



COMMONS REGISTRATION ACT 1965

Reference Nos 220/D/57-64

In the Matter of The Salt Marsh,
Hambleton, Wyre Borough, Lancashire

DECISION

These eight disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No CL. 184 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by Objections numbered, made by and noted in the Register as follows:- (D/57) No 104, Mr A R Winder, 4 December 1970; (D/58) No 148, F H & L Simmonds Limited, 15 January 1971; (D/59) No 172, Mrs H A Maguire, 7 April 1971; (D/60) No 211, Mr & Mrs F B Thornhill, 16 November 1971; (D/61) No 212, Mr J Whiteside, 16 November 1971; (D/62) No 213, Mr R Lingard, 16 November 1971; (D/63) No 214, Mrs R M Brown, 16 November 1971; and (D/64), No 218 Mrs P E Newberry and Mr F J Taylor, 30 November 1971.

I held a hearing for the purpose of inquiring into the disputes at Lancaster on 23 and 24 November 1976. At the hearing, (1) Hambleton Parish Council on whose application the registration was made, were represented by Mr J J Pearlman solicitor of Pearlman Grazin & Co, Solicitors of Leeds, (2) Mr & Mrs F B Thornhill (they made Objection No 211), (3) Mr J Whiteside (he made Objection No 212), (4) Mr Desmond Firth (as successor in title to Mr Lingard who made Objection No 213), (5) Mrs R M Martin (formerly Mrs R M Brown; she made Objection No 214) and (6) Mr F J Taylor (he and Mrs P E Newberry made Objection No 218; she has since died) and Mr H P Newberry (appointed as a trustee in her place) were all represented by Mr A W Simpson of counsel instructed by Renshaw Gilchrist & Co, Solicitors of Fleetwood; (7) Mr John Albert Howarth (as successor in title of Mr Winder in support of his Objection No 104) attended in person; and (8) Lancashire County Council as registration authority were represented by Mr J A Strong their Assistant Solicitor. Mr Simpson also represented Mr Alan W Bates of Springtide Cottage.

The land ("the Unit Land") comprised in this Register Unit is bounded on the west and south by the line of the High Water Mark of Medium Tides on the River Wyre, and comprises two strips: one about $1\frac{1}{2}$ miles long extending from a point on Kiln Lane a little to the south of Wardleys Pool and northwest of Hambleton to Shard Bridge about $\frac{2}{3}$ of a mile south of Hambleton (the Bridge carries the A 585 road over the River); and the other about $\frac{1}{2}$ a mile long extending southeast from the Bridge. Nearly all the evidence at the hearing was directed to the part ("the Disputed Part") of the Unit Land along the length of which there is a track (usable by motor vehicles) running for about 400 yards from Kiln Lane (a tarmacadamed public side road suitable for general motor traffic); the track provides access to Clough Cottage, a Caravan Site (also approachable from the east) and six dwelling houses known as Whispering Waves (formerly Lime House Cottage), Waveside (formerly Wayside, and before the north part of Lime House), Shore Cottage (formerly the south part of Lime House), Beach House, Springfield Cottage (formerly Riverside) and Wyre Haven (formerly Riverside); these premises



(hereinafter called "the Back Lands") form the east boundary of the Disputed Part except that for a short distance the east boundary of the Disputed Part is a little to the west of the Back Lands, so that part of the track (including a ~~standing~~ turning space) in front of the said six dwelling houses is not included in the Unit Land. The west boundary of the Disputed Part is for about half its length an L-shaped line apparently drawn arbitrarily (not corresponding with any marks on the ground) a short distance to the north and east of Clough Cottage and the Caravan Site and for the other half by the High Water Mark of Ordinary Tides.

