



COMMONS REGISTRATION ACT 1965

Reference No 15/D/5

In the Matter of the Spinney, Goodrich,
Ross and Whitchurch R.D., Herefordshire

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL.128 in the Register of Common Land maintained by the Herefordshire County Council and is occasioned by Objection No 2 made by Mr J L Trafford and noted in the Register on 20 October 1969.

I held a hearing for the purpose of inquiring into the dispute at Hereford on 20 February 1973. The hearing was attended (1) by Mr John Lionel Trafford who was represented by Mr J B Morrogh-Ryan land agent and surveyor employed by Messrs Frank Knight & Rutley Land Agents and Surveyors with an office at Hereford, (2) by Alderman F W Green (chairman of the Parish Council at the time when the application to register this land as common land was made on their behalf), and (3) by the Herefordshire County Council who were represented by Mr R B Barber.

The registration was made pursuant to an application dated 26 February 1968 and made by Goodrich Parish Council. The grounds of objection stated in the Objection were:- "That the land appearing in the registration is not common land but forms part of the Hill Court & Goodrich Estate as shown on the enclosed plan". The plan enclosed delineated the same land as the land ("the Unit Land") comprised in this Register Unit. In a letter dated 15 January 1973 Goodrich Parish Council stated to the Clerk of the Commons Commissioners that the Council withdraws the application and now makes no claim whatsoever that the land in question is common land; however no application was made for a decision by consent under regulation 31 of the Commons Commissioners Regulations 1971, so such withdrawal does not make it unnecessary for me to hold the hearing. With the consent of all those attending I heard part of the evidence relating to this dispute at the same time as I held a hearing for the purpose of inquiring into four disputes relating to land on or near Huntsham Hill (reference nos:- 15/D/1, 15/D/2, 15/D/3 and 15/D/4): in the course of this combined hearing it appeared that the evidence about the Hill Court & Goodrich Estate related only to this dispute and accordingly this evidence was taken after I had concluded the hearing relating to the other four disputes.

The Unit Land extends to about 2 acres. It is a long narrow strip bounded on the south by the road ("the Road") between Goodrich and Whitchurch; the River Wye is nearby on the other side of the Road. The Unit Land slopes steeply upwards from the Road; it is uncultivable rough land, for the most part covered with trees and scrub.

Mr Barber produced from the County Archives a Tithe Apportionment Award for the parish of Goodrich dated 8 May 1841 and sealed by the Tithe Commissioners on 5 June 1841. The "Waste" treated in the Award as not tithable amounted (exclusive of water and roads) to 283 acres. The eastern and greater part of the Unit Land was described as: "536: Parish Quarry: 1.0.36.", *The "occupier" being "WASTE"*.



Alderman Green who is a member of the County Council and of the District Council and was a member of the Parish Council for over 20 years before 1971, said that from 1932 to 1970 he had been the tenant of Huntsham Court Farm which is near the Unit Land on the other side of the River and from which the Unit Land is visible, and that the application for registration made by the Parish Council had been based on the description of the Unit Land in the 1841 Award.

Mr Morrogh-Ryan in his evidence said:- "The Hill Court and Goodrich Estate now owned by Mr Trafford comprises about 2000 acres; roughly 1000 acres on each side of the River with about 200 acres of woodlands. For the last 15 years and upwards, his firm had looked after the Estate for Mr Trafford. He (the witness) had known the Unit Land for the last six years; it was bounded on the north by arable land; along the southern boundary (the Road side) there is in places an old wall and in places a hedge. He produced a copy of a conveyance dated 4 February 1896 (his firm had received this from Mr Trafford's solicitors; the original was held by the Agricultural Mortgage Corporation): from this it appeared the Unit Land had been conveyed as "brinkage land" together with farm lands; the conveyance made no mention of any manor or of any manorial waste. Mr Trafford owned the estate under an assent dated 28 June 1965,

Alderman Green in his evidence said:- There was (and perhaps still is) a Manor of Goodrich. The Unit Land could be described as a slinget. The stone wall along part of the Road side buttresses the ground which is above the level of the Road. The Unit Land has been kept open by the Estate.

With the consent of those attending the hearing, Mr Morrogh-Ryan on the following day produced to me the original assent dated 28 June 1965. By it the executors of Dorothy Trafford (she died on 24 March 1954) assented to the vesting in Mr Trafford of 95.557 acres in Marston and 429.887 acres in Goodrich. In the Assent the Goodrich land is described by reference to the 1928 edition O.S. Map and includes two pieces: "139: Woodland: 0.368" and "143: Woodland: 1.607", which pieces by reference to the plan annexed to the Assent and from the oral evidence of Mr Morrogh-Ryan, I identify as the Unit Land. The Assent contains no reference to any manor or any manorial waste and the Unit Land is included in the Schedule with pastures, house, gardens and other woodlands without any distinction. The Assent recites that the Goodrich Court Estate was vested in Dorothy Trafford by a principal vesting deed dated 8 March 1927, *subject to the trusts of the Settlement therein referred to.*

There ~~was~~ ^{was} no evidence that any person had ever exercised or attempted to exercise any rights of common over the Unit Land and being so rough, I think it unlikely that any person ever did so. Accordingly I find that it has never at any now relevant time been subject to any rights of common within paragraph (a) of the definition of "common land" in section 22 of the 1965 Act.

On the evidence I conclude that the Unit Land is and has for many years been open to anyone wishing to walk on it from the Road, that all of it is now and has for some years past been waste land and that the eastern part described as "waste" in the 1841 Award has since then been waste. Except that the Award relates to the parish of Goodrich there was no evidence in any way indicating that it was part of the Manor of Goodrich. On the contrary, the 1965 Assent is some indication (the Unit Land being herein dealt with as "woodland" without reference to any manor, that is is not and at least since the settlement therein referred to ~~had~~ ^{was} been part of any manor. It was not suggested that Mr Trafford (or his predecessor in title Dorothy Trafford) had ever been Lord of the Manor of Goodrich. On balance, I find that the Unit Land was never at any now relevant time "waste land of a manor" within paragraph (b) of the definition in section 22.



The Unit Land is therefore not common land as defined by the 1965 Act and accordingly I refuse to confirm the registration.

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 this decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 21st day of May 1973

a. a. Baker Fuller

Commons Commissioner