



COMMONS REGISTRATION ACT 1965

Reference No. 273/U/41

In the Matter of Broadstreet Common, Peterstone, Wentlooge

FURTHER DECISION

This reference relates to the question of the ownership of part of the land comprised in the Land Section of Register Unit No. CL.35 in the Register of Common Land maintained by the Gwent County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

On 8 February 1988, Mr R.G de Sully of Maryfield Close, Marshfield, Swansea wrote to the Clerk to the Commons Commissioners claiming the ownership of part of the unit land and enclosing various documents, claiming that they supported a possessory title to that land.

A hearing for the purpose of inquiring into the question of the ownership of the land was fixed for 9 November 1988 at Cwmbran.

On 2 November 1988, however, Mr de Sully wrote to the Clerk to the Commons Commissioners stating that he did not intend to attend the hearing. He did not however ask for it to be adjourned so I proceeded with the hearing in his absence.

Since no person claimed to be the owner of the land at the hearing I gave a Decision to the effect that I was not satisfied that any person was the owner of the land.

On 20 January 1989, however, Edward Harris and Son, solicitors, of Swansea wrote to the Clerk to the Commons Commissioners stating that they had been instructed by Mr de Sully and since he had been prevented from attending the hearing by bad health, applying, under regulation 21 of the Commons Commissioners Regulations 1971, for the Decision to be set aside. Being satisfied that Mr de Sully had sufficient reason for his absence, I set the Decision aside and re-opened the hearing.

The re-opened hearing was held at Cwmbran on 14 July 1989. At that hearing Mr de Sully was represented by Mr E Harris, solicitor of Edward Harris and Son of Swansea. His case was that his great grandfather, William Sully, a fisherman, had in about 1884 built a hut known as "The Fisheries" on the edge of the unit land on the land coloured yellow on the plan attached to this Decision. He had used the land coloured orange on that plan for drying nets and other purposes and had driven posts into it to hang the nets on. He had continued so to use it up until his death in 1921. His son Alfred Sully occupied the Fisheries and used the land for the same purposes until his death in 1949. Alfred's son William had also lived at the Fisheries but predeceased his father in 1946. William Sully's son Raymond de Sully (he has changed his name by deed poll) was born at the Fisheries in 1930.



The documentary evidence which was produced in support of this case was impressive. In view of the agreement which was later reached it is not necessary to describe it. I merely say that standing uncontradicted it satisfied me that William Sully had acquired a possessory title to the orange land which on his death in 1921 vested in Alfred Sully as his heir and that on his death intestate in 1949 vested in the President of the Probate Divorce and Admiralty (now the Family) Division of the High Court of Justice.

It came to light, however, in the course of this hearing that solicitors acting for Mr and Mrs Whittaker (who had recently purchased land to the south of the unit land at this point) had on 28 April 1988 written to solicitors then acting for Mr de Sully claiming that the land purchased by their clients included the orange land and to have applied for their title to be registered at the Land Registry. I then adjourned the hearing since, if the title to land is registered at the Land Registry, it ceases to be registrable under the Commons Registration Act 1965.

On 19 July 1989 the Clerk to the Commons Commissioners wrote to Messrs. Davies, Prichard and Weatherill, the solicitors acting for Mr and Mrs Whittaker, enquiring whether they had in fact registered title to the land at the Land Registry and if not whether they still claimed ownership of the land. Messrs. Davies, Prichard and Weatherill replied on 20 July 1989 stating that Mr and Mrs Whittaker had taken a conveyance of land including the site of the Fisheries and that all relevant papers were with the Land Registry with the application to register pending. After further correspondence on 1 November 1989 Messrs. Davies, Prichard and Weatherill wrote to the Clerk to the Commons Commissioners informing her that the Land Registry had refused to register title to the orange land in the name of Mr and Mrs Whittaker. Since, however, Mr and Mrs Whittaker still claimed to be owners of the land it became necessary to hold a further hearing.

This took place at Cwmbran on 24 April 1990. At that hearing Mr E Harris again represented Mr de Sully and Mr G Eveleigh, solicitor, of Messrs. Davies, Prichard and Weatherill represented Mr and Mrs Whittaker. Mrs S Coldrick of Church Farm, which lies immediately to the east of the orange land, appeared in person. This was her first appearance and she stated that she did not claim ownership of any of the unit land but wished to oppose Mr de Sully's claim.

The parties requested an adjournment during which I sent for the original register map which made it clear that the yellow land did not form part of the unit land.

After the adjournment the parties presented me with a written agreement by which it was agreed, as far as relevant to this inquiry, that the land coloured orange was "in the estate of the late Mr Alfred Sully" and that where the boundary of the land coloured orange and the land of Mrs Coldrick coloured green on the plan is a rean the boundary is the middle of the rean. The letters XY on the plan refer to a right of way and are not relevant to this inquiry.