The grounds of Objection No 148 (F H & L Simmonds Limited) are "that the land was not common land at the date of the registration". The Objection gives no indication of the part of the Unit Land with which the Objector is particularly concerned. The Registration Authority were in 1973 notified by Mr R M R Gilchrist that he was interested in the Objection as purchaser of Plots Nos 11 and 12 Riverside Drive; at the hearing Mr Gilchrist said that he had sold his interest to Mr Coleman. In the course of the hearing a letter (see Schedule TS/12) dated 19 November 1976 from the Solicitors for the Duchy of Lancaster was produced and Mr Pearlman said that the Parish Council agreed that a small part ("the Duchy Part") of the Unit Land was situated below High Water Mark and had been included in the registration by mistake, and that the registration should be modified accordingly. Save as regards the Duchy Part, and save as it may possibly have been intended to relate to the Disputed Part, nobody at the hearing supported this Objection.

The grounds of all the other Objections were that some specified part of the Unit Land (such parts being all some part of the Disputed Part) was not common land. Additionally Objection No 104 (Mr A R Winder) included a statement: "This land was sold to my grandfather by the agent of Queen Victoria and I am now the owner" and Objection No 211 (Mr & Mrs Thornhill) included a statement in effect criticising Mr Winder's Objection.

At the hearing in support of the registration evidence was given orally by Mr T Swarbrick a member of Hambleton Parish Council, by affidavits of Mr H H Bridge, Mr T H Brookes, Mrs E Gardner, Mrs E A Lord and Mr A H Lord (now deceased) sworn on 27, 13, 27, 27 and 27 March 1973; additionally the statements (TS13/A-K of the Schedule hereto) were put in as evidence by the signatories. Against the registration evidence was given orally by Mr R M Gilchrist (a member of the firm instructing Mr Simpson), by Mr F B Thornhill (one of the Objectors) and by Mr J A Howarth. In the course of the hearing documents were produced as specified in the Schedule hereto. On 26 November 1976, I walked over the Unit Land from Kiln Lane to Point Shard and viewed it from the north side of Shard Bridge, being accompanied (so far as my inspection related to the Disputed Land) by Mr Swarbrick, Mr Gilchrist, Mr Thornhill and Mr Howarth (all of whom had given evidence at the hearing); Mr Eastham (concerned with land north of the Unit Land and south of Wardley's Pool) was also present.

Mr Pearlman at the hearing contended that the Unit Land (apart from the Duchy Part) had been proved to be "waste land of a manor" within the meaning of the definition of "common land" in section 22 of the 1965 Act. Against this Mr Simpson, while conceding that there had at one time been a Manor of Hambleton, contended that there was no evidence that the Unit Land or any part of it was waste land of this or any other manor. He also contended (in effect, as I understood him) that the documents produced showed that the Disputed Part was not separate and distinct



from but was in fact part of and belonged to the Back Lands (each part of the Disputed Part belonging to that part of the Back Lands to the east of it); so the Disputed Part even if it was at one time waste land of a manor had either become waste land of the Back Lands or had ceased to be waste land in any now relevant sense. Both Mr Pearlman and Mr Simpson resisted Mr Howarth's contention that the part of the Disputed Part mentioned in Objection No 104 (Mr Winder) was not properly registrable because it had been owned by Mr Winder and was now owned by Mr Howarth. I will first deal with the issue between Mr Pearlman and Mr Simpson.

As to the Unit Land being distinct from the River Wyre:- Apart from the above mentioned L-shaped line, the west boundary of the Unit Land is the High Water Mark of Medium (or Ordinary) Tides; that this line has moved sometimes and in some places to the east, sometimes and in some places to the west is apparent from the maps produced; and on my inspection it seemed to me likely that the line will continue to move according to the vicissitudes of the sea, the wind and the volume of water flowing down the River. In my opinion there is no legal objection to such a boundary; a gradual accretion of land from the sea or a river belongs to the owner of the land gradually added to, see Theobald, Law of Land (2nd edition 1929) page 238 and the judgment in Brighton v Hove 1924 1 Ch 372. The cases cited in Theobald mostly relate to accretion of land from the sea, but the same principle is applicable accretions from a river, see Foster v Wright (1878) 4 CPD 438 at page 448. Land added by accretion takes the character and incidence of the land to which it is added, see Mercer v Denne 1905 2 Ch 538; so I conclude that if the land to which there was an accretion was waste land of a manor the land added by accretion became waste land of a manor.

