



COMMONS REGISTRATION ACT 1965

Reference No 205/D/1 & 2

In the Matter of Piece of land
known as Rectory Cul-de-Sac,
Dodleston, Chester D

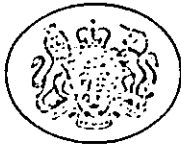
DECISION

These disputes relate to the registrations at Entry Nos 1 in the Land Section and Entry No 1 in the Ownership Section of Register Unit No CL. 89 in the Register of Common Land maintained by the Cheshire County Council and are occasioned by Objection Nos 72 and 73 both made by Marshcrest Properties Ltd and both noted in the Register on 10 December 1971.

I held a hearing for the purpose of inquiring into the dispute at Mold on 11 March 1975 and an adjourned hearing at Chester on 25 January 1977.

At the hearing at Mold Mr J K Shanklin who registered the land as common land and claimed ownership withdrew his claim to ownership. There are no Entries in the Rights Section and the land can therefore only be common land as defined in Section 22 of the Act of 1965 if it is waste of a manor. I adjourned the hearing in order to give the parties an opportunity to deal with this outstanding question. At the adjourned hearing at Chester Mr Shanklin appeared in person, Mr Southam of Messrs Slater Heelis & Co appeared for Northern Commercial Trust Ltd (mortgagees of Marshcrest Properties Ltd) and Nashmead Investment Ltd (the purchaser of the land in question and other adjoining and adjacent land). Mr Riddle counsel instructed by Messrs Burkson & Burkson also attended and claimed to appear on behalf of certain creditors and contributories of Marshcrest Properties Limited now in liquidation. In my view Mr Riddle's clients were not entitled to be heard and in the events which happened there was no occasion for Mr Riddle to take any part in the proceedings and I therefore make no further comment on his attendance.

The land in question which is less than half an acre, is the means of access to the church, which stands at the end of the cul de sac, and to Mr Shanklin's property which adjoins the church; at its northern extremity it joins the main road and there is a footpath which leads out of it across land to the east now owned by Nashmead and a pathway to a cottage leads out of this land which Nashmead plans to develop. I inspected this unattractive piece of land after the hearing at Mold. There are grass verges on each side of the unmade road to the church and a small plot of land immediately in front of the entrance to the church. Marshcrest acquired the land from the Eaton Estate by a conveyance dated 29 October 1971, subsequent to the date of the registration of the land as commonland. The importance of this land to an intending developer who wished to make a suitable access road to his development may be judged from the circumstance that Marshcrest paid £3000 for the land.



The definition of Common Land in Section 22(1) of the Act of 1965 expressly excludes "any land which forms part of a highway" and it follows therefore that I must refuse to confirm the Entry in the Land Section.

Mr Southam made two submissions viz:

- (1) that the land is and has at all material times been a highway

and

- (2) that if the land is not a highway it was not at the date of the registration waste land of a manor.

In support of his first submission Mr Southam referred to passages in Vol 19 of Halsbury's Laws of England pp 12 to 17. The passage most relevant to the instant case is at p 15 viz:-

"Many ways which because they give access to a church are spoken of as churchways are in fact public highways; and since a cul de sac may be a highway a road leading to a village church may be a highway even though it leads to no place beyond. Whether it is or is not a highway is a question of fact."

Faced with this statement of the law Mr Shanklin did not contend that the use of the land in question as a means of access to the church, his property and cottage farm was in any way restricted and he conceded that any visitor to Dodleston who for any reason wished to visit the church was free to use this only means of access. In these circumstances I find as a fact that the land in question is a highway and some support for this view was to be found in a conveyance dated 25 June 1919 produced by Mr Southam with a plan attached on which the land in question was coloured brown as also was the main road from which it led. Mr Shanklin suggested that the grass verges and the triangle in front of the church were not part of the highway. As regards the verges, I was told that cars are conveniently parked there on occasions such as weddings and funerals, and they are in my view "de minimis". As regards the land in front of the church Mr Southam stated that his clients did not intend to disturb this land, and there was some doubt as to whether the church might not be the true owner of this small plot.

In view of the conclusion I have reached on Mr Southam's first submission I can deal briefly with his second submission. He produced a statutory declaration by Mr Jones the land agent for the Eaton Estate in which he stated that he could not say with total certainty how the land in question came into the ownership of the Grosvenor family and he expressed the view that it was at one time part of Dodleston Hall Farm which was acquired in 1835 as appears from copies of extracts from a bound book containing the schedule of deeds and documents in the Muniment Room at Eaton and elsewhere exhibited to his statutory declaration. This Exhibit established that the Grosvenor family acquired the Lordship of the Manor of Dodleston in 1797 and that thereafter they acquired not only Dodleston Hall Farm but other adjacent land in Dodleston. In these circumstances I am not satisfied that the land in question was not in 1797 parcel of the Manor of Dodleston. I take the view that since Mr Shanklin by his registration is seeking to impose a status on the land which is the subject of an objection by the owner, the onus is on him to establish his case and this he has failed to do. There was produced an extract from the 1819 Edition of The History of Cheshire. This confirmed the



date on which the Grosvenor family acquired the Lordship but threw no light on whether or not the land in question was then and has remained ever since parcel of the Manor, and I am not satisfied that it was or is parcel of the Manor, and Mr Shanklin has therefore failed to discharge the onus which lies upon him.

For these reasons I refuse to confirm both registrations.

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 6th day of May 1977

G A Settle

Commons Commissioner