



In the Matter of Otterbourne Hill Common,  
Eastleigh, Hampshire.

### DECISION

This reference relates to the question of the ownership of land known as Otterbourne Hill Common, Eastleigh, being the land comprised in the Land Section of Register Unit No. CL 2 in the Register of Common Land maintained by the former Hampshire 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 Winchester on 24 February 1977.

At the hearing the Eastleigh Borough Council was represented by Mr R E Wintle, solicitor, and Mr B A Richardson of Penarth House, Otterbourne Hill appeared in person.

Mr Wintle informed me that he had no evidence as to the ownership of the land in question.

The land is unfenced and is bounded on the north east by an area of land subject to a scheme under the Commons Act 1899 made by the former Winchester Rural District Council. There is no physical boundary between the land the subject of the reference and the land subject to the scheme, but they are separated by an old parish boundary, the land the subject of the reference having formerly been in the parish of Hursley. This land is bounded on the south by a rough track on the south side of which there is a wall dividing it from the garden of Penarth House.

When the tithe apportionment was made in 1839 the northern part of what is now the garden of Penarth House, the track, and the land in question formed the eastern part of a single enclosure numbered 1284. The site of Penarth House and the southern part of its garden were then enclosure No. 1288.

On 25 April 1900 one George Henry Mead was granted a building lease for 1000 years from 25 March 1899 of an area, which was defined by measurements and a plan, consisting of the whole of Title No. 1288 and the major part of Title No. 1284, but the measurements and the plan both clearly exclude the part of Title No. 1284 which now consists of the track and the land the subject of the reference. The lessee covenanted to discharge all outgoing, including tithe and tithe commutation on the land demised.

Mr Richardson and his wife took an assignment of the lease and then acquired the freehold reversion by a conveyance made 11 September 1969 between (1) Penelope Mary Alexandra Tankerville Chamberlaye Macdonald (2) Barry Arthur Richardson and Janet Marjorie Richardson his wife. The parcels in the conveyance were a repetition of the parcels in the lease.



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With the lease Mr and Mrs Richardson obtained a manuscript sheet of paper dated 20 January 1936 containing a tithe apportionment calculation relating to Penarth House. This calculation appears to have been made by someone acting on behalf of the then lessor. It shows that the lessee was being required to pay the whole of the assessment on Tithe No. 1288 and on the part of Tithe No. 1284 which included the northern part of the garden of Penarth House, the track, and the land the subject of this reference. Mr Richardson contended that this document showed that the lessor in 1936 regarded the lease as extending to the whole of the land included in the calculation. It may well be that the person who prepared the document thought that this was the case, but if he did so think, he was mistaken. The calculation showed the lessee as being liable to pay slightly more than he should have been, but that would not, in my view, have had the effect of enlarging the area included in the lease. The lessee could have objected to the calculation as being inaccurate, but his failure to do so could not entitle him to the possession of land not covered by his ground-rent. However, whatever the position may have been between the lessor and the lessee in 1936, the conveyance of 1960 defines the parcels in exactly the same terms as the lease of 1900. If the area included in the lease was enlarged, Mr and Mrs Richardson have acquired the freehold of the part defined in their conveyance by the repetition of the words used in the lease and remain the lessees of the additional part, which does not entitle them to registration as owners under the Act of 1965.

Mr Richardson suggested that should I not be satisfied that he and his wife are the owners of the land the subject of the reference, I should find that their vendor, Mrs Macdonald, is the owner. While it appears quite likely that this land has passed to Mrs Macdonald, I have no evidence as to this and, in my view, it would be wrong to direct the County Council to register her as the owner of land of which she has not claimed to be registered as owner.

On this evidence 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 26<sup>th</sup> day of April 1977

Chief Commons Commissioner