



In the Matter of Littlewick Green, White
Waltham, Berkshire

DECISION

This reference relates to the question of the ownership of land above mentioned being the land comprised in the Land Section of Register Unit No. VG 18 in the Register of Town or Village Greens maintained by the Berkshire 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 Mrs S M Davis claimed to be the freehold owner of part 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 Reading on 16 July 1981 and at Maidenhead on 8 December 1982.

At the hearing in Reading which was adjourned by agreement after an hour, Mr G M Davis, Solicitor, appeared for his wife, Mrs S M Davis and Mrs Zivkovic (a member) appeared for White Waltham Parish Council.

At the hearing in Maidenhead Mr R M Purchas (of Counsel) instructed by Messrs Godfrey Davis and Baldwin, Solicitors of Mitcham appeared for Mrs Davis and Mr R Edam (Clerk) appeared for the White Waltham Parish Council. At Reading Mr Davis produced the land Certificate of Littlebury which was their home and which his wife owned in fee simple. The title had first been registered on 21 June 1978. Mrs Davis had bought the property in 1947 before her marriage. Her maiden name was Purser. The plan on the Land Certificate showed a gap between the limits of the property and a dotted line on the front and southern side of the property.

Giving evidence Mrs Davis said that her first memories of Littlebury went back to 1928 when her father bought a farm adjoining that property and she went to live on the farm. At the time Mr Hogarth's two daughters were then living at Littlebury with their father, who had purchased the house in about 1920 from a Mrs E L Horwood. Mrs Davis soon became a close friend of the two daughters and a frequent visitor to their home. The Hogarths always kept the strips of land at the front and to the south of their house in a neat and tidy condition and their father kept chickens on the south side of the house.

After Mr Hogarth's death Mrs Davis purchased Littlebury from his surviving daughter Margaret on terms that the purchaser would not go into possession until the vendor's death. Miss Hogarth died in 1955 and Mrs Davis moved into Littlebury. In 1965 Mrs Davis applied for and obtained planning permission to build two garages with hard standings crossing to the road and living accommodation over the garages. Having obtained planning permission Mrs Davis had the building work carried out. In addition to these hard standings there is a metalled path leading from the highway to a gate in the centre of the property and another metalled path leading to a large shed at the southern end of the frontage. These have been there since 1928 and 1956 respectively.



In the Queen's Jubilee year Mrs Davis planted a row of lawrels along the northern edge of the path which runs from Coronation Road to the west at the southern end of Littlebury. A little later she put in a white post on the line of Coronation Road and in line with the lawrels to prevent cars parking on the verge at that corner.

Mrs Davis had also put a row of stones on the road verge for the length of her frontage to prevent parking on the grass verge. This was done soon after the white post had been put in.

Mrs Davis said that she and her husband had not made use of the land between the front wall of Littlebury and the road verge except that in the Summer they would put out chairs and watch cricket matches on the green.

In cross-examination Mrs Davis said that the lawrel trees had been there about five years.

Mr Alexander Street of Colwyn Cottage, Littlewick, who gave his evidence in 1981, said he had lived at this address for the past 73 years. He remembered the Hogarth family buying Littlebury. He used to do odd jobs for them. There included cutting the grass at the front and sides of the house and during the period 1920-1930 he looked after the chickens which Mr Hogarth kept at the south side of the house. There was no road at the front of the house until the present road was built shortly after the great war.

Mr David Arthur Silvey said that he was aged 70 and had lived at Little Cullin since 1938. Little Cullin is at the western end of the south side of the way which separates Littlebury and the Cricketers. This way was known locally as 'the Alley'. Mr Hogarth used to keep chickens at the side of his cottage which bordered on the Alley. The chickens were not confined and there was no fence. The occupier of Little Cullin before him was a Mr Hill. When he first moved in, the Alley was a footpath through grass.

The grass was not mown until after the last war. Mr Ripley of Bow House keeps it mown today.

Littlebury was at one time two dwellings. Both Miss Hogarth and Mrs Davis kept tidy the frontage between Littlebury and the road.

Mr Adrian Robert Plint, FRICS, said that he was a partner in the firm of Simmons and Lawrence, Chartered Surveyors of Henley-on-Thames. He was aged 59.

He had examined the editions of the OS. maps for the area of Littlewick Green produced in 1912, 1932 and 1971 and had prepared a sketch plan, Plan IV, on which he had plotted the respective positions of the front wall of the house, the garden wall and the road verges as shown in each edition. In 1912 the distance from the house wall to the garden wall was 15 ft., the distance from the garden wall to the edge of the road was 20 ft., and the width of the road was 10 ft. In 1932 those distances were respectively 10 ft., 27 ft., and 10 ft., showing that the garden wall had been moved back 5 ft. In 1971 the same distances were 10 ft., 15 ft., and 10 ft. If there were any editions between 1912-1932 or 1932-1971 they did not show any alteration in those measurements.



