

COMMONS REGISTRATION ACT 1965

Reference No 8/D/15

In the Matter of land (1) at
Barber Booth and (2) at Upper
Booth, Edale, High Peak Borough,
Derbyshire.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No CL. 33 in the Register of Common Land maintained by the Derbyshire County Council and is occasioned by Objection No 17 made by Mr Gordon John Perkins and Mrs Mary Elizabeth Perkins and noted in the Register on 6 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Derby on 26 January 1977. At the hearing Edale Parish Council, on whose application the registration was made, were represented by Mr A R Favell solicitor of Favell & Smith, Solicitors of Sheffield, Mr and Mrs Perkins were represented by Mr J I R Horton solicitor of Moody & Woolley, Solicitors of Derby, and Derbyshire County Council as registration authority were represented by Mr H O Jones, solicitor in the County Secretary's Department.

The land comprised in this Register Unit is (as appears from the Register map) three pieces:- One ("the West Piece"), the largest, is in Barber Booth, and is adjacent to and north of the River Noe and west of the road ("the Old Road") which runs from the Bridge over the River to Barber Booth; recently a new road ("the New Road") was constructed as a bypass (very short) of the Old Road to carry the traffic from south of and across the Bridge clear of some of the buildings in the Village and thence to Edale. Another of the three pieces ("the East Piece") is a much smaller piece which is east of the New Road and which is also adjacent to and north of the River Noe. The remaining piece ("the Upper Booth Piece") is about $\frac{1}{2}$ of a mile away at Upper Booth. As drawn on the Register map there is excluded from the West Piece a rectangular area ("the Cottage Rectangle").

The grounds of the Objection are "That the land edged red on the attached plan was not common land at the date of registration". The Objection plan comprises all (except a part at the northeast end by the Old Road) of the West Piece, the Cottage Rectangle, Whitmore House where Mr & Mrs Perkins reside and some other lands occupied with or situate near to the House.

Oral evidence was given by Mr V N Noblett who has lived all his life (70 years) in Edale, has been a member of the Parish Council (except at one election) since 1931 and was a member of the Chapel-le-Frith Rural District Council for 6 years, by Mr T R Nield who lives at Morelea (the farmhouse adjoins Whitmore House) and has lived in Edale for 63 years (he came there when he was 7) and by Mr Perkins. In the course of their evidence they produced the documents specified in the Schedule hereto.



At the hearing Mr Favell and Mr Horton agreed that there was no reason why I should not confirm the registration of the East Piece and the Upper Booth Piece.

The day after the hearing I inspected the West Piece, having been met there by Mrs M E Perkins and Mr V H Noblett. While I was walking over the West Piece, Mr William Noblett, who apparently resides at Littlewood Cottage spoke to me.

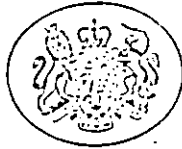
The Objection plan is a copy of the plan annexed to a conveyance dated 6 May 1970 under which Mr and Mrs Perkins became the owners of Whitmore House. The successive owners of this House ("erected a few years before" 1916) and of the land on which it was built were:- William Carrington until his death in 1799, his son James Carrington until his death on 22 November 1854, his (James') brother William Carrington until his death on 5 August 1884, his (William's) son James Carrington until his death on 17 July 1916. For a short period his personal representatives were the owners and his widow was the occupier. Under a conveyance dated 4 July 1918 (copy produced) Mr F Proctor became the owner; after him his son Mr F W Proctor became the owner, Mr J L Proctor (another son and brother of Mr F W Proctor) said it was under a deed of gift dated 23 June 1936, but this was not produced. Under a conveyance dated 28 July 1961 Mr K G Douglas became the owner, and continued until the 1970 conveyance.

