



DECISION (UNCLAIMED LAND)

In the Matter of Holmwood
Common near Dorking

DECISION

This reference relates to the question of the ownership of parts of the land described above ("the unit land") being the parts of the land comprised in the Land Section of Register Unit No. CL/86 in the Register of Common Land maintained by the Surrey County Council of which no person is registered as owner under section 4 of the Commons Registration Act 1965 or under the Land Registration Acts.

The greater part of the Unit Land has owners registered under the Land Registration Acts. There are however 4 small areas with no registered owner and it is with these 4 areas that this inquiry is concerned. The areas are indicated on a copy of the Register Map and more particularly on 4 enlarged plans marked respectively 'A' 'B' 'C' and 'D'.

I held a hearing for the purpose of inquiring into their ownership at Guildford on 29 October 1987. Mr A W Motion appeared in person but did not submit a claim to ownership.

Areas on Plans C and D

These areas are at the south-western corner of the Unit Land and are claimed as owned by or in connection with Holmwood Parish Church. The C area is north of the Church School and was part of the property comprised in a Deed dated 22 November 1911 made under the School Sites Act 1841 and with the consent of the Board of Agriculture and Fisheries under the Commons Act 1899. By this Deed the Earl of Norfolk Lord of the Manor of Dorking granted to the then Vicar of the Parish of Holmwood and 2 named churchwardens of the parish 2 pieces of land, including the C area, to be held by them and their successors for the purposes of the School Sites Act as an adjunct to the existing school.

The D area is adjacent to the Church, and was comprised in a Conveyance dated 19 March 1945 made under the Consecration of Churchyards Act 1867 by the Duke of Norfolk to the person or corporation in whom the churchyard of St Mary Magdalen's Church, South Holmwood, was then vested or their successors in title.

Mr M Lewis, Solicitor, of the firm of Lee Bolton and Lee, appeared for the Church and I am satisfied on the evidence that the 2 areas are Church property. The question arises as to the person or body in whom the legal estate in each case is now vested. It is submitted on behalf of the claimants that the C area should be registered in the ownership of the Vicar and churchwardens of the Parish of Holmwood and this, I think, is right - see Section 7 of the School Sites Act 1841. As regards the D area, it is submitted that this should be registered in the ownership of the Vicar of the Parish of Holmwood. This may well be in order, but I propose to follow the wording of the model entry in Part I of Schedule 2 to the Commons Registration (General) Regulations 1966 viz "The incumbent for the time being of the benefice of St Mary Magdalen's Church, South Holmwood, Dorking", which I would suppose has the same effect as the wording submitted.



Accordingly I shall direct the registration authority to register ownership of the C and D areas respectively as indicated above.

Area on Plan B

This small area is situate on the western edge of The Holmwood (which is the main part of the Unit Land) and at the edge of a property (not part of the Unit Land) called 'The Oaks'. The main part of the Unit Land is registered with freehold title under the Land Registration Acts and accordingly is not the subject of this inquiry. The Holmwood, comprising some 635 acres, was by a Conveyance dated 22 April 1955 conveyed by the Duke of Norfolk to Surrey County Council. By a transfer dated 20 September 1955 part of Holmwood Common was transferred by Surrey County Council to the National Trust. From the extract of the plan on this transfer it appears that the part transferred to the National Trust included the B area. The transfer although in Land Registry form bore no Title number, and since the ownership of the B area has been referred to the Commons Commissioners, I assume that the B area is not included in any Land Registry title.

By a lease dated 30 January 1967 some 18 acres of Holmwood Common were demised by the National Trust to Surrey County Council for a term of 99 years at a yearly rent of £1 for highway purposes. The B area was part of the 18 acres.

On this evidence I am satisfied that the National Trust is the owner of the B area, and I shall direct the registration authority to register the National Trust as such owner.

Area on Plan A

This is a small strip in North Holmwood lying near to a property called Inholms Farm. Its ownership is claimed by the joint owners of Inholms Farm, Mr J A Ford, Mrs B M Brooker and Mr M W Ford, whose title to Inholms Farm is registered under the Land Registration Acts. They were represented at the hearing by Mrs M C Pamfrett, Solicitor, of the firm of Atkins, Walter and Locke.

By a lease dated 31 July 1946 Inholms Farm was demised to R B Barker for a term of 21 years at a yearly rent of £550. In a Statutory Declaration dated 5 December 1978 Mr Barker said that after the expiry of the term his tenancy continued by virtue of the Agricultural Holdings Act 1948: that from 1945 to 1978 he used the access roads marked on a plan as of right without the consent of any person or payment or acknowledgement. One of the access roads was it appears over the A area or part of it. By a Deed dated 8 December 1978 Mr Barker surrendered his tenancy to the owners of Inholms Farm, who are the present claimants to ownership of the A area.

Mr M W Ford gave evidence and said that the access way over the A area had continued to be used by the claimants and they have maintained the tarmac and the hedges.

I am not satisfied on this evidence that the claimants have established ownership of the A area. Mr Barker's evidence may well support the existence of rights of access by way of the A area but in the circumstances cannot be regarded as acts of ownership of the area. Mr Ford's evidence as regards maintenance adds some slight support for the ownership claim, but in my opinion such maintenance is attributable to better enjoyment of an access right rather than to a claim to ownership, and



in any event has not been carried out for the statutory period required for a possessory title

Accordingly, as I am not satisfied that any person is the owner, the A area will remain subject to protection under section 9 of the Act of 1965. Should further evidence emerge which supports a claim to its ownership, it will be open to the claimant to request the registration authority to refer the matter again to the Commons Commissioners.

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 1988 17 March

L. J. Morris Smith
Commons Commissioner