



COMMONS REGISTRATION ACT 1965

Reference No.29/D/42

In the Matter of The Pound,
Steeple Aston, Oxfordshire.

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.C.L.124 in the Register of Common Land maintained by the Oxfordshire County Council and is occasioned by Objection No.90 made by Ede Developments (Oxford) Ltd and noted in the Register on 4th August 1971

I held a hearing for the purpose of inquiring into the dispute at Oxford on 29th January 1974. The hearing was attended by Mr.R.Mason, a resident of Steeple Aston, whom I allowed to appear on behalf of the Steeple Aston Parish Council, the applicant for the registration, and by Mr.Henry Brooke, of counsel, for the Objector.

The land the subject of the reference lies to the east of Paine Street (also called Paine's Hill) and is now derelict. It is divided from the road by a stone wall and a wooden gate at the southern end of the wall, and is bounded on the south by a hedge and on the north by a stone wall approximately 16 feet 6 inches long and by an iron fence to the east of the wall. Mr.Mason did not contend that the whole of this land was properly registered, but he asked me to confirm the registration in so far as it related to the westerly rectangle bounded by the two walls to the north and west and by lines parallel to these walls on the south and east.

This limited area is indicated on the first edition of the 25 inch to the mile Ordnance Survey Map, surveyed in 1875, as "Pound". This is repeated on the second edition, revised in 1898. The only evidence of its use as a pound was that given by Mr.F.N.Franke, who remembered seeing some calves put in it about 1913, at which time the southern and eastern boundaries consisted of oak posts and railings. These boundaries do not appear on the 25 inch to the mile Ordnance Survey Map, revised in 1919.

That there was a pound in Steeple Aston in the eighteenth century appears from entries in the Parish Book and the Constable's Book from 1762 onwards. Where this pound was is not stated, but in an indenture made 30th January 1824 between (1) John Marten Watson (2) John James Perry (3) John Woodford (4) John Hall, relating to property fronting on Paine Street, the northern boundary of the property is stated to be the common pound.

I therefore find that the limited area for the registration of which Mr.Mason contended was the common pound of Steeple Aston.

Mr.Brooke accepted this, but argued that as a matter of law a pound does not fall within the definition of "common land" in section 22(1) of the Commons Registration Act 1965. Mr.Mason's argument was that the pound fell within the second limb of that definition by being waste land of the manor of Steeple Aston.



Waste land of a manor was defined by Watson B. in Att.-Gen. v Hanmer (1858) 27 L.J.Ch.837 at p.841 as "the open, uncultivated and unoccupied land parcel of the manor or open land parcel of the manor other than the demesne lands of the manor".

That the land in question is parcel of the manor may be indicated by a number of entries in the records of the Court Leet between 1862 and 1871, when the jury presented that the pound was out of repair, though other evidence to be mentioned later makes this far from certain.

I am not able to accept Mr. Brooke's contention that a pound cannot, as a matter of law, be waste land of a manor. As was pointed out by Mr. Commissioner Baden Fuller in Land known as Pinfold, Higham-with-West Close Booth, Lancashire (1972), 20/D/2, a pound surrounded by manorial waste and usable by commoners having rights in the waste might properly be regarded as appurtenant to or part of the manorial waste. This pound, however, is not surrounded by manorial waste nor does it even adjoin such waste.

Mr. Mason's argument went to the opposite extreme. He contended that every pound within a manor is prima facie waste land of the manor. In support of that contention he relied on Jacob's Law Dictionary (10th edn, 1782) s.v. Pound, where it is stated that "a pound overt is an open pound, usually built on the lord's waste, and which he provides for the use of himself and tenants, and is also called the lord's or the common pound".

The history of the pound at Steeple Aston is somewhat confused. The Parish Book for 4th January 1762 contains a set of "Articles agreed upon by the Inhabitants", among which is the following:-

"We agree that the Fieldsmen shall pound all Cattle he shall find "trespassing against these articles".

So far, this appears to be a common pound constituted by agreement among the inhabitants of a vill, as described by Holt C.J. in Vasper v Edwards (1701), 12 Mod.658, at p.664. It is next referred to in the Constable's Book for the period 1776 to 1843, which contains several entries between 1781 and 1838 relating to payments for repairs to the pound. Then the Court Leet records of October 1862 refer to the pound's having been put into good order by the surveyor of highways, and in October 1867 the disrepair of the pound was to be reported to the "Board of Haywarders", as successors to the "Parish Road Surveyor". Finally, there is a receipt dated 13th November 1880 for money paid for repairs to the pound by order of the Hayward of the Parish.

Apart from the fact that the pound is referred to in the records of the Court Leet (which are entered in the Vestry Minute Book), these records appear to indicate that this is a parish pound rather than a manorial one. However, even if it is a manorial pound, the topographical evidence does not indicate that it has ever been waste land of the manor.

On the earlier editions of the Ordnance Survey map there is to the east of Paine Street an enclosure O.S.No.127, having an area of 1.342 acres. This enclosure is divided from Paine Street by a narrow strip of land, on which there is a continuous row of buildings with the pound at the northern end. The eastern boundary of the pound is shown as a continuation of the line



of the back walls of the buildings. On the 1919 revision of the map the area of O.S.No.127 has been reduced to exactly one acre by adding the western part of it to the strip of land on which the buildings fronting onto Paine Street stand, thus providing those buildings with rear curtilages. This alteration has obscured on the ground the fact that the pound was formerly the northern end of a strip of land of more or less uniform width, most of which was covered with buildings. From this I draw the inference that at some time, possibly a long time before the pound came into being, the road frontage was developed by taking a strip from the enclosure which later became O.S.No.127 and that the land which afterwards became the pound was either part of the curtilage of the northernmost building on the strip or the site of a destroyed or derelict building. In neither case could the land be said to be manorial waste.

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 7th day of March 1974

Chief Commons Commissioner