



COMMONS REGISTRATION ACT 1965

Reference No. 239/U/118

In the Matter of Freasley Common,
Dordon, North Warwickshire Borough
Warwickshire

DECISION

This reference relates to the question of the ownership of land known as Freasley Common, Dordon, North Warwickshire District being the land comprised in the Land Section of Register Unit No. CL18 in the Register of Common Land 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 no person claimed to be the freehold owner of the land in question. In a letter dated 24 February 1988, Mr A J Pritchard as Hon Secretary of Freasley Common Rights Association said that the ownership of the Common was of great interest to the current owners of property in Freasley and the Association had made a number of enquiries which they believed would yield information of material use. 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 Atherstone on 19 May 1988. At the hearing (1) Freasley Common Rights Association also or formerly known as Owners and Occupiers of Freasley Common Rights, were represented by Mr A J Pritchard of Ivy Cottage, Freasley; (2) Mr J Earp of 12 Chaytor Road, Polesworth who is a member of but did not represent Dordon Parish Council, attended in person; (3) Mr J Ison of Towyn, Watling Street, Grendon who is a member of the Parish Council, of Atherstone District Council and of Warwickshire County Council, attended in person; (4) Mr R J Anders of Sycamore Cottage, Freasley, attended in person; and (5) Warwickshire County Council as registration authority were represented by Miss P Roddies legal executive in the County Solicitor's Department.

The land ("the Unit Land") in this Register Unit is from north to south about 550 yards long and has a variable width averaging about 30 yards; it includes some short and comparatively narrow extensions to the east and to the west. The houses of the Village all front on the Unit Land or are not far from it. From outside there is only one public vehicular access for motor vehicles; this is from the north by a road apparently recently realigned consequential on the newly constructed nearby M42 motorway; in this respect the Register map which shows a like road from the south may be confusing: in that the road so shown extends for public use no further than the cars-metal scrap yard a short distance south of the Unit Land. In the Rights Section of this Register Unit, there are 8 registrations of a right to "graze 1 adult beast over the whole of the land in this register unit", attached to 8 different nearby pieces of land with a dwellinghouse or cottage on them.



Mr A J Pritchard who in 1976 came to the Village and in 1980 became the Hon Secretary of the Freasley Common Rights Association ("FCRA") in the course of his oral evidence produced the documents (except JE/1) specified in Part I of the Schedule hereto. He explained that the before 1953 documents came, so he understood from Mr W W Cooper who as therein appears acted as Hon Secretary of the Owners and Occupiers of Freasley Common Rights and who in 1952 apparently assumed that the National Coal Board as successors of Morris & Shaw Ltd (the mine owners) were Lords of the Manor. He said that as Secretary of FCRA he had other before 1953 documents relating to various festivities on the Unit Land. There had never been any Minute Book of the meetings of the FCRA or of "the owners and occupiers ..."; merely a collection of papers which included the minutes he had produced. The Way Leave agreement (AJP/12) had never been signed. The trees mentioned in AJP/13 have been planted and paid for by the Department of the Environment and Transport.

Mr Earp said:- As far back as he could remember, Dordon and Polesworth Parish Council included the hamlets of Freasley and Hall End; Freasley was then mostly farm-workers' cottages and Hall End was built as miners' cottages. The mine was closed in 1987. A Parish Council for Dordon was created in 1948 when Polesworth was separated from Dordon, but Dordon Parish Council continued to include Freasley and Hall End. He suggested that the Unit Land should if possible be vested in the Parish Council so as to avoid the difficulties appearing in the 1985 and 1987 documents produced by Mr Pritchard.

Mr Ison agreed with Mr Earp's suggestion and added that the Lord of the Manor had his hall in Hall End.

A discussion followed in the course of which Mr Pritchard suggested I should adjourn the proceedings so that the British Coal could complete the inquiries mentioned in their May 1988 letter, with the possible result that under a conveyance made by them, FCRA became the owners. I indicated that I had under the 1965 Act no discretion to award ownership to the Commoners or to the Parish Council or anyone else, but if I concluded that the Unit Land was parish property within the popular meaning of these words, I could "be satisfied" in accordance with the jurisdiction conferred by the Act that the Unit Land had been for some time, and now is owned by the Parish Council in accordance with the law.

On the day after the hearing, for the purpose of my inspection of the Unit Land, there assembled in the cottage attached to the Mission Hall and occupied by Mr Reginald Arthur Wilding the following: (1) and (2) Mr J Earp and Mr A J Pritchard who attended the hearing and, (3) Mr J Dormand of Overhouse Farm who is and for the last 15 years has been, chairman of FCRA, and (4) Mr R A Wilding who has lived all his life (born 1919) in the village.

