COMMONS REGISTRATION ACT 1965 Reference No. 276/R/1

COMMON LAND (RECTIFICATION OF REGISTERS) ACT 1989

In the Matter of land at Coed-y-Polyn School House, forming part of Coed-y-Polyn Common

DECISION

This reference relates to an objection under the Common Land (Rectification of Registers) Act 1989 to the registration of part of the land registered in Entry No. 1 in the Land Section of Register Unit No. CL.89 in the Register of Common Land maintained by the Powys County Council. It is occasioned by an Objection made by Swansea and Brecon Diocesan Trust (Incorporated) in July 1992 and referred to a Commons Commissioner on 5 July 1994.

I held a hearing to inquire into this objection at Brecon on 6 December 1994.

At the hearing the Diocesan Trust was represented by Mr Victor Stuart Batcup, formerly a Solicitor now a District Judge. Mr Batcup is a member of the Standing Committee of the Diocesan Trust.

Mr Batcup gave evidence. He confirmed the contents of a statutory declaration made by him on 16 July 1992, which exhibits a plan on which the part of the unit land the subject of the objection ("the property") is shown coloured yellow. The property is (and has since a conveyance dated 29 July 1947 by the Welsh Commissioners been) vested in the Diocesan Trust for educational purposes and the Trust was registered as owner of the property in the ownership section of the Register Unit on 4 March 1970.

From plans and photographs produced at the hearing and also as a result of an inspection of the property which I made immediately after the hearing I find that the physical characteristics of the property may be summarised as follows:-

(a) the property is a small square-shaped piece of land on a hillside overlooking and sloping down to the River Wye to the west.

(b) standing on the property a few feet to the west of the eastern boundary (which is near but does not abut on a public highway) are buildings which run nearly the whole length of this boundary; the greater part of these buildings form the site of Glasbury School.

(c) these buildings may be categorised as follows:

(i) a house ("the school house") with three bedrooms on the first floor and two reception rooms kitchen and bathroom on the ground floor

(ii) a building ("the old school") which is physically attached to the schoolhouse and slightly larger than it with two small extensions

(iii) a relatively large modern extension to the old school ("the modern block")

A copy Conveyance dated 25 May 1822 was produced. This together with an extract from Theophilus Jones' History of the County of Brecon (1911 revision) volume 3 page 91 (which was read at the hearing by Mr Leitch, a local antiquarian) established that the old school was built in 1816 and the school-house was built as a school master's house in the following year, 1817.

The Reverend Evan Thomas Derwen Lewis gave evidence. He confirmed the contents of his letter to the Clerk to the Commons Commissioners dated 5 July 1994. He said that he was instituted and inducted to the Parish of St. Peters Glasbury on 12 January 1946 and one of the two primary schools in the Parish at that time was Glasbury School of which he became Chairman of the School Governors. The Head Teacher at that time was Mr Gwyn Evans and he and his family were living in the school house. The greater part of the property then consisted of a garden running from the school house and old school down the slope to the western boundary. Virtually the whole of this area was cultivated as a vegetable garden by Mr Evans apart from a small orchard which was also enjoyed by Mr Evans. Mr Evans continued to occupy the school house and garden until he retired in 1967 and after him there were successive occupiers known to the Rev. E T D Lewis until he retired in 1980, when the headmaster in occupation of the school house and garden was Mr Ward.

The Reverend Geoffrey Martin Reed gave evidence. He was inducted to the Parish in 1984 and became Chairman of the School Governors. He has been familiar with the locality throughout his life. In 1984 Mr Ward and his wife and 4 children were still in occupation of the school house. In October 1986 they left and the Reverend G M Reeds mother, Mrs N Reed, occupied the school house and garden until July 1987. In that month Dr Jones took a tenancy until October 1987 and two other tenants occupied the house and garden successively until the autumn of 1992 since when it has been empty awaiting improvement and re-letting.

During the course of his evidence Mr Batcup produced plans showing the modern block. This is in fact slightly larger than the old school, to which it is connected by a short passage. It was built in 1991 on land which had formed part of the garden. When I inspected the property I noticed that a substantial quantity of earth and rubble had been brought onto the site to form a level ar on which the modern block and also a small play area stand.

Nobody present at the hearing opposed the Diocesan Trust's objection nor gave or produced any evidence inconsistent with the evidence summarised above.

On the above facts I have no hesitation in finding that the property has been for very many years (going back to the 19th century) and is now the site of a dwellinghouse, namely the schoolhouse, and a garden used and enjoyed therewith for the purposes of the 1989 Act. I have some doubt as to whether the sites of the old school, the modern block and the play area fall within the Act but the High Court has on numerous occasions held that the Act should be construed liberally (see Cresstock v Commons Commissioner 1992 1WLR 1088: Re Land at Freshfields 66 P and CR 9: Storey v Commons Commissioner (Vinelott J.22 February 1993): and on these authorities (albeit with hesitation) I hold that these sites do also fall within the Act on the basis either that they are "outbuildings" within Section 1(3) or, alternatively, that these sites are so small in relation to the total area of this Unit Number as to be de minimis.

I accordingly consider that the requirements of Section 1(2) of the 1989 Act are satisfied in the case of the whole of the land to which this objection relates.

I am required by regulation 22(1) of the Common Land (Rectification of Registers) Regulations 1990 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 15 day of December 1994

Commons Commissioner