



COMMONS REGISTRATION ACT 1965

Reference No. 262/U/594

In the matter of Dufton Fell,
Dufton, Eden District, Cumbria

SECOND DECISION

This second decision relates to the question of the ownership of part ("the DCXGHD Area") of Dufton Fell, Dufton, Eden District being the land ("the Unit Land") comprised in the Land Section of Register Unit No. CL81 in the register of Common Land maintained by the Cumbria County Council. It is supplemental to my first decision dated 23 January 1989 (corrected 13 February 1989) which I made after a hearing at Appleby on 19 July 1988 and in which the DCXGHD Area was defined by reference to a plan ("the Decision Plan") being page 4 thereof. Of the DCXGHD Area no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose inquiring into the question of the ownership of the DCXGHD Area at Appleby on 28 November 1989. Before this hearing and after my said first decision, the letters specified in the First Schedule hereto were received in the office of the Commons Commissioners.

At my second hearing: (1) Corlands Minerals Limited were represented by their Secretary, Mr Joseph Dixon of Pavillion House, Pavillion Square, Scarborough, North Yorkshire; (2) Mr Donald Allinson Shepherd of Birks Head, Knock who is in partnership (as Messrs Smith & Shepherd of Glebelands, Knock) with the widow of George Ernest Smith who with John James Smith (now deceased), Elsie Jane Smith and Joseph Arthur Smith applied for the registration at Rights Section Entry No. 8 (Far Close, Dufton) attended in person; (3) Mr Alec Christopher Allan of Greenhow, Dufton attended in person as he did at my July 1988 hearing; (4) Mr John Michael Richardson of Fawcett Park, Long Marton attended in person as he with his brother Mr William Richardson did at my July 1988 hearing (Mr William Richardson then gave evidence); (5) Lake District National Park (Lake District Special Planning Board) of Buser Walk, Kendal were represented by Mr R Foulds of their Commons Office (he said they made no claim in these proceedings, so he was attending only as an observer); and (6) Cumbria County Council as registration authority were represented by Mrs J H Simpson administration officer in their department of property and services.

At the beginning of the hearing, I read or summarised the letters specified in the First Schedule hereto and said I would assume unless anyone present objected (none did) that they had all read my first decision. So the matter then stood as follows:-I knew that the DCXGHD Area is about 120 acres as delineated on the Decision Plan and as described by Mr William Richardson (see pages 5 and 6 of the decision). About the owners of the parts of the Unit Land adjoining the DCXGHD Area, I knew that (a) Natural Environment Research Council (now the Nature Conservancy Council, "the NCC") and (b) Corlands Minerals Limited ("Corlands") are in the Ownership Section respectively registered finally as the owners of (a) the part (Moor House) north and northwest of XGH and (b) the part (High Scald Fell, etc.)



south and southwest of DCX and that I was (as appears in my first decision) satisfied that Mr P B Oughtred is the owner of the part southeast of HD. I knew that neither NCC nor Mr Oughtred claimed to own any of the DCXGHD Area, but as appears in the said letters, Corlands now claim to own it as waste of the Manor of Dufton of which they had become the Lord under a conveyance which they could produce. Also at the beginning of the hearing, I had the November 1989 letter specified in the First Schedule hereto in which Mr Gaynham referred to his submission recorded at page 7 of my first decision that the Commoners are the owners in the absence of any person proving a "paper title"; he left a message that his office was nearby and he could therefore if any question arose attend at short notice.

