



In the Matter of Waste Land, Carperby,  
North Yorkshire.

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DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 139 in the Register of Common Land maintained by the former North Riding of Yorkshire County Council and is occasioned by Objection No. 0218 made by Mr J U Machell and Sir Henry Lawson-Tancred and noted in the Register on 25 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Richmond on 20 July 1977. The hearing was attended by Mr M Boon, solicitor, on behalf of the Registration Authority, Mr E R D Johnson, solicitor, on behalf of the Carperby Parish Council, a concerned authority, and by Mr J H N Towers, solicitor, on behalf of the Objectors.

There is no registration in the Rights section of the Register Unit, so this registration cannot be confirmed unless the land comprised in the Register Unit is waste land of a manor.

The Objectors are registered in the Ownership section of the Register Unit as the owners of the whole of the land comprised in it, such registration having become final on 1 August 1972. Mr Towers agreed that the Objectors are lords of the manor of Carperby. The only matter remaining to be determined is whether the land is waste of the Objectors' manor.

The land comprised in the Register Unit consists of two Ordnance Survey parcels, Nos 3 and 4. O.S. No. 3 consists of a fairly wide lane through which passes the made-up part of a county unclassified road. This lane is fenced on each side. Mr Johnson conceded that, applying the usual presumption, its whole width forms part of the highway and is therefore excluded from the definition of "common land" in Section 22(1) of the Commons Registration Act 1965.

O.S. No. 4 is wider than O.S. No. 3 and, although the unclassified road passes through it, it would be difficult to say that the whole of the land between the fences forms part of the highway. The whole of O.S. No. 4 has for many years part been let to tenant farmers by the Objectors and their predecessors in title as part of a farm known as East End Farm. It can be regarded as consisting of two parts, one to the west of Harper Wath Bridge and the other to the east of the bridge. Mr Johnson conceded that the eastern portion is not manorial waste. It thus remains for me to consider the western portion.

The unclassified road previously mentioned leads through the western portion to the bridge. The western portion is divided from the eastern portion by a wire fence erected by a tenant many years ago. While the eastern portion has been used for grazing, the western portion is virtually useless from the agricultural point of view. It has never been cultivated in living memory and, in my view, could fairly be described as waste land. That, however, is insufficient to bring it within the classic definition laid down by Watson B. in Att. - Gen. V. Hammer (1858), 27 L.J. Ch. 837 as "the open, uncultivated and unoccupied lands parcel of



the manor ..... other than the demesne lands of the manor". Even if it could be said that this land has been unoccupied by the tenants, since they have made no use of it, the mere fact that it has been included in the tenancy of East End Farm is, in my view, sufficient to exclude it from Watson B.'s definition as demesne land of the manor. It was held in Att.-Gen. V. Parsons (1832), 1 L.J. Ex 103 that "demesne lands" properly signifies lands of a manor which the lord either has, or potentially may have, in propriis manibus. This is an accurate description of the whole of the land in O.S. No. 4, none of which is therefore waste land of the manor of Carperby.

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 9<sup>th</sup> day of August 1977

Chief Commons Commissioner