



In the Matter of Bealeswood Common, Dockenfield,  
Waverley B.

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DECISION

This reference relates to the question of the ownership of land described above being the part of the land comprised in the Land Section of Register Unit No.CL.231 in the Register of Common Land maintained by the Surrey County Council of which no person is registered as owner under section 4 of the Commons Registration Act 1965 or under the Land Registration Acts.

Following upon the public notice of this reference claims to ownership were made by (1) Waverley Borough Council ("Waverley") (2) Mrs B M Tussler.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 5 July 1985. At the hearing Mrs S J Tovey, Solicitor, appeared on behalf of Waverley, and Mr B Whelan, Solicitor, on behalf of Mrs Tussler.

The land comprised in this Register Unit CL.231 is some 9 acres in area. The bulk of the land ("the main area") lies on the east of Pond Cottage, which belongs to Mrs Tussler; a small area ("the disputed area") lies on the west of the cottage. There are three small sections of the main area which are registered freehold under the Land Registration Acts; this inquiry is not concerned with the question of the ownership of those three sections, and subsequent references in this Decision to the main area do not include those sections.

Waverley claims ownership of the whole of the land in question - i.e. the main area and the disputed area; Mrs Tussler's claim is to the disputed area.

A. Claim by Waverley

By a deed dated 20 February 1928 Richard Combe applied S.193 Law of Property Act 1925 to Bealeswood Common which was shown on a plan and comprised the main area & a part of the disputed area. The Deed recited Richard Combe's ownership of the common in fee simple. Following Richard Combe's death in 1939, his executors by a Conveyance of 16 January 1941 conveyed to W L Wood their estate and interest in Bealeswood Common having an area of 9 acres or thereabouts; there is no plan on this Conveyance. The 1928 Deed was revoked by W L Wood, by a deed dated 15 May 1947; the Deed recited that by the 1941 Conveyance the land shown on the plan on the 1928 Deed was conveyed to W L Wood. That land, as I have mentioned, comprised only part of the disputed area.



W L Wood died in 1958, and by a Conveyance dated 1 May 1960 his executors conveyed to Hambledon R D C (Hambledon) their estate and interest in Bealeswood Common shown on the plan. This plan comprises the main area but not the disputed area. Waverley is, I understand, the successor Authority to Hambledon.

As regards the disputed area, by an Assent dated 12 February 1963 W L Wood's executors assented to the vesting in Dorothy Wood of the West End Estate, Frensham, shown on a plan. The area comprised in this plan includes the whole of the disputed area. By a Deed of Exchange dated 8 April 1968 Dorothy Wood conveyed to Hambledon the disputed area; and in a Statutory Declaration made on 21 March 1968 she deposed to her belief that the disputed area, shown on an attached plan, was included in the 1941 Conveyance to her husband W L Wood, and stated that since 1941 it had been in the undisputed possession of her husband, his personal representatives and herself, and that she was not aware of any adverse claim during that period.

Mrs Tovey also produced a copy of an Agreement made in 1949 between W L Wood and Surrey County Council by which Mr Wood granted a licence to the County Council to deposit materials and plant on a piece of Bealeswood Common shown on a plan, in consideration of a rent. The piece appears to comprise a part of the disputed area, roughly corresponding to the part comprised in the Deed of 20 February 1928.

Mrs Tovey called three witnesses. (1) Mr John Ely, who is Waverley's Countryside Officer and began that employment in 1982. He said that the disputed area had for many years been cut twice a year by Waverley. Part of the disputed area was posted off by the occupants of Pond Cottage to stop parking by the clientele of the Bluebell Inn, opposite the Cottage; they also maintained the grass in front of the Cottage. In 1984 the Parish Council objected to the posts and Mr Ely had a meeting with Mr W J Tussler (Mrs Tussler's Son) who claimed that the Cottage boundary extended 14 feet into the common. Mr Ely also produced a copy of the Management Plan of the Common which was drawn up by the Rangers and endorsed by him. This plan includes a statement that the Wood family requested in 1966 that the small piece of common outside the cottage should be excluded from the gift of the rest of the common in order to make possible vehicular access to the Cottage.

