foot paths the "Village Greens" were cut with a mechanical cutter and a man following cut the grass missed by the machine. He lived for 27 years at the bottom end of the Street (near the south unit) and he had often seen children playing on the paths, the "Greens" and the roads, but there had not been so many motorists then. He remembered cows and goats grazing on the Village Green. As to his use of the words "Village Green", he explained he took it that children could play there, cattle could feed on it, anybody who had a horse could put it on, and it was for the inhabitants of the Village; he further explained that he used the words as including all the grass verges in or around the Street (meaning all of the 17 pieces of grassland above mentioned).

On behalf of the Parish, Mrs. Armstrong gave evidence. She is 70 years of age, was born in the Vicarage of Hundon (opposite the middle unit) and has lived there all her life; she is now and has been for over 20 years a member of the Parish Council. She described the middle unit as it was when she first knew it; the carriageway was narrower than now and the traffic very much less; the grass was for the most part flat and at a higher level than the carriageway and there was a steep bank between them; on the grass children played cricket and football for which it was then more suitable than now; in the evening they (the inhabitants generally) used to dance there and there were Club feasts from time to time. Throughout the years after the first War, the traffic in and through the Village had steadily increased; from time to time the carriageway has been widened and the land dug up to lay cables and pipes; in the result not only has the area of grassland been much reduced, but the surface altered in that as regards the middle unit and the south unit instead of being for the most part level, (and suitable for recreation) they now slope gradually down from the footway towards the carriageway. The children have played there less since 1918 being encouraged because of the risk of passing vehicles to play elsewhere. She concluded her evidence by stating that what she said about the use of the south and middle units applied to all three units generally.

On behalf of the County and Parish the proceedings were conducted with expressions of mutual goodwill and it was clear that each accepted, as I do, the evidence offered by the other as factually correct. They differed as to the conclusion I should draw from it. The Parish would have preferred an agreed solution and suggested an adjournment for further negotiations; but the County wanted me to give my decision on the evidence as it stood.



-3-

On behalf of the Parish it was argued that all three units were in substance "Village property"; before the first War they were, it was said, quite clearly Village Greens, the present position resulted from irregular encroachments made by the Highway and other Public Authorities on to Village property. The parish wanted to stop, or at least have a say in, any further proposed encroachments and to be able to keep the green tidy. The registration under the 1965 Act should therefore stand.

On behalf of the County it was argued that the 1847 instrument, the cutting of the grass described by Mr. Pledger, and the presumption that the highway extended up to the fences etc. enclosing it established that the lands are now and at least had been since 1847 highway; it was said I would when I inspected the Street find support for this argument from what I saw; the units were all highways; no other explanation of the present position was possible.

By section 21 of the 1965 Act, any registration I confirm or refuse to confirm is not evidence for the purpose of deciding whether any land forms part of the highway. Accordingly unless there is no doubt that these units are all highway I should, I think, consider the position under the 1965 Act in the alternative, as it would be if the units were or were not all highway. Unless I do do this, if it is determined in other proceedings that land which I have assumed to be highway is not, the position of such land under the 1965 Act would be uncertain. In approaching this case in this way, I follow the decision of the Chief Commissioner in re Haythorn Common (dated 20th March 1972, reference 10/D/3) where he considered a similar situation.

Having regard to the judgment in Att.-Gen. v Beryon 1970 1 Ch.1, in other proceedings the County may have a strong case for contending that the fences etc. on the east and west side of the Street were erected with reference to the highway and accordingly all these three units are all highway. But in my view the result of such proceedings is open to some doubt for the following reasons:- The 1847 instrument may be convincing evidence that the lands therein described as "roads" were not then tithable because this is what the Assistant Tithe Commissioner had to consider; but it is not, I think, convincing evidence that the highway then extended up to the boundaries indicated on his plan; the highway may have in part passed between land which was waste or village green; he would not have been concerned to consider this possible distinction because it would not have affected tithability. The existence of plot 8159 shows that not all land between the fences etc on the east and west sides of the Street is or was highway; the fences of the south and north ends of plot 8159 may, I think, have been originally placed where they now are because the cost of taking in any more of the middle unit and the south unit would have been disproportionate to the advantage obtained. Quite apart from the "intake" in the north unit having no obvious highway purpose, this unit must, I think, as regards the highway, be in the same position as the middle unit and the south unit. Considering the evidence of Mrs. Armstrong as to what the Village was like when she first knew it (the carriage way was then below the level of the middle unit and the south unit), together with what I saw, I think in other proceedings the Court might accept the view that the highway position in this case was nearer to that considered in Neeld v. Hendon 1899, 81 L.T. 404, rather than that considered in Harvey v. Truro 1903, 2 Ch. 630. It is, I think, unrealistic to assume that in any other proceedings to determine the extent of the highway, the evidence would be as brief (the whole proceedings before me lasted less



-4-

than 1½ hours) as that which I had.

Considering first the position as it would be if these three units were all highway:-

- (a) In section 22(1) of the 1965 Act, there is a difference between the definitions of "common land" and "town or village green", in that the circumstance that any land is a highway does not by itself prevent the land being a town or village green.
- (b) There is, I think, no necessary inconsistency between land being a highway and at the same time being subject to a trust to permit the inhabitants of the village to indulge therein in lawful sports and pastimes. Although such a trust may not be sensible if the highway for the most part consists of tarmac carrying motor traffic, it may, I think, be sensible in relation to a wide highway of which only a comparatively narrow strip carries motor traffic. The owner of the soil of a highway subject to the public right of passage has rights: the trees and herbage belong to him; see Halsbury Laws of England (3rd edition 1957) volume 19 paragraphs 95 et seq. If such an owner may lawfully permit a stranger to graze cows on the roadside herbage, provided there is no interference with the public right of passage, I see no reason why he should not lawfully permit the local inhabitants to recreate thereon subject to a like proviso.
- (c) I think I can properly infer from the evidence of Mr. Pledger and Mrs. Armstrong that the inhabitants of this Village have on these three units indulged in lawful sports and pastimes as of right for not less than 20 years. I think I can do this notwithstanding that such evidence was lacking in detail or particularity. The contrary case was not put to Mrs. Armstrong in evidence. The objection of the County dated the 28th May 1969 was at the hearing developed as resting solely on the point whether the land was or was not a highway.
- (d) Apart from this objection, the registration of these units as a village green would have been final, with a resulting benefit to the inhabitants of the Village. I should not, I think, give the objection of the County an effect beyond that developed by the County; on their behalf I was told that they did not claim ownership of the soil and that their concern was with not having to pay more compensation if they wished to widen the road; but any right they may have to widen the road without paying compensation will not, I think, be affected by my finding that these units are village greens.

Considering next the position as it would be if these three units were not all highway:- On this basis the case for my finding that they are village greens is, I think, stronger.

It is not, I think, necessary to modify the Registration so that it shall expressly appear in the Register that these units are subject to the rights which the public have if the whole or any part of them is highway: in my view land registered is subject to such rights whether or not they are noted on the Register.

For these reasons I confirm the registration of each of these units without any modification.



-5-

I refrain from stating what finding I would make on the evidence before me as to how much of these three units is or is not highway, because in order to comply with the 1965 Act it is not, I think, necessary for me to do so and because persons who might be affected by such finding have in these proceedings had no opportunity of being heard.

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 was sent to him require me to state a case for the decision of the High Court.

a. a. Baden Fuller,

Dated this 15th day of June 1972

Commons Commissioner