



In the Matter of Tollard Green, Tollard Royal, Wiltshire.

DECISION

This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No CL 81 in the Register of Common Land maintained by the former Wiltshire County Council and is occasioned by Objection No 78 made by Mr M A L F Pitt-Rivers and noted in the Register on 6 September 1972.

I held a hearing for the purpose of inquiring into the dispute at Salisbury on 14 April 1978. The hearing was attended by Mr F J Osgood, the applicant for the registration, Mr J Sher, of Counsel, on behalf of the Objector, and Mr A Copley, the Chairman of the Tollard Royal Parish Council. Mr Osgood stated that he was also authorised to speak on behalf of the Commons Open Spaces and Footpaths Preservation Society, whose application was noted under Section 4(4) of the Commons Registration Act 1965.

The land comprised in the Register Unit is roughly U-shaped. Although named "Tollard Green" in the Register, it is but the perimeter of an area of land, the whole of which was formerly known as Tollard Green. Tollard Green in this wider sense lies within the manor of Tollard, of which manor the Objector is the lord. What might be described as the land embraced by the U-shaped area has not been registered under the Act of 1965, and there are no entries in the Rights section of the Register Unit regarding the U-shaped area. Therefore, the question which has to be determined is whether the U-shaped area falls within the definition of "common land" in section 22(1) of the Act of 1965 by being waste land of the manor of Tollard.

The earliest document relating to Tollard Green in the wider sense which was adduced in evidence was the tithe apportionment award dated 3 June 1855, in which Tollard Green is shown under the heading "Commons and Wastes", with the state of cultivation described as "Pasture" and with no entries in the "Landowner" and "Occupier" columns. The parties, however, drew my attention to the account of Tollard Royal at pp. 170-177 in the history of the hundred of Chalk by Charles Bowles, which was published in 1833 as a supplement to Sir Richard Colt Hoare's History of Modern Wiltshire.

With the exception of one small ancient freehold and the glebe lands of the rectory, the whole of the parish of Tollard Royal was in one ownership until about 1814. It consisted of four farms in demesne and divers tenements or livings, held on lives by leases granted by the lord of the manor from time to time, and the downs and common lands. In so describing the property Charles Bowles was writing with first hand knowledge, for he stated that he was steward of the manor from 1799 until about 1814. About 1814 the property was divided. The manor of Tollard with the greater part of the woods, and a farmhouse and about 480 ac. of land, with 50 beast leazes on Tollard Green, and the reversion of the leasehold tenements were acquired by the Objector's predecessor in title, Lord Rivers, and the remainder of the farms and lands were acquired by Thomas Grove. Manorial courts were still being held by the new lord when Bowles wrote.



Although there is no direct documentary evidence, it is clear that on the division of the property rights of common of pasture on Tollard Green were attached, either by reservation or grant, to the land acquired by Thomas Grove, for the existence of such rights was acknowledged by subsequent owners of Tollard Green.

The Objectors' predecessors in title continued the previous practice of including specified numbers of beast leazes on Tollard Green in the leases of the two farms into which the land acquired with the manor was divided. In addition, there were beast leazes belonging to the rector of Tollard Royal. Meetings were held to elect a hayward and for making rules of the stocking and unstocking of the common. In 1884 it was recorded that the fence at Tollard Green had been kept up by the hayward for the past eight or ten years, everyone who had leazes paying a part of the cost. The Green is crossed by a road, which was formerly gated, but when motor traffic increased the gates were removed and the common was fenced from the road at the expense of the lease holders.

During World War II an area of 88 acres, bounded on three sides by the land comprised in the Register Unit, was taken over for cultivation by the War Agricultural Executive Committee. On 25 February 1953 the Wiltshire County Council passed a resolution assenting to the exclusion of this area from the operation of section 194 of the Law of Property Act 1925. By a conveyance made 12 February 1960 the Objector purchased the 16 leazes held by three commoners and the 7 leazes held by the Rector. The rights of common having thus been extinguished by unity of possession, the Minister of Agriculture, Fisheries and Food approved the County Council's resolution on 8 June 1960. It would appear that the conveyance of 12 February 1960 also extinguished the rights of the vendors over the land comprised in the Register Unit, but whether this was the effect of the conveyance or not, any such rights have now ceased to be exercisable by virtue of non-registration under the Act of 1965.

Mr Sher submitted that Tollard Green was never waste land of the manor of Tollard because it was always demesne land under the control of the lord of the manor. I find myself unable to accept this submission. Bowles described only the four farms as being in demesne. This, coupled with the fact that manorial courts were being held in Bowles's time, indicates that the rest of the land in the manor was not demesne land and therefore that Tollard Green, over which there were rights of common, was not demesne land, but waste land of the manor.

Since the land comprised in the Register Unit is still in the ownership of the lord of the manor, it is now necessary to consider whether it or any part of it has ceased to be waste land, i.e., in the words of Watson B. in Att-Gen. v Hanmer (1858), 27 L.J. Ch. 837, open, uncultivated, and unoccupied.

Mr Sher put in a helpful plan showing the land comprised in the Register Unit divided into seven sections, lettered from A to F in an anti-clockwise direction.

Mr Osgood agreed that areas A and B, being cultivated land, should be excluded from the Register Unit.

Area C is scrub with some timber trees in it. Some of the trees have been removed in the course of silviculture. It does not appear to me that this thinning of the self-sown trees is sufficient to alter the status of this land as waste.

Area D adjoins the garden of a property known as Tollard Green Cottage. This area, together with Tollard Green Cottage, was sold by the Objector in 1976. Before the sale Area D was cleared, but some of the trees on it were left. Since the sale



the new owner has cut the grass and generally kept the area neat and tidy as an amenity for his house. It may be that this area ceased to be waste land of the manor on its severance from the lordship of the manor, but this point is at present under consideration by the Court of Appeal in In the Matter of Box Hill, Wiltshire. However, assuming that the status of manorial waste was not lost automatically on severance, I have come to the conclusion that this area is no longer waste land.

Area E was cleared of scrub some years ago and in 1969 it was planted with trees in rows. The scrub between the rows of trees is kept down. In my view this area is no longer waste land.

Area F is overgrown woodland open to the road. A verge about 6 ft wide along the road has been cleared. The Objector allows a sporting tenant to keep pheasant rearing pens on the land. I do not consider that this can be regarded as sufficient to constitute occupation of the land. I have therefore come to the conclusion that it is still waste land of the manor.

Area G has been cleared and sown with grass and so is no longer waste land.

For these reasons I confirm the registration with the following modifications:- namely, the exclusion of Areas A, B, D, E, and G.

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 this

18th

day of

May

1978

CHIEF COMMONS COMMISSIONER