



COMMONS REGISTRATION ACT 1965

Reference No 260/D/9

In the Matter of the Duck Pond, Hanham Abbots,
Kingswood District, Avon

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL. 327 in the Register of Common Land maintained by the Avon County Council (formerly the Gloucestershire County Council) and is occasioned by Objection No Ob. 54 made by Mrs Amelia Florence Duddridge and noted in the Register on 28 January 1971.

I held a hearing for the purpose of inquiring into the dispute at Bristol on 11 March 1976. At the hearing (1) Mr E I L Lovell, on whose application the registration was made, was represented by Mr J E Adams of Adams Brown & Co Solicitors of Bristol and (2) Mrs Duddridge was present in person. Mrs Nesta Irene Hull of 134 Abbots Road, Hanham Green, who under the Commons Commissioners Regulations 1971 was not at the hearing entitled to be heard, was represented by Mr K C R Gibson, solicitor of Mansboroughs Solicitors of Bristol.

The land ("the Unit Land") comprised in this Register Unit is approximately rectangular. Its northeast side (about 25 yards) fronts on and is open to Abbots Lane (sometimes called Hanham Green Lane), a public highway. Its southeast side (about 12 yards) adjoins a lane ("the Lane") which leads off Abbots Road to (i) a dwelling house (134 Abbots Road: occupied by Mr & Mrs Hull) on the northwest side of the Lane and southwest of the Unit Land, (ii) the buildings behind the dwelling house, The Lindens (136 Abbots Road: owned by Mrs Duddridge and occupied by herself and her son) and (iii) a field (through a gate at the bottom of the Lane). Most of the Unit Land is pond.

The grounds stated in the Objection are:- "I have Plans Revealing, that this Land, Referred to as The Duck Pond and Lane Hanham, Belongs to me. And I have no wish for it to be Registered as Common Land".

At the beginning of the hearing, Mr Adams invited me to rule that the evidence and argument need only relate to the Objection as framed; additionally he contended that under regulation 26 of the Commons Commissioners Regulations 1971, it was for Mrs Duddridge to call her evidence first. Mrs Duddridge produced a plan ("the Linen Plan") apparently showing the position of the drain from the Pond where it crosses the front garden of The Lindens and a statement dated 30/8/75 and signed by David J Lear; she said that the Pond drained to her cess tank, and that her difficulty was that she did not know why it was alleged that the Unit Land is common land.

I declined to give any ruling as invited by Mr Adams, and decided that the evidence in support of the registration should be given first, because this on the information then before me seemed to be likely to be the more convenient, such decision to be without prejudice to any contention which might later be made as to the burden of proof.



In support of the registration evidence was given by Mr Lovell (the Applicant; he is 77 years of age and has known the land since before the 1914-18 war), by Mr F Kendall (he is aged 68 years and lived until he was 30 years old at Hanham Abbots), by Mr J Snell (he is assistant chief administrative officer of Kingswood District Council and since 1962 has been clerk of Hanham Abbots Parish Council), and by Mrs N I Hull (above mentioned; she has since 1947 resided at 134 Abbots Road, the garden of which is southwest of and adjoins the Unit Land). In the course of his evidence Mr Lovell produced or was referred to:- (i) a tracing he had made of an old parchment map held in the Gloucestershire Archives in the Shire Hall, being plan C referred to in the Bitton Inclosure Award 1827, (ii) a copy he had made of part of the said Award from the copy now in Bitton Church, (iii) a copy of part of the tithe map now held in the Bristol Archives, (iv) a sketch plan (not drawn by himself) of the drainage of the Pond and of The Lindens, (v) a certified copy extract of the minutes of the Warmsley Rural District Council for 19 July and 4 October 1904, and (vi) a copy made by himself of part of the minutes of the same Council for 21 November 1905.

In support of her Objection Mrs Duddridge gave oral evidence in the course of which she produced (in addition to the Linen Plan and the said statement of Mr Lear) (i) a conveyance dated 2 October 1956 by which a plot of land for the purposes of identification delineated on the plan annexed also the dwelling house and outbuildings thereon and known as The Lindens numbered 398 on the tithe map was conveyed by Mr P F Rothwell to Mr F J Duddridge, (ii) a conveyance dated 5 January 1956 by Mr R J Taylor to Mr P F Rothwell, (iii) a conveyance dated 23 June 1937 by Mrs N Nurse (as personal representative of Mr W R Nurse who died on 14 March 1937) to Mr F J Taylor, (iv) a conveyance dated 28 November 1933 by which various persons all bearing the name of Nurse conveyed their beneficial interest in the land to Mr W R Nurse, and (v) an assent dated 15 April 1965 by which Mr A B Price as executor of Mr W J Duddridge (he died on 12 October 1964) assented to the plot for the purposes of identification described in the plan annexed to the said 1956 conveyance vesting in Mrs Duddridge.

On the day after the hearing, I inspected the Unit Land, it having been agreed that I might do so unattended.

Mrs Duddridge said in effect that when her husband bought The Lindens, their solicitor had told them that the Linen Plan was vital to their sewage system. Mr Lear in his statement said that Mr Nurse owned the brewery (meaning the buildings at the back of The Lindens and some of the buildings now on land occupied by Mr and Mrs Hull)... Mrs Nurse owned the Pond. He sold the land around but kept the Pond for the drains from The Lindens, the house he built. I helped him build the drain. For as long as I can remember Mr Nurse owned the Pond and Mrs Duddridge bought it with The Lindens..."

