



COMMONS REGISTRATION ACT 1965

Reference Nos. 8/D/24
8/D/25

In the Matter of (i) Town Mere (ii)
Pump Square and (iii) the Pinfold,
Elton, Bakewell R.D., Derbyshire

DECISION

These disputes relate to the registrations at Entry No.1 in the Land Section and at Entry No.1 in the Ownership Section of Register Unit No.CL.60 in the Register of Common Land maintained by the Derbyshire County Council and are occasioned by Objections No.6 and No.7 made by Mr. George J. Noton and noted in the Register on 21 July and 20 August 1970.

I held a hearing for the purpose of inquiring into the disputes at Matlock on 22 January 1974. At the hearing Elton Parish Council were represented by Mr. W. Taylor articled clerk with Bertram Mather & Co. Solicitors of Chesterfield, Mrs. Elsie Noton was represented by Mr. K. V. Malkin solicitor of Potter Brook-Taylor and Wildgoose, Solicitors of Matlock as agents for Bennett Brooke Taylor & Wood, Solicitors of Buxton, and Derbyshire County Council were represented by Mr. I. D. Ross solicitor employed by them.

Entry No.1 in the Land Section comprises three pieces of land: (i) Town Mere at East End near its junction with Back Lane and Minster Lane, (ii) Pump Square, Well Street and (iii) the Pinfold, West End at its junction with Cliff Lane and Dark Lane. At Entry No.1 in the Ownership Section, the Parish Council is registered as owner of Pump Square. The grounds of objection stated in No.6 are:- "The Enclosure Award indicates that the land in question then formed part of the Highway; and was not a part of the Manorial Waste. This situation remains unchanged". The grounds of objection stated in No.7 are:- "The Parish Council, so far as I am aware, has no title to the land. Neither does it derive any from the Act. The land is neither Common Land nor Green. It is highway. In accordance with presumption of Common Law, ownership vests in the frontagers." In both objections Mr. G. J. Noton gives his address "Hawthorn Cottage, Well Street".

Mr. Malkin said that Mr. G. J. Noton died intestate on 24 November 1973, that Mrs. E. Noton (who he represented) as his widow, is applying for (but has not yet obtained) letters of administration to his estate, and that it is possible (because he left a married son) that she may not be solely entitled. It was agreed that I should proceed with the hearing on the basis that in these proceedings Mrs. E. Noton should be considered as representing the estate of Mr. G. H. Noton. It was also agreed that I should hear both these disputes together and that the said objections were intended to refer only to Pump Square (Hawthorn Cottage and the land round it adjoins on the north side) and that whatever might be my decision as regards it, I should confirm the registration at Entry No.1 in the Land Section so far as it relates to Town Mere and the Pinfold.



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The Elton and Winster (townships in the parish of Youlgreave) Inclosure Award, dated 8 June 1822, was produced from the County Records. Oral evidence on behalf of the Parish Council was given by Mr. T. W. Andrews who was born in the Village in 1919 and is now chairman of the Parish Council, by Mr. N. E. Buxton who became headmaster of the School in 1927 and has resided in the Village ever since, and by Mr. J. Bibby who was born in 1896 and has lived ever since 1921 at Well Street Farm (near Pump Square). No evidence on behalf of Mrs. Noton was offered. On 23 January I inspected the said three pieces of land and also the piece known as Exlowmere described in Entry No. 2 in the Land Section, it having been agreed that I might make this inspection unattended.

The land ("the Disputed Land") about which most of the evidence was given, now appears as follows:- It is four sided; bounded on the west side by a bank lower at its south end and higher at its north end supporting on its west side a track (outside the Disputed Land) leading to farm buildings and farm land; bounded on its north side for the most part by a stone wall enclosing land in front of the Cottage and for a small part (the west end) by entrance gates ("the west gates") providing vehicular access to the land by the side and at the back of the Cottage and by a narrower gate providing access on foot to the front door; bounded on its east side for the most part by a stone wall (a continuation of that above mentioned and for a small part (the south end) by entrance gates providing vehicular access to a garage joining to (part of the east end of) the Cottage; and bounded on the south side by a line corresponding more or less to the visible difference between the made up part of the roadway on the south and the differently made up part (the south part) of the Disputed Land. Across the west part of the Disputed Land there is a vehicular slope ("the west slope") leading up from the roadway to the west gates. In the middle (perhaps east of the middle) there is an iron pump about 5 feet high (now with no handle, but with an outlet pipe conveniently arranged for hanging buckets); around the pump there is a small stone ~~enclosed~~ flat area enclosed by a stone wall ("the Inner Wall"), apart from a gap on the south side through which access can be obtained by walking up three or four steps. Between the Inner wall and the walls on the north and east side, there are some bushes and rough vegetation. On its south side the Disputed Land is open to a roadway.