Mr Dormand said (in effect):- Through the gate leading to the cars-metal scrap yard at the south end of the Unit Land, there was and is a bridle path but no more. The track off the minor road to his farm, leads to a slag heap for the colliery, closed in 1987. The house of Mr Cutler (near such gate) was formerly that occupied by Mr Mitcheson. He (Mr Dormand) thought that the FCRA acted for the benefit of the village and that their purpose was to keep the Unit Land tidy and to make somebody clear it up when it had been neglected.



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Mr Pritchard produced his folder containing all the before 1953 documents and some others by him held as Secretary of the FCRA and which are specified in Part II of the Schedule hereto.

Mr Wilding pointed out on the Unit Land, an oak and a chestnut planted to commemorate the Jubilees of HM Queen Victoria and of HM King George VI and said that there was at the south end of the Unit Land a copper beech in 1953 planted in the place of a 1938 oak to commemorate the coronation of Her Majesty the Queen.

During my inspection I saw the various things mentioned at the hearing and ^{at} Mr Wilding's cottage, noting particularly: (1) the wide well-kept area south of the Mission Room and west of the gates of Freasley Hall and (2) the southern part of the Unit Land (on JE/1 called THE GREEN) recently planted with trees in accordance with the M42 offsite planting (AJP/13 and 14). Generally the Unit Land is now, and I would infer for a long time has been a valuable amenity to those of the village who live by or near to it, and a suitable site on which to plant trees to commemorate nationally joyful occasions.

By Section 8 of the 1965 Act, I am required to say whether I am or am not satisfied as to ownership.

As to British Coal as successors of Morris & Shaw Ltd:- The 1931 and 1933 minutes, notwithstanding the somewhat casual manner in which they were made and have been preserved, are I think some evidence of what was said at the meetings. But I decline to infer that the Company were then the owners of the Unit Land from Mr Mitcheson's 1931 threat → if nothing was done (something was done) and from his 1933 non-objection to what others proposed, that the Company → then owned as Lord of the Manor the Unit Land or that there was then anything manorial about the Unit Land. The word "commons" in the 1565 indenture (AJP/17) was at that time inserted in almost every indenture conveying land of any kind, and I am unable to infer from such words or anything else in it that this indenture relates to the Unit Land; or that the land thereby dealt with was held of any manor. Apart from Mr Cooper's 1952 begging letter (AJP/5) I have nothing else manorial. Contra, I have the 1988 statement of British Coal (AJP/16) that nothing as to the succession of the Lord of the Manor can be found in their Freasley deeds and records. So on the evidence I now have I find that British Coal are not the owners of the Unit Land.

It is possible that British Coal might find a document supporting their ownership, but because I think it unlikely I refuse to adjourn the proceedings and now give the decision on the evidence I had at the hearing and during my inspection. But because it is possible that British Coal might in the near future find something, and because → Mr Pritchard → told them that he was applying for an adjournment, ^{and} they may, although they had notice of the hearing, not have attended in the expectation that an adjournment would be granted, I give British → Coal → liberty to set aside this decision. Any application under this liberty should be made in writing (in the first instance it may be by letter to the Clerk of the Commons Commissioners in London) and should summarise the evidence that would be given if the hearing were reopened; the application should be made within 6 weeks of the day on which this decision is sent to the persons concerned or within such extended time as may be allowed by a Commons Commissioner.



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From the before 1953 document I conclude that Mr Cooper and the Committee of which he was Secretary were, notwithstanding the unusual name by which they were called, acting for the benefit of the village generally and not for the benefit particularly of the individuals residing in the dwellinghouses and cottages mentioned in the Rights Section made as a result of applications made in 1968. I think the activities of FCRA since 1963 have been similarly motivated. On these considerations I find that the Unit Land has for long periods been treated as belonging to the village of Freasley within the popular meaning of these words.

As to the law applicable to land belonging to a parish within the popular meaning of these words:- By section 17 of the Poor Act 1819 (59 Geo.3.c.12) the churchwardens and overseers of a parish were empowered to "accept take and hold in the nature of a body corporate for and on behalf of the parish all land belonging to the parish". In Doe v Hiley (1830) 10 B & C 885, Lord Tenterden C J held that this section had the effect of vesting in the churchwardens and overseers all land belonging to the parish, notwithstanding that the land was not acquired for purposes relating to the poor. This decision has since been treated as applicable to all land "belonging" to a parish in the "popular sense of that expression", see Doe v Terry (1835) 4 A & E 274 at page 281 and Haigh v West 1893 2 Q B 19 at page 31; this last case although distinguished on the facts was recognised as stating law still applicable, see Wyld v Silver 1963 1Ch 243 at page 271. It is not necessary to consider whether a locality is a parish or township because the 1819 Act is applicable to churchwardens and overseers of a township, see section 21 of the Poor Relief Act 1662 (13 & 14 Car. 2 chap 12). Any legal estate of the churchwardens and overseers is now vested in the Parish Council as their successors under the Overseers Order 1927 (S.R. & O. 1927 No. 55) made under the Rating Act 1925; by section 68(4) of the 1925 Act, having regard to the section 21 of the 1662 Act above quoted, a township is a "parish" within the meaning of the 1925 Act.