The part ("the Objection Land") of the West Piece which is included in that edged red on the Objection plan and in the 1970 conveyance plan is the south part (about three quarters) of the West Piece. The Objection which is dated 29 September 1970 was based (as I understood Mr Perkins, not on any personal knowledge he had of the history of the land (he did not come to the area before the purchase) but on the documents produced by the vendor when he and Mrs Perkins purchased. Although as a general rule the mere fact that an objector owns the registered land is not of itself evidence that it is not within the definition of common land in the 1965 Act, in the circumstances of this case, I consider the ownership position under the documents relevant, because if they show that the Objection Land has been regularly dealt with as belonging or as part of the land held and enjoyed with Whitmore House, they would be weighty evidence that it was not within the definition. Mr Horton also contended that even if the documents do not show this, the Objection should nevertheless succeed, because there was no evidence that the Objection Land was within the definition.

I will first consider the ownership position under the documents produced by Mr Perkins. The proceedings were much simplified by these documents having been shown before the hearing to the Solicitors acting for the Parish Council; their evidence was directed to showing that the documents did not establish, or at least were not reliable evidence of the ownership claimed.

All these documents relate in some way to the Objection Land or the land near it, and I can only determine their proper meaning and effect by first determining as best I can the appearance when they were made of the land mentioned in them.

At present the West Piece with the comparatively minor exceptions below mentioned is waste land. In many places it is at quite a different level from the surrounding land, there being at or near the boundaries banks, some of them steep; in particular the River is much lower than most of the West Piece and the land on which stands Carle Butts Barn is much higher. An area ("the New Bungalow Area") approximately



corresponding with the Cottage Rectangle now comprises Littlewood Cottage and the garden and other land fenced off and apparently enjoyed with it. There is a vehicle track across the West Piece from the southeast to the northwest providing convenient access to Littlewood Cottage, and also alternative access to Whitmore House and Morelea Farm (the more level access being by a side road or track by the north boundary of the West Piece).

Mr Noblett in the course of his evidence said (in effect):- The building marked on the Register map in the U of the north boundary of the West Piece has always been known as Barley Butts Barn, and is and always has been part of Barley Butts Farm (to the north). When he was a boy the West Piece was used by all the nearby farms (particularly by Barley Butts Farm) with cattle, being their only means of getting down to the River; it was then the only water they had. It was also used for recreation; when he was a boy there were two large families who so used it; also there was the annual bonfire (the last was on 5 November 1975). It was (when he was a boy) common land; one or two ponies were left there to graze. At that time it looked much as it does now and so it has been all his life. Looking at the postcard, Littlewood Cottage has not looked like that for 20 years; the Cottage has been rebuilt. The grazing he described was in the springtime and during the winter; the cattle were turned out on the West Piece an hour at a time, "we all considered it was Parish Land and had equal rights"; the West Piece has never been fenced in his time, excepting the New Bungalow Area; the postcard shows only a little piece of fencing. He remembered Mr William Proctor and his father Mr Frank Proctor; his brother Mr J L Proctor never lived in Edale. Mr K G Douglas is not now alive. The said track across the West Piece was formerly not as wide as it is now; the County Council put in some waste from where they had been widening the road down to the River. The animals are not watered from the River now because there are drinking bowls elsewhere (water supply); watering has not discontinued altogether, for example when the water supply ran short this summer. The use of the land described was not with the permission of Mr Douglas.

Mr Nield in the course of his evidence said (in effect):- As to Barley Butts Barn, there used to be an old house there, now there are not many foundations; he remembered it as a ruin; it belonged to Mr Rowbotham; the man who owns it now bought it off Mr Thornley. He (the witness) used the West Piece for cattle going to water and grazing sheep at shearing time before being sheared; Ivy House Farm about 150 yards to the east had used it to about 1960; Barley Butts Farm used it when they were turning out their cattle in the morning and when they were fetched in in the evening (up to about 1955, when Barley Butts Farm was last used agriculturally); the cattle go down to the River to drink; he (the witness) let them graze before they went down and afterwards. On the West Piece children from Barley Booth played there. He remembered a low stone wall ("the Stone Wall") being erected for the convenience of Mr William Proctor on the West Piece near the west boundary in front of the hedge visible in the postcard; this was round about 1950; Mr Proctor was infirm because of his leg and it was put up for his convenience as a barrier for his cattle (to prevent them from straying around the house).