This roadway ("the roadway") is part of or a continuation of Well Street which runs down from the west side of the Parish Church graveyard ending at the Disputed Land. The south side of the roadway is for the most part the wall of a dwelling house (Mrs. Elliot's) and for a small part the entrance to a footpath (the Joule Croft path) leading towards the School and the east side of the Parish Church graveyard. The east side of the roadway is a farm gate leading into a field (grass).

It is not clear from the Register or Register map whether the land registered under the description "Pump Square, Well Street" is limited to the Disputed Land as above described or includes the roadway as above described. The roadway was made up by the County Council when they made up the rest of Well Street. By reason of section 21 of the 1965 Act, no highway interest will be prejudiced if this part of the roadway remains registered; accordingly I shall in this decision disregard the possibility of the roadway being included in the registration, and assume that the evidence relating to the Disputed Land particularly governs all that is registered under the description "Pump Square".



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The history of the Disputed Land from as far back as any of the witnesses can remember is as follows:-

It has always been known as Pump Square and the road leading to it known as Well Street.

In 1921 (when Mr. Bibby came to live near) the west gates and the west slope had not been made; the wall continued across where the west gates now are; there was a trough on the west side of the Disputed Land which could be filled by allowing the water from the pump to pour out onto the stone below and then flow across the hard surface (where the west slope now is) into the trough (the pipe through the Inner Wall and part of the hard surface are now visible).

From sometime before 1921 up to 1952, when water for agricultural purposes was piped to the Village, the cattle from Well Street Farm were regularly watered at this trough, there being no other agricultural water supply.

From about 1927 (when Mr. Buxton came), the pump was the only water supply for the near by houses in the Village. Mr. Buxton got his water from it, as also did Mr. Andrew's grandmother.

In about 1930 there was an outbreak of nettle rash in the Village. The water from the pump was thought to be the cause; it was analysed and found to be contaminated. So to keep the water cleaner, the Inner Wall was then constructed; during the work a well beneath the Pump with old steps leading down from the roadway to it was uncovered; these works were done by the Bakewell Rural District Council and paid for by the Parish Council.

Notwithstanding these works a further analysis showed that the water was still contaminated. Its use was forbidden; the alternative water supply being most inconvenient, all concerned suffered and their outcry received much publicity (a 1936 cartoon from the Derbyshire Times was produced). Shortly afterwards piped water for domestic purposes was brought to the Village, and the pump for these purposes ceased to be used.

During and after the 1939-45 war, the space between the Inner Wall and the trough was used by an inhabitant for parking a lorry. In 1966 Mr. Noton (who then had recently come to live at Hawthorn Cottage) complained to the Parish Council, with the result that they erected a notice: "No Parking: Turning Space for Vehicles", and the lorry parking ceased.

In 1967 Mr. Noton applied (a written application dated 10 April 1967 was mentioned but not produced) for permission to erect gates and build a slope up to them; the Parish Council refused this permission. Mr. Noton nevertheless constructed the west gates as they now are and arranged for several lorry loads of chatters (quarry waste) to be placed over the hard surface in front of the trough (or former trough) and for the whole to be tarmaced over, so that the west slope became as it now appears. The Parish Council protested and requested him to remove what he had deposited, but he refused.



The only information available about the Disputed Land before 1921 (apart from a water colour picture of doubtful age showing it much as described by Mrs. Bibby when he was a boy) is that deducible from the 1822 Award:

The Award after reciting that the commonable land and waste grounds within the Township of Elton, by the recited Act (49 Geo. 3 c. lxvi), directed to be divided and allotted and inclosed contained 418 a. 2r. 37p. continued: "And for the better illustration of this Award, I have hereunto annexed a map or plan as aforesaid and which I declare to be and direct to be taken as part of my award on which are delineated the direction of the public and private roads and ways, and the situation of the several and respective allotments with their and every of their respective boundaries. And I have also set out the public and private roads hereinafter described ...". The said allotments are coloured pink on the plan, although there is no reference to this colour in the Award. The plan is in two parts: the larger showing the extensive allotments made south of the Township and the smaller (on a much enlarged scale: drawn across the left hand top corner) showing the middle of the Township, including all or nearly all the Disputed Land. Numerous allotments were made on either side of what is now the said main road through the Village, such road in the Award being referred to as "the Town Street"; from an allotment made at the corner where Well Street now joins the East End and West End, I infer that the south end at least of Well Street was then called "the Town Street". On the plan the Disputed Land, Well Street, the said main road, Town Here, the Finfold, and other roads leading out of the Village are delineated together without any distinction. The Disputed Piece is shown a little larger than it is now, including, I should say, part of the land on which Mrs. Elliot's house now stands. The plan, has on it, in the middle of the Disputed Piece a little to the south of where the Pump now is, a small circle.

