



COMMONS REGISTRATION ACT 1965

Reference No.3/U/38

In the Matter of land at Lane End,  
Wycombe R.D., Buckinghamshire

DECISION

This reference relates to the question of the ownership of land at Lane End (about .042 of an acre at the junction of the Oxford - Marlow road with the side road leading across Handleton Common), Fingest and Lane End, Wycombe Rural District being the land comprised in the Land Section of Register Unit No.CL.81 in the Register of Common Land maintained by the Buckinghamshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference Sir Francis Dashwood, Bt. claimed to be the freehold owner of part of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Aylesbury on 27 November 1973. At the hearing Sir Francis J. V. H. Dashwood, Baronet ("the First Claimant") was represented by Mr. R. H. Mills, land agent (A.R.I.C.S.) employed by Smith - Woolley & Co. Chartered Surveyors and Chartered Land Agents of Woodstock, Oxford and Fingest and Lane End Parish Council were represented by Wing Commander H. Clark their vice-chairman.

Mr. Mills, whose firm had been appointed as managing agents of the West Wycombe Estate by the First Claimant on 1 April 1971 gave oral evidence; as also did Wing Commander Clark (he first went to Lane End in 1949 and has lived there until 1966 on and off and after 1966 permanently). After the hearing I inspected the land, it having been agreed that I might do so unattended.

The land ("the Unit Land") comprised in this Register Unit is centrally situated in Lane End. It is in two pieces: one piece ("the West Piece"), the smaller of the two and triangular in shape, is bounded on the south by the backs of some buildings which front on the main road (the Oxford-Marlow road) running through Lane End, and bounded on the west and north east by two side roads which combine to form the road leading out of Lane End across Handleton Common to the north; the other piece ("the Pond Piece") is bounded on the south by the said main road, on the west by one of the said two side roads, and on the north east by buildings. The West Piece is hard ground convenient for parking cars and other vehicles. The Pond Piece consists in part (the greater part) of a pond ("the Pond"), in part (north of the Pond) of ground with some grass and a seat looking over the Pond and with some hard ground providing access from the road to the buildings on the north-east, and in part (the remaining part) of some hard ground providing similar access and space for leaving vehicles.

Mr. Mills on behalf of the First Claimant claimed ownership of the West Piece and of that part of the Pond Piece which is within the Old Parish of West Wycombe, that is the part north of a line running approximately through the centre of the Pond parallel with the main road. Wing Commander Clark on behalf of the Parish Council claimed ownership of all the Unit Land.



Mr. Mills gave evidence by reference to a statement which he had prepared and to which was attached a schedule of all areas of registered (under the 1965 Act) common land lying within the Old Parish of West Wycombe, and a plan ("the Statement Plan") showing the Old Parish surrounded by a red line and all the said areas coloured yellow blue and pink; the yellow (9 areas, together comprising many acres, including Booker Common, Downley Common, Wheelerend Common, Naphill Common, Toweridge Common and all except two small pieces of Handleton Common) being the areas of which the First Claimant is under the 1965 Act the registered owner, the blue (2 areas, Desborough Castle and Church Hill) being the areas the ownership of which is not claimed by the First Claimant and the pink (8 areas all very small) the ownership of which has not been registered and is claimed by the First Claimant. The Unit Land is one of the 8 areas coloured pink.

In support of his statement Mr. Mills produced (1) an affidavit sworn by the First Claimant on 21 November 1973, (2) a conveyance dated 29 April 1925 by which Sir John Lindsay Dashwood conveyed certain lands to West Wycombe Estate (a company incorporated under the Companies Acts 1908 to 1917), (3) a conveyance dated 7 July 1965 by which certain lands were conveyed by West Wycombe Estate (then in liquidation) to the First Claimant (the principal shareholder), (4) a conveyance dated 8 March 1968 by the First Claimant, (5) a framed photograph of a map of the Manor of West Wycombe prepared for Sir Francis Dashwood and dated 1767, (6) a photograph of an earlier map (said to have been made about 1700) entitled "Map of Manor of West Wycombe", (7) an appointment dated 29 May 1920 by which Sir J. L. Dashwood "as Lord of the Manor of West Wycombe appointed William Wingrove to discharge the duties of Hayward and Custodian of the Commons of Naphill and Downley part of the Manor of West Wycombe...

