



COMMONS REGISTRATION ACT 1965

Reference No. 260/D/1

In the Matter of land south of
Eastcombe Hill, Olveston, Northavon
District, Avon

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.206 in the Register of Common Land maintained by the Avon County Council and is occasioned by Objection No. Ob.70 made by Mrs. D.A. McDonald and noted in the Register on 18 January 1971.

I held a hearing for the purpose of inquiring into the dispute at Bristol on 18 March 1975. At the hearing Olveston Parish Council pursuant to whose application the registration was made, were represented by Mr. M.J. Collingridge clerk with J.L. Judd & Co., Solicitors of Thornbury, and Mrs. D.A. McDonald was represented by Mr. R. McDonald her husband.

Evidence was given on behalf of the Parish Council by Mr. E.V. Garrett who has lived all his life (45 years) in Olveston, and on behalf of Mrs. McDonald, by her husband whose parents moved to Olveston in 1914 when he was a schoolboy (he was born in 1903). Two days after the hearing I inspected the land.

The land ("the Unit Land") comprised in this Register Unit is a triangular piece containing (according to the Register) about 0.14 of an acre. It adjoins the northeast side of, and is open to, the road between Olveston and Tockington, and is south of Eastcombe Hill. The Unit Land for the most part slopes steeply up from the road. On the east is land held with a dwelling house ("the House") now occupied by Mr. and Mrs. McDonald; this land is higher than the Unit Land and much higher than the part of the road on which it fronts, there being between it and the road a steep bank. On the north are two fields which slope steeply up from the Unit Land and which higher up, become the south side of Eastcombe Hill. The Unit Land is now crossed by a driveway leading steeply upto a garage at the back of and belonging to the House; this also provides access to the gates into the field. The part of the Unit Land east of the driveway is now attractively landscaped apparently for the benefit of the House; across it, is a flowerbed retained by a stone wall and the rest is grassed over. The part of the Unit Land west of the driveway (not so near the House), although not unsightly, is rougher.

Mr. McDonald said in effect:- The House was in or about 1935, built by his father-in-law (a builder and decorator). Before then, from the time (1914) when he first knew it, the Unit Land was, except for a narrow track, covered with scrub of bramble briars, nettles and blackthorn (for the most part impenetrable); a narrow track (no wide enough for more than a horse and cart) provided access to the fields. To bring up the materials for the House, a roadway was laid out across the Unit Land where the driveway now is; the owner of the fields (Mrs. Millard) was agreeable, (access to the fields was thereby improved); the County Surveyor's Department was in agreement or did not object. In 1949 he and his wife decided to clear away all the scrub; with



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some advice and also some practical assistance of the County Surveyor's Department this was done and the whole grassed over. He put up the wall retaining the flowerbed in 1967 and it has since been planted as a rockery.

Mr. Garrett described the Unit Land as he had known it over the years; his description is not contrary in any important respect with that given later by Mr. McDonald. He emphasised that the Unit Land is now and has always been open to the road. From a point opposite the House to Haw Lane Junction (in Olveston), the road is known as "the New Road"; the Unit Land must Mr. Garrett thought have originally been an area of wasteland off Westfield Lane, being the original road between Olveston and Tockington; however, the New Road was made many years ago before he could remember.

On this reference I am concerned to determine whether the Unit Land is within the definition in Section 22 of 1965 Act which so far as relevant is: "Common Land means - (a) land subject to rights of common ...; (b) waste land of a manor not subject to rights of common; but does not include... any land which forms part of a highway".

Mr. McDonald said that nobody had ever exercised any rights of common over the Unit Land, and having regard to its past appearance as described by him and as it now appears, it is I think unlikely that it was at any relevant time ever subject to any such rights. Mr. Collingridge did not rely on paragraph (a) of the definition and conclude that the Unit Land is not within it.

I had no evidence at all about any manor. I cannot I think, properly conclude that the Unit Land is within paragraph (b) merely because it has for all time within living memory before the year 1935 been waste land open and unfenced from the highway. Other explanations are possible: the owner by reason of the steepness and unusual situation may well have concluded that it was useless agricultural land; it may be part of the highway; the circumstances that the Highway Authority, being mainly concerned with providing for motor traffic takes no interest is not conclusiv see *Attorney-General v Beynon* 1970 1 Ch. 1.

I cannot treat the Unit Land as protected by the 1965 Act merely because the Parish Council considers that because it has been open to the public for a long time, it should forever remain so. On the evidence given at the hearing, as outlined and from what I saw at my inspection, I conclude that the Unit Land was not at any relevant time waste land of a manor not forming part of a highway.

For these reasons I 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 this 22nd ——— day of May ——— 1975

a. a. Baden Fuller

Commons Commissioner.