



Reference Nos: 209/D/333
209/D/334

In the Matter of Sticklepath Common,
Sampford Courtenay, West Devon
District, Devon

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 14 inclusive in the Rights Section of Register Unit No. CL 53 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objection No. 138 made by Mr Thomas Rupert Hollins and Mrs Marjorie Kathleen Hollins and noted in the Register on 13 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 8 and 11 November 1983. At the hearing (1) Mr T R and Mrs M K Hollins were represented by Mr C Dowell solicitor with Veitch & Co, Solicitors of Crediton; (2) Sampford Courtenay Parish Council were represented by the Reverend D Bickerton who is their chairman; and (3) Mr John Isaac Reddaway on whose application the registration at Rights Section Entry No. 2 was made, attended in person.

The land ("the Unit Land") in this Register Unit is a piece containing (according to the Register) about 4.89 acres situated a short distance west of Sticklepath. On its north, northwest and west sides (being the sides to which the Objection relates) it adjoins enclosed lands; on its east side it for the most part adjoins the main Exeter-Okehampton road (A30); on its southwest side it adjoins part of the lands in Register Unit No. CL 73. These last mentioned lands comprise all the common lands in the adjoining parish of Belstone (together a comparatively very large area), of which the largest is Belstone Common some miles away and of which one known as Belstone East Cleave at its extreme east end adjoins the Unit Land as aforesaid. In the Ownership Section no person is registered as owner of the Unit Land.

The grounds of the Objection are (in effect) that the registration includes an area ("the Objection Area") which "has for many years past formed part of the curtilage of the property known as The Mount, Sticklepath of which we (the Objectors) are the owners". The Objection Area extends for about 60 yards along and within the west boundary of the Unit Land, its south part being about 10 yards or less wide and its north part being about 30 yards or less wide. Next to it and just outside the Objection area stands the dwelling house known as "The Mount". The Objection Area as it now appears includes an inhabited part ("the Back Kitchen") of and apparently an old addition to the dwelling house; it also includes the driveway from what is apparently the south one of the entrance gates of the curtilage and its continuation to the north to what is apparently the other entrance gate, some flower beds, some land on which stand sheds apparently used with the dwelling house and other lands all apparently within the curtilage. In papers addressed to Devon County Council (yellow forms) dated 31 October, 26 and 3 November 1970, the applicants for the registrations at Entry Nos. 3, 4 and 10 agreed the Objection.

In support of the Objection oral evidence was given by Mrs M K Hollins (one of the Objectors) in the course of which she produced the documents specified in Part I of the Schedule hereto; she said (in effect):- She with her husband (the other Objector) moved into The Mount in April 1968 and they left following its



sale in April 1982 to Mr and Mrs Harris. The Objection Area appears as a plateau higher than and with a distinct retaining wall boundary to the adjoining part of the Unit Land: at the south entrance gate about 2 feet higher and at its highest point (the centre) about 9 feet higher. The boundary terminates at the entrance of a quarry of which they are the owners. From when they moved in until about 1970 the ordinary and only access from the public road (A30) was up a track (nearly everywhere very steep) which started at Lady Well at the road level and went up across the Unit Land (near its southwest boundary) to Woodha Cottage (formerly called The Mount Cottage), and then to the said south entrance gate of the Objection Area. After 1970 for vehicular access they used a track which leaves the A30 road a short distance north of Lady Well and goes up by the said quarry to the north entrance of the Objection Area. The dwelling house is a stone built construction with a slate roof which she understood was built in 1912 and then included the Back Kitchen. In April 1960 when they bought The Mount expressly including the Objection Area; there was on it a nissen hut apparently old which they had since replaced by a garage; also there were 3 sheds 2 of which are still there and one of which has gone. During the occupation of the dwelling nobody had tried to exercise any common right over the Objection Area.

Mr R Dowell asked that the statutory declarations produced (obtained for the purpose of supporting the said Objection) should be treated as evidence by the declarants.

Mr F Blackmore declared in effect that he and his wife Mrs M E Blackmore formerly owned the dwelling house known as The Mount (formerly Wooder House or Woodha) and were in possession from September 1960 until 19 April 1967 that he had always regarded the Objection Area as part of the curtilage and had freely used the road which went both to The Mount and Wooder Cott.

Mr F Salter declared similarly in respect of his ownership and possession between 17 June 1955 and 20 September 1960.

Mrs D B Watson declared that she formerly lived at Wooder Cott from 1930 until April 1968 and was well acquainted with The Mount (formerly Wooder House or Woodha). In other respects her declaration is similar to, although more detailed than, those of Messrs Blackmore and Salter.