On my inspection it was apparent that Wardley's Pool and the land immediately south of it, used by yachtsmen could properly be regarded as not now being waste land of a manor; notwithstanding that the L-shaped line may be somewhat arbitrarily drawn (it may have been based on the 1904 Royal Grant, TS12 of the Schedule hereto), there is I think no reason why the Disputed Part which is south and east of it should under the 1965 Act have the same status as that on the north and west.

The east boundary of the Unit Land (except possibly in the region of Point Shard where it is drawn in consequence of a compromise reached following an objection) appears to me clear enough: being a bank or wall enough to prevent high tides and flood waters from crossing.

In the Register the Unit Land is described as "Salt Marsh", and in my opinion this is what it is; it is distinct from the River on one side and distinct from the drylands on the other; although it may be covered with water on occasions, it cannot in my view properly be regarded in any now relevant sense as part of the bed of the River. Further on its present appearance and from what I deduced from the maps and plans produced, it cannot properly be regarded either as being now or at any time in the past as part of the Back Lands or any other dry land on the east side.

Mr Swarbrick who was born in 1915 and visited the Disputed Part frequently before 1936 and after 1963 described how as a boy he had walked in front of Lime Cottage playing and helping to pick mussels (locally known as Hambleton Hookers) and how on one occasion they went up the foreshore with a horse and float coming back by



Pedder's Lane (a little to the south of the Disputed Part). The deponents to the affidavits and the signatories to the statements all described things as having been done on the Unit Land which could be done on waste land. The appearance is such that I would expect it to be so used. These affidavits and statements were not challenged on this point. In my view the jetty shown in the photographs (apparently recently constructed) is too recent and of such a temporary nature that it could not affect any conclusion which I would apart from it reach as to the Disputed Part.

I find that as far back as living memory goes the Unit Land including the Disputed Part has always been waste land distinct from the River bed and distinct from the land on the east. In my opinion the maps produced at the hearing indicate that apart from the increase in the number of dwelling houses and other buildings on the land on the east, the Unit Land has always been such as those now living remember it. Accordingly I find that making due allowance for changes consequent on the enlargement and improvement of the buildings shown on the 1846 Ordnance map, the change in the HWMT line, the making up of the track which now runs the length of the Disputed Part and the recent construction of the jetty, the Unit Land has from time immemorial always been waste land as it now appears.

The documents of title produced by Mr Gilchrist as stated in the Schedule hereto were not intended (so I understood) to show the title of the Objectors to the Back Lands, but to show how the Back Lands had from time to time been described; Mr Simpson referred me to *Mellor v Walmsley* 1905 2 Ch 164. In the 1801, 1820 and 1899 conveyances (RMG2, 3 and 6 of the Schedule hereto) part of the Back Lands are described as being "on the north bank of the River Wyre", but this description is not used in later documents (eg the 1920 conveyance RMG7) relating to the same land; I do not deduce from the words above quoted from the 1801, 1820 and 1899 conveyances that the Back Lands were considered as including the adjoining part of the Disputed Part; the words quoted may not be entirely accurate, and having regard to the areas given in these deeds they should I think be read as referring to the bank on the east side of the Marsh. The words in the other documents of title produced to which I have referred are in my opinion quite insufficient to negative the conclusion I reached on the present appearance of the Unit Land and from the maps produced that at all times the Back Lands and the Salt Marsh have been distinct and that accordingly the documents produced relating to the Back Lands provide no indication that their ownership was ever the same as that of the Salt Marsh.

The documents produced, particularly the 1774 map, show that the Back Lands had at one time been part of the Manor of Hambleton; the Disputed Part was waste land adjoining these Back Lands. I cannot imagine how the Disputed Part could be anything else but waste land of the Manor. Its use within living memory was consistent with it being waste land of a manor, because much waste land of manors is now commonly used in this sort of way. Notwithstanding the absence of any documentary evidence relating particularly to the Disputed Part, I consider that I can properly find, as I do find, that the Disputed Part was at one time waste land of the Manor of Hambleton.



