



COMMONS REGISTRATION ACT 1965

Reference No. 275/D/556-603

In the Matter of Ogmore Common and Oldcastle Down, St. Brides Major and Merthyr Mawr

DECISION

This dispute relates to certain land at "Rock Cottage" (otherwise "Rock Villa") shown on the plan annexed to this decision and edged black and hatched blue thereon. The dispute was adjourned at the first hearing of this reference on 19 June 1990 to be dealt with at a future hearing. Although further hearings were held on 8 February 1991, and 12 November 1992, no notice of such hearings appears to have been given to the owners of the land, Mr & Mrs Rickard, or to their solicitors. The land is accordingly still provisionally registered as Common Land in the Land Section of Register Unit CL.32 in the Register of Common Land maintained by the Mid Glamorgan County Council.

I held a hearing to inquire into this dispute at Bridgend on 7 March 1995. The hearing was attended by Mrs Rickard appearing in person on behalf of herself and Mr Rickard. Mr Robert Hughes, Solicitor, appeared for Ogwr Borough Council to oppose Mrs Rickard's application for de-registration and Mr J B Humphreys and Mr G D Jones appeared for Mid Glamorgan County Council the registration authority.

The Ogmore Commoners Association were permitted to give evidence by written statement. They said "The Commoners regard this land as having been enclosed, incapable of grazing by commoners livestock and taken out of common for all practical purposes for something approaching forty years". They did not oppose the removal of the land from the register. On this evidence it seems to me that any rights of common which had existed over the land would have been barred by 20 years' "adverse prescription" if not by the date of registration 2 January 1967 at least long before the date of the hearing. In accordance with *In re Merthyr Mawr Common* 1 WLR 1014 I therefore find that the land is not subject to rights of common and therefore does not fall within section 22(1)(a) of the Commons Registration Act 1965. It is fair to say that Mr Hughes did not argue to the contrary. His case was that the land fell within S. 22(1) (b) as being "waste land of a manor not subject to rights of common".

Mr Hughes first showed me an extract from the Tithe Map of 1840. This shows unmarked and unnumbered a triangular strip of land forming an "island" between what are now Ewenny Road and Penylan Road, with a path running between the two roads severing the "island" from the developed land further to the north. On the west side of the island two enclosures are shown, and these are, in the Schedule, described as "encroachments". Comparison with the plan annexed hereto shows that virtually the whole of the "island", except its southern tip, is now enclosed and built up. However, I accept that in 1840 the land was waste land of the manor, whose Lord was the Duke of Lancaster, H.M. Queen Victoria.

Mr Hughes then produced a Scheme of Regulation for the commons in (inter alia) St. Brides Major made under the Commons Act 1899 by the Penybont R.D.C. and approved by the Minister on 25 November 1949. This Scheme (para 4) requires the Council to maintain the commons free from all encroachments and not to permit any partial or other enclosure of any part thereof, and by para 5



grants a right of free access to every part of the commons for recreation to the inhabitants of the district and neighbourhood. The plan annexed to the Scheme shows that the bulk of the "island" is excluded: only the land at the southern tip, and a strip of land along the eastern side (which includes the land here in question) are affected by the green colouring delineating the land subject to the Scheme. It is not clear what edition of the O S map was used for the Scheme: but close perusal of the map shows that the land here in question is enclosed by a hedge or fence or wall along its north, east and southern sides. (Despite para 4 of the Scheme, no evidence was presented as to any attempt by Penybont R D C or its successor Ogwr B C to enter upon the land or open it for public access). Thus the evidence is that before the Scheme was made, this land had been enclosed: how long before one cannot say, save that the enclosure must have been before the date of the ordnance survey on which the map was based. Accordingly, it appears that at some time after 1840 and before 1949 the land was enclosed. According to a letter from the Duchy of Lancaster to the Commons Commissioners dated 15 February 1995 "it would seem that the land was regarded as the upper garden for the Post Office on adjacent property with a stone wall built against Penlan Road". I believe that in that sentence there should be a comma after "property", since it is the garden, not the adjacent Post Office, which has the stone wall against Penlan Road. The land was sold by the Duchy in 1954. It was purchased, together with the adjoining derelict cottage "Rock Cottage" by Mr and Mrs Rickard in 1988, and they have obtained planning permission for the demolition of the derelict cottage and the erection of a dwellinghouse on the site, of which they are registered as proprietors under W A 414 916. Mr Hughes drew my attention to Hampshire County Council v Milburn 1990 2 All E R 257 H.L for the proposition that the severance of the land from the manor did not affect its status as "waste land of a manor". This of course I accept, but in that case the land was still "waste", and the House also approved the description of "wastelands" given by Watson B. in AG v Hanmer 1858 L J Ch.837 at 840, ie "open, uncultivated and unoccupied lands parcel of the manor". Clearly, on the evidence such as it is, the land was not in 1949 or 1967 nor is now, either open or uncultivated: on the contrary, it was in 1949, 1967 and is now enclosed and used and cultivated as a garden (its present non-user is irrelevant see Re: White Row Cottages Bewerly 1991 Ch 441). Accordingly, it is not "waste land". Nevertheless, Mr Hughes submitted that the enclosure must have been unlawful, because of the statutory provisions restricting inclosure to be found in the Inclosure Act 1845 and the Commons Act 1876 and S.193 of the Law of Property Act 1925. His point was that the approval by the Minister of the Scheme in 1949 showed that the consents which were necessary under these former Acts had not been obtained, and he submitted that there was no evidence of lawful enclosure. It is, in my opinion, a strong thing to allege that the Crown, as Duke of Lancaster, committed a breach of those Acts by using waste land of its own manor as a site for its own Post Office and a garden to go with it, and in my opinion, the land being shown to be enclosed since well before 1949 the burden is on Mr Hughes to show clearly that such enclosure was unlawful and therefore that the land remained de jure "waste" even when it was not defacto within the meaning of that expression. I note that the Penny Post was introduced in 1840, and accordingly it is possible that the Post Office and its garden were enclosed before the Act of 1845. Certainly no evidence was led by Mr Hughes as to the date of the enclosure. Moreover, since his case involved the proposition that the Crown, as Duke of Lancaster, had either unlawfully



enclosed the land, or at least by the sale in 1954 approbated an unlawful enclosure, I consider that he should have given notice to the Duchy to appear and produce its records so as to counter or prove the allegation. My own view is that it is more probable than not that the Crown acted lawfully: at very least, no evidence has been led to rebut the presumption that whatever statutory consent was necessary was in fact given. The inclusion of the land in the 1949 Scheme is, probably, due to the fact that the land was still owned by the Duchy: but that does not make it waste land of a manor within s.22(1)(b) of the 1965 Act, and any problem created by the Scheme can easily be rectified by its amendment under S.9 of the Commons Act 1899, a suggestion made by the Duchy to the Ogwr B C in a letter of 1 February 1995. I accordingly find that the land is not "waste land of a manor" within S.22(1)(b) of the Act.

In these circumstances I refuse to confirm the registration of the land and will direct that it be excluded from the Land Section of CL.32.

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

May

1995

Commons Commissioner

H.M. LAND REGISTRY		TITLE NUMBER	
		WA 414916	
ORDNANCE SURVEY PLAN REFERENCE	SS 8974	SECTION D.	Scale 1/1250 Enlarged from 1/2500
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