



COMMONS REGISTRATION ACT 1965

Reference No. 267/U/13

In the Matter of land known as Pelsall North Common situate at
Pelsall, Walsall

DECISION

This reference relates to the question of the ownership of the above mentioned land being the land comprised in the Land Section of Register Unit No. CL.39 in the Register of Common Land maintained by the Walsall Metropolitan Borough Council ("Walsall MBC") 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, I held a hearing for the purpose of inquiring into the question of the ownership of the land at Walsall on 24 May 1995.

The hearing was attended by:

- (a) Ms E. Stuffs, representing the Walsall MBC as registration authority
- (b) Mr D W Russell, representing British Coal Property
- (c) Ms J Ross representing Walsall MBC as a claimant
- (d) Mrs Doris Lee as a claimant and
- (e) Mr A Owen and Mr A Braznell, as members of Pelsall North Common Society.

Ms Ross produced a conveyance of the greater part of the unit land dated 27 October 1958 and made between The Church Commissioners for England (1) and The Aldridge Urban District Council (2)

There was no other claim to ownership of any of the land comprised in this Conveyance except by Mrs Doris Lee, of 164 Wood Lane Pelsall, and her claim was limited to a small area ("the disputed land") abutting, to the east, Wood Lane, to the west farmland not part of the common and, to the south the premises 164 Wood Lane. She made this claim on behalf of herself and her husband, Mr C B Lee, jointly. Mrs Lee did not at the hearing produce any documents in support of her claim. But she said that she and her husband had over the past 30 years or thereabouts carried out various acts on the disputed land such as clearing away rubbish, planting trees, putting a fence along the side of the road and putting a caravan, planting vegetables and grazing a horse on parts of the land. After the hearing I inspected this land and as a result find that what Mr Lee said was substantially true. But for the following reasons I reject Mrs Lee's claim to ownership of the disputed land or any part thereof:

- (i) she said that she and her husband had never stopped anyone from coming onto the land and that people were free to do so if they wished;
- (ii) with the exception of two very small areas (forming the site of a vegetable patch and a stable respectively) no part of the land is or ever has been fenced so as to prevent or impede access to the land
- (iii) even if it had been so fenced no adverse title could have been based on such fencing since it would have been illegal under the Law of Property Act 1925 Section 194 - see George Legge & Son Ltd v Wenlock Corporation 1938 Ac 204; Glamorgan County Council v Carter 1963 1 WLR 1; Hanning v Top Deck Travel Group Ltd 68 P. C.R. 14.



(iv) Mrs Lee has since the hearing sent the following deeds for my inspection namely a conveyance dated 21 April 1959 Chapman to Flavell, a conveyance dated 11 February 1963 Flavell to Mr and Mrs Lee and a legal charge also dated 11 February 1963 by Mr and Mrs Lee in favour of the Aldridge UDC. The property conveyed by the 1963 conveyance was described by reference to the 1959 conveyance and the plan annexed thereto and having examined this conveyance and plan I am satisfied that it does not include any part of the disputed land.

Ms Ross also produced a conveyance, dated 3 May 1951, by the Church Commissioners to the Aldridge UDC of land which includes a small part of the unit land to the extreme south west thereof numbered 106b on the Ordnance Survey Map and measuring 0.981 acres.

Ms Ross claimed that the land conveyed by the 1958 and 1951 conveyances mentioned above are now vested in the Walsall MBC as successor to the Aldridge UDC (by virtue of the Local Government Act 1972), these claims were not disputed or questioned at the hearing (save by Mrs Lee in regard to the disputed land) and they are supported by the available evidence.

The remainder of the unit land ("the rectangle") is an approximately rectangular area edged red and coloured yellow on the plan attached to a statutory declaration made by Mr D W Russell on 23 May 1995. In that declaration Mr Russell says that

- (a) he has been employed by British Coal Corporation as Senior Estates Surveyor since 1990
- (b) the records of British Coal show that the whole of the rectangle was let to a Mrs Lynn from June 1963 to 1985 and since then the land edged red has been let to a Miss Whitehouse under short term agreements (the current agreement being due to expire on 30 November next) and the land coloured yellow has remained in the possession of British Coal
- (c) the title deeds to the land edged red have been lost but they included a conveyance thereof by Pelsall Coal and Iron Company to Walsall Wood Colliery dated 5 June 1983.

Mr Russell's evidence was corroborated by his production at the hearing of a Register of assets transferred to the National Coal Board (on nationalisation of the coal industry in 1946) and the Register includes, under reference File AAll 067, the said land edged red. Mr Russell's claim on behalf of the Corporation was not disputed or questioned at the hearing.

On the above evidence I am satisfied that British Coal Corporation is the owner of the rectangle and that Walsall Metropolitan Borough Council is the owner of the remainder of the unit land and I shall direct Walsall MBC as registration authority to register them as owners under Section 8(2) of the Act of 1965 accordingly.

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.

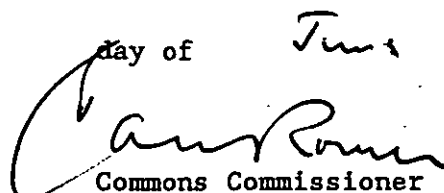
Dated this

13th

day of

June

1995


Commons Commissioner