The statement in the Victoria History (RMG12 of the Schedule) that the manorial lands were in 1867 sold in parcels, and the statement in the Baines History (RMG13 of the Schedule): "Mr Weld sold the chief part of the property", although they might perhaps support the conclusion that from then onward a manorial court ceased to be held, do not I think support the conclusion that the Manor has ceased to exist or that the Unit Land which (as I have found) was formerly part of the waste land of the Manor, had in some way ceased to be such.

At the hearing there was some discussion as to the meaning of the words "waste land of a manor" in the section 22 definition. Mr Pearlman contended for a meaning (the wider meaning) such as land free to be used by everyone, public, being land which is such by having been waste land of a manor historically; this is the meaning which I had favoured in my decision dated 28 March 1975 in re Yateley (reference 214/D/9). Mr Simpson contended for a meaning (the narrower meaning) which would require the land at the date of registration to be actually manorial in some sense, and of this he said there was no evidence at all: to deduce such a conclusion from the 1776 map would be taking a leap not justified by the law or the facts, and he referred me to the 1229 and 1576 charters (see Schedule hereto), the Victoria History page 89, Harris & Ryan on Common Land (1967) paragraph 1.28 and Clwyd v CEGB 1976 1 WLR 151. At the date of the hearing (23 and 24 November 1976) the High Court decision on the appeal from re Yateley had been briefly reported in The Times of 14 November 1976. Subsequently the High Court had given another decision relating to these words, re Chewton also briefly reported in The Times of 22 March 1977. I have seen transcripts of the relevant judgment and they appear to me to support the wider meaning; but the point may still not altogether be free from doubt, because I understand re Yateley may be the subject of a further appeal to the Court of Appeal.

On the wider meaning, the Unit Land is I think clearly within the words of the definition. But even if the narrower meaning is that which I ought to adopt, I am of the opinion that the Unit Land is within the words, upon the considerations set out above. For the above reasons my decision is that Objections which are the subject of the above observations, all wholly fail.

The 1899 Royal Grant produced by Mr Howarth was of "All the Right Title and Interest of Her Majesty in right of Her Duchy of Lancaster in all those several pieces or parcels of foreshore of the River Wyre in the County Palatine of Lancaster which abut upon the firm land edged with red between the points at which the red lines A and B, the red lines C and D and the red lines E and F drawn on the extract from the 6 inch Ordnance Survey map of Lancashire annexed to these Presents start from firm land and would be enclosed between these several lines produced seaward to low water mark and such low water mark..." The "firm land" edged red on the said part of the Disputed Part. In my opinion the grant does not convey "the firm land" edged red on the 1899 Grant plan: the only land thereby conveyed was the foreshore on the sea side (west) of such "firm land".

Against this conclusion Mr Howarth argued (as I understood him) that the 1899 grant must include the firm land because unless it did, Mr Winder could never get onto the foreshore thereby granted; alternatively the grant was evidence that Mr Winder then owned the firm land. I reject this argument; if the 1899 grant was intended to include the land above the High Water Mark Medium line



It would I think have been expressed differently; Mr Winder may have mistakenly thought that he had or would become the owner of the firm land under the conveyance of 25 August 1899 (RMG6 of the Schedule hereto). Alternatively he thought that because the firm land was waste land for all practical purposes he could enjoy the foreshore granted notwithstanding that he was not the owner of the firm land.

The 1904 article in the Preston Guardian announces the intention of Mr Winder to erect on the foreshore of the Wyre that he had acquired by purchase from the Duchy of Lancaster a large cornmill at which vessels and steamers of moderate tonnage will be able to discharge and take cargoes at all times. In my opinion I cannot conclude from the 1899 grant whether it be read with or without the 1904 article that Mr Winder was then the owner of the firm land.