Next oral evidence was given by Mr Joseph Dixon formerly Secretary of Broadland Properties Limited and now retired, in the course of which he produced the documents specified in the Second Schedule hereto. Among other things he said (in effect):- He was employed by the Appleby Castle Estate from 1933 to 1963 (except for army service from 1940 to 1946). The Estate was owned by the second Baron Hothfield until his death in 1952; under his will his son the third Baron Hothfield was only entitled to a life interest; he died in 1961 without children and the Estate passed to Mr Marcus Hill a relative of the Tufton family (that of the Hothfields). Mr Hill and the Executor of the will after receiving advice decided to sell to whole Estate because what was likely to remain after estate duty had been paid would not be a viable proposition to enable him to live in the Castle. As a result a sale was (? sales were) agreed between Broadland Properties Limited, Corthorn Land & Timber Co Ltd and members of the Tufton family acting in concert; the Tufton family took the Drybeck, Hoff section as well as Knipe, Slatequarry and Shot Moss on Stainmore, together with the Lordships of the Manor of Drybeck, Hoff Row and Netherhoff (all to the west of Appleby and/or not relating to the Unit Land); and all the remaining property, retained rights and Lordships of Manors were to be taken by Broadland Properties Limited and Corthorn Land & Timber Co Ltd. At that time (1961) the Estate owned the moorland area in the Manor and Parish of Dufton less that part of the Moor House moor in that Manor ~~—————~~ and less Birkdale Moor which had already been sold off (meaning Moor House comprised in the 24 January 1952 conveyance to Natural Environment Research Council and Birkdale comprised in the 22 December 1954 conveyance to Messrs J A and P B Oughtred). The surveyors concerned with the Moor House and Birkdale sales (in 1952 and 1954) as well as in the abortive offerings of Moor House in 1948 and 1951 were not the same as those involved in the sales arranged in 1962 (relevantly completed by the 1965 conveyance next mentioned). He (the witness) suggested (in effect) that irrespective of the plan on the Dufton Fell 1965 conveyance being at some minor variance to that on the Moor House (1952) conveyance where they should have coincided, the DCXGHD Area is covered by the documentary title as belonging to Corlands under the transfer to them of the Lordship of the Manor of Dufton as waste of the Manor, on the basis of no one else having title to it.

The parcels of the 1965 conveyance produced by Mr Dixon are by reference to the First Schedule thereto which is divided into eight parts (First to Eighthly), are very long, include various lists and amount altogether to 7½ pages of brief. The First is "for identification" edged and hatched yellow on Plan Number 1 annexed thereto; the land so hatched does not include the DCXGHD Area but does include all the land of which Corlands is in the Ownership Section registered as owner. The Eighthly comprises 10 manors (not counting the submanors and Lordships particularly mentioned) and includes "The Manor of Dufton".



As to the DCXGHD Area being within the Manor of Dufton, Mr J Dixon relied on the map (JD/5) specified in the Second Schedule hereto. Of it he said (in effect):- The map was coloured and marked as it is now in 1981 by or under the supervision of Mr J B Owen who was a partner of E & EA Heelis, Solicitors of Appleby. He had (as had other members of his firm) been appointed steward of the Manor of Dufton (and of the other Manors whose boundaries have been marked on it). Mr Owen gave the job to a solicitor then recently qualified who spent 3 months doing it, checking it against documents. The Manor of Dufton is thereon edged green, and such edging includes: the DCXGHD Area, all the Unit Land south and southwest of it of which Corlands have in the Ownership Section been registered as owners, and all the other parts of the Unit Land of which NCC and Mr P B Oughtred have been or will be registered as owners. The land so edged is coextensive with the parish of Dufton, so manorially, the map must have been intended to record the Manor of Dufton historically. Under the November 1989 deed of declaration (JD/6), specified in the Second Schedule hereto, NCC have in effect agreed the boundary between their land and that of Corlands as being FXGH on the Decision Plan.

By section 62 of the Law of Property Act 1925 a conveyance of a manor shall be deemed to include and operate to convey "all ... wastes ... commons ... to the manor appertaining ... or at the time of the conveyance ... occupied or enjoyed with the same ..." unless so far as a contrary intention is not in the conveyance expressed. If the DCXGHD Area can properly be regarded as waste within these words, the circumstance that other land within these words was in the "First" of the Parcels expressly conveyed, is not in my opinion a contrary intention.

