



In the Matter of Bernard's Heath, St. Albans

DECISION

This reference relates to the question of the ownership of land, part of Bernard's Heath, being the land comprised in the Land Section of Register Unit No. CL.241 in the Register of Common Land maintained by the Hertfordshire 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 the Trustees of Earl Spencer's family trusts ("the Claimants") claimed to be the freehold owners of the land in question (CL.241). 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 Hertford on 18 February 1986.

At the hearing Miss Sheila Cameron Q.C., appeared on behalf of the Claimants, and the County Council was represented by Miss A Pegram.

CL.241 consists of two separate pieces of land, of an aggregate area of some half an acre. The greater part of Bernard's Heath amounting to approximately 26 acres is registered as common land Unit no. CL.34. As regards CL.241, ownership is claimed by the Claimants of one only- the more northerly- of the two pieces, and this I will refer to as the N. piece. The foundation of the claim is that the N. piece is waste land of the manor of Sandridge and that the lordship of the manor is now vested in the Claimants. They also claim ownership, based on the same title, to CL.34: the question of ownership of CL.34 was not before me at this hearing, but I propose in this Decision to intimate to what extent the evidence put forward in support of the claim to ownership of CL.241 is equally applicable to CL.34; this may facilitate proceedings at any future hearing to determine the ownership of CL.34.

EVIDENCE

(1) Mr R J Stanley FRICS has since 1976 acted as Land Agent to the 8th Earl Spencer and the trustees of the Spencer family trusts; the estate books and manorial records are in his control and custody. Giving evidence, he told me that in the 18th century, John Spencer, on the death of his grandmother Sarah, Duchess of Marlborough, succeeded to her property which included the Sandridge estate and the lordships of the manors.

Among the documents produced by Mr Stanley was a Manorial Roll for the Manor of Sandridge which included a copy of an 1815 plan of the part of Bernard's Heath belonging to the lord "as lying within the parish and manor of Saundridge". The part of the Heath depicted on the plan includes the N. piece and substantially coincides with the area of CL.34. In other manorial records there



-2-

are references (1813, 1829 and 1860) to Earl Spencer as lord of the manor of Saundridge with Walmonds, (1815) to an encroachment on Bernard's Heath "within the manor on the soil belonging to the lord of the Manor", (1813) to a grant of permission to erect brick kilns on Bernard's Heath and (1829) to a grant of land on the east side of the Heath. Mr Stanley said that after a careful search in the estate Sales book and other estates and manorial records he had found no record of sales or dealings with the freehold of Bernard's Heath; on the other hand the southern part of the estate was in the 19th century gradually disposed of for building as the City of St. Albans developed northwards.

With the concurrence of the sixth Earl Spencer, in 1915 a Scheme was made under the Commons Act 1899 and approved by the Board of Agriculture and Fisheries, for the regulation of Bernard's Heath and its management by the St. Albans Town Council. The plan of the Heath attached to the Scheme accords with the area of CL.34 as shown on the Register Map and includes the N. piece; by an amendment made in 1965 there was added to the Scheme area the strip of land which is the more southerly of the two pieces of CL.241, ownership of which is not claimed by the Claimants. The Scheme contained no provisions affecting the then existing ownership of CL.34 or CL.241.

(2) Evidence as to the subsequent devolution of title was given by Mr Ian G Barnett, solicitor, who on behalf of his firm has since 1973 acted on behalf of the seventh and eighth Earls Spencer and their family trusts, and is consequently familiar with the title to their estates. Following the death in 1910 of the fifth Earl, the sixth Earl, became entitled in tail to the freehold and copyhold estates owned by his predecessor; and by a Disentailing Deed dated 22 August 1910 he barred the entail in respect of the Manors or lordships to which he was entitled in tail.

The sixth Earl died in 1922; under his will dated 18 July 1919 and proved on 4 January 1923, his land and inheritments were settled. By a Vesting Deed dated 29 March 1926 the freehold land; therein mentioned were declared to be vested in the tenants for life under the Settlement, namely the seventh Earl. The freehold lands included "The Manor of Sandridge with Walmonds in the County of Hertford" and "messuages farms and lands situate in the parish of Sandridge".

The seventh Earl died in 1975 and probate of his estate limited to settled land was granted to two of the Settled Land Act trustees. As appears from a Deed of Declaration dated 17 June 1981 the present trustees are the Claimants, John Chandos-Pole, John Anthony Floyd and Guy Hugo Southern.



-3-

Mr Barnett stated that there had been no subsequent Vesting Assent in respect of the lordship of Sandridge in favour of the present tenant for life ~~and~~ ^{or} of any freeholds in or around St. Albans.

On this evidence I am satisfied that the Claimants are the owners of the N. piece of CL.241 and I shall accordingly direct the Hertfordshire County Council, as registration authority, to register them as such owners under section 8 (2) of the Act of 1965. The other piece of CL.241 will 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. I should add that the same evidence, in the absence of any other evidence or claim, satisfies me as to the Claimants' ownership of CL.34.

Dated

5th May

1986

L. J. Morris Smith

Commons Commissioner