On that evidence I am satisfied that the land coloured orange on the plan attached to this Decision is in the ownership of the President of the Family Division of the High Court of Justice. As far as the remainder of the unit land is concerned I am not satisfied that any person is the owner and it will remain subject to protection under section 9 of the Act of 1965.



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 this decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

14th

day of

May

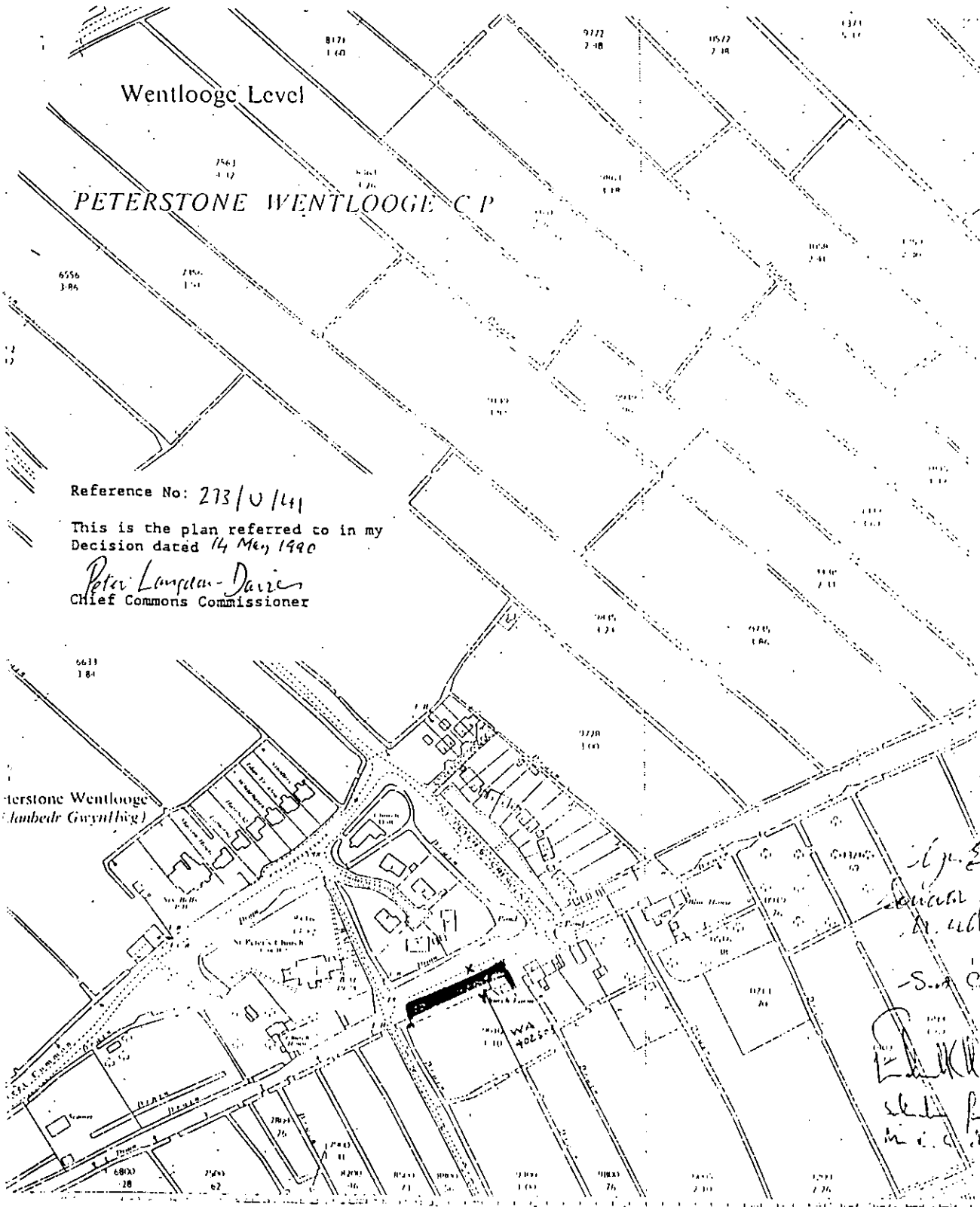
1990

Peter Lamdan-Davei

Chief Commons Commissioner

E SURVEY ERENCE	ST 2680	Scale 1:2500
GWENT	DISTRICT NEWPORT	© Crown copyright

A.



Reference No: 273/0/44

This is the plan referred to in my Decision dated 14 May 1990

Peter Langford-Davies
Chief Commons Commissioner

Peterstone Wentlooge
(lanbedd Gwynllwg)

J. J. Enelough
Solicitor for
M. J. Williams

S. J. Caldwell

[Signature]
Solicitor for
M. J. Williams