The circumstance that Freasley is a hamlet part of the Parish of formerly Polesworth and Dordon and now Dordon, does not I think make the 1819 Act inapplicable; for as appears from the cases above cited the purpose of the Act was to provide generally for parish land, and that the land benefits some only of → the inhabitants of an outlying hamlet does not prevent it being parish property just as much as land → centrally situated and benefiting more of the inhabitants.

Upon the above considerations I am satisfied that the Parish Council of Dordon is the owner of the Unit Land, and accordingly, subject to any variation of this decision which may result from any proceedings under the liberty to apply by me hereinbefore granted to British Coal, I shall, pursuant to section 8(2) of the 1965 Act direct the Warwickshire County Council as registration authority to register the Parish Council of Dordon as owner of the Unit Land.

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.



SCHEDULE
(Documents produced)

Part I: at hearing

- AJP/1 10 July 1931
(pencil
signature
W B Fowler
20 Aug 1931)
- Typed minute with typed subscription "W W Cooper, Hon. Sec." (2PP fscp;? contemporary copy) of meeting "of the Owners and Occupiers of Freasley Common Rights", recording:- "... The reasons were that owing to the non-exercise of the common right holders rights to graze the green that it was becoming nothing but a waste and nuisance and that there was a danger of the general public obtaining prescriptive rights over the green and making same into a public highway. Messrs Morris & Shaw Ltd felt if nothing was done in the matter by the common right holders that the Company as Lord of the Manor might have to take steps to let the grazing in order to protect their rights. A considerable discussion took place ... The deplorable state of the green owing to thistles and nettles ... non use by the Cottagers of their rights ... proposed letting of the grazing rights to farmers ... generally agreed that the common was in danger of becoming a nuisance and liable to be taken over as such ... high price of young cattle at the moment and other factors acting as a deterrent ... (after motions not agreed) ... all present would do their best to prevent straying or damage to any cattle which might be placed on the Green ... Committee be formed comprising all those present to meet periodically to deal with the proper supervision of the common (Carried) ... next meeting August 20th."
- AJP/2 18 May 1933
(signed
W B Fowler
no date)
- Ms Minute (2pp fscp subscribed? and written by) "W W Cooper Hon Secretary"; of meeting of "the Freasley Common Rights Owners and Holders", recording "... meeting had been called to decide upon the steps to be taken for the grazing of the Common ... to know if the letting of the grazing by the Common Right Holders would be sanctioned by the Lord of the Manor? Mr Mitcheson informed the Chairman and the Meeting that the Lord of the Manor would offer no objection to such a course provided the Common itself benefitted ... moved ... that the Common be let by tender to local farmers, a notice to this effect to be placed ... Carried ... pigs were not allowed on the Common ..."



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- AJP/3 14 May 1988 "Freasley Common. Register of Rights Holders. There are NINE grazing rights and they belong as follows:- ..."; with map (scale 1/2500) showing Unit Land as Common Rights Land".
- AJP/4 14 May 1930 Copy (1p fscp) of resolutions proposed and carried at a meeting of "Owners and Occupiers of Freasley Common rights ..." (1) ... desirable for the thistles and brambles to be cut and kept cut by those entitled to grazing rights ... (2) permission to erect a wooden fence six feet in front of the farmhouse ... (3) ... provision for spaces ... for turning motor cars ... (4) ... letting of common rights ... finally decided that this was allowable to occupiers in the Village only but not to large farmers; (5) road to ... cottage ... grassed over to be reopened ... agreed. (6) Horses not to be allowed ...
- H B FOWLER CHAIRMAN ... NINE grazing rights ... belonging as follows:- ...
- AJP/5 19 May 1952 Copy Ms letter sent by W W Cooper Hon Secretary, endorsed "for Mr Mitcheson's approval to Area Estate Manager, West Midlands Area: "At our last Common Rights meeting under the Chairmanship of Mr Mitcheson, the bad state of the road leading from the main road (opposite Mr Mitcheson's House) to NCB cottages ... was brought forward ... decided to approach you as representing the West Midlands Area Estates and the Lord of the Manor for Freasley ..."
- AJP/6 27 May 1952 Letter in reply from Area Estates Manager National Coal Board, West Midlands Division: "... let me know if the tenants of the houses concerned would be prepared to spread and level any materials which I may be able to procure for the purpose of improving this piece of road. If you can help in this way I think I may be able to arrange something for you.
- AJP/7 1959 (? Draft) letter to National Coal Board from Mrs M Hodgkins, Hon. Sec. Freasley Common Rights Committee ... if you can meet some of them to inspect the common and discuss with them the general improvements needed ..."
- AJP/8 21 August 1959 Letters from National Coal Board, West Midlands Division to Mrs Hodgkins: "... The Board feel that they cannot expend any money on carrying out improvements to Freasley Common".
- AJP/9 15 January 1960