I accept the evidence of Mr J Dixon above summarised; nobody suggested I should not. From the circumstances in which the map (JD/5) was made, it is I think evidence of the historical extent of the Manor of Dufton. I infer that the DCXGHD Area when the 1969 conveyance was made, was and still is within the Manor notwithstanding that some of the land within the green edging on the map, had by then ceased to be manorial. I infer it was then "waste" or "common" from Mr William Richardson's description of it and the registration of numerous rights of common over it. My inferences are confirmed by what I saw when after my July 1988 hearing I was in Dufton and Knock and I was at the car park on the northeast side of Cow Green Reservoir (places about 8½ miles from each other) from which I could see much of the Unit Land but could not see the DCXGHD Area (about halfway between). I felt little doubt that it must be waste land from the appearance of so much of the Unit Land as was visible. No person claiming otherwise, I consider I should give full effect to the 1965 conveyance (JD/2) and the oral evidence of Mr J Dixon about summarised and conclude that Corlands are the owners of the DCXGHD Area.

Of the two matters perhaps against this conclusion, one is that NCC having obtained the agreement of Corlands to the November 1989 deed of declaration (JD/6), may expect me to direct their registration as owner of the FBXF area. This I cannot do because this area is included in the Corlands Ownership Section registration which became final in 1972 and is therefore not within the jurisdiction of a Commons Commissioner under section 8 of the 1965 Act. However NCC will not be prejudiced by such non registration, because as I read the deed of declaration Corlands will henceforth hold their registration as owners of the FBXF Area on trust for NCC.



The other matter perhaps against the conclusion is that under my first decision the liberty thereby granted to apply to reopen my July 1988 hearing for the purpose of adducing evidence as to the ownership of the DCXGHD Area had to be exercised within THREE MONTHS of the sending of a copy of the decision to persons concerned (1 February 1989) or such longer period as a Commons Commissioner may allow. It was not suggested at my November 1989 hearing that anybody had been prejudiced by any delay on the part of Corlands or that there was any reason why I should not then continue my July 1988 hearing; further it may be that they never had notice of my July 1988 hearing and were therefore not bound by anything resulting from it. Accordingly for the purpose of enabling Corlands to claim ownership as they did at my November 1989 hearing I treat their application as within time and such hearing as being a continuation of my July 1988 hearing.

Upon the above considerations my decision is:- I am satisfied that Corlands Minerals Limited are the owners of the DCXGHD Area and I shall accordingly pursuant to section 8(2) of the Commons Registration Act 1965 direct Cumbria County Council as registration authority to register Corlands Minerals Limited of The Bury, Church Street, Chesham, Bucks, HB5 1JE, as the owners of the DCXGHD Area delineated by such letters on the Decision Plan referred to in and being page 4 of my first decision dated 23 January 1989 and made by me in this matter.

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.

FIRST SCHEDULE
(Before hearing letters)

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| 1989 | From. |
| 3 February | Iliffes, solicitors of Chesham, Bucks, on behalf of Corlands Minerals Ltd:- "...There is a discrepancy on the boundary in question as indicated on the plans annexed to the conveyance by the late Lord Hothfield to the Nature Conservancy of 24th January 1952 and that on the conveyance by Lord Hothfield's Executor to Corlands Minerals Ltd of 18th November 1965 ..." |
| 20 March | Broadland Properties Limited (signed J Dixon):- "... This has enabled me to be of some assistance to Corlands Minerals Limited in providing them with copy plans retained from the Appleby Castle Estate Office when it was closed down in 1963 and where I was Estate Clerk from 1933. ..." |
| 31 March | Iliffes:- Enclosing a copy of a letter of 20 March to the Nature Conservancy Council proposing the agreed boundary should be FXGH, and suggesting a deed of declaration. |



13 April

Iliffes:- "... in touch with the Nature Conservancy Council regarding a Deed of Declaration the purpose of which will be to define the southern boundary along the line FXGH ... time to complete ... request an extension of time..."

20 June

Iliffes:- Enclosing copies of letters with Nature Conservancy Council about the boundary of Moor House National Nature Reserve ~~and~~ requesting a further extension of time.

