



In the Matter of Castle Green and Two Pieces
of Land on the North and South Sides of Castle
Road, Kenilworth, Warwickshire

DECISION

This reference relates to the question of the ownership of land known as Castle Green and two pieces of land on the north and south sides of Castle Road, Kenilworth, being the land comprised in the Land Section of Register Unit No. VG 24 in the Register of Town or Village Greens maintained by the Warwickshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Warwick District Council claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Leamington Spa on 8 December 1982.

At the hearing the Warwick District Council was represented by Miss J Doran, its Deputy Secretary, and the Kenilworth Town Council by Mr H L G Sunley, the Town Clerk, and Mr H Pender appeared in person.

Miss Doran's only evidence was that Castle Green is subject to byelaws made by the District Council and confirmed on 23 June 1977 under section 164 of the Public Health Act 1875. For the reasons given in my decision in In the Matter of Tainters Hill Pleasure Ground (1982), Ref. No. 239/U/99, I do not consider that such byelaws are evidence that the authority which made them is the owner of the land to which they relate.

Mr Pender is the owner and occupier of Leicester House, which abuts onto part of the land on the north side of Castle Road. The part of the land onto which Leicester House abuts is bounded in the east by the Queen and Castle Hotel and on the west by a post and chain fence, and is bisected by a path leading from the front door of Leicester House to the roadway. Along the flank wall of the Queen and Castle Hotel there is a cultivated border 5ft. wide, which has been maintained by the occupiers of the hotel by agreement with Mr Pender. Except where there is a gap for the path, the land is divided from the roadway by a post and chain fence. Mr Pender keeps the grass between his house and the roadway mown. In order to make mowing easier he has inserted cast iron sockets from which the posts can be removed.

Mr Pender has only been the occupier of Leicester House for nine years, so he cannot have acquired a possessory title to the land which he claims. However, Mr Eric Prince, the District Council's Planning and Technical Officer and who was the Engineer and Surveyor of the former Kenilworth Urban District Council from 1 October 1962, said that the position with regard to the land in front of Leicester House had been the same during the whole of the time that he had known it. He had agreed to let the posts and chains remain in order to prevent visitors peering into the windows of the house. The grass in front of the house was included in the local authority's mowing schedule, but in fact Mr Pender and his predecessor had mown the grass more frequently than was provided for by the mowing schedule.



While the mere cutting of grass does not constitute adverse possession of land, I have come to the conclusion that in this case the cutting of grass together with the maintenance of the posts and chains and the cultivation of the cultivated border does constitute adverse possession by Mr Pender and his predecessor or predecessors. Since that adverse possession started at some time before 1 October 1962, the title of the previous person entitled to possession was extinguished by virtue of section 16 of the Limitation Act 1939 in 1974 at the latest. In these circumstances Mr Pender's possession of the land is prima-facie evidence of seisin in fee, and there is no rebutting evidence.

On this evidence I am satisfied that Mr Pender is the owner of the land adjoining Leicester House, and I shall accordingly direct the Warwickshire County Council, as registration authority, to register him as the owner of the land under section 8(2) of the Act of 1965.

Since I am not satisfied that any person is the owner of the remainder of the land the subject of the reference, I shall direct the County Council to register the Kenilworth Town Council as the owner of that part of the land under section 8(3) of the Act of 1965.

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

16th

day of

December

1982

Chief Commons Commissioner