



LAWS. 20; 270



(20/11/82)

COMMONS REGISTRATION ACT 1965

Reference No. 20/U/82

In the Matter of Amberswood Common,
Wigan Borough, Greater Manchester

DECISION

This reference relates to the question of the ownership of land known as or being part of the land known as Amberswood Common in the Borough of Wigan and being the land comprised in the Land Section of Register Unit No. CL. 102 in the Register of Common Land maintained by the Greater Manchester County Council (formerly Lancashire County Council) of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

The land ("the Unit Land") comprised in this Register Unit is in three pieces, which together contain (according to the Register) about 13.759 hectares (34 acres): one ("the Walmesley Park Piece") which is much the largest, is irregularly-shaped and is north of the railway which runs from Wigan and Ince to Hindley and Westthoughton; another ("the Hospital Piece") which is comparatively small, is approximately square, and which is south of the said railway and about 300 yards south of the Walmesley Park Piece; and the remaining ("the Fir Tree Cottages Piece") which is a little smaller than the Hospital Piece, is also approximately square, and is about $\frac{1}{2}$ a mile southsouthwest of it. Following upon the public notice of this reference in a letter dated 24 October 1973 the Trustees of the Walmesley Estates through their solicitors said that they did not claim Walmesley Park Piece or the Hospital Piece but did claim the Fir Tree Cottages Piece, and gave some information about each of the three pieces, and in a letter dated 21 November 1973 Ince-in-Makerfield Urban District Council claimed ownership of the Walmesley Park Piece. No other person claimed to be the freehold owner of the Unit Land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Salford on 11 December 1976. At the hearing (1) Wigan Borough Council were represented by Mr A Kitchen, their principal assistant solicitor, (2) Mrs Dorothy Mary Walmesley (one of the Trustees of the Walmesley Estates) was represented by Mr Peter Henderson solicitor of Ellis Sayer & Henderson Solicitors of Wigan, (3) Mr Peter Henderson (the other Trustee) appeared in person, and (4) Greater Manchester County Council as registration authority was represented by Mr J P Johnson articled clerk in the County Secretary's Department.

Mr Henderson said that notwithstanding his firm's said letter of 24 October 1973, on behalf of the Walmesley Estates Trustees he now claimed the Hospital Piece as well as the Fir Tree Cottages Piece. Mr Kitchen said that his Council were only concerned with the Walmesley Park Piece.



Mr Henderson in the course of his evidence said that a large area ("the CL.68 Land") which surrounds the Hospital Piece and the Fir Tree Cottages Piece has been registered as common land and the Trustees have been registered as owners of it (this was confirmed by Mr Johnson; the area so registered is south of the railway, is about a mile long, and for the most part about 250 yards wide). Mr Henderson produced: an abstract of the title of the Trustees commencing with a vesting deed dated 25 November 1926 in favour of Colonel C T G Walmesley and including a vesting deed dated 20 August 1935 also in his favour and an assent dated 2 March 1964 by his personal representatives (he died 12 May 1960: they were also the Trustees) in favour of themselves. The schedule and plan attached to the 1926 vesting deed includes (as being part of the Westwood Estate) the whole of the CL. 68 Land (said to be "in hand"), and "Site of 3 Fir Tree Cottages" tenant said to be "Crompton Shawcross Limited", but the said schedule and plan did not include the Hospital Piece (it is uncoloured on the plan and is thereon called "Hospital: Infectious Diseases"). The parcels of the 1935 vesting deed are by reference to the 1926 vesting deed. The land particularly described in, and drawn on the plan annexed to, the 1964 assent includes the CL. 68 Land but does not include either the Hospital Piece (on the plan called "Hospital: Infectious Diseases") or the Fir Tree Cottages Piece; however the parcels of the assent include "all other (if any) the lands belonging to the Testator at his death except" (as therein mentioned). Mr Henderson also produced a plan of the Westwood Estate dated August 1926 and an examined copy of a settlement dated 15 December 1903 and made by Colonel Walmesley immediately after he had executed a deed of disentail by which the Estates were resettled. On the 1926 plan the Fir Tree Cottages Piece is included with other lands let to Crompton & Shawcross, but the Hospital Piece is not included (it is uncoloured and distinct from the CL. 68 Land which is coloured). On the plan attached to the 1903 settlement and shown as "common land and roads" is the whole of the Unit Land and the CL. 68 Land, including the Hospital Piece and the Fir Tree Cottages Piece without any distinction (except that the Walmesley Park Piece is shown as common land given to the Ince District Council); the Hospital Piece is thereon described as "Hospital (Infectious Diseases)" and delineated as a separate plot and the Fir Tree Cottages Piece corresponds (not very closely) to a group of buildings thereon called "Fir Tree Cottages".