26 September

Iliffes:- "... Treasury Solicitor regarding the agreement relating to boundaries. This matter is now progressing and should be completed shortly. We shall then seek to satisfy the Commons Commissioner as to Corlands Minerals Ltd's title to the land in question with such supporting evidence as is available. At the same time we will deduce our clients' title to the Manor of Dufton, on the premise that the land may well form part of the waste of that Manor..."

28 November

Cartmell Shepherd, solicitors of Appleby:- We are the successors to Messrs Little & Shepherd and confirm we are instructed by the Dufton Commoners in connection with the above.

Our clients are not of course in a position to oppose any documentary claim for ownership of the remaining land in question. They have never sought to show a paper title to the land in question. Indeed their application for ownership made at the hearing on 19th July 1988 was simply based on the evidence available that day namely that no-one claimed ownership of the land.

In the event of the present applicants for ownership not being able to satisfy the Commissioner that they hold documentary title to the land we would repeat our application made at the July hearing that the Public Trustee be registered as the owner of the land on behalf of the Dufton Commoners.

We shall not be attending the hearing unless otherwise advised.

TURN OVER



SECOND SCHEDULE
(documents produced at hearing)

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| JD/1 | 6 November 1989 | Statement by Mr Joseph Dixon. |
| JD/2 | 18 November 1965 | Conveyance between (1) George Gerard Shiel ("the Vendor"), (2) Broadland Properties Limited and Corthorn Land & Timber Company Limited ("the Companies"), and (3) Corlands Minerals Limited ("the Purchaser") by which after reciting that Rt Hon J S R 2nd Baron Hothfield ("the Testator") died 21 December 1952 having by his will appointed the Hon H H S T Tufton (afterwards 3rd Baron Hothfield, he died 20 August 1961), Rt Hon H M Baron Terrington (he died 7 January 1961) and the Vendor to be executors thereof (they proved the will on 2 April 1953), that the Testator at his death was seised in fee simple of the property thereafter described and other property known collectively as the Appleby Castle Estate, that the Vendor had agreed with the Companies for the sale of the property thereafter described together with the remainder of the said Estate and that the Companies had agreed with the Purchaser for the sale of the property thereafter described, it was witnessed that the Vendor as surviving personal representative of the Testator and by the direction of the Companies conveyed to the Purchaser the property described in the First Schedule thereto. |
| JD/4 | 6 December 1960 | Information Sheet about Mr Joseph Dixon. |
| JD/5 | Undated (made about 1981) | Map based on OS 1/50,000 showing the boundaries of manors including edged light green that of the Manor of Dufton. |
| JD/6 | 17 November 1989 | Deed of declaration between the Nature Conservancy Council ("the Council") and Corlands Minerals Limited ("Corlands") by which after reciting a conveyance dated 24 January 1952 by which J S R Baron Hothfield conveyed to the Council an area of about 10,000 acres known as Moor House part of the Appleby Castle Estate and on a plan annexed thereto indicated as having for its southern boundary the line FXGH on the Decision Plan and after reciting the said conveyance of 18 November 1965 (JS/2) as including an area of about 4,000 acres known as Dufton Fell on the plan annexed thereto indicated as having for its northern boundary the line FBXCD on the Decision Plan, it was agreed and declared (1) that the line FX correctly indicated the |



northern boundary of Dufton Fell and that Corlands had no right title or interest in the section of the land contained within FBXF and (2) that the line FXGH correctly indicated the southern boundary of Moor House and that the Council had no right title or interest in the section of the land within the line XGHDCX on the said plan.

JD/7· 1974

Copy agreement between Corlands Minerals Limited ("the Company") and the Parish Council of Dufton ("the Council") by which in consideration of the covenant for indemnity therein contained the Company as Lord of the Manor of Dufton granted rights and powers in relation to Dufton Village Green as therein specified, that is (a) right of control of and siting of benches seats etc, (b) power to prevent deposit of litter and unauthorised parking etc, (c) right to fell prune trees etc, and (d) such other powers in respect of management of the Green as may be vested in the Company.

Dated 19th _____ day of December _____ 1989

A. A. Baden Fuller

Commons Commissioner