I accept the evidence of Mr Noblett and Mr Nield, any inconsistencies between what they said in my view cast no doubt on the general accuracy of what they said. The New Bungalow Area does not exactly correspond with the Cottage Rectangle, and it was at the hearing agreed that there must have been some encroachment by the owner on the West Piece as drawn on the Register map; although any such encroachment is not directly my concern, the circumstance that the Old Cottage and Littlewood Cottage which now replaces it could never be described as "belonging" to Whitmore House,



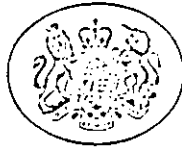
is relevant to any consideration of the 1961 conveyance. During my inspection, I found some difficulty in determining whether the Stone Wall was or was not on the West Piece as registered; the fencing off of the land surrounding Littlewood Cottage, had the effect of making older OS maps somewhat confusing. In my opinion the Stone Wall is just within the boundary of the West Piece; nevertheless, I reject the suggestion that Mr Douglas by building this wall can in some way be regarded as taking possession of or appropriating for his own use any part of the Objection Land save possibly the very small strip on the west side of it. This strip if it exists at all is so small that I shall disregard it when giving my decision because its existence cannot I think give rise to any practical difficulty. There was some indication of small insignificant additions to some of the buildings I looked at. Save as before mentioned and making due allowance for the changes resulting from Littlewood Cottage being rebuilt from the track up to it being relaid, for the dwelling house behind Barley Butts Barn having ceased to be occupied and having become a ruin and for the changes resulting in it being no longer necessary (except during exceptionally dry weather) to water cattle from the surrounding farms in the River, I find that the West Piece has at all times material to any question I have to consider appeared to be much as it is now.

Although the document most relied on in support of the case of Mr & Mrs Perkins was the plan annexed to the 1961 conveyance made by Mr J L Proctor to Mr K G Douglas, it is convenient to consider first the 1918 conveyance.

The 1880 OS map shows that the West Piece is distinct and different from Whitmore House and the Croft and the OS Nos particularly mentioned in the 1918 conveyance. By this conveyance "the Farm...comprising first the...dwelling house known as Whitmore House lately erected by the testator...with the gardens outbuildings and all other (if any) the land premises rights and appurtenances thereto belonging... as the same were in his lifetime occupied and enjoyed by the testator and since his death at Whitmore House aforesaid by his widow Mrs Hannah Carrington...and secondly ...". I reject the suggestion that any part of the West Piece passed under the words "all other (if any)"; such contention is not in my view supported by the 1918 declaration of Mr N Tym; if it had been thought that the West Piece then belonged to Whitmore House, he would I think having regard to its appearance as I find it to have been, have expressed himself quite differently.

The parcels of the 1961 conveyance are (apart from words of no importance) the same as those of the 1918 conveyance with the important addition: "as the same are for identification only more particularly delineated on the plan annexed hereto and thereon edged red". This plan is open to obvious criticisms: first it is carelessly drawn, and clearly not based on any OS map (the plan attached to the 1970 conveyance which is drawn on such a map is only more or less the same); secondly it includes the Cottage Rectangle which quite clearly Mr Douglas had no right to convey (as he himself says in his 1970 declaration); and thirdly although from the words of the conveyance the plan is apparently intended to identify the Croft, it clearly does not.