From the evidence outlined above, and from the appearance of the Disputed Land and the surrounding houses and lands in the Village, I find that there was in 1822 (when the Award was made) a well in the Disputed Land marked by the said circle on the Award map, that the inhabitants of the Village then had (and still have) a customary right to draw water from the well, that the Award map correctly delineates the Disputed Land, Well Street, East End, West End, Town Here, the Finfold and the other unenclosed lands as they were after the Award took effect (that is all unenclosed from each other) and that the land coloured pink on the Award map shows waste lands of the Manor properly allottable by the Award; so that before the Award, the Town Street consisted of waste land of the Manor on both sides of which there were buildings and old inclosures at varying distances from the middle line and across which passed the highway through the Village (much as East End and West End do now) and off which led a highway to the Well (much as Well Street does now).

In my opinion some parts of the said waste land were not allotted because their allotment would not have been advantageous or convenient, the parts being (so far as now relevant) small parts off the Town Street which would if enclosed be of no value to anyone, and the Town Here, the Finfold and the Disputed Land (larger parts the inclosure of which would obviously have been most inconvenient to all concerned. The highways by the Award expressly set out are all south of the Village and are named on the Award map; no part of what is now East End, West End and Well Street was expressly set out by the Award, and they are not named on the Award map. It was no part of the duty of the Commissioner to determine how much of the uninclosed land not allotted by him was highway and how much waste land could not be advantageously or conveniently enclosed, and accordingly in my view the words "the



direction of the public and private roads and ways" above quoted from the Award can be given full effect without ascribing to the Commissioner any intention to make any such determination.

Upon the above considerations I conclude that the Award does not show the Disputed Land was then highway and is entirely consistent with the Disputed Land being then, and continuing to be thereafter waste land of the Manor, and that accordingly the grounds of Objection No.6 are not established.

As to ownership, by section 64 of the Public Health Act 1875 (now replaced by section 124 of the Public Health Act 1936) "public cisterns, pumps, wells... and works used for the gratuitous supply of water to the inhabitants ..." vest (stating the effects of the sections shortly) in the appropriate parish council. I see no reason for limiting the applicability of these sections to the part of the Disputed Land around the Pump; they must I think at least extend to the trough and the land between it and the Pump. In my view the whole of the Disputed Land is within the sections, so the Parish Council have a title.

I hesitate to determine whether the Disputed Land is now highway. Although the definition of "common land" in section 22 of the 1965 Act expressly excludes "part of a highway", it is clear from section 21 that by including part of a highway in a registration of common land, no person having highway rights is prejudiced. There being great difficulty in many cases in determining whether roads, tracks and paths over what is commonly described as common land are or are not highway, I infer that I should not attempt such a determination unless it is unavoidable. However, as the matter has been raised in the grounds of Objection, and even although any decision of mine adverse to those claiming under Mr. Noton will not prejudice any claim which may be made in other proceedings that the Disputed Land is highway, I record that in my view the Disputed Land has never been dedicated as a highway, and any presumption of common law arising from it being between Well Street or a continuation of Well Street on one side and the walls of Hawthorn Cottage on the other side either to the effect it is highway or to the effect that being highway it is in the same ownership as Hawthorn Cottage is rebutted by the situation of the Disputed Land at the end of Well Street, by the Pump, the Inner Wall and appearance of the Disputed Land as above described and by the existence of the right (which I have found as above stated) of the inhabitants to take the water.

Upon the above considerations I conclude that the grounds of Objection No.7 are not established.

As to the possibility of my considering grounds not mentioned in the Objections:- It may be that the case of the Parish Council for treating the Disputed Land as within the definition of "common land" in section 22 of the 1965 Act, is weak, in that land subject to a customary right to take water is not for this reason only subject to a right of common, see Race v Ward (1855) 4 E. & B. 702 (although it may nevertheless for some other reason be waste land of a manor) and in that if the Parish Council have for many years been owners of the Disputed Land it may be difficult to reconcile such ownership with it being waste land of a manor.

By regulation 26 of the Commons Commissioners Regulations, I am required when considering a dispute to limit myself to the grounds of objection stated unless



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I think "it just in all the circumstances to allow" additional grounds of objection as appear to me to be material. In my view it would not be just in the circumstances of this case to allow any such additional grounds, because (a) if the Disputed Land is (contrary to my view) highways, the access rights of the successors in title of Mr. Noton as owners of land abutting on a highway will not by reason of section 21 be affected by any decision I may give; (b) under the 1965 Act the registration of the Disputed Land as common would but for the Objection have become final, notwithstanding any doubt there may be as to the exact legal position; (c) the right of the inhabitants to draw water having become practically obsolete, some public advantage may result by the Disputed Land being registered as common land; and (d) thus the Parish Council are the proper judges; (d) ~~their~~ ^{Noton's} ownership ~~is~~ ^{is} defeated not by the 1965 Act, but by the 1875 and 1936 Acts, see Smith v Archibald, 1880 5 A.C. 489; and (e) if the Parish Council is the owner of the Disputed Land, nobody is prejudiced by it being registered under the 1965 Act.

For these reasons I confirm both registrations without any modification.

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 15th day of March 1974.

a. a. Baden Fuller

Commons Commissioner