(ii) Mr Kenneth George Adsett, a Countryside Ranger employed by Waverley, said that he remembered visiting Mr Tussler at the Cottage concerning the erection of posts on the common to prevent parking. Mr Adsett told me that there is a hedge outside the Cottage, from which the disputed area starts.



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(iii) Ms Jill Trout, clerk to the Dockenfield Parish Council, told me that the posts lie outside the hedge which encloses the cottage and were put up by Mr Tussler about 1976. He does some regular mowing on the disputed area, which the Borough Council mows twice a year.

I should add that Mrs Tovey referred me to Minutes of meetings of Dockenfield Parish Council and to a letter written by Mr Tussler to the Parish Council on the 10 January 1966, but in neither did I find anything relevant to the question of the ownership of the disputed area.

#### B. Claim by Mrs Tussler

The evidence in support of this claim was documentary. Mr Whelan produced an examined Abstract of Title starting in 1879. The earlier title culminates with an admittance on 5 July 1894 of Frederick Lintott as customary tenant in Frensham Manor of the cottage at Bealeswood and so much of the piece of land of 1 $\frac{1}{2}$  R 20 p allotted by an Inclosure Award in respect of the cottage, and also of a parcel of land of some one acre lying on the east side of the cottage. By a Deed dated 6 July 1894 Richard Henry Combe as Lord of the Manor enfranchised these areas in favour of Frederick Lintott.

By his will Frederick Lintott, who dies in 1921, created a settlement of his real estate and by a Vesting deed dated 1 May 1931 the trustees of the settlement assented to the vesting in Elizabeth Lintott of property which included the cottage and garden, formerly part of the Lord's waste of the Manor of Frensham Beale, at Beak's Wood, the parcel of land of not more than one acre situate on the east side of the cottage, and the piece of land 1r.20p "adjoining the road leading from Batts Corner & Dockenfield." Elizabeth Lintott died in 1942 and by an Assent dated 1 May 1946 her personal representative assented to the vesting in F G Lintott of the cottage garden and premises known as Pond Cottage situate at or near to Batts Corner Frensham coloured yellow on the plan attached to the Assent. There is no such plan on the Abstract but Mr Whelan showed me a plan which he said Mrs Tussler had found among her papers; this plan is headed "Copy of plan of Assent (1946)." On this plan the part coloured yellow comprises the cottage and the disputed area.

Pond Cottage was purchased by Mrs Tussler in 1948. The original of the conveyance to her cannot be found but a photocopy was produced. The circumstances in which the photocopy was made and of the disappearance of the original are explained in a Statutory Declaration made by Mrs Tussler on 20 June 1985. She is, I understand, advanced in years and somewhat infirm and did not attend the hearing. Mrs Tovey did not seek to challenge this evidence or the existence of a Conveyance on the terms of the photocopy and I am satisfied that such a Conveyance was executed. This Conveyance was dated 15 November 1948; F G Lintott died in 1947 and the Vendors were his administrators Edith M Lintott and Percy F Lintott who conveyed Pond Cottage as shown on a plan to Mrs Tussler. As shown on the plan the property included the disputed area.



I am prepared to accept the plan apparently relating to the 1946 Assent, as a copy of the plan attached to the original Assent - the Assent comprised four properties each coloured differently and the copy plan does show four properties each bearing one of these colours and one coloured yellow showing Pond Cottage as including the disputed area. Nor did Mrs Tovey challenge the authenticity of the plan, though she commented on some difference in the shades of yellow. Subject to the question of the competing claim by Waverley, the title, starting with the Vesting Deed of 1931, in my opinion shows a good paper title in Mrs Tussler.

