



In the Matter of Pieces of Land on each side
of New Road, Kendal B

DECISION

This reference relates to the question of the ownership of land described above being the part of the land comprised in the Land Section of Register Unit No. CL 68 in the Register of Common Land 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 South Lakeland District Council claimed to be the freehold owner of the land in question.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Keswick on 9 July 1984.

At the hearing the District Council was represented by Miss M E Bailey of its Solicitors Department, and Mr L Hayton, Solicitor, appeared on behalf of the owners of No. 7 New Road, Kendal.

The land in question is one of several areas which were the subject of a Scheme made in 1910 under the Commons Act 1899. By the Scheme the management of the areas was vested in the Kendal Borough Council but there was no provision for the vesting of ownership of the land in the Council or any other person. Bye-laws were made by the Borough Council in 1951, which continued to manage the land until 1974.

Following the Local Government Act 1972 it appears that Kendal Town Council did not wish to take over the management of common land and that since 1974 the land in question has been managed by the present claimants, South Lakeland District Council. Miss Bailey referred to 1974 S.I. No. 1351 para. 10 and the reference in Schedule 2 to the Parish Council of Kendal. Since, however, under the Scheme the land in question did not become the property of Kendal Borough Council or, so far as I can see, of any successor authority to that body, it does not seem to me that the provision referred to took effect in regard to the land in question.

Mr Hayton said that he had hoped to establish ownership in his clients, but his evidence was not complete. In these circumstances he at present opposed the District Council's claim.

On the evidence I am not satisfied that the District Council or any other person is the owner of the 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.

Dated

31 July

1984

L. A. Morris