



COMMONS REGISTRATION ACT 1965

Reference No. 210/U/108

In the Matter of Knighton Common,
Winfrith Newburgh, Purbeck
District, Dorset.

DECISION

This reference dated 21 December 1984 relates to the question of the ownership of land of about 0.8 acres known as Knighton Common, Winfrith Newburgh, Purbeck District being the land comprised in the Land Section of Register Unit No. CL98 in the Register of Common Land maintained by the Dorset County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

This reference was preceded by a similar reference dated 5 January 1972 about the same land. Following upon the public notice of this reference Mr John Kilpatrick of Gibraltar Cottage, East Knighton claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership. Mr G D Squibb QC the former Chief Commons Commissioner held a hearing for the purpose of inquiring into the question of the ownership of the land at Dorchester on 12 May 1972. There was no appearance at the hearing. In his decision dated 30 May 1972 (reference 10/U/15), he said he was not satisfied that any person is the owner of the land.

This December 1984 reference was in consequence of a letter dated 11 October 1984 from Witham Weld & Co, Solicitors of London and written on behalf of the Trustees of the Weld Estate who therein claimed they owned the land.

Following upon the public notice of this December 1984 reference: (1) Mr Harold Killingback said (letter dated 1 March 1985) that his wife Monica (the application for the registration was made by Mrs M Killingback of 39 Stowell Crescent, Wareham) died six years ago and that he suspected that someone in the Dorset section of the Ramblers Association will now have taken over the work she was doing; (2) the Ramblers Association said (letter dated 19 March 1985) that they had no interest in the ownership of the land; (3) Messrs Brendan Laurence Garry, Charles Edmund Thomas Bellord and Maurice Alfred Edwards as Trustees of the Weld Estate claimed (their Solicitors' letter of 21 March 1985) ownership of the land; (4) the owners of a piece of land near the south-east corner of the land in question said (their Solicitors' letter of 10 April 1985) that as far as they are aware the freehold of the land in question has always been vested in the Trustees of the Weld Estate although they had exercised rights of access to their land over the common land for many years; and (5) Mr E A Sinnick ————— said (letter received 22 May 1985) that he was born at No. 63 East Knighton over 60 years ago and has lived at East Knighton all his life, the last 34 years at No. 65 (they both adjoin the land) and would like it left as common ground. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.




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I held a hearing for the purpose of inquiring into the question of the ownership of the land at Dorchester on 13 May 1986. At the hearing: (1) Mr B L Garry, Mr C E T Bellord and Mr M A Edwards were represented by Mrs J A Foster, solicitor of Witham Weld & Co, Solicitors of London, SW1; (2) Mr Christopher Wakelin of 63 East Knighton attended in person; (3) Mr Ernest Winn and his wife Mrs Ann Winn of No. 1 Gibraltar Cottage attended in person; (4) Mrs N Guy of Sunray, East Knighton attended in person; (5) Mr Bryan Baker of Heathgate, East Knighton attended in person; (6) Dorset County Council as registration authority were represented by Mr S Cheeseman, a law administrative clerk in their Legal Department. Also present was Mr David Bridges Clark of Winfrith Parish Council who said he attended as an observer.

Mr C Wakelin and Mr B Baker said they did not claim ownership. Mrs N Guy said that her son Mr Stephen Guy had just bought some land adjoining the land in question. Mrs A Winn said that Mr J Kilpatrick is her father and that she and Mr E Winn now own Gibraltar Cottage having bought it from him.

Mrs Foster opened the claim of the Weld Trustees to be the owners by saying (among other things):- The Weld Estate comprises about 12,500 acres or about 25 square miles; and of it the land in question ("the Unit Land") is at its northern extremity. The land to the north of the Unit Land (being the greater part of that on the map marked as Winfrith Heath) was in 1959 sold by the Estate to the Atomic Energy Authority. The Unit Land (the remainder of Knighton Heath) is still part of the Estate, not having ever been sold.

In support of the claim oral evidence was given by Mr Christopher Rothwell who is and has been since 1970 the Resident Agent of the Estate, in the course of which he referred to the maps (WT/1 and 2) specified in the Schedule hereto. He said (in effect):- The Unit Land as shown on the map WT/1 is part of the Estate, being shown as such on the copy of the Principal Vesting Deed in the Estate Office. Access to the Unit Land is obtainable by a track from the Dorchester-Wareham Road (A352). The Unit Land appears to widen out particularly on the east side of the track, and at this point (the south part of the Unit Land) is overgrown: at some stage in the past it has had builders rubble and other bits of waste left upon it; then as one proceeds further north (towards the actual Heath itself), the Unit Land becomes wide road verge and is not so overgrown, he thought because various residents nearby like  to keep it tidy and like to cut the grass. The Estate had entered into a licence arrangement with a Mr Shakesby under which he pays an annual consideration of £5 for the right to go onto the land and also has consent to fence the piece of land in to prevent unlawful tipping of waste; this licence is limited for a period of 364 days and has been renewed on 3 occasions.

