



In the Matter of Ellenborough Moor Gardens,  
Ellenborough, Cumbria

DECISION

This reference relates to the question of the ownership of land known as Ellenborough Moor Gardens, Ellenborough, being the land comprised in the Land Section of Register Unit No.VG.75 in the Register of Town or Village Greens maintained by the Cumbria 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 no person claimed to be the freehold owner 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 Carlisle on 27 March 1984. At the hearing the Maryport Town Council was represented by Mrs E Graham, its Clerk, and Mr A Montgomerse, Mr A Ritson, and Mr M Little appeared in person.

The land the subject of the reference was set out, allotted, and awarded by the Ellenborough Common Inclosure Award made on 1 February 1849 under the Act 9 & 10 Vict., c.117 to the Churchwardens and Overseers of the Township of Ellenborough to be held by them and their successors in trust as an allotment for the labouring poor of the township of Ellenborough subject to a rent charge of £2 payable to the lord or lady for the time being of the manor of Ellenborough.

The subsequent history of the land is somewhat obscure, but at some time which I have been unable to ascertain it became part of the former Urban District of Maryport. It would, however, appear that Ellenborough was a "parish" within the meaning of Section 68 (4) of the Rating and Valuation Act 1925, in which case the land became vested in the former Maryport Urban District Council by virtue of articles 4 (1) of the Overseers Order 1927 (S.R. & O. 1927, No.55).

The land is now and has for as long as any one can remember been divided into sixteen plots. It is said that these plots were let at 2/6d (12½p.) a year each, thus producing the £2. required to pay the rent charge. It is said that in about 1961 Mr R H P Senhouse, who was then the lord of the manor of Ellenborough, purported to convey this land with the majority of his property in and around Maryport to Metropolitan Railway Country Estates Ltd. Presumably this came about because someone did not realise that the £2 was a rent charge and not a rent payable under a lease. This may have been because the Urban District Council short-circuited the rent procedure by getting the tenants of the allotments to pay their rents to the Senhouse Estate Office, but however that may have been, the conveyance was invalid in so far as it related to the land in question.

After Mr Senhouse's sale in 1961 there ceased to be an Estate Office to receive the rents. For a time the rents were paid to the Urban District Council with the rates, but in 1963 a Mr Dobson, who was at that time the Collector, said that he did not want to receive any further rents because the allotments had been sold. Since then none of the tenants has paid any rent.



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The claims to ownership are based on the uninterrupted possession of allotments without paying any rent since 1963. Such a claim depends upon section 15 (1) of the Limitation Act 1980, which provides that no action shall be brought to recover land after the expiration of twelve years from the date on which the right of action accrued, and Section 18 of that Act, by which the title of the previous owner is extinguished after the expiration of the limitation period. It is, however, provided by paragraph 8 (1) of Schedule 1 to the Act of 1980 that no right of action to recover land shall be treated as accruing unless and until adverse possession is taken of the Land.

Upon the facts proved before me, I am not satisfied that any of the claimants have been in adverse possession of any of the allotments. It was provided by the award that the land should be used as allotments, and the only function of the owners for the time being was to ensure that the land was used for that purpose and pay the rent charge. It is therefore to be implied that any person using an allotment was so using it by permission of the owners. It is not essential that a charge should be made for the use of an allotment, so that the use of an allotment without payment can more properly be regarded as being by permission than as adverse possession. I therefore find that the title of the owners of the allotments has not been extinguished.

The Maryport Urban District ~~having~~ been abolished by the Local Government Act 1972, it is necessary to consider to which authority the land in question has been transferred by the Local Government (England) (Property etc) Order 1973 (S.I. 1973 No. 1861). One might have expected this land to have been transferred to the Maryport Town Council as Parish Property, but after a careful consideration of the somewhat convoluted definition of "parish matters" in paragraph 1 (b) of Schedule 2 to the Order of 1973, I have come to the conclusion that this land does not fall within either of the categories of property in paragraph 1 (b) (i) (a) and (b). Furthermore the definition of "parish matters" in Schedule 2 is applicable only to article 9 of the Order and it is provided by article 9 (1) (a) that nothing in that article applies to property held as sole trustee, exclusively for charitable purpose, by (inter alia) an Urban District Council. Therefore the only provision in the Order relating to the transfer of property which is applicable to this case is article 16 (3) (a). The Urban District Council being an authority described in column (1) of Part II of Schedule 4 to the Order, the property was transferred to the Allerdale District Council, the authority specified in column (2).

For these reasons I am satisfied that the Allerdale District Council is the owner of the land, and I shall accordingly direct the Cumbria County Council, as registration authority, to register the District Council as the owner of the land under section 8 (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

9<sup>th</sup>

day of

April

1984

  
 Chief Commons Commissioner