In the 1925 conveyance the lands conveyed were described as "First All the lands situate in the Counties of Buckingham and Oxford which are more particularly delineated on the Plan annexed hereto and therein coloured Pink and Green (except ...) Secondly All the waste lands of the Manor of West Wycombe in the said County of Buckingham which waste lands are for the purposes of identification only and not of limitation more particularly delineated on the said plan and thereon coloured yellow. Thirdly the several fee farm rents ... And Fourthly All other (if any) the lands and hereditaments of the Vendor situate or arising in the Counties of Buckingham and Oxford or either of them and whether freehold customary freehold copyhold or leasehold and under whatsoever title the same are held except Manors and reputed Manors". In the 1955 conveyance the lands conveyed were described as: "First the fee farm rents and perpetual yearly rent charges reserved out of the lands coloured blue ... Secondly all those freehold lands situate in the county of Oxford and Buckingham as shown on the said plan coloured pink beige brown hatched mauve yellow and green ... And Thirdly all other (if any) the lands and hereditaments of the Company situate and arising in the counties of Oxford and Buckingham or either of them and under whatsoever title the same are held". The lands coloured yellow on the plans referred to in the 1925 and 1955 conveyances included all the commons coloured yellow on the Statement Plan, but did not (as Mr. Mills candidly stated at the outset) include the Unit Land. The 1968 conveyance did not include the Unit Land or any of the Commons coloured yellow on the Statement Plan.

Mr. Mills as I understood him, based his claim on three propositions: (1) the First Claimant is now the Lord of the Manor of West Wycombe; (2) the Manor is coextensive with the Old Parish of West Wycombe, and accordingly all common lands in the Old Parish



which have been registered under the 1965 Act are (or at least should be presumed to be until the contrary is proved) within the Manor and accordingly owned by the Lord; (3) alternatively on the evidence I should conclude that the Unit Land is within the Manor and accordingly so owned.

As to proposition (1):- The First Claimant in his affidavit, after saying (among other things) that the freehold of the West Wycombe Estate which included large areas of common land was conveyed by his father Sir J. L. Dashwood to the West Wycombe Estate Company on 29 April 1925, says: "My father always assumed that he was Lord of the Manor and was always assumed by others so to be ... To the best of my knowledge and belief, I am myself now Lord of the Manor and this belief has never been challenged ..." Mr. Mills argued (basing himself on some suggestion which had been made in past years by the First Claimant's Solicitors relating to other matters) that the First Claimant is now Lord of the Manor (a) because the Lordship passed with the freehold of the waste lands secondly described in the 1925 conveyance and with the other lands fourthly described in the 1955 conveyance notwithstanding the above quoted exception at the conclusion of the "Fourthly" in the 1925 conveyance; or alternatively (b) that the Lordship on the death of Sir J. L. Dashwood passed to his widow under his will and then passed to her son the First Claimant under some arrangement made between them. On the affidavit of the First Claimant and the 1920 appointment, I conclude (Wing Commander Clark did not contend for the contrary) that the Lordship of the Manor was vested in Sir J. L. Dashwood and is now vested in his successors in title. I reject argument (a) as being inconsistent with the First Claimant's statement that his father "always" (meaning as I read his affidavit, up to his death) assumed that he was Lord of the Manor and as being inconsistent with the exception in the 1925 conveyance; although by section 6 of the Conveyance Act 1881 and section 62 of the Law of Property Act 1925 a conveyance of a manor (in the absence of a contrary intention) is deemed to include commons appertaining to the manor, there is no statutory or other legal rule under which a conveyance of commons appertaining to a manor is deemed to include the lordship and further the 1925 conveyance shows I think a contrary intention. There was no evidence to support argument (b).

By section 8 of the 1965 Act, I have to determine whether I am "satisfied" as to ownership. In my view it is not enough for a person who claims a legal estate as successor to his father to state that he believes himself to be entitled as owner; he should support his claim by evidence of his succession such as is usually produced on sales of land or in some other way. For this reason, I cannot on the evidence produced to me at the hearing, conclude that the First Claimant is now the Lord of the Manor. But I regard this defect in the evidence in support of this part of his case as a mere technicality; I record therefore that if I would have been satisfied as to his ownership of the Unit Land had I been able to conclude that he is now Lord of the Manor, I would have granted an adjournment or otherwise given him (or his advisers) an opportunity of producing evidence of his succession to the Lordship; having regard to his affidavit and to the information given to me by Mr. Mills, it is reasonable to expect that this evidence could be produced without any difficulty or great expense.

As to proposition (2):- On the 1767 map is written:- "NOTE. All these fields, meadows & woods etc. coloured within the hedges belong to my Lord and those not coloured belong to persons whose names are wrote therein". The original map (not produced) is in the West Wycombe Estate Office. From the copy produced to me and



from Mr. Mills description of the original, I am not persuaded that in 1767 the boundary of the Old Parish and the boundary of the Manor marched everywhere together, even assuming that the plots with the names "wrote therein" were all customary freeholds. The 1700 map is not so clear as the 1767 map, and I do not therefore regard it as more persuasive than the 1767 map. Although it is possible that all the areas of land scheduled to Mr. Mills' statement were registered under the 1965 Act because they were within the words "waste land of a manor" which appear in the definition of "Common Land" in section 22 of the 1965 Act, it is possible that some of them (the Unit Land particularly) were so registered either because they were within the words "land subject to rights of common" (the other part of the definition) or because the applicants were mistaken in thinking that they came within either of the two parts of the definition. For these reasons I reject this proposition: and I am not I think acting contrary to the two decisions of the Chief Commissioner cited by Mr. Mills: re Broad Green dated 26 June 1973 reference 42/U/1 and re Poor Lots Common dated 30 May 1972 reference 10/U/6.