Mr Wakelin questioned Mr Rothwell; in the resulting general discussion it was agreed that there had been some tidying up to the Unit Land by Mr Shakesby helped by Mr Wakelin, that of the lands delineated on map WT/1 Mr Wakelin owned "4166" Mr Winn owned the purple, Mr Guy owned the yellow and Mr Shakesby owned "4176", that the licensed area mentioned by Mr Rothwell was that edged blue, at one time a clay pit now filled in "near enough level".

Mr Rothwell said that as far as he was aware the Estate had never granted any right over the Unit Land other than to Mr Shakesby but possibly some have acquired rights of access by prescription; but he had no reason to believe that the Estate had ever parted with its ownership.



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Next Mrs Foster gave oral evidence reference to her statutory declaration WT/3 specified in the Schedule hereto, in the course of which she produced the abstract of title therein mentioned as said (in effect):- The Estate is known as The Lulworth Castle Estates or the Weld Estate; the only full description of the Lulworth Castle Estates is in the Vesting Deed of 24 June 1926; this contains 37 Ordnance survey sheets on a scale of 25" = 1 mile, is enclosed in heavy covers, is in a fragile condition and two men are required to carry it. because of its bulk and weight and its tendency to suffer damage if manipulated, she was to her regret unable to produce the deed for inspection. However she produced the original of the documents mentioned in this Schedule hereto dated 3 December 1935, 10 December 1951, 9 December 1955, 9 March 1965, and 11 April 1982.

Mr Wakeman questioned Mrs Foster as to whether the Unit Land was "common land" and about the rights of persons who walk on it for the purposes of access or otherwise. As I understood Mrs Foster and Mr Rothwell, they thought the answers to these questions might to some extent depend on my decision; he conceded that the cottage now owned by Mr Wakelin was originally owned by Weld Estate, but not having seen the original conveyance felt unable to express any opinion as to the rights of access by it granted. Mrs Foster said that she thought Knighton Heath which was a large adjoining common and which was purchased by the Atomic Energy Authority, was purchased under statutory powers which would extinguish rights.

Next I had the written evidence of Sir Joseph William Weld (his declaration WT/4), in which he said:- On 3 December 1935 he became the tenant for life of all the freehold properties in Dorset which were in the June 1926 Vesting Deed referred to as the Lulworth Castle Estate; this deed was executed to give effect to the provisions of a settlement made in 1869. On 10 December 1951 he became the absolute owner of the said Estates; he executed a settlement of them on 9 December 1955 for the benefit of certain members of his family. He was able to speak of the ownership of the Estates on the evidence of the title deeds and by virtue of his close and continued personal knowledge of the Estates. The Vesting Deed contains a description of the Estates by reference to the Ordnance Survey maps and detailed schedules. The colouring of the sheets and the description in the schedules indicate that they were prepared with care and accuracy.

Mr Bridges said that the Parish Council wanted the matter clarified; they thought that the land should be looked after and improved. In the records of the Parish Council there was no adverse comment about the ownership of the Weld Trustees of Knighton Heath and of the Unit Land being part of it.

Mr Winn said:- The Weld Estate seemed to assume that they, if they were the owners could fence part of the Unit Land; he was worried about the fencing. Also had his land over it the same rights as had the yellow land (so marked on WT/2). The part of the Unit Land fenced pursuant to the licence (mentioned by Mr Rothwell), has, → since fenced become a wilderness.

Mr Wakelin said he was worried about getting to his bungalow. Mrs Guy said it would be nice to clean up the area and plant a few trees.

Shortly after the hearing I inspected the Unit Land in the presence of Mr Winn, Mr Wakelin and Mrs and Mr S Guy.



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This reference resulted from the said letter of 11 October 1984 in which it was said that the Weld Trustees had two objectives, one is to establish their title to the land, and the other is, if at all possible, to free the land from any registration as common land. The jurisdiction of a Commons Commissioner to consider whether land has been rightly registered as common land is conferred by section 5 of the Commons Registration Act 1965; the circumstances in which such jurisdiction can be exercised are set out in the Act and the Regulations made under it; none of these circumstances here exist; so I have no jurisdiction to do anything about the other objective of the Weld Trustees.

