



COMMONS REGISTRATION ACT 1965

Reference No: 203/U/148

In the Matter of Old Lane, Swanbourne,  
Aylesbury Vale District, Buckinghamshire

DECISION

This reference relates to the question of the ownership of land containing about 3.08 acres known as Old Lane, Swanbourne, Aylesbury Vale District being the land comprised in the Land Section of Register Unit No. CL300 in the Register of Common Lane 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 the Honourable John Fremantle claimed (letter of 13 September 1977) ownership of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purposes of inquiring into the question of the ownership of the land at Aylesbury on 20 June 1979. At the hearing (1) Commander the Honourable J T Fremantle on whose application the Land Section registration was made, and who as owner jointly with Mr Kenneth James Reading was the applicant for the only Rights Section registration (a right attached to Athawes Farm to graze 20 cattle or 50 sheep) attended in person; (2) Mr Reading who as tenant was the other applicant for the said Rights Section registration, also attended in person; and (3) Buckinghamshire County Council as registration authority were represented by Mr C D Durrant of their County Secretary and Solicitor's Department.

The land ("the Unit land") in this Register Unit is a strip about 800 yds or a little more long and having a width bearing between about 40 and 80 ft. It is accessible from a tarmacadam public road which is at the south-east end of the Village and which ends near the north end of the Unit Land. From there, the Unit Land runs almost due south, gradually turning south-eastwards; then at a point ("the Bend") after about 450 yds from the start, it turns almost due east; at a point about 100 yds east of the Bend ("the point X") the Unit Land abruptly becomes about twice as wide (this enlargement is clearly shown on the Register map) and continues eastwards with this larger width for about 250 yds to end at a gate ("the End East Gate").

The ownership claim made by Commander Fremantle (supported by Mr Reading as his tenant was by reference to two closes of land ("Carpenters Closes") which are west of and adjoin the Unit Land; the north end of the common boundary between Carpenters Closes and the Unit Land ("the Point Q") is the south-east corner of OS No. 151; the south end of such boundary is at the Bend. The claim was to all the Unit Land except that north of the Point Q.

Mr Durrant produced from the County Archives the Swanburne (sic) Inclosure Award dated 23 August 1763 made under the Swanburne Inclosure Act 1761 (2 Geo. 3.c.9). By it the Unit Land together with some other land to the west was allotted as set out in the Schedule hereto. With reference to the allotment being apparently of a public highway and also to the said September 1977 letter, Mr Durrant said that the County Council do not claim ownership.

Mr Reading in the course of his evidence produced a copy of a map in the County Archives said to be either the basis of or a draft of that annexed to the said 1763 Award. This map shows all the land north and east of the Unit Land as intended



to be allotted to "William Warr" (a small part by the north end of the Unit Land and north of the point Q to "Mr Warr Lease"); and shows that all the land south and west of the Unit Land was intended to be allotted (~~was~~ regarding a small and irrelevant piece at the north) to "John Carpenter" as regards the north and "James Adams Gent" as regards the south.

