



COMMONS REGISTRATION ACT 1965

Reference No 234/U/43

In the Matter of Marl Pit
Hinderclay, Mid Suffolk
District, Suffolk

DECISION

This reference relates to the question of the ownership of land known as Marl Pit Hinderclay, Mid Suffolk District being the land comprised in the Land Section of Register Unit No CL 2 in the Register of Common Land maintained by the Suffolk 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 no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership.

Mr Commissioner C A Settle QC held a hearing for the purpose of inquiring into the question of the ownership of the land at Ipswich on 12 January 1979. At the hearing Hinderclay Parish Council were represented by Mr D G Lawrence a former chairman who produced a "Survey of Common Lands" of the Parish of Hinderclay relating to (i) Hinderclay Pen and (ii) Sandy Common, and based on Rickinghall Superior and Inferior and Hinderclay Inclosure Award dated 1819. Mr Commissioner Settle adjourned the hearing in order to give the Suffolk County Council as the highway authority an opportunity to claim this land as successors to the Surveyors of the Highways.

In a letter dated 5 March 1979, the County Secretary says (in effect) that no request by the Rural District Council to take over the pit can be traced (referring I suppose to the position under the Local Government Act 1929) and that the pit has never been used for Highway purposes by the highway authority within living memory. In a letter dated 26 May 1979 the clerk of Hinderclay Parish Council says that her Council no longer wished to claim ownership considering the land would be best left in the ownership of the District Council.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Ipswich on 2 October 1979. At the hearing Mid Suffolk District Council were represented by Mr K Charman legal executive in their Solicitor's Department, and Suffolk County Council as registration authority were represented by Mr J W Gibbs and Mr I Sands of the County Secretary's Department.

The land ("the Unit Land") in this Register Unit is approximately rectangular being (as I scale the Register map) a little less than 100 yards long and 50 yards wide.

Mr Gibbs produced from the County Archives the said Award (it is dated 13 July 1819) and was made under the Rickinghall Superior, Rickinghall Inferior and Hinderclay Inclosure Act 1815 (55 Geo. 3. c.12). The Award contains the following allotment:-
"... unto the Surveyors of the Highways in the said parish of Hinderclay for the time being as and for a public sand and marl pit ONE piece of land parcel of Broom Common containing by measure three roods and twenty four perches ... AND I do



hereby direct and appoint that ... they (the said Surveyors) and their Successors Surveyors for the time being of the said Highways for ever hereafter shall maintain and keep in repair the same fences by keeping up the banks and quicks and Scouring out the Ditches thereof ..."

The said Survey produced by Mr Lawrence which is dated January 1957, and appears to have been based on information obtained from Mrs E Rivett, Clerk of the Parish Council and Mr W Pillbrow, trustee of Hinderclay Fuel Allotment, refers to the Tithe Apportionment dated 16 November 1843 in which reference is made to the Gravel Allotment measuring 3 roods 24 perches, the landowners and occupiers being the Surveyors of Hinderclay Highways; no rent charge was payable in respect of it. According to the Survey the Pit is (1957) available for use by anyone in the Parish provided the land in which the mineral is used is within the Parish.

Mr Charman said that the Unit Land is now very overgrown (scrub and small trees) and it can only be walked through with difficulty.

On the evidence summarised above I conclude that the Unit Land is now vested in the Successor of the Surveyors of the Highways. Whether the County Council, or the District Council, or the Parish Council are such successor depends on the circumstances of the Unit Land when or shortly after the Local Government Act 1894 and the Local Government Act 1929 and possibly other Acts came into operation. In the absence of any direct evidence as to these circumstances, I conclude that they were such that under the 1894 and 1929 Acts the District Council are in relation to the Unit Land the Successors. I am therefore satisfied that they are the owners, and I shall accordingly direct Suffolk County Council as registration authority to register Mid Suffolk District Council as the owners of the land under Section 3(2) of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulation 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 16th - day of November - 1979.

a. a. Baden Fuller

Commons Commissioner