Proposition (3) is I think in law sound subject to the qualification that the ownership of the lord of the manor could be extinguished under the Limitation Act 1939 by adverse possession; but whether the proposition is applicable to the Unit Land depends on the evidence relating to the Unit Land particularly.

I do not regard the general words used by the First Claimant in his affidavit as evidence that he personally has any reason for supposing that the Unit Land particularly is now part of the Manor.

The 1767 map shows the part of the Unit Land claimed by Mr. Mills (except the Pond) as part of a larger area (north of the Unit Land) then called (and now for the most part known as) Handleton Common. On the 1767 map the south boundary of Handleton Common is drawn (unlike the boundary of the Pink land drawn on the Statement Plan) so as to exclude the whole of the Pond. The boundary of Handleton Common as coloured yellow on the plans annexed to the 1925 and 1955 conveyance does not extend so far south as the Unit Land (a gap of about 30 yards or more).

Mr. Mills suggested that it would be advantageous to everyone if the ownership of the Unit Land was the same as that of Handleton Common which (as it is or as the greater part of it is now) is subject to a scheme made in 1937 under the Commons Act 1899; if the ownership was the same, the scheme could be extended to include the Unit Land.

Wing Commander Clark said that the Unit Land had never so far as he knew been maintained by the West Wycombe Estate, that on the contrary the Parish Council had in 1964 arranged for the Pond to be cleaned, had recently spent £200 in landscaping the land around the Pond and had over the years continuously interested themselves in the Unit Land generally. In support of what he said (so far as not within ~~the~~ his knowledge) he produced a copy of extracts from the Minute Book of the Parish Council relating to meetings between 1934 and 1972. These extracts, as regards the West Piece (usually referred to as "Land behind North's Garage" or "the Car Park") may be summarised as follows: 1936, the Council resolved to erect a No Parking Board; 1938-39, the Council requested Thames Valley Traction Co. to improve the standing place and thanked them for gravelling the place; 1944, the Council referred complaints that bus drivers had encroached to Thames Valley Traction Co.: 1946, the Council resolved that Mr. North be told that the space behind his garage was intended exclusively as a parking place for buses; 1946, the Council resolved that a notice board to this effect be repainted, rewritten and re-erected; 1954-1955 discussions at 11 meetings as to how the land could be made into a public car park ending with a resolution that the



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Council erect an enamel "P" sign; 1960, the Council resolved that the Divisional Surveyor be asked to repaint the white line and 1972, a proposal by Mr. North to tar macadam on his nearby land was agreed. These extracts as regards the Pond Piece (referred to as Lane End Pond or Top Pond; the Lane End Ponds include a pond a little to the north on Handleton Common) may be summarised as follows:- 1934, the Council resolved that the District Bus Company be asked to discontinue washing buses in the Ponds; 1935, the Council resolved to ask the County to fence the dangerous side of the Pond; 1935-1937, discussion at 11 meetings as to filling in, or alternatively cleaning out the Pond ending in a resolution (other alternatives being considered too costly) to employ a man to clear it of weeds; 1955, a proposal to clear out the Pond rejected (too costly); 1962-1965, at the request of the Parish Council, the County Council cleaned out the Pond, the Parish Council paying half the cost; the County resolved that a complaint as to an overflow being blocked be referred to Mr. N. (presumably the person responsible; it was unblocked); and 1972, the Council resolved that the County be asked to remove a fence apparently erected because it was thought (mistakenly as it was ultimately discovered) that a discolouration in the water of the Pond was toxic.

The Extracts do however mention the Lord of the Manor and the West Wycombe Estate in relation to four matters:- (1) 1935 (Pond Piece) the Council resolved to write "to Sir John Dashwood (also to Lady Clayton) asking if they are (sic) Lords of the Manor of this portion of ground, would they be willing for the pond to be filled in as the Council considered it served no useful purpose". (2) 1954 (West Piece), the Council resolved to consent to the extinction of an alleged public right of way leading from the main road to the Unit Land between some buildings "provided the consent of the Lord of the Manor were also obtained" (3) 1955 (West Piece), the Council having received a letter from the West Wycombe Estate asking for observations on a request by Mr. North for special car parking permission, resolved to recommend that he be given special right and that the land be a public car park with a notice to this effect; at a later meeting the Council resolved that the West Wycombe Estate be pressed to make this ground a car park; at a later meeting it appeared that West Wycombe Estate would make no objection to the parking of cars but they would not make it into a car park, because it was open to a commoner to object to any obstruction of his right (as mentioned above the Council in the end put up a "P" sign); (4) 1969 (after the registration on the application of the Council under the 1965 Act) in reply to the Council's query, West Wycombe Estate wrote "they (meaning the West Piece and the Pond Piece) were thought to be waste of the Manor of West Wycombe, but that in any case Sir Francis Dashwood would have no objection to the Parish Council caring for them for the parish's benefit".