C. Conclusions (1) As regards the main area I am satisfied that Waverley is the owner.

(2) The question of the ownership of the disputed area I have found one of some difficulty. Both of the paper titles adduced derived originally from the Combes - Richard Henry and his successor Richard.

The earliest in date of the documents produced by Mrs Tovey and specifically referring to Beales Wood Common is the Deed made by Richard Combe in February 1928 for applying S.193 of the Law of Property Act to Beales Wood Common shown coloured green on the plan. This land does include the western tip of the disputed area but not, so far as I can judge, the whole of it. The earliest of such documents which purports to deal with ownership of the disputed area as specifically shown on a plan, is the Assent by W L Wood's executors of 12 February 1963 in favour of Dorothy Wood. The Executors could not effectively have dealt with the disputed area unless it was in the ownership of their testator W L Wood. His ownership, if it existed, derived from the 1941 Conveyance of the Common by Richard Combe's Executors on which there is no plan to indicate whether or not the disputed area was included; and it is of some significance that when in 1960 W L Wood's Executors conveyed the Common to Hambledon the plan did not include the disputed area. If, as Dorothy Wood averred in her Statutory Declaration, the 1941 Conveyance did include the disputed area, it could only have been effective to convey it if Richard Combe had owned it at the date of his death in 1939. As to this, it seems clear that his predecessor in title Richard Henry Combe had as Lord of the Manor by a Deed dated 6 July 1894 enfranchised the Cottage and an area to the west of the cottage in favour of Frederick Lintott, the admitted customary tenant of the property, from whom Mrs Tussler's title derived. Moreover the plan on the 1963 Assent seems wrong in at least one respect; it appears to include the site of Pond Cottage itself, which had devolved on Elizabeth Lintott in 1931.

Dorothy Wood in her Statutory Declaration went on to depose to uninterrupted possession of the disputed area by her husband, his personal representatives and herself since 1941. Mrs Tovey did not formally submit, as an alternative to the paper title she adduced, a claim based on adverse possession, nor would I have considered sufficient for such a claim a general statement of possession without more detail of the nature of, and activities on the disputed area illustrative of, such alleged possession.



Both claims were essentially based on evidence of a paper title and I find the claim by Mrs Tussler is the stronger and to a minor extent is supported by the facts that posts were erected by Mr Tussler on part of the disputed area and that he regularly mowed the grass. Nevertheless, taking into account the whole of the evidence adduced, I have some doubts as to her ownership of the whole of the disputed area. The titles of both claimants ultimately derived from the Combes. Mrs Tussler's ownership can then be traced through the Lintott's and then ownership is ultimately based on the admittance and deed of Enfranchisement in favour of F Lintott in 1894. On the documents relating to this which I saw it was not possible to determine the extent to which the disputed area was included; and it seems to me of considerable significance that in 1928 Richard Combe, in the Deed of 20 February 1928, was continuing to act as owner of the western tip of the disputed area, as was his successor W L Wood in 1949 when he granted licence in respect of it to the County Council.

My conclusion is that whilst part (the western tip) of the disputed area remained in the ownership of the Combes and devolved through Mr Wood to Dorothy Wood and thence to Waverley, the remainder passed into the Lintott's ownership and thence to Mrs Tussler. This division of ownership, going back to 1894, may well subsequently have been lost sight of, ~~with or without~~ that in the case of both claimants their respective predecessors in title purported to deal with the whole area without being aware, until the question has now become a live one, of the conflicting claim of the other. It will be appreciated that the divergence of ownership does not affect the status of the whole area as common land.

In the result I am satisfied as to the ownership by Mrs Tussler of the part of the disputed area other than the western tip shown on the plan attached to this decision, and as to the ownership by Waverley of the main area and the western tip of the disputed area. I shall accordingly direct the Surrey County Council, as registration authority to register them respectively as such owners under Section (2) 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

23 September

1985

L. J. Morris Smith  
Commons Commissioner