



COMMONS REGISTRATION ACT 1965

Reference No 21/D/31

In the Matter of The Parish Wash
Pit, Sapcote, Blaby District,
Leicestershire

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL. 61 in the Register of Common Land maintained by the Leicestershire County Council and is occasioned by Objection No 31 made by Mr J K Underwood and noted in the Register on 2 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Leicester on 20 July 1976. At the hearing Sapcote Parish Council were represented by Mr John Dews, solicitor of Dews Welham & Co, Solicitors of Leicester, and Leicestershire County Council were represented by Mr J M Emery, solicitor in their Legal Department.

In the Objection the grounds stated are: "That the land was not common land at the time of registration". Mr Dews contended that in these proceedings the County Council should not be heard. In a letter dated 16 June 1976 sent to the Office of the Commons Commissioners, Thomas Flavell & Sons, solicitors of Leicester, writing on behalf of their client Mr J K Underwood said that this land has now been sold to the Leicestershire County Council, and that they had forwarded the notice of the hearing to them, as their client himself no longer had any interest in the property. The persons entitled to be heard at the hearing of this dispute are set out in paragraph (1) of regulation 19 of the Commons Commissioners Regulations 1971; although the person who made the Objection is included, the paragraph makes no mention of his possible successors in title. However I need not consider what course I might have followed if the County Council's only claim to be heard rested on their being successors of Mr Underwood under the below mentioned conveyance dated 30 December 1975, because the paragraph expressly includes the registration authority.

The Land ("the Unit Land") comprised in this Register Unit is a short distance northwest of Sapcote, about 100 yards north of (although not visible from, there being a row of newly erected houses in between) the Hinckley Road. It is an oval piece between about 30 and 40 yards long and 15 and 25 yards wide, in the middle of a field ("the Surrounding Field") which is bounded on the south by the Hinckley Road, and the fences of the back gardens of the houses (all or nearly all newly erected) fronting on the Road (or the parallel access road), bounded on the east by the fences of the back gardens of the newly erected houses fronting on Frewen Drive, and bounded on the north by a stream (recently dredged; perhaps the land on the north side of this stream is regarded as part of the same field); now the Surrounding Field is arable. The Unit Land is wetter or damper than the Surrounding Field (being at a lower level); however there was no water there when I saw it (there had not been any rain for some time), and from the

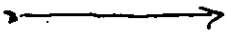


nettles and other vegetation growing over it; I infer that although after prolonged rain it might become muddy, there is never much if any water. Near or within the boundary of the Unit Land there are five trees (sycamores and thorn, not large) and in places the remains of iron railings.

The registration was based on the reference to a Wash-pit in the Sapcote Inclosure Act 1778 (18 Geo.3.c.9.). Mr Emery contended that the rights mentioned in the Act had been abandoned, and the registration should therefore be avoided.

The 1778 Act after directing how the lands to be inclosed under it were to be allotted, provided as follows:- "Provided always, that a certain Pit, at the northwest End of the Town of Sapcote aforesaid, which is, and from time immemorial has been used by the Inhabitants at large of Sapcote aforesaid, as and for a Wash-pit for their Cattle, be not comprised in any such Allotment or Allotments, but that the same shall, at all Times, for ever hereafter, be reserved for, and for the Use of the Inhabitants at large of Sapcote aforesaid, as and for a Wash-pit for their Cattle, in the same Manner as heretofore;..."

The 1778 Award made under the Act was not produced, but it was agreed that it contained no significant reference to the Wash-pit, apart from an allotment in these words:- A private drift road or way of breadth of thirty feet for the use and convenience of all the Inhabitants of Sapcote from the Road or way hereinbefore set out as the Road leading from Sapcote to Hinckley into and through the land hereby allotted to the said Thomas Frewen Turner in Elmeathorpe Field in a Northward direction to a certain Wash Pit, near the Town of Sapcote aforesaid and northwest therefrom reserved by the said Act of Parliament for the use of the Inhabitants at large of Sapcote aforesaid as and for a wash Pitt for their Cattle".

It was agreed that the Unit Land is, or is the site of the Wash-pit referred to in the Act, and that the drift way so allotted was from Hinckley Road on the south along a line of  a gap between the newly erected houses (at the north end of this gap there is now a 10-foot farm gate).

Mr Emery produced a conveyance dated 1933 by which Mr P Toone and another as personal representatives of Mr T Powis (he died 7 June 1932) and his mortgagee conveyed "three closes of pasture land" containing 36 acres 9 perches, including the Surrounding Field and the Unit Land to Mr A Bannister and a conveyance dated 30 December 1975 by which Mr Underwood conveyed pieces of land containing 33.87 acres including the Unit Land and the Surrounding Field and most of the other lands comprised in the 1933 conveyance to the County Council. Neither conveyance contained any express reference to the Unit Land or to any Wash-pit such as it mentioned in the 1778 Act, but the 1933 conveyance was expressed to be subject to an agreement dated 18 January 1915 and made between Hinckley Rural District Council and Mr J Cockerill. On the plan drawn on this agreement an area corresponding a little more or less to the Unit Land is thereon coloured blue and marked as "Low Hole"; the agreement recites (among other things and in effect) that in 1901 the Council laid a sewer under Hinckley Road in order to dispose of the sewage of certain farm premises and dwelling houses south of the Road and continued it through a brick settling tank to an outfall by Low Hole and that there was another sewer from eight dwelling houses known as Workhouse Cottages on the north side of the Road across the Surrounding Field ending a little to the east of Low Hole; it was by the 1915 agreement agreed in effect and among other things that the last-mentioned sewer should be diverted so as to be