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- AJP/10 24 June 1987 Letter from Severn Trent Water, Avon Division to Mr G Dormand ("as Chairman of the Freasley Commons Committee"): "... Common may have been damaged by the Authority's vehicles. ... who actually owns the Common ... unpleasant consequences of not emptying the biodisc unit!"
- AJP/11 July 1987 Copy of reply to AJP/10 by A J Pritchard, Secretary - Freasley Common Rights Committee.
- JE/1 Map of north part of Unit Land (1/1250) produced by Mr Eastham.
- AJP/12 Draft/ Wayleave Consent to East Midlands Electricity Board, with plans showing overhead electric line and underground cable.
- AJP/13 February 1985 Letter from Department of the Environment and Transport to (Regional Landscape Architect) to Mr Pritchard as Secretary of Freasley Common Committee, headed "M42 Kingsbury Section, off-site planting, Freasley Common" requesting approval of plan and confirmation that committee will enter into Section 253 Agreement as set out on the attached Model Form with plan showing situation of proposed planting of 700 trees and shrubs (some nurse trees to be removed later).
- AJP/14 9 September 1985 Letter being a follow up of AJP/14 mentioning the Commons Registration Act 1965.
- AJP/15 2 February 1988 Letter from Mr Pritchard as Secretary of Freasley Common Rights Committee to Area Estates Officer, National Coal Board: "... an indication from you on your disposition towards transferring ownership to the owners of the Common Rights so that our custodianship can continue".
- AJP/16 18 May 1988 Letter from British Coal (Estates Manager) Central Area to Mr Pritchard: "The Corporation's Deeds & Records for lands in Freasley have been inspected but at the present time no confirmation can be found as to the succession of the Lord of the Manor. However, following information supplied by your further inquiries are now being made. The Corporation will raise no objection to your proposal regarding the future ownership of the Unclaimed Land ... further ... inquiries".



- AJP/17 23 March 1934 Extract from Midland Counties Tribune and Warwick County Graphic: "Spots Steeped in History -- Freasley II"
- ... An Ancient Document ... we are giving it in full.
- 1565
This indenture ... (28 Sept in 7 Eliz)
John orm off ffriesleye ... agnes orme ... mother of the said John ... Witnesseth ... the said John (in ... performyne ... certayne awarde in Writinge indented ... 18 august in said 7 Eliz) granted ... all that his messuage ... in ffriesleye ... (for 60 years) ...
- Part II: at inspection
- AJP/21 3 May 1935 Agenda (Ms) Freasley Jubilee Committee: Freasley Common Rights.
- Minute (Ms) of Jubilee meeting: W W Cooper, Hon Sec
- Description (Ms) of Freasley Jubilee Celebrations (postponed).
- Extract from Tamworth News: 29/11/35 headed "Tree-Planting, interesting ceremony at Freasley.
- AJP/22 3 May 1935 Minute (Ms) of Freasley Common Rights meeting: W W Cooper Hon Secretary.
- AJP/23 17 April 1935 Minute (Ms) of Freasley Jubilee Celebrations, ... Second General Meeting ...
- AJP/24 1930
1931
1932
1933
1934 Envelope containing Freasley Common Rights minutes.
- AJP/ "Saturday last" Description (Ms) of Freasley Jubilee Celebrations.
- AJP/25 4/3/37 Minute (Ms) of public meeting held in connection with the coronation celebrations.



- AJP/26 1-4-35 Minute (Ms) of meeting: "... what steps were to be taken to celebrate the Kings Jubilee in May next ..."
- AJP/27 May 7/51 Draft letter from W W Cooper to Area Estate Manager: "... at our last Common Rights Meeting held recently with Mr Mitchison in the chair ... bad condition of lane leading from Freasley to wood end.
- 18 April 1951 Letters from National Coal Board, West Midland
26 April 1951 Division to W W Cooper: "... some ashes to be sent
19 May 1951 down from the Colliery".
- AJP/28 28 January 1980 Freasley Common Rights Comm.
Draft minute of meeting about tree planting scheme.
- 12 May 1937 Envelope containing numerous copies of invitation to Freasley Coronation Tea and some replies to such invitation.

Dated this 17th — day of August — 1988

A. A. Baden Fuller

Commons Commissioner