

In the Matter of Pieces of Land at Coopersale, Theydon Garmon,  
Essex

DECISION

This dispute relates to the registration at Entry No. 1 in the land section of Register Unit No. CL 390 in the Register of Common Land maintained by the Essex County Council and is occasioned by Objection No. 86 made by The Chisenhale-Marsh Estates Company and noted in the Register on 4 December 1970.

I held a hearing for the purpose of inquiring into the dispute at Chelmsford on 9 March 1982. The hearing was attended by Mr R J Carpenter, the local Hon. Footpaths Secretary of the Ramblers Association, the applicant for the registration, and I gave leave to Mr H E T St John, chartered surveyor, to appear on behalf of the Objector.

The land comprised in the Register Unit consists of strips along the sides of roads. The Objection relates to three such strips.

Mr Carpenter produced copies of licences enrolled in the manor court books of Theydon Garmon which show that some strips of land adjoining roads have been treated as waste land of the manor. I do not, however, consider that this is evidence as to the status of all such strips. It is necessary to consider the facts relating to the strips the subject of the dispute.

These strips and other similar strips not comprised in this Register Unit are hatched black on the map of the Gaynes Park Estate belonging to the Objector, the other parts of the Estate being coloured in various ways. The strips the subject of the dispute are open to the roads. The Estate includes the lordship of the Manor of Theydon Garmon. One of the strips has been mown under the direction of the farm manager for the last thirty years and looks like a lawn, one has semi-ornamental trees growing in it, and the other consists of woodland which has been managed by the forestry staff of the Objector and its predecessors in title.

It is not disputed that the strips are in the ownership of the Objector. No rights of common over them have been registered, so that the only question for decision is whether they are waste land of the manor. Waste land of a manor is a technical expression, the classical definition of which was stated by Watson B. in Att. Gen. v Hammer (1858), 27 L.J. Ch. 837 as open, uncultivated, and unoccupied land parcel of a manor other than the demesne land of the manor.

To my mind, this is a border-line case. With some hesitation I have come to the conclusion that the strips in question were probably at some time waste land of the manor, but that the activities of the lords of the manor have been just sufficient to convert them into demesne land of the manor and so take them out of the definition of "common land" in the section 22(1) of the Commons Registration Act 1965.



For these reasons I confirm the registration with the following modification, namely, the exclusion of the land the subject of the Objection.

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 18th day of March 1982

*[Handwritten signature]*

Chief Commons Commissioner