Without the words referring to the plan, the 1961 conveyance is clear; what is conveyed is "ALL THAT farm...comprising". The "FIRST" is "Whitmore House with the gardens outbuildings and appurtenances and all other (if any) the land premises outbuildings and appurtenances thereto belonging...;SECONDLY" is "...a Croft... forming the east end of...No 795...and includes (after the words about the plan) "...closes of land containing...52.098 acres and numbered..." If the draftsman



had intended that the conveyance should extend to lands which were not then "belonging" to Whitmore House, and were not then included in the Numbers which he specified, he would, I think, have expressed himself differently. The appearance of the land in 1961 as I have found it to be, was such that no part of the West Piece could properly be described as belonging to Whitmore House, so that the words referring to the plan (even if they are read as transposed so as to be applicable only to the "First" of the parcels) are nonsense. In my opinion the conveyance is not therefore altogether void, but in accordance with the principles of law conveniently summarised in the maxim "falsa demonstratio non nocet", the conveyance takes effect as if the words referring to the plan had been omitted; with the result that being satisfied that no part of the West Piece in 1961 in any sense was "belonging" to Whitmore House, it follows that the conveyance is no evidence that Mr Douglas ever became the owner of any part of the West Piece and no evidence as to it being either within or not within the words "waste land of a manor" in the 1965 Act.

Further I decline to treat the 1961 conveyance as statements by Mr Douglas or Mr J L Proctor which I can now treat as evidence in any relevant way. Mr Douglas and Mr Proctor both made statutory declarations since the registration under the 1965 Act of the West Piece as common land; neither declaration deals expressly with this aspect of the 1961 conveyance. Mr Horton did not suggest (rightly I think) that I could rely on Mr Proctor's declaration. That of Mr Douglas made in February 1970 is as regards any matter I have to consider, equally unreliable; I decline to assume that when he made it he did not know about the West Piece having been registered as common land (in the conveyance made by him on 6 April 1970 such registration was mentioned), and if he did, he should have dealt with the matter particularly.

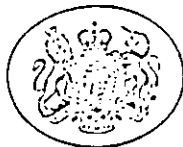
For the above reasons I conclude that Mr & Mrs Perkins are not the owners of any part of the West Piece and the documents they produced do not support the Objection which they made.

From the evidence of Mr Noblett and Mr Nield and from the appearance of the land I am satisfied that the West Piece is now and has at all material times been waste land. I have not overlooked that neither Mr Noblett nor Mr Nield name any manor to which the West Piece might have ever belonged; but I am satisfied from their evidence that the West Piece was never waste land belonging to any of the adjoining farms nor any of the adjoining buildings or houses. Having regard to their evidence, its present appearance and the appearance of the surroundings, I cannot imagine how the West Piece could not be waste land of a manor. Having regard to my above conclusion about ownership, Mr & Mrs Perkins have no legitimate interest contending that it is not.

I am satisfied that the West Piece is within the definition of common land in the 1965 Act.

For the above reasons I confirm the registration without any modification.

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
(Documents produced)

A. by Mr Noblett:-

PC1	1880	Extract from OS map (1880) of Barber Booth
PC2	1840(?)	Extract from Tithe Award map
PC3	about 1950	Picture post card of Old Cottage, Barber Booth (No 182. PHC)
PC4	-	Copy of PC1 edged green to correspond with 1961 conveyance plan

B. by Mr Perkins:-

GJP1	1936	Abstract of title of Mr F Proctor to freehold land commencing with a statutory declaration made 1 July 1918 by N Tym and continuing with a conveyance dated 4 July 1918 by S Tym to F Proctor
GJP2	4 July 1918	Complete copy of said 1918 conveyance
GJP3	28 July 1961	Conveyance by Mr J L Proctor as administrator of Mr F W Proctor (he died 24 October 1959) to Mr K G Douglas
GJP4	31 August 1973	Statutory declaration by J L Proctor
GJP5	4 February 1970	Statutory declaration made by Mr K G Douglas
GJP6	6 April 1970	Conveyance by Mr K G Douglas to Mr G J and Mrs M E Perkins

Dated this 6th day of April — 1977

a. a. Baden Fuller

Commons Commissioner