Objection No 104 by Mr Winder was not supported upon any other ground, and for the reasons set out above my decision is that it wholly fails.

By reason of Objection No 148 (F H & L Simmonds Limited) I have jurisdiction to consider the validity of the registration of the whole of the Unit Land; in my opinion having regard to the concession made on behalf of the Parish Council that as regards the Duchy Part such registration was mistaken, I can modify the registration accordingly. However as regards the rest of this Objection and the only other Objection, No 211 (Mrs Maguire) the evidence and considerations summarised and set out above are applicable, and for similar reasons my decision is that these Objections (except as regards the Duchy Part) fail. I define the Duchy Part (basing my definition on the plan handed to me by Mr Pearlman) as the part of the Unit Land which is shown on the Ordnance Survey map as northwest of the flood gate holding up the stream known as Peggs Pool, which is southwest of OS No 246 (4.632 acres west of Bunkers Hill), which is northeast of OS No 386 (1.846 acres), and which is all below High Water Mark of Ordinary Tides as marked on such map.

For the above reasons I confirm the registration with the modification that there be removed from the Register the Duchy Part as above defined.

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)

(A) By Mr Pearlman when opening

16 March 1229

^{Copy}
Charter (Latin) of HM King Henry

26 May 1576

Copy charter (Latin) by HM Queen Elizabeth in favour of Richard Shireburn, confirming above charter
Translation of 1576 charter



(B) By Mr Swarbrick

TS1/A	1774	Copy (original Lancashire Record Office) of plan of the lands within the Manor of Hambleton in the Parish of Kirkham belonging to Edward Weld Esq
TS1/B	-	Part of A enlarged for clarity to 6" = 1 mile
TS1/C	-	Transparency of B to overlay
TS1/D	1774	Copy Tenants Rolls which accompanied A
TS2/A	1838	Copy (original Lancashire Record Office) of part of Weld map of Hambleton
TS2/B	-	Transparency of C
TS2/C	-	A reduced to 6" = 1 mile
TS3/A	1839	Extract (original Lancashire Record Office) Tithe Award for township of Hambleton in the Parish of Kirkham
TS3/B	1839	Extract from Tithe Map (attached to Award)
TS3/C	1839	Extract from Schedule to Award
TS3/D	-	Area relevant to evidence
TS3/E	-	Tracing of D
TS3/F	-	Reduced to 6" = 1 mile
TS3/G	-	Copy for overlay of F
TS4/A	1840	Extract (original Lancashire Record Office) of Weld Estate Sale Plan
TS4/B	-	A above enlarged to 6" = 1 mile
TS4/C	-	Copy of B for overlay
TS5/A & B	1846	Ordnance Survey map
TS6/A & B	1895	Ordnance Survey map
TS7	1970	Ordnance Survey map
TS7/B	-	Same as B with markings of Clough Cottage, Caravan Site, Limehouse Cottage (now Whispering Waves), Wayside, Shore Cottage, Beach House and Wyre Haven
TS8	-	Measurement in feet between HMW and boundary of land on east as shown on 1846, 1895, 1956 and 1970 maps for Clough Cottage, Caravan Site, Lime Cottage, Beach Cottage, Shore Cottage, Beach House, Cottages and Longmoor Field/Waterside Field
TS9	After 1910	Copy map (original with District Valuers & Valuation Office Lancaster) made under Finance Act 1910
TS10/A, B & C	After 1910	Valuation of (a) Clough Cottage, (b) Limehouse, (c) Beach House and Kiln House for purposes of Act
TS11	-	Extract from Table of Values held in District Valuers Office