Against the Objection oral evidence was given by the Reverend D Bickerton who is and has been for the last 22 years Rector of Sampford Courtenay in the course of which he produced the documents specified in Part II of the Schedule hereto. He described the Unit Land as sloping very steeply up from the A30 road and now covered with much scrub and as being impractical to use at present because it is open to the road. He claimed that the documents he produced showed that The Mount as a dwelling house was built as an encroachment on the Common in about 1906 and that the occupation of the Objection Area with the dwelling house was a further encroachment.

Mr J I Reddaway who has been in the parish since 1909 (now aged 75 years) and was for 20 years Chairman of the Parish Council until he retired at the age of 70 years in the course of his oral evidence said (in effect):- He remembered walking on the Unit Land as a school boy. He had since grazed sheep on it, and regarded it for this purpose as one with the adjoining part of Belstone East Cleave.



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After an adjournment for 3 days, Mr Dowell produced the documents specified in Part III of the Schedule hereto, asked that the signed statement of Mr A Symons be treated as evidence by him, and referred me to Harris and Ryan on Common Land (1967) page 78 about the effect of a 20 year encroachment.

Mr Symons who is 79 years of age, had known the area very well since childhood and had worked in the quarry from 1929 to 1931, stated (in effect) that only the quarry workers used the path below the retaining wall of the Objection Area and that at no time did anyone have a right over the Area itself.

The Reverend Bickerton said (in effect):- Sampford Courtenay had a strange manorial history, there was no mediaeval manor. There was a grant in 1140 to the Chantry of St Mary Sticklepath (a charity he understood) which must have ended in 1531 with the abolition of Chantries, or in 1539. Somehow the Unit Land came to John Wills (named in the 1842 Award) who called himself "Lord of the Manor of Sticklepath".

On the day after the hearing, I inspected the Objection Area and much of the Unit Land and other land nearby, accompanied by the Reverend Bickerton, Mr J I Reddaway, Mrs M K Hollins and others.

The present appearance of the Objection Area is against it being subject to any right of common or it being common land for any other reason. The boundary between it and the rest of the Unit Land is distinct and the Objection Area is apparently part of the garden and other lands occupied and enjoyed with The Mount. I accept the evidence of Mrs Hollins that at least since April 1968 when she moved in, its appearance has been in all relevant respects the same as now.

Contra, the Parish Council minutes are some evidence that the Objection Area was in 1906 regarded as part of Wooders Common. Although I cannot identify anything mentioned in the 1899 minutes with the Objection Area, the 1906 minute records:- "The Committee appointed to view the alleged encroachment by John Bennett at Sticklepath report that they visited the site and were shown the buildings which are stated to stand on the extreme limit of Mr J Bennett's property and they also saw the foundations of the old wall forming the boundary on the north. They were satisfied that no actual encroachment had taken place and J Bennett assured them that none should occur, but that the land which had been damaged in the course of the building should be allowed to return to its former condition of common land right up to the walls of the house". I accept that the buildings referred to were the same as or included a dwellinghouse substantially the same as that now known as The Mount, and that Mr Bennett in 1906 as the then owner of the Objection Area acknowledged that it or a substantial part of it was common land. Such acknowledgement is consistent with the item in the part of the 1842 Award dealing with open spaces: "John Wills (Landowner); George Underhill Wills and others (occupiers): 2432 Wooders: pasture: 5.2.24. (ARP)".

I have no evidence that Mr Bennett paid the "2/6 a year for the roadway in front of his house as acknowledgement for his encroachment" as contemplated by the 1907 minute. But even if he so paid to the time he ceased to be owner, and even if he gave the assurance described in the 1906 minute, he did not thereby (as was in effect contended on behalf of the Parish Council) for ever exclude the operation of the law under which by encroachment rights of common may be extinguished and under which by adverse possession the ownership of a Lord of a Manor may also be extinguished.



By the 1955 conveyance Devon County Council conveyed to Mr F Slater the "parcel of land ... together with the dwellinghouse ... known as The Mounts erected thereon"; it would have been irregular so to convey the land if the County Council had at the time been paying 2/6 for the use of the land or if it was subject to rights of common; the conveyance is therefore some evidence that during the County Council ownership no such rights were exercised. The words used in the parcels in the 1955 conveyance are not clear enough for me to deduce from them that the whole or any part of the Objection Area was by the parties intended to be thereby conveyed; but with the evidence of Mrs Hollins and the declaration of Mr F Salter and the statement of Mr Symons I think it likely that they did so intend. The reference in the 1955 conveyance to a conveyance dated 31 March 1930 between William Bennett and George Bennett and The Council, renders it likely that the ownership of Mr Bennett mentioned in the 1907 minute ceased in 1930.