Commander Fremantle in the course of his evidence produced: (1) a certified extract from an assent dated 22 April 1958 by which the Rt Hon J W H 4th Baron Cottesloe (his father) is personal representative of the 3rd Baron (he died 19 July 1956) assented to the vesting in himself of the Manor of Swanbourne and all the property described in the schedule and delineated on the plans annexed; and (2) a similarly certified copy of a conveyance dated 23 April 1958 by which Lord Cottesloe conveyed to him (the witness) the said Manor and all the other property described in the said assent. The land scheduled to the assent includes Athawes Farm, Nearton End in the schedule described by reference to OS Nos and Areas (totalling about 135 acres) including "116: Lane: 1.511". On one of the annexed plans Athawes Farm is edged red, but as regards OS116 such red edging includes only from the End East Gate to the Point X. Mr Reading said (in effect):- He was born in March 1929 and came to the village in 1935 (? November 1934) when his father took over Athawes Farm as tenant of the 3rd Lord Cottesloe. At that time the neighbouring Farm (on the east side of the Unit Land) was tenanted by Mr F Tofield; he paid rent in respect of the part of the Unit Land east of the Bend to his father (Mr James Thomas Reading) who held it as part of his tenancy at Athawes Farm; this continued until 1940 when the owner of the neighbouring farm claimed the land in question, so Mr Tofield stopped paying rent for it. He (Mr Reading) took over Athawes Farm in 1959 when his father retired and (so he understood) this part of the Unit Land (east of the Bend) was included in his tenancy and was also included in the tenancy of Mr R Tofield (who succeeded his brother in 1940). After he (the witness) became tenant this part of the Unit Land became very derelict although it was occasionally grazed by him; the tenant of the land to the north questioned his activities, and soon after the registrations under the 1969 Act were made. As he first knew the Unit Land, there was a gate at the bend, which is now no longer there.

After the hearing I inspected the Unit Land.

As regards the part of the Unit Land east of the Point X, in the absence of any claim from the owner of the adjoining land to the north, there is I think no reason why I should not give full effect to the evidence of Mr Reading and the assent produced by Commander Fremantle, and conclude as I do that he is the owner of it.

As regards to the part west of Point X and east of the Bend:- The Register Map as I read my copy, shows the west boundary of OS No. 116 as a line crossing the Unit Land at the Bend, and there is no line crossing the Unit Land at the Point X. During my inspection I noticed: (1) At the Point X there is a hedge about half way across the Unit Land. The other half is a gap which might be thought to have been at one time a gateway (I have no evidence that there ever was any ~~such~~ gate), (2) there is now no such obvious division at the Bend. Resolving the conflict between the Assent schedule and the assent plan, and having regard to the evidence of Mr Reading about the former gate at the Bend, I consider I ought on the conflict to treat the schedule as decisive and the red edging of the plan at the Point X to have been a mistake. So I conclude that Commander Fremantle's ownership extend to the part of the Unit Land east of the Bend up to the Point X.



The part of the Unit Land east of the Point X is now grassland along which runs a way apparently used for moving farm implements from the field beyond the East End Gate, and possibly also by horse riders going from Swanbourne to and beyond the East End Gate; notwithstanding this use, this part is obviously of some value for grazing. The part between the Bend and the Point X is more track than grass. The part of the Unit Land which is north-west of the Bend and which is also claimed by Commander Fremantle is rougher and (so Mr Reading said) of comparatively little if any agricultural value. This ownership claim is based on the 1763 Award and the map produced by Mr Reading. As to this claim:-

If the Unit Land is highway as the Award contemplates, it should not have been registered as common land under the 1965 Act, see the definition in section 22 of "common land". The 1763 Award appears to contemplate that the Unit Land would become the road between Swanbourne and Stewkley; in this respect as a piece of country planning, it has by the subsequent 200 years been shown to be mistaken; the motor road between Swanbourne and Stewkley is further north. So quite apart from its age, there is a technical difficulty in using the Award as a basis for the ownership claim now being made long afterwards.

The old map produced is favourable to the claim in that the line of the contemplated lane after running by and within the west boundary of the allotment "Mr Warr Lease" then runs along and within the east boundary of the allotment "John Carpenter", and then (from somewhere near the Bend) runs along and within the north boundary of the allotment "James Adams Gent", and then from somewhere not very clear on the map (maybe by the End East Gate) runs near the south boundary of the allotment "William Warr".

Unfortunately there is in the County Archives, no map attached to or reputed to be part of the 1763 Award; and it may be (as seems likely from the extract quoted) that the Award was intended to take effect without reference to any map. I did not study in detail the 1763 Award for the purpose of ascertaining how the various allotments mentioned in the Schedule extract were made, but I will assume (as was agreed at the hearing) that the map produced is generally a fair summary, and that the "allotment of the said John Carpenter" is the same as the fields now known to Mr Reading as Carpenter's Closes. But I cannot give the map any effect which is clearly contrary to the Scheduled extract; and it is clear from this extract that the public road or common highway thereby allotted did not cross such allotment. Accordingly I reject the claim so far as it is based on Commander Fremantle being the present owner of Carpenter's Closes.