As to their first objective:- By section 8 of the 1965 Act a Commons Commissioner is in the circumstances therein stated to inquire into the ownership of land registered as common land and if "satisfied that any person is the owner of the land; direct the registration authority to register that person accordingly". The circumstances making it necessary for a Commissioner to inquire into the ownership of the Unit Land existed in May 1972 when the former Chief Commons Commissioner held his hearing, which no-one attended. Under his 1972 decision the persons under the Act possibly benefiting from it are the local authorities specified in Section 9 of the Act, being Dorset County Council, Purbeck District Council and Winfrith Newburgh Parish Council; none of them at my hearing suggested that his May 1972 decision precludes me from holding another hearing. Accordingly I consider the evidence at my 1986 hearing above summarised as if the 1972 hearing and decision had never been held and made.

Colonel Sir Joseph William Weld in his statutory declaration quotes from the 1926 Vesting Deed Schedules "267 (1972 OS plan No): Knighton Heath (description): 59.130 (quantity in acres)", and identifies this description as including the Unit Land. The rest of Knighton Heath so described was during my inspection easily identifiable with the large area of heathlike land now enclosed situated to the north and at a level slightly higher than the Unit Land; so I infer that the Unit Land was before the 1959 sale to the Atomic Energy Authority a tongue of land for practical purposes the wide entrance way to the Heath from (by the track mentioned by Mr Rothwell) the main road (A352). It is likely therefore that historically the Unit Land at one time was common land, at least within the popular meaning of these words, and so it may be now. Whether it was when registered within the definition of common land in the 1965 Act, and whether anyone can now avoid the registration for this or any other reason are questions not for me to determine; about them those concerned may find helpful the Court of appeal decision in *Corpus Christi v Gloucestershire* 1983 1QB 360. I cannot I think properly refuse to determine its ownership as required by Section 8 merely because after my determination the Weld Trustees may seek to nullify the registration, thereby, as I see it) possibly nullifying the determination. The questions (raised at the hearing and during my inspection) as to the consequences of the registration and as to the benefit which it may have conferred on those who live nearby and others, are outside my jurisdiction, and I cannot therefore properly about them express any opinion.

As to ownership the evidence is all in favour of the claim made on behalf of the Weld Trustees. Although it was apparent at the hearing and more apparent on my inspection that many things have been done on the Unit Land to improve its appearance, so much of it is now an attractive amenity to those who live by and to others who use the track across it, I have no evidence that such things have gone on for long enough or been done in such a way as to affect adversely the title of the Weld Trustees and their predecessors.

On the oral evidence of Mr Rothwell, the written evidence of Sir Joseph William Weld and the documents produced, I am satisfied that the Weld Trustees are the owners



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of the Unit Land and I shall accordingly direct the Dorset County Council, as registration authority, to register Messrs Brendan Laurence Garry and Charles Edmund Thomas Bellord both of 70 St George's Square, London SW1V 3RD and Mr Maurice Alfred Edmunds of Unity Chambers, High East Street, Dorchester as the owners of the land under section 3(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.

SCHEDULE
(Documents produced)

WT/1	1963	Extract OS map scale 1/10,560 shows Unit Land and Knighton Heath and Winfrith Heath to the north.
WT/2	--	Extract OS map, scale 1/2,500 showing Unit Land edged red (part edged blue) and adjoining lands edged purple, yellow and brown.
WT/3	6 May 1986	Statutory declaration by Mrs Jill Adrienne Foster as to vesting deed dated 24 June 1926 and exhibiting abstract of title JAF.1, including:-
	24 June 1926	Principal Vesting Deed: scheduled properties vested in Humphrey Joseph Weld: with extract from plan 13.
	9 February 1929	Letters of administration to Estate of H J Weld (he died 26 August 1928) limited to settled land.
	15 February 1929	Vesting assent by personal representatives of H J Weld in favour of Herbert Joseph Weld of premises in 1926 Vesting Deed "on trusts refd to in sd Vesting Deed".
	22 August 1935	Probate of Will of H J Weld (he died 5 February 1935).
	3 December 1935	Vesting assent by his personal representatives of property comprised in clause 2 of 1926 Vesting Deed in favour of Joseph William Weld upon trust of a settlement of 11 February 1869.
	9 December 1955	Conveyance by Joseph William Weld in consideration of marriage of Wilfred Joseph Weld to himself J W Weld, Humphrey Joseph Giles Weld and George Bellord.



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9 March 1965	Appointment and discharge of trustees on death of G Bellord on 7 July 1963 on retirement of J W Weld of B L Garry, C E T Bellord and M A Edwards to act with H J G Weld.
11 April 1982	Deed of discharge of H J G Weld.
WT/4 7 May 1986	Statutory declaration of Colonel Sir Joseph William Weld OBE TD, with plan attached.

Dated this 2nd ——— day of October — 1986.

A. A. Bowen Fuller

Commons Commissioner