The Linen Plan (as also the sketch plan put to Mr Lovell) shows that the drain appearing to take excess water from the Pond connects with a pipe which runs under the Lane across the front garden of The Lindens, where it is joined by a pipe taking excess water from The Lindens' cess pit (perhaps it flows through the pit) and thence continues under Abbots Road; ultimately the water flows away to the north-east. Importantly the Unit Land enjoys an advantage from this pipe, because the excess pond water must flow away somewhere, and I infer that the front garden is or may be burdened with an easement or obligation to accept this water. It may be that the drain pipes used by The Lindens (and perhaps the pit too) are cleansed



by the excess water from the Pond so that the owner of The Lindens gets some advantage from this excess water, and perhaps the Unit Land may be burdened by an easement or an obligation to allow this; however this may be, I am not persuaded by the plans or anything said at the hearing that this drainage system provides any evidence of the Unit Land being for ownership purposes part of The Lindens.

At the hearing I examined the said conveyances and assent produced by Mrs Duddridge, and in my opinion there is nothing in any of them in any way supporting the view that the plot of land which was thereby conveyed and on which The Lindens and the buildings used therewith now stand, include any land northwest of the Lane. On the copy tithe map produced by Mr Lovell the plot is numbered 398 but neither the Unit Land nor the Lane are numbered. On my inspection of the Unit Land, it seemed to me that the stone wall which is on the southeast side of the Lane and which is the northwest boundary of the front garden of The Lindens is the obvious boundary of the plot of land dealt with in the conveyances, I could see nothing which suggested that the Unit Land could sensibly be regarded as included in such plot.

For the above reasons I am of the opinion that neither the plans produced by Mrs Duddridge nor the documents of title produced by her nor anything said by her or anyone else at the hearing are evidence that she owns the Unit Land or any part of it, and I accordingly conclude that it does not belong to her and that the grounds of her Objection are not established.

Mrs Duddridge explained that she had objected to the Unit Land being registered as common land because she thought such a registration might interfere with the transport business carried on by her son from the buildings behind The Lindens. Her reasons as I understood them for thinking this registration could have this effect seemed to me insubstantial and irrelevant, and neither this circumstance nor anything else which she said could I think make it "just" within the meaning of regulation 26 (cited to me, as above stated, by Mr Adams at the beginning of the hearing) for her to put forward additional grounds not mentioned in her Objection, and accordingly in my view it is not necessary for me to consider whether the evidence produced by Mr Lovell establishes that the Unit Land is within the definition of common land in section 22 of the 1965 Act. However in case I have wrongly exercised my discretion under this regulation, I summarise the evidence which was given about this.

The documents about the 1827 Award show that the plot of land now owned by Mrs Duddridge was allotted, that the Lane was laid out as a private carriage way, and that the Unit Land which was on the Award map numbered 94 and was then for the most part a pond, which extended some distance to the northwest, was not allotted. On the tithe map neither the Unit Land nor the Lane were (as above stated) numbered. Warmley Rural District Council on July 1904 resolved to "fill in the Pool" but in October 1904 found the water could run away freely (so I suppose did not fill it in) and in December 1905 paid £2 towards the £5 which a Mr Haskins said it had cost him to clean out the Pond at Hanham Green. Mr Lovell said that the Unit Land had always been called the Duck Pond, that he remembered carts and horses being driven through it, because the horses liked the water and the wetting of the carts tightened up the wheels. Mr Kendall said his father was a carrier whose circuit from Bristol included Hanham Abbots and regularly let his horse have



a drink at the Pond. Mr Snell said that about 10 years ago when the Pond was filled in with such things as bedsteads and bicycles and branches of trees, the Parish Council had arranged with the Warmsley Rural District Council for the clearing out of the Pond, the District Council supplying a lorry and the Parish Council providing the labour.

Although the evidence summarised was not supported by the production of the original documents referred to, it is consistent with the present appearance of the Unit Land, and I consider that I can properly give full effect to it and conclude that the Unit Land is waste land of a manor within the 1965 Act definition. Accordingly both for this reason and because I am bound by regulation 26, I confirm the registration without any modification.

Mrs Duddridge should not I think be liable (as was suggested by Mr Adams for all the costs incurred by Mr Lovell in these proceedings. He in the public interest took upon himself to apply for the registration and thereby subjected himself to the risk of having to explain at or before any public inquiry why he considered the Unit Land was properly registered under the 1965 Act. However Mr Lovell could not reasonably expect that Mrs Duddridge would (wrongly as I have held) claim to be the owner, and when he knew that such a claim was being made he could reasonably arrange to be represented at the hearing by a solicitor who could deal with the legal technicalities which might arise in consequence of any ownership evidence given by or on behalf of Mrs Duddridge; and to this extent he should I think be indemnified by Mrs Duddridge. Having regard to these considerations, I shall order Mrs Duddridge to pay to Mr Lovell the costs incurred by Mr Lovell in respect of these proceedings with the modification that such costs be limited to Mr Lovell's representation by a solicitor at the hearing and to other matters consequential on her ownership claim and that the Registrar shall (notwithstanding the scale of costs hereinafter directed) have a discretion as to the amount he shall allow in respect of such representation and I shall direct that such costs be taxed according to scale 2 prescribed by the County Court Rules 1936 as amended.

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 24th day of May —

1976

Richard Fisher

Commons Commissioner