Mr Henderson said (in effect):- He came to his present firm in 1945 and although they had previously acted for the Walmesley Estates, his personal knowledge of the Estates started then. As long as he had known it the Hospital Piece was indistinguishable from the surrounding CL. 68 Land; he understood that the Hospital had been pulled down at least 40 years ago, that there was no trace of any foundations now, or if there were any such foundations traceable they had been long ago covered up with grass. The Fir Tree Cottages Piece is now derelict foundations of cottages. The CL. 68 Land is generally waste land which although at one time used for colliery waste was such that nobody during his time had been able to think of any likely use for it apart from it being possibly the site of a motorway. However the Trustees had from time to time granted access over the CL. 68 Land.

Mr Kitchen who has since May 1973 been with the Wigan County Borough Council or their successors Wigan Borough Council in the course of his evidence produced (1) a plan dated June 1888 of the recreation ground on part of Amberswood Common then proposed by the Ince Local Board (2) the Commons Regulation (Amberswood) Provisional Order Confirmation Act 1889, (3) a foolscap book containing consents and statements possibly used for the purpose of the enquiry preceding the 1889 Act (4) a copy certified on 18 December 1945 of a map sealed on 20 February 1890



by the Board of Agriculture as being that referred to in an Award relating to Amberswood Common; (5) an agreement dated 1 July 1905 between Mr J Brown and the Ince-in-Makerfield Urban District Council relating to access to the Walmesley Park Piece; and (6) a copy of the byelaws made in 1906 by the Ince-in-Makerfield District Council for the regulation of Walmesley Park.

Mr Kitchen said (in effect):- The Walmesley Park Piece is ~~grass~~ land which is now and has (so he understood) ever since the 1889 Act been maintained by the Borough Council or their predecessors. It is grass land and a valuable amenity for the Borough; part is a playing field.

As to the Walmesley Park Piece:-

The provisional order scheduled to the 1889 Act provides (in effect) that all rights of common and the rights of the lord of the manor shall by virtue of the awards of the valuers in the matter of the regulation be vested in the Local Board for the District of Ince-in-Makerfield. Although no such award was produced, I conclude from the documents produced by Mr Kitchen that it was made and that as contemplated from such documents it comprises the land therein delineated, being the Walmesley Park Piece.

For these reasons, I am satisfied that Wigan Borough Council as successors of the said Local Board are the owners of the Walmesley Park Piece, and I shall accordingly under section 8(2) of the Act of 1965 direct the Greater Manchester County Council as registration authority to register Wigan Borough Council as the owner of the part of the land comprised in this register unit which is north of the railway which runs from Wigan and Ince to Hindley and Westhoughton.

As to the Hospital Piece:-

Mr Henderson's claim is in effect either (a) that the Hospital Piece was when the 1903 settlement was made and has ever since been in the same ownership as the rest of the Walmesley Estate; or (b) that although it ceased to be in such ownership when the Hospital was erected on it, it somehow reverted to the same ownership subsequently.

As to (a):- From the 1903 plan I conclude that there had been for some time before 1903 on the Hospital Piece which corresponds (a little more or less) with the plot containing .239 of an acre delineated on such plan, ~~and that there was on this plot~~ a building about 80 feet long used as a hospital for infectious diseases. The 1903 settlement shows the Hospital Piece as part of the Estate; the 1926 plan shows it as being not part of the Estate; the 1926 deed and the 1937 deed do not show it particularly as part of the Estate although the Piece might have passed under the words "all other (if any)" of the 1926 deed. There are two possibilities: either the Hospital Piece was acquired by some local authority or charitable institution and used as a hospital; or the Hospital Piece was used as a hospital under some lease or some other arrangement while remaining in the same ownership as that of the Estates. In my opinion the information put before me falls short of showing which of these two possibilities is correct. The relevant word in the 1965 Act is "satisfied", see section 8(2); I am unable to conclude that the second possibility is the correct one, or even the more likely.



For these reasons I am not satisfied that the Trustees or any other person are the owners of the Hospital Piece, and it will therefore be subject to protection under section 9 of the Act of 1965.

As to the Fir Tree Cottages Piece:- This is shown particularly as part of the Estates in the 1903 settlement, 1926 plan, the 1926 vesting deed, and by reference in the 1937 vesting deed. In the 1926 deed it is described as "site of..."; notwithstanding that the Piece does not correspond closely with the Fir Tree Cottages delineated on the 1903 plan, and it is not I think clear whether the Piece is the site of one of the cottages which was at one time numbered 3, or is the site of three cottages, I consider the documents produced to be evidence enough of ownership, which I should disregard merely because the Piece is not particularly mentioned in the 1964 assent.

For the above reasons I am satisfied that the Trustees are the owners of the Fir Tree Cottages Piece, and I shall accordingly under section 8(2) of the Act of 1965 direct Greater Manchester County Council as registration authority to register Mrs Dorothy Mary Walmesley of East Stoke House, Stoke-sub-Hamdon, Somerset and Mr Peter Henderson of 24 King Street, Wigan as the owners of the part of the land comprised in this register unit which is the more southerly of the two pieces south of the said railway.

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 22nd day of March —

1976

a. a. Baden Fuller

Commons Commissioner