



In the Matter of Hentor Warren, Willings Wall Warren,
Trowlesworthy Warren, Shaugh Moor, Wotter Common,
The Ruts and part of Crownhill Down, Shaugh Prior,
Devon (No. 1)

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. CL 190 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 266 made by English Clays Lovering Pochin & Co. Ltd and Objections Nos 339 and 341 made by the Roborough Estate Trustees and all noted in the Register on 19 November 1970, Objection No. 490 made by the National Trust and noted in the Register on 4th December 1970, and Objection No. 619 made by Mrs J E S Cobbold, and noted in the Register on 1st February 1971.

I held a hearing for the purpose of inquiring into the dispute at Paignton on 26 and 27 January 1977. The hearing was attended by Mr Ian McCulloch, of counsel, on behalf of the Devon County Council, which made the registration without application, Mr V H Leese, solicitor, on behalf of English China Clays Lovering Pochin & Co. Ltd, Mr D Tyzack, of counsel, on behalf of the National Trust, and Mr C Davies Jones, solicitor, on behalf of Mrs Cobbold. The Roborough Estate Trustees were not represented, but I was informed by Mr McCulloch that they did not wish to pursue their Objections.

Mr McCulloch informed me that the County Council would not object to the exclusion of the three small areas of land the subject of Objection No. 266.

It was agreed by all parties that the major part of the land comprised in the Register Unit formed part of the Commons of Devon and was therefore properly included in the Register Unit.

This left in dispute the land known as Crownhill Down. This land is open, uncultivated, and unoccupied and so falls within the classic definition of waste land of a manor in the judgment of Watson, J. in Att. Gen. v. Hammer (1858), 27 L.J. Ch. 637 if it is also parcel of a manor. Mrs Cobbold is lord of the manor of Fernhill. Mr Davies Jones produced a deed dated 20 June 1867 whereby new trustees were appointed for Mrs Cobbold's estate. The parcels of this deed included the lordship of the manor of Fernhill and Crownhill Down. The deed does not state that Crownhill Down is part of the manor of Fernhill, but the root of title for the two is the same. The 2½ inches to the mile Ordnance Survey map shows that the site of the old manor house of Fernhill is about ½ mile from Crownhill Down and there is nothing to indicate that the Down is in any other manor. I have therefore come to the conclusion on the balance of probabilities that Crownhill Down is parcel of the manor of Fernhill and has therefore been properly included in the Register Unit, irrespective of whether it is subject to any rights of common.

Mr McCulloch asked that the costs of the issue regarding manorial waste should follow the event. Although I have decided this issue in favour of the County Council, the evidence adduced by the County Council did no more than satisfy me that Crownhill Down is waste land. Had it not been for the fair way in which Mr Davies Jones put the whole of the available evidence before me, I should not have been able to find that it was also parcel of the manor of Fernhill. In these circumstances it does not seem to me to be fair to order Mrs Cobbold to pay the costs of this issue.



All the parties agreed that the remainder of the land comprised in the Register Unit was properly registered as common land.

For these reasons I confirm the registration with the following modifications:- namely the exclusion of the three areas of land the subject of Objection No. 266.

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 30th day of May 1977

Chief Commons Commissioner