combined with the first-mentioned sewer "to the outfall at the point marked C on the said plan as now existing on the low irrigation hole shown on the said plan and marked Low Hole"; it was also agreed that the Council would fence round with about 100 yards of iron hurdle fencing 4 feet in height "the said low irrigation hole marked Low Hole shown on the said plan, and fix a 9 feet wood entrance gate..." and that Mr Cockerill should "from time to time properly irrigate and dispose of the sewage discharge from the said Sewers into the said Low Hole area".

Mr V W Forster who is 62 years of age, has lived in the Parish for 44 years, has been a member of the Parish Council for 7 or 8 years and is this year their chairman, in the course of his evidence after describing the Unit Land and explaining that the Parish Council feel it is a little bit of their history which they do not wish to lose, produced an extract from the Award map which shows the Unit Land as mostly water with an outflow to the north and with a driftway approach from the south. He said (in effect):- When the stream was recently dredged, the remains of an underground soakaway from the Unit Land was found. He had never seen it used as a wash pit. He thought there must originally have been a spring there, but the water table in this area having dropped, it must have ceased to flow as it used to.

After the conclusion of the evidence it was agreed that I could proceed on the basis that the rights referred to in the above extract from the 1778 Act have not been exercised for sixty years at least. Mr Emery contended that they had therefore been abandoned; the advantage of the Unit Land being in any sense public is minimal, because its only likely use is as an unusual area of exploration by children from the nearby newly erected dwelling houses; against this the disadvantages to the County Council farmer tenant who cultivates the Surrounding Field are very considerable because children when crossing the Surrounding Field to get to the Unit Land may damage the growing crops.

I am concerned to determine whether the Unit Land was in 1963, the date of registration, common land within the meaning of the definition in section 22 of the 1965 Act, being (so far as relevant): "(a) land subject to rights of common ...; (b) waste land of a manor not subject to rights of common". In my opinion land which the inhabitants of a locality have a right to use as a wash-pit for their cattle, whatever may be "the Manner" in which they use it, is not merely because it is subject to such a right within either paragraph of the definition; although a right customary or otherwise to use or take water is protected by law, it is not I think properly described as a "right of common", see *Race v Ward* (1855) 4 E&B 702; further although land from which the inhabitants of a locality have a right to take water may be waste land of a manor, it is not I think necessarily so.

In my opinion the right of using the Unit Land for a wash-pit as set out in the above extract from the 1778 Act is in the nature of a customary right which cannot be lost by abandonment or non-use, see the observations of Lord Denning M.R. in the *Windsor v Mellor* 1975 Ch. 380 at p. 387 ; but as explained above, this does not I think conclude the matter against the County Council, because it may have ceased to be waste land of a manor.

There may be some question as to the meaning of the words "waste land of a manor" as used in section 22 of the 1965 Act. If they mean land which was in 1965 owned by a person who also owned the lordship of a manor, the Unit Land is not within them. If on the other hand they mean land which because of its manorial



history has continued in some way to be public land, I must consider its history. Many public springs, wells and watering places were originally on waste land of a manor, and the lands surrounding them may still be waste land of a manor, notwithstanding that the rest of such waste land has been inclosed, because the springs, wells and watering places on the land have up to the present time preserved their public character. But in the case of the Unit Land, its spring has not had this effect. It may be that for about 100 years after the 1778 Act, the Unit Land was used by the inhabitants as a wash-pit for cattle, and during such period it could fairly be described as being waste land of a manor. But the 1915 agreement shows I think that some time before then the land had become a suitable place for an outflow of sewage: a place which could be described as the "Low Hole", and not a place the public would wish to visit. I am not I think concerned to speculate whether it has become unusable as a wash-pit because the level of the water table has changed or because it has silted up either naturally or by additions consequent on the drainage system contemplated by the 1915 agreement, or ~~else~~ ^{if} it would, if anybody incurred the trouble and expense of digging it out, ever again be used as a wash-pit for cattle. In my view land which was formerly waste land of a manor may for the purpose of the 1965 Act cease to be such; the Unit Land did I think some time before 1968 cease to be waste land of a manor within any meaning of these words which I can think of.

My conclusion is therefore that for the reasons set out above the registration should not have been made, and accordingly I refuse to confirm it.

I regret that some of the questions discussed at the hearing before me will remain unresolved. The short answer to these questions is I think that the wash-pit rights by the 1778 Act conferred or recognised are outside the scope of the 1965 Act and can neither be protected by registration nor lost by non-registration under it. However this may I have I think no jurisdiction to determine such questions except to the extent set out above.

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 4th day of August _____ 1976

a. a. Baden Fuller

Commons Commissioner