

In the Matter of Didling Common, Trayford,
West Sussex

DECISION

This reference relates to the question of the ownership of land known as Didling Common, Trayford, being the part of the land comprised in the Land Section of Register Unit No. CL 174 in the Register of Common Land maintained by the West Sussex 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 and no one 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 Chichester on 18 and 19 February 1981.

At the hearing the Trustees of the Leconfield Estate were represented by Mr A R Dickinson, their land agent, and the Elsted and Trayford Parish Council by Brigadier G Proctor, one of its members.

Brigadier Proctor had no evidence regarding the ownership of the land in question, and Mr Dickinson did not have with him the Trustees' documents of title. At Mr Dickinson's request I adjourned the hearing in order to give the Trustees' solicitors, Messrs Farrer & Co, an opportunity to produce the relevant documents. Since there was no other claimant, I decided, if possible, to save the costs of a further hearing by deciding the case after a consideration of the documents. This course I am now taking.

The land the subject of the reference consists of strips of waste on either side of two lanes in what was formerly the parish of Didling.

The manor or lordship of Didling and Dumpford was conveyed to the late Mr G Wyndham by an indenture made 26 December 1855 between (1) George Graham and William Whateley (2) George, Duke of Marlborough (3) John Winston Spencer Churchill (commonly called the Marquis of Blandford) (4) George Wyndham (5) James Archibald Murray. The manor or lordship was stated to extend over several hundred acres, of which about 400 ac. were copyhold and lifehold estates and about 300 ac. common and waste land.

The area of the manor or lordship was probably ascertainable from the manorial records, but the earliest document before me which indicates what was comprised in the "several hundred acres" is an indenture made 1 August 1901 between (1) Charles Henry, Baron Leconfield (2) Hon. Reginald William Wyndham. The parcels of this indenture include the manors or lordships of several manors, including Didling and Dumpford, and land described in the schedule to the indenture and coloured green on the plan attached to it. This land includes Didling Manor Farm with a total area of 618 ac. 2 r. 34 p. Several inclosures forming part of the farm are shown on the plan as adjoining parts of the land the subject of the reference, but no part of that land is coloured green on the plan. There can, however, be no doubt that as a matter of law the parts of the land the subject of the reference adjoining the land coloured green on the plan were included

in the parcels of the indenture by virtue of the presumption that such strips are in the same ownership as the adjoining inclosed land, but the indenture affords no evidence relevant to the ownership of the remaining parts which adjoin inclosed land which is not coloured on the plan. There is no evidence of what land beyond Didling Manor Farm was parcel of the manor, but as between the lord of the manor and the owners of the uncoloured inclosed land the presumption would be that the strips of waste land along the sides of the lanes belonged to the owners of the adjoining land: see 21 Halsbury's Laws of England (4th ed), 97 and the cases there cited.

To sum up the evidence so far, in 1901 parts of the land the subject of the reference were in the ownership of the then Lord Leconfield, who was both the lord of the manor and the owner of the adjoining land, while the remaining parts were in the ownership of persons unknown.

In 1957 part of the Leconfield Petworth Estate was sold to Lord Cowdray, but Messrs Farrer & Co have been unable to find a duplicate of the conveyance. It is thus uncertain exactly what the parcels of that conveyance were, but a plan prepared for the sale by auction of the Didling and Dumpford portion of the Estate in 1957 shows that the land to be offered for sale included the whole of Didling Manor Farm.

This plan, like that attached to the indenture of 1 August 1901, shows the whole of the land the subject of the reference as uncoloured. It is uncertain whether the 1957 conveyance included the lordship of the manor. Messrs Farrer & Co have suggested that the lordship was not conveyed and, while I am not satisfied on the available evidence one way or the other, I do not consider that it can have any effect upon my decision. If the lordship of the manor was conveyed to Lord Cowdray with the farm, the Trustees can have no further interest in the land the subject of the reference. If the Trustees still retain the lordship of the manor, there is no evidence as to the ownership of the parts of the land the subject of the reference which do not adjoin the land coloured green on the plan attached to the indenture of 1 August 1901, and the ownership of the remainder depends upon the terms of the 1957 conveyance. In the absence of a copy of that conveyance, the assumption most favourable to the Trustees is that the land conveyed was shown on a plan which was copied from the plan prepared for the purposes of the auction, that is to say, with the land the subject of the reference left uncoloured. If such were indeed the case, the problem as to what passed by the conveyance was answered by Holroyd J. in Doe d. Pring v. Pearsey (1827), 7 B & C 304, at p.307, where he said:-

"It is very improbable that when a lease or grant is made of land
 "near the high road, and there is between the highway and the land
 "inclosed a small quantity of uninclosed land, of little or no use
 "to the lord or lessor, that he should separate it from the rest, or
 "reserve to himself such land. When a grant of land near to a road
 "is made (even where it is inclosed and separated from the land
 "adjoining) it appears to me that the prima facie presumption is,
 "that the land, on that side of the fence on which the road is,
 "passes likewise with it".

It is, of course, possible that the wording of the 1957 conveyance made it clear that the adjoining strips of roadside waste did not pass with the inclosed land, but the onus of proving that is on the Trustees. On the material before me it seems likely that Lord Cowdray acquired parts of the land the subject of the reference in 1957, but there is no evidence that he still owns those parts. As to the ownership of the remainder, there is no evidence at all.

All that I can say is that on the evidence before me I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 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

July

1982



Chief Commons Commissioner