TS12/A	1 March 1871	Copy conveyance by HM the Queen to F H & L Simmonds Ltd of right to lay a sewer
TS12/B	13 December 1904	Copy conveyance of HM the King to B Lewtas of 8a Or 18p of foreshore of land west of Clough Cottage south of Wardley's Pool outside the Unit Land
TS12/C	19 November 1976	Letter from Frere Cholmley on behalf of the Duchy of Lancaster as to the above indentures and as to a small part of the foreshore land near Keggs Pool
TS13/A-L	November and December 1972	Statements by (a) Mrs A H Croft of Alice Hardman Cafe, (b) Mrs D S Bridge of Westleigh, (c) Mr D Mallinson of Hambleton PO, (d) Mr J H Gornall of Woodcar Grange Road, (e) Mr H W Perkins of Kiln-Nook, Broadpool Lane, (f) Mr F T Preston of Victorinus, Greenmeadow Lane, (g) Mrs I Armer of 1 Shard Cottage, (h) Miss A B Baron of Maybank, Marsh Lane, (i) Mr J P Julian of Ryecot, Broadpool Lane, (j) Mr T A Wilkinson of Wyre Villa, Market Street, (k) Mrs E C Swarbrick of 2 Shard Cottages and (l) Mrs J S G Stansfield of Aldwath, 22 Sunderland Avenue

(C) By Mr R M Gilchrist

RMG1	-	Two aerial photographs
RMG2	1 April 1801	Conveyance of J Thompson to J Hornby, C Hornby and W Hornby of cottage "on north bank of River Wyre"
RMG3	2 February 1820	Conveyance by T Hornby and J Thompson of same cottage
RMG4	27 March 1934	Conveyance by T Hayhurst to E D Brown of two cottages (north being Lime House Cottage, later Wayside or Waveside and the south being Shore Cottage)
RMG5	6 June 1966	Conveyance by Mrs E D Brown to Mr R Haworth of Wayside
RMG6	1920	Abstract of title of Mr R Winder to Lime House Cottages commencing with a conveyance dated 25 August 1899 by J Salthouse and other to A R Winder
RMG7	1924	Abstract of title of personal representatives of P Swarbrick to Limehouse Cottages commencing with a conveyance dated 7 October 1920 by R Winder and his trustees to P Swarbrick
RMG8	1 March 1924	Conveyance by A Wilkinson and others (as personal representatives of P Swarbrick) to W Lockwood of Lime House Cottages



- RMG9 1941 Abstract of title of personal representatives of T Hayhurst to Clough Cottage and close of land at Wyreside commencing with a conveyance dated 5 November 1919 by R Lewkes and others to T Hayhurst of Sanded Field 2a 3r
- RMG10 31 December 1919 Extract from conveyance with plan
- RMG11 1933 Abstract of title of J Fenton and his mortgagees to Beach Farm commencing with a conveyance dated January 1925 to J Fenton 3r 3lp
- RMG12 - Victoria History of County of Lancaster edited by W Farrer and J Brownhill volume seven pp xiii, 6, 7, 188, 189 and 190
- RMG13 1891 edition (vol 5) Extract from Baines History of the County of Lancaster p 373

(D) By Mr F B Thornhill

- FBT1-6 - Copy photographs (3" x 3") endorsed: (1) Car Private Road after high tide, (2) Mine and Mr Whiteside's garden after a storm, (3) This was the earth bank the River Authority was building until the Parish Council intervened, (4) 16 wagon loads of rubbish brought up by the tide; double and single gate washed away, (5) my front garden after a storm, also showing the small wall to which the Parish Council object and (6) my drive after a storm

(E) By Mr J A Howarth

- JAH1 4 June 1904 The Preston Guardian including article headed "The Estates of Mr K Winder, Important Development (by our Commissioner)"
- JAH2 20 November 1899 Grant by HM the Queen to A R Winder of foreshore (firm land edged with red)
- JAH3 6 May 1975 Statement headed "Our Contention"
- JAH1-15 - 15 (?16) photographs taken by E R Hargreaves for the purpose of these proceedings: 8 (10" x 7") marked taken 10/1/71 and 8 (8" x 6") not so marked



(F) Agreed Document produced by Mr Pearlman

- 7 recent photographs (10" x 7½")
Before 1939 1 old photograph postcard size entitled "Wyre Side,
Hambleton"

Dated this 29th day of April —

1977

a. a. Baker *Jill*

Commons Commissioner