

Over Green (originally called the Recreation Ground)

A brief history of ownership issues and challenges

The "Recreation Ground" (now called "The Green") was given in trust to the Lord of the Manor of Over under the 1837 Inclosure Act, and the boundary is marked on the Inclosure Map of Over.



Around 1866-70 a land swap was agreed with Mr de Freville, then owner of the land to the south of this rectangle, whereby the eastern half of the parish land was exchanged for a similar-sized area to the south of the remaining part, creating a more useful square outline. This new boundary is shown on the 1st edition Ordnance Survey map of 1886, and is the shape we see today.



In 1895 the newly-created Parish Council asked to take over the land, and the Lord of the Manor, acting on legal advice, agreed to the request and notified the Charity Commissioners accordingly.

Boundary challenges and resolution

(recorded in Parish Council minutes and correspondence)

1960-2 - Messrs G & E Norman

The council became concerned that two neighbours were using gaps in the eastern boundary hedge as a way onto the Green from their properties and wrote asking them to desist. The matter escalated, solicitors were involved and Counsel's opinion was sought.

(That opinion was inserted in the Minutes and is therefore on public record – so it is attached).

Acting on that legal opinion, the Council sent Solicitors' letters to the two neighbours asking them to desist and notifying them that the hedge would be cut.

(A copy of one of the letters was written into the Minutes, so it is also attached.)

The minutes also record receipt of a letter from Mr Norman's solicitors, claiming a right of way across the Green, a claim that the Council rejected – but it decided to take no further action at that time.

1968 – (No.2a)

The Council discussed encroachment on the Green boundary ditch by the owner of the new dwelling recently erected in the S.E corner. Having received no satisfaction from written verbal requests to respect the Council's boundary, the Clerk was instructed to write informing the owner that, unless the boundary ditch was cleared within 14 days, further action would be taken.

1968-9 - Mr M R Woolley (No.4a)

The Council noticed that Mr Woolley had filled in the ditch and wrote asking him to clear it. He responded through his solicitors demanding proof of the Council's ownership. The Council once again sought a QC's opinion, which agreed with the earlier QC's opinion.

The case eventually went to Huntingdon County Court on 22 May 1969 and the Court found in the Council's favour, deciding that the Council did indeed own the boundary ditch. Mr Woolley was required to pay a nominal £1 in damages as well as the Council's costs. Mr Woolley cleared the ditch.

1977 - Mr M R Woolley (No.4a)

The Council noticed that Mr Woolley had once again filled in the ditch and wrote asking him to clear it. He wrote back asking for a copy of the Council's Deed of Title.

The Council wrote back in the following terms (taken from the Minutes):

“Thank you for your somewhat surprising letter of 12th January. I am instructed by the Parish Council to quote you the following extract from the Minutes of our meeting of 30th May 1969, which I feel sure will remind you of the situation regarding the legal ownership of the ditch outside the boundary hedge of the recreation ground:

I quote: “ *The Clerk was then asked to report on the recent legal action taken by the Parish Council to confirm the exact boundary of the Recreation Ground. At Huntingdon County Court, before Mr*

Justice Connolly-Gage, the Parish Council's case was heard and proved, i.e. that the legal boundary of the Recreation Ground includes the ditch outside the boundary hedge, and that by filling-in that ditch the Defendant, Mr M.R. Woolley, had acted wrongfully, and that the Parish Council had thereby suffered damage.

On May 22nd the Parish Council were awarded 20s damages and costs. The Defendant had complied with an order to reinstate the ditch by removing the infilling therefrom.

The Clerk attended and gave evidence on behalf of the Parish Council."

May I respectfully point out that you are now breaking this Court Order and ask that you reinstate the ditch within the next 28 days."

Mr Woolley asked for further time to allow the daffodils to finish flowering before carrying out the work, leaving instructions for his gardener to do so – a request that the Council considered reasonable and granted. However Mr Woolley then sold the house and moved to Newmarket without ever doing the work. The Council then cleared the ditch and notified Mr Woolley in September 1979 that it would be sending him the bill. In April 1980 the Council sent Mr Woolley by Recorded Delivery a bill for £33 for the cost of the work, giving him 14 days to respond - followed up later with a solicitors' letter demanding £44.50, including their own costs, since he had not responded.

Ditch specifications that were sent to Darby (Sutton) Ltd who were awarded the contract to re-dig the ditch in 1979

"The ditch to be about 2'6" wide at the top, and 1' wide at the bottom to run from ground level approx. at its southern end, to fall to the level of the drain and connect with same at the Willingham Road end. Our boundary is 4' from the centre of the hedge to the extreme far edge of the ditch."

1979 - Dr C.E. Mellish (No.4a)

The Council had notified all its neighbours in May of its intention to re-dig the ditch and Dr Mellish responded by asking to erect a fence on his side of the ditch. The Council pointed out that it had decided to re-dig the ditch rather than pipe it as "we felt that this would be a more visible boundary and would, of course, help prevent stray balls in use on the Green from bouncing further onto your property". The Council agreed to his request, but asked that he postpone the fencing work until the ditch had been dug the following week. However it was concerned that he was going to include barbed wire in the fence and would be contacting all sports clubs to let them know of his intentions.

