



In the Matter of Land in Falls Drove, Cloots Drove and Wash Bank, Crowland, Lincolnshire (No. 1).

DECISION

These disputes relate to the registration at Entry No 1 in the Land section of Register Unit No CL 57 in the Register of Common Land maintained by the former Eolland County Council and are occasioned by Objection No 113 made by the former Deeping Fen, Spalding and Pinchbeck Internal Drainage Board and noted in the Register on 16 December 1970, Objection No 193 made by the former Welland and Nene River Authority and noted in the Register on 10 May 1971, Objection No 237 made by St John's College, Cambridge and noted in the Register on 7 September 1971, Objection No 288 made by the County Surveyor of the former Holland County Council and noted in the Register on 1 August 1972, and Objection No 301 made by the 9th Earl of Normanton and noted in the Register on 1 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Spalding on 18 April 1978. The hearing was attended by Dr DG Teall, the applicant for the registration, Mr R G Moverley, of Counsel, on behalf of the Anglia Water Authority, the successor of the former River Authority, Mr D C F Hutchinson, solicitor, on behalf of St John's College, Cambridge, and Mr A G Dyer, Senior Assistant Solicitor of the Lincolnshire County Council. There was no appearance by or on behalf of the other Objectors but the Welland and Deepings Internal Drainage Board, the successor of the former Deeping Fen, Spalding and Pinchbeck Internal Drainage Board, stated in a letter to the Clerk of the Commons Commissioners dated 6 April 1978 that it had been established that the land comprised in the Register Unit did not lie in the Board's area, so that the Board did not wish to proceed further with Objection No 113.

Dr Teall stated that he agreed to the exclusion of the land the subject of the objection by St John's College, Cambridge. Mr Hutchinson applied for an order for costs on the ground that he had not been informed of this before the hearing. I have decided to grant this application.

There have been inconclusive negotiations between Dr Teall and the County Council as to how much of the land comprised in the Register Unit should be excluded on the ground that it is part of a highway. The land to which these negotiations related is described in the Register Unit as "The pieces of land lying between the highway boundary and the dykes or fences on both sides of Falls Drove and Cloots Drove", but it was described in the application simply as "Cloots Drove, including Falls Drove". The grounds of the former County Council's objections were stated to be "The land was not common land at the date of registration", but I was informed that the negotiations had been concerned solely with the question of the width of the highway, Dr Teall stating that he was only concerned with the amenity value of the land on either side. Mr Dyer stated that he agreed that the dykes were not part of the highway.

In order the better to understand the evidence, I viewed the two Drovers. Having seen them, I am left in no doubt that, applying the general presumption that a highway is not confined to the metalled portion, but includes all the land between the boundaries of the land on either side, the whole of this part of the land comprised in the Register Unit forms parts of highways and is therefore excluded



from the definition of "common land" in Section 22(1) of the Commons Registration Act 1965.

This leaves for consideration the land described in the Register Unit as "Wash Bank from its junction with Cloots Drove to St Guthlac's Cross and including the site of St Guthlac's Cross". It was agreed between Dr Teall and the former River Authority on 26 January 1976 that there should be excluded from the registration the whole of this land with the exception of St Guthlac's Cross and a small triangle of surrounding land. St Guthlac's Cross consists of the stem of a medieval stone cross, now fixed to a base of obviously much more recent date. It stands at a place known as Brotherhouse Bar. It is said to have marked the northern boundary of the manor of Crowland. Brotherhouse Bar is at the junction of two portions of the Barrier Bank, which was constructed under the powers of a Commonwealth Act of Parliament passed in 1649: see the history of the Barrier Bank set out in North Level Commissioners v. River Welland Catchment Board, [1938] Ch. 379 at pp. 381-3. It appears from the 1/2500 Ordnance Survey Map of 1904 that at that time St Guthlac's Cross was within the curtilage of a cottage immediately to the south of the Barrier Bank. The cottage is no longer there, though its site is readily identifiable, and the cross now stands on the top of the Barrier Bank.

There being no entry in the Rights section of the Register Unit, St Guthlac's Cross and the land around it can only fall within the definition of "common land" by being waste land of a manor. There seems to be some room for doubt whether the land on which the Barrier Bank was constructed lies within or immediately to the north of the manor of Crowland, but whether within the manor or not, I find it impossible to regard this artificial construction as being waste land of the manor.

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

Dated this

26th

day of

May

1978

CHIEF COMMONS COMMISSIONER