In 1932 the boundary of "The Cricketer" went right up to the road.

Mr Godfrey Mark Davis the husband of Mrs Davis said that he was a Solicitor and now acted as a consultant to the firm in which he was previously a partner. He had lived at Littlebury since 1955. The car park at The Cricketer was bounded by the road. There is a fence on the north side of The Cricketer. The mowing of the grass on the north side of the Alley was carried out by arrangement with Mr Ripley.

Mr Edam Clerk to White Waltham Parish Council, produced a copy of a Scheme made in 1902 under the Commons Act 1899 in respect of Littlewick Green which included the Register Unit. The Scheme had been made by Cookham Rural District Council, which had delegated its powers of management to White Waltham Parish Council under S. 4 of the Commons Act 1899. This S. 4 had been repealed by the Local Government Act, 1972.

The Royal Borough of Windsor and Maidenhead was the local authority for the purposes of S. 8(5) (a) of the Commons Registration Act 1965 as amended by S. 189 (2) of the Local Government Act, 1972. The Royal Borough of Windsor and Maidenhead had taken over in 1973 the area previously administered by Cookham Council. The land had been registered as a Village Green in 1976.

Mr Edam referred to paras. 675, 775, 776 and 780 of Vol. 6 of the Halsbury's Laws of England, (4th Ed.).

Mrs Susan Zivkovic a member of White Waltham Parish Council said that she had been present at the hearing in July 1981. She had lived in Littlewick Green since 1947. There was now a post and chain fence 2 feet high out the Cricketer. There were white stones along the line of the edge of the road immediately to the north of Littlebury. About 5 years ago the Parish Council put bollards and posts round the edge of the Green. She had been a member of the Council since 1976.

In cross examination Mrs Zivkovic said that she was not aware of any document which transferred ownership of the Green to the Parish Council. She was not aware of any objection made by the Council to the fence outside The Cricketer.

Mr Purchas accepted that the plan on Mrs Davis's Land Certificate excluded the area claimed. That area which is L shaped is shown coloured red on the print of the OS. Map marked Plan III in blue ink which I have signed for the purpose of identification.

He relied, 1. On the presumption that an owner of land adjoining the highway owns the soil up to the middle of the highway, and
2. On the evidence given of acts of ownership and submitted that Mrs Davis and her predecessors in Title had treated the land coloured red as their own.

I will deal first with two points which were made on behalf of the Parish Council. First that the effect of the making of an Order under the Commons Act 1899 such as was made in relation to Littlewick Green operated as a transfer of ownership



to the authority at whose request the Order was made. It was conceded that there was no specific provision relating to the alleged transfer in the 1899 Act. In my view the provisions of S. 7 of that Act allowing a district council to acquire the fee simple or any estate in or any rights in or over any Common regulated by a Scheme made under the Act by gift or by purchase by agreement makes it clear that the confirmation of a Scheme does not effect or operate as a transfer.

Secondly it was suggested that some correspondence between Mrs Davis and the Parish Council in 1965 when Mrs Davis erected a street lamp outside her property and the Council asked for it to be resited within her garden wall showed in some way that Mrs Davis accepted that the Council controlled the grass verge outside her house. I have read the whole of the correspondence and in my judgment no such inference can be drawn. Mrs Davis stood her ground and the matter was dropped by the Parish Council.

Mr Purchas's submission as to the ownership of land adjoining the highway carrying with it ownership of the soil up to the middle of the highway does not advance his case because the land certificate shows that Mrs Davis boundary stopped some way short of the edge of the highway.

Mrs Davis is clearly a public spirited person who takes a pride in the appearance of the locality in which she lives. The grass was cut at the front and side of her house. She planted lawrels along one side of the Alley, and put a line of stones along the line of the road for the length of her frontage.

In the circumstances of this case it seems to me difficult to reach the conclusion that Mrs Davis has acquired a title by adverse possession unless she has gone to the length of fencing it off so as to exclude the public from access.

In a small and friendly community many members will at their own expense do things to increase the attractiveness of the surroundings, an improvement from which their own property may also benefit.

For these reasons I reject Mrs Davis's claim.

On the evidence I am not satisfied that any person is the owner of the land, and I shall accordingly direct the Berkshire County Council, as registration authority, to register White Waltham Parish Council as the owner 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 26th day of January 1983

George Haskett
Commons Commissioner