Dr Mellish also objected to the cutting of the hedge, but the Council pointed out that no less than three other residents bordering the Green had requested the action and that the decision had been taken long before his move into the property. It pointed out that *"the hedge had always been maintained at approximately 4' in height, and only a mechanical breakdown of our hedgecutter and the shortage of available manpower prevented it from being cut last year."*

Dr Mellish contacted the Council again in June through his solicitors regarding damage that had been done to his new fence when the hedge had been trimmed. However the Council pointed out to the solicitors that *"at a site meeting of our Recreation Ground Committee held earlier this week it was felt that the damage may have been due to an error in the alignment of the fence which, although accurate at the south end of*

their boundary, it is about 6" too near to the hedge by the time it reaches the northern boundary (at the Willingham Road end). We would request, therefore, and to prevent any future mishaps or misunderstandings, that the fence is accurately re-aligned in the near future."

Visual boundary markers around the perimeter of the Green

All along the southern boundary of the Green, bordering the Cox's End development, there is a substantial close-boarded wooden fence, erected precisely 4' from the centreline of the hedge.

Boundary marks were clearly visible during the Viewing Day while No.2a was being renovated, but it appears that these were removed before the property went on the market.

The boundary of No.2 is clearly marked with a fence set back 4' from the centreline of the hedge.

The 'dog-leg' of land belonging to No.6 (formerly part of the back garden of No.4a) still has metal posts and wire fencing visible, again set back 4' from the hedge.

The rear garden of No.4a has a line of leylandii clearly set 4' away from the Green hedge centreline.

August 2013

Attachments:

Opinion of Martin Nource QC (Nov 1961)

Copy of Solicitor's letter sent to Mr G Norman (Aug 1962)

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O P I N I O N

1. In my opinion the evidence available conclusively suggests that the ownership of the hedge is vested in the Parish Council of Over as Trustees of the Over Recreation Ground

I arrive at this conclusion for the following reasons:-

(i) Where two properties are separated by a hedge and a ditch there is a presumption, which can of course be rebutted by evidence, that the boundary runs along the extremity of the ditch farthest from the hedge: See Emmet on Title 14th Edition Vol.1. p.445

(ii) The Council have for many years treated the hedge as belonging to them and have consistently exercised acts of ownership over it

(iii) The undated copy Agreement filed in the Parish Church apparently obliged the Parish to carry out some sort of fencing. I do not think that much weight can be attached to this. Furthermore, the Agreement appears to require that a gate be made at "the East end of the close..if required by the tenant." Could this in any way entitle Mr.Norman, as successor of that tenant, to make a gap in the hedge?

2. The position could of course be affected either way by the documentary title of the Council or Mr.Norman to their respective properties. The Council's title is derived from an Award made under an Inclosure Act passed in 1837. I have examined this Act, which by section 50 empowered the Commissioners to allot between four and six acres to the Lord of the Manor to be held for recreation purposes. Section 64 provided that all allotments should be enclosed, ditched and fenced at the expense of the Allotees, and that all fences should be repaired and maintained by persons named by the Commissioners in perpetuity. Section 93 provided that the Award and plan should go to the Clerk of the Peace for the County of Cambridge and that copies of them should be placed in the Parish Church. It may therefore be possible to obtain a copy of the Award and the plan may be of assistance. I appreciate that this assistance may not be very great if, as appears to be the case, the hedge in dispute does not border the original property but the part which was taken in accordance with the undated Agreement for exchange.

It is also possible that Mr.Norman's title deeds will yield some indication one way or the other. This point should be borne in mind, but it appears probable that Mr.Norman would have already disclosed his deeds if they were likely to assist his claim.

3. If Mr.Norman persists in his contentions then the Council's remedy will be to take proceedings for a declaration for their rights, an injunction restraining Mr.Norman from tampering with the hedge or passing through it, and for damage, which would appear likely to be no more than nominal. These proceedings could be taken in the County Court under section 51 of the County Courts Act 1959. If the Council were successful I see no reason at present why they should not be entitled to an order for costs in the normal way.

4. I have nothing to add.

Martin Nource,
Lincoln's Inn,
2nd Nov.1961.

COPY

18 The Broadway
St Ives
Hunts.

20 Aug. 1962.

Mr G. Norman
"Greenhill"
Over, Cambs.

Dear Sir,

No doubt you will recall that last year we had some correspondence with you concerning the hedge in front of your property which belongs to the Over Parish Council.

We have now been instructed by the Over Parish Council to inform you that on the 12th July last the following proposal was carried at a meeting of the Council.

"That the hedge be cut and the gaps repaired and that a letter be sent to the owner of the neighbouring property informing him of the Parish Council's action, and asking him not to use the boundary hedge as a way into or out of his property."

We are writing to you as the owner of the neighbouring property, and, in view of this resolution we accordingly ask you on behalf of the Over Parish Council to cease using the gap in the hedge in front of your property as a way into it or out of it.

Yours faithfully
Day & Son