



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/317

In the Matter of Waste Ground on the North West
Side of Custard Hill, Gussage All Saints, Dorset

DECISION

This dispute relates to the registration at Entry No. CL 54 in the Land Section of Register Unit No. CL 54 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 351 made by the Earl of Shaftesbury and noted in the Register on 10 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Poole on 20 November 1979. At the hearing Miss Sheila Cameron of Counsel appeared on behalf of the Earl of Shaftesbury: the Ramblers Association was represented by Mr P Claydon and the Vale of Allen Parish Council by Mr R Childs.

The registration was made on the application of Gussage All Saints Parish Council, to which Vale of Allen Parish Council is the successor, and a supporting application No. 338 by Mr N H Hotchkiss (on behalf of the Ramblers Association) is noted on the Register. The ground of the Objection is that the land in question ("the Unit Land") was not common land at the date of registration. There are no rights of common registered, and the Earl of Shaftesbury is provisionally registered as the owner of the Unit land. By a Conveyance dated 19 July 1976 property known as Bowerswain Farm and including the Unit land was conveyed to N.F.C. Trustees Ltd for whom, as successors to the Earl, Miss Cameron also appears.

The Unit land is a small area of about 0.67 acres adjoining to the north-west a tract of land called Ton Mead which is an area of about 6.9 acres and is the land comprised in Register Unit CL 55: on the south-east is a road, the southern end of what is now Custard Hill and the continuation of which to the south is Whiteway Hill. On the south western side of the Unit land is Mead Lane and on the north-eastern boundary, a river or brook which runs across the Unit land and under a bridge to land on the other side of the road.

2. In the absence of registered rights of common, the issue is whether the Unit land qualifies for registration as common land as being waste land of a manor. By an Inclosure Award of 21 June 1798, Ton Mead was allotted in strips of specified proportions to various persons as copyholders or leaseholders of the then Earl of Shaftesbury and it appears from the Award, read in conjunction with a contemporary map of "Gussage New Allotments", that the strip on the south-eastern side of Ton Mead (the strip adjoining the roadway then called The Coachway and now Custard Hill) was awarded to Jenny Gue in respect of her copyhold tenement under the Earl of Shaftesbury. The same Award appointed the Coachway as a public road and ordered that the grass and herbage growing on the public roads should be for the use of the owners and occupiers of the contiguous allotments.

In a Tithe Rent Charge Apportionment made in 1844 Ton Mead, numbered 92 ~~on the~~ on the Plan and stated to be of an area of 6a.3r.20p. is shown as in the ownership of the Earl of Shaftesbury.



b. If I am wrong on this, the further question arises whether the registration should be confirmed notwithstanding the fact that since registration it may have ceased to be land of a manor. Mr Claydon accepted, and rightly so I think, that it did so cease by reason of the Conveyance to N.F.C. Trustees Ltd in 1976 when ownership of the land and the lordship was severed (see Re Box Hill Common 1979 2WLR 177). That case was concerned with land of which ownership and lordship had been severed years before the date of registration, and is not a direct authority on the question as to the effect of severance which occurs after the registration of land which was then waste land of a manor. In Central Electricity Generating Board v Clwyd County Council 1976 ICLR 15 an analogous question arose where the Commissioner found that there were rights of common existing at the date of registration: at the date of the hearing no rights had been registered or could any longer be registered, so that by that date (there being no case made for the land being waste land of a manor) the land had ceased to be common land. The Commissioner confirmed the registration, taking the view that if the land was subject to rights of common immediately before registration (as on his finding it was) it was ~~not~~ that by the time of the hearing the rights were no longer exercisable because they had not been duly registered. On appeal Goff J took a different view and held that if at the date of the hearing the land was not subject to rights of common and had therefore ceased to be common land, confirmation of the registration should be refused: and he said that if the registration were confirmed, and thereafter it had ceased to be common land, this would lead to "an unanswerable application" under S.13 of the 1965 Act to amend the register.

The Clwyd case was concerned with land ceasing to be common land by the cessation of rights of common, but I think that the judgment on the question of land ceasing to be common land after registration by the extinguishment of common rights is equally applicable to the present case of land which, if it was waste land of a manor at the date of registration and therefore common land, has ceased to be so since it has ceased to be waste land of a manor: and accordingly if, contrary to my decision ~~appeared~~ in paragraph 5 above, it was waste land of a manor at the date of registration, I would nevertheless, following the decision in the analogous Clwyd case, refuse to confirm the registration.

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

30 January

1980

L. J. M. Davis

Commons Commissioner