At the conclusion of the hearing, Mr. Mills applied for an adjournment to enable him (i) to obtain further evidence as to how the First Claimant had become entitled to the Lordship of the Manor in succession to his father and (ii) to produce the earlier deeds relating to the Estate going back to when the Estate was first acquired by the Dashwood family (the First Claimant in his affidavit said that this was in 1670). I refuse this application, for the reasons mentioned above, as to (i), and at the end of this decision as to (ii).

On my inspection of the Unit Land (it was snowing, so that neither it nor Handleton Common were at their best), I was impressed by Handleton Common (as it is now registered under the 1965 Act: Unit No. CL.79) being in appearance quite a distinct piece of land from the Unit Land. Handleton Common (as it now is) is an extensive area of grass land attractive in appearance and obviously a valuable amenity for all those living anywhere near. The Unit Land (I have described it above) is quite



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different. Further a division of the ownership of the Pond Piece into two, (the part north of the Old Parish boundary being owned by one person and the rest of the Unit Land by somebody else) would, as the land now appears, be absurd. Knowing that the 1767 map shows Handleton Common as then extending southwards to the north edge of the Pond, I have no difficulty in seeing how this might well have been at that date; possibly the Pond was then a horse pond for those using the highway which is now the main road. But it seems to me that the erection at various times since 1767 of the buildings now surrounding or near the Unit Land cumulatively effected a change, so that the Unit Land ceased to appear to be part of Handleton Common and somehow came to appear to be parish property within the ordinary meaning of these words. From appearance only I would say this change took place at least 30 years ago.

That such a change took place is confirmed not only by the concern of the Parish Council with the Unit Land as described by Wing Commander Clark and recorded in the Extracts summarised above, but by the omission of the Unit Land from the 1937 scheme made under the 1899 Act and from the lands coloured yellow on the 1925 conveyance plan.

Upon these considerations, I conclude for many years probably ever since 1925, the Unit Land has ceased to appear to be part of the waste lands of the Manor.

There was no evidence that any person acting on behalf of the First Claimant or any of his predecessors ever did any acts of ownership relating particularly to the Unit Land; from the mention of them in the said extracts as set out above, I deduce that their Estate Office never asserted ownership and never in relation to any matter discussed actually did anything on the Unit Land. I see no reason to ascribe to the Unit Land acts done by the First Claimant and his predecessors in relation to other commons owned by him.

Having regard to the appearance of the Unit Land, I can I think treat the things done by the Parish Council as acts of ownership, and accordingly on the evidence outlined above I conclude that the Parish Council has from at least since the 1939-45 war been in possession; although as regards the Pond Piece, most of what they did related to the Pond, I see no reason for treating the other part of the Pond Piece in any way differently from the Pond itself.

The letters referred to in the Extracts were not produced; as described in the Extracts, they do not I think amount to an acknowledgement of the title of the First Claimant or any of his predecessors by the Parish Council; I conclude therefore that any title he or they may have under documents and events which were made or happened more than 12 years ago, is now barred by the Limitation Act 1939. I cannot imagine how any other person could be successful in any proceedings against the Parish Council to recover possession. As possession with the practical certainty that it will not be disturbed is equivalent to ownership, I am satisfied on the evidence given at the hearing that the Parish Council is the owner of the Unit Land.

If the earlier deeds were produced at an adjournment ~~being~~ as suggested by Mr. Mills, I might I think be persuaded to take a different view of the 1925 conveyance; at present I find it difficult to suppose that Sir J. L. Dashwood, or those advising him, intended, not merely that he should continue to be Lord of the Manor, but that he should also (having conveyed many acres of waste land to the Company) retain as appurtenant to the Lordship the Unit Land and the other pieces of land coloured pink on the Statement Plan. But however this maybe, these earlier deeds could not affect my findings based on the present appearance of the Unit Land, on the said extracts and the other evidence I have as to things done just before and since the



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1939-45 war; as it is on these findings that my conclusion as to the ownership of the Parish Council is based, the adjournment asked for could I think serve no useful purpose.

I shall accordingly direct Buckinghamshire County Council as registration authority, to register Fingest and Lane End Parish Council as the owner of the land under section 3(2) 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 the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 28<sup>th</sup> day of January 1974.

a. a. Baden Fuller

Commons Commissioner