I reject the suggestion which was made at the hearing that persons exercising the rights of common would necessarily use the track/driveway across the Objection Area to take animals from one part of the Unit Land to another part, because (as became clear during my inspection, and was agreed by those present) the north end of the track/driveway did not end on another part of the Unit Land. Furthermore even assuming that Unit Land and Belstone East Cleeve are in any relevant way one common, the boundary between them is south of the Objection Area, and graziers would not use the Area to get from one to the other. The substance of the matter is that from the point of view of persons grazing the Unit Land an encroachment to the extent of the Objection Area would cause them no inconvenience at all. At present the remainder of the Unit Land because so much covered with trees and scrub does not appear (perhaps during my inspection it was not looking at its best) attractive for grazing; but even assuming before 1955 there was then much more grass than now, the Objection Area would have been a trivial encroachment. Perhaps the plateau and its retaining wall were not built up immediately after 1909 when the house was completed, and some years may have elapsed before the east boundary of the Objection Area became as distinct as it is now. Now it openly excludes grazing on the Objection Area by persons who have rights of grazing over the the remainder of the Unit Land. On the balance of probability I find that such open exclusion of grazing has existed for at least 20 years (and may be for much longer) before 1967 when these registrations were made.

Although a right of common is not extinguished merely by non use, the owner of a right who is openly excluded from its enjoyment for so long a period may be presumed to have released his right or otherwise effectively abandoned it. I conclude therefore that in 1967 the Objection Area ceased to be within that part of the definition of common land in section 22 of the Commons Registration Act 1965 "(a) land subject to rights of common". As to the other part of the definition "(b) waste land of a manor" I conclude that if the Objection Area ever was owned by a lord of any manor, his title had in 1967 by the Limitation Act 1939 been extinguished by adverse possession.

My decision is therefore that the Objection succeeds and as regards the Objection Area none of the registrations were properly made. Nobody at the hearing suggested that registrations were not as regards the remainder of the Unit Land properly made and accordingly I see no reason as regards such remainder to alter them



in any way. For these reasons: I confirm the Land Section registration at Entry No. 1 with the modification that there be removed from the Register the area in Objection No. 138 made by Mr T R and Mrs M Hollins described as the "portion (indicated by pink edging in the 1/8" to 16" drawing and coloured brown on the 1:2500 site plan annexed hereto) which has ... formed part of the curtilage of the property known as The Mount ..."; and I confirm the Rights Section registrations at Entry Nos. 1 to 14 inclusive without any modification save such as is necessarily consequential on the removal of the said area from the Register.

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 or referred to

Part I: by Mrs M K Hollins

KH/1	19 June 1970	Objection map marked during the hearing, to indicate exact extent of Objection Area, ANCDEFGHIJK and PQR
MKH/2	4 February 1970	Copy statutory declaration by Frank Blackmore
MKH/3	1 May 1970	Copy statutory declaration by Frank Salter
MKH/4	5 February 1970	Copy of statutory declaration by Doreen Barbara Watson
MKH/5	--	Advertisement for sale of The Mount by Gribble Booth & Shepherd, auctioneers etc
MKG/6	--	Map with MKH/5

Part II: on behalf of Parish Council

PC/1	March 1980	Extract OS map, Belstone/Sticklepath "Parish Boundary Review"
PC/2	7 January 1842	Tithe Apportionment Award (printed copy endorsed "NB left at the Rectory, Sampford Countenay 1846)
PC/3	--	Extract of PC/2 made by witness
PC/4	1 November 1897 24 February 1899 17 April 1906 4 March 1907 19 November 1908 18 October 1909	Extracts from minute book of Sampford Parish Council for 1895 to 1932
PC/5	23 March 1961 to 1 April 1968	Extracts from later minute book of Parish Council



Part III: by Mr Dowell

MKH/2, 3/4 -- Original declarations mentioned in Part I above.

MKH/5
bis 11 November 1983 Statement signed by Harry Symons of Jacobs, Pool, Okehampton, with map annexed dated 9.6.70 by W T R McMillan-Scott, ARIBA, scale $\frac{1}{8}$ " = 16".

-- 17 June 1955 Conveyance by Devon County Council to Frank Salter of land with dwelling house (then) known as The Mount with pieces of land containing altogether 9.147 acres.

-- 20 September 1960 Conveyance by F Salter to Frank Blackmore and Margaret Elizabeth Blackmore of said premises.

19 April 1967 Conveyance by F and M E Blackmore to R Harris and Son (Builders) Ltd of said premises.

-- 12 June 1960 Conveyance by R Harris & Son (Builders) Ltd to T R and M Hollins of said premises (described) as contained 9.030 acres (pt 36a estimated at .100 instead of .217).

Dated this 2nd — day of July — 1984

a. a. Baden Fuller

Commons Commissioner