It was argued that the "North East Corner" mentioned in the Scheduled extract from the 1763 Award must be the Point Q being, the north-east end of Carpenter's Closes, and therefore this part of the Unit Land now being claimed must somehow be treated as part of the land allotted to "James Adams Gent", and must therefore have come into the ownership of Commander Fremantle with the part east of the Bend. As to this argument Mr Reading and Commander Fremantle were agreed, that Carpenter's Closes as they now are known, were outside Athawes Farm until about 10 or 15 years ago and were only included in the lease with effect from Michaelmas 1967. At the hearing and having only the maps before me, I found the reference to this "North East Corner" in the Scheduled extract from the 1763 Award difficult to understand. But while making my inspection it struck me that the shape of OS 120 is such that without much loss of accuracy the corner of Carpenter's Closes by the Bend could be properly described as "a north-east corner", and that this corner was that to which reference was made in the Award.



During my inspection of the Unit Land, being conscious that under the allotment in the Scheduled extract from the 1763 Award the ownership was throughout the length of the land allotted intended to change twice, it seemed to me that the most obvious places for these two changes were (1) the End East Gate and (2) either the Bend or the Point X.

Having regard to the above considerations I consider the Award too uncertain to be the basis of any conclusion about the ownership north-east of the Bend, and I therefore reject the claim based on it. But I record that it does I think support the claim (which for other reasons I have found to be established) but the part of the Unit Land east of the Bend is now in the ownership of Commander Fremantle as successor of James Adams.

For the above reasons I am satisfied that Commander Fremantle is the owner of the part of the land comprised in this Register Unit east of the Bend, and I shall accordingly direct Buckinghamshire County Council as registration authority to register Commander the Honourable John Taping Fremantle of The Old House, Swanbourne as the owner of the part of the land comprised in this Register Unit which is east of the Bend and for the purpose of giving precision to my direction, I define the Bend as meaning the line shown on the OS map 1/2500 which crosses the land in a direction approximately northeast-southwest, and which would if produced northeastwards pass through "345" which is on the map within and near the southwest boundary of plot No 118 (acreage 8.945). For the above reasons, in the absence of any evidence that anyone other than Commander Fremantle could be the owner, I am not satisfied that any person is the owner of the remainder of the Unit Land, and it will therefore 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 the decision is sent to him, require me to state a case for the decision of the High Court.

SCHEDULE  
(Extract from 1763 Award)

AND WE DO hereby further ascertain set out and appoint determine and award that there shall at all times for ever hereafter be and remain a like publick Road or Common Highway from another part of the East End of Swanbourne aforesaid at or near the messuage and farmhouse of the said William Warr situate in Swanbourne aforesaid into through and over the herein before first described allotment of the said William Warr (in lieu of his leasehold land) and from thence into through and over the herein before first described allotment of the said William Warr to the North East Corner of the hereinbefore described allotment of the said John Carpenter and from thence unto through and over the hereinbefore third described allotment of the said James Adams and from thence into through and over other part of the hereinbefore described allotment of the said William Warr and from thence into through and over the hereinbefore third described allotment of the said William Warr to a certain Lane in the Parish of Mursley aforesaid called Doverell's Lane leading towards Stewkley which said last mentioned publick Road or Common Highway now is and shall at all times hereafter be and remain of the breadth of forty feet in every part thereof as the same is now staked and set out and shall at all times for ever hereafter be deemed a publick Road or Common Highway.

Dated this 13<sup>th</sup> —

day of September — 1979.

*A. A. Baden Fuller*

Commons Commissioner