



COMMONS REGISTRATION ACT 1965

Reference No 236/U/43

In the Matter of Milton Gore,  
Holmwood, Mole Valley District,  
Surrey

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DECISION

This reference relates to the question of the ownership of land known as Milton Gore, Holmwood, Mole Valley District being the land comprised in the Land Section of Register Unit No CL. 215 in the Register of Common Land maintained by the Surrey 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: (1) Mole Valley District Council (letter dated 17 October 1975) said they did not claim ownership although by a conveyance dated 22 May 1967 the Council had acquired the Manor of Milton and a map of such Manor of 1859 indicated that the waste land of such Manor included this land; they enclosed a letter dated 8 December 1972 from the Tunbridge Wells District Land Registry (to the effect that no more than a possessory title could be granted to the Council in respect of any such waste land), and said that they (the Council) felt unable as regards this land to make a statutory declaration as to its maintenance as they had been able to do as regards Milton Heath (also shown on the 1859 map); and (2) Mr R F Philpott, on whose application the registration was made, said (letter dated 4 February 1976): "I wish to place on record the following facts. It is within my knowledge, and other residents of long standing, that Milton Gore is in the ownership of J P M H Evelyn Esq, Lord of the Manor of Wootton. There is a reference to the land in the Victoria County History of Surrey, as the land is detached and somewhat remote from the remainder of the Evelyn Estate, the owner and his agents seem to have lost sight of its existence. However it is known that the Estate Bailiff has visited the land from time to time and on one of his visits gave permission to Messrs W J & E G Ede, Haulage Contractors of Capel, Surrey to deposit soil on the land in question"; and (3) Surrey County Council said (letter dated 16 February 1976) that a highway depot within this land is within County Council ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 25 February 1976; upon the application of Mr R C Navarro representing the Surrey County Council, I adjourned the proceedings.

In a letter dated 25 February 1976, King & Chasemore, chartered surveyors of Horsham on behalf of Evelyn Wootton Estate claimed possessory title. Mr Commissioner C A Settle QC held a further hearing at Guildford on 9 November 1976 and adjourned the proceedings.

In a letter dated 17 October 1977 King & Chasemore said (among other things) on behalf of their client Mr J P M H Evelyn they had agreed with Mole Valley District Council that they would not pursue their client's claim to ownership. I held a further hearing at Guildford on 18 October 1977 at which there was no attendance;





however having regard to a suggestion in the said letter of 17 October 1977 that Mole Valley District Council might claim ownership, I adjourned the proceedings. After the hearing I inspected the land.

I held a further hearing in London on 19 January 1978. At this hearing Mole Valley District Council were represented by Mr V A S McNamara, a legal assistant in their Legal Department, and Surrey County Council were represented by Mr P W Pilgrim, articled clerk with the County Secretary.

Mr McNamara in the course of his evidence produced: (1) an extract of the Title Apportionment Award dated 4 December 1841 for the Parish of Milton (original in the Public Record Office) and extracts from the map therein referred to; (2) a copy of the map dated 1859 and entitled "Manor : Milton : County Surrey" (the original being in the possession of the Surrey County Archivist) and an extract from the reference book accompanying such map; (3) a land certificate title no SY 432961 (first registration 9 December 1973, possessory title) relating to Milton Heath; (4) a certified copy of a conveyance dated 22 May 1967 by which National Employers Life Assurance Co Ltd ("NELA") conveyed to the Urban District Council of Dorking "the Manor or Lordship or the reputed Manor or Lordship of Milton..."; (5) a copy conveyance dated 31 March 1966 by which Associated Electrical Industries Limited ("AEI") conveyed to NELA first 39.943 acres of land as conveyed by the below mentioned 1939 conveyance and secondly the Manor of Milton; (6) a copy conveyance dated 26 September 1961 by which W T Henley's Telegraph Works Company Limited ("Henley's") conveyed to AEI first land containing 39.943 acres as conveyed by the 1939 conveyance and secondly the Manor of Milton; (7) a copy conveyance dated 9 August 1939 by which (a) Foundling Estates Limited and their mortgagees and (b) Lady E M Mallaby-Deeley and Sir G H M Mallaby-Deeley as administrators of Sir H M Mallaby-Deeley (he died 4 February 1937) conveyed respectively (a) 39.943 acres of land including Milton Court and pleasure grounds and (b) the Manor of Milton; and (8) a conveyance dated 24 December 1936 by which Foundling Estates Limited conveyed to Sir H M Mallaby-Deeley the Manor of Milton.

The land ("the Unit Land") comprised in this Register Unit is on the west side of Coldharbour Lane, the road from Dorking on the north to Coldharbour and Leith Hill on the south. It is about 150 yards long, being open to the Lane for about 100 yards. According to the 1841 Award and the 1859 reference it contains 8 acres 1 rood 34 perches. Being situated near one of the higher points of the Lane and being well but not densely covered with trees (it slopes down from the Lane), it is an attractive piece of land suitable for picnics or a pleasant walk. On a small part of it there is a dump of material apparently used for repairing roads in front of which there is a small area where cars may be parked conveniently.

Mr McNamara summarised the information available to him from the files of his Council and of their predecessor Dorking Urban District Council) as follows:- The Council acquired the Manor of Milton primarily with a view to obtaining control of Milton Heath (about 15 acres of land about 2 miles north of the Unit Land situated on the south side of the Dorking-Guildford road). The Forestry Commissioners own much land adjoining the Unit Land; some time ago they approached the Council about a scheme that they had in mind of having a number of nature walks and footpaths over their land; the idea was that the walks and footpaths on the Unit Land and the Forestry Commissioners land should conveniently combined and that part of the Unit Land could perhaps be used as a car park from which these walks and footpaths could start; the Council being then uncertain as to the ownership position, for that reason declined to consider the scheme. Although the Council had not dealt with the Unit Land, they would accept it if it became vested in them under the 1965 Act, and accordingly he on their behalf claimed ownership, although





he felt he ought not to press such claim in view of the apparently adverse decision of the Land Registry as set out in their 1972 letter.

Mr Pilgrim said (in effect):- The County Council accepted the evidence put in by the District Council. He understood that the County Council had ~~been~~ used a small part of the Unit Land as a highway depot and that such use went back for about 60 years. Also a very small part is used as a car park. Although material is kept there for repairing roads, this is not done in very large quantities. The County Council did not claim that by such use they were in possession, their acts being more properly referable to section 48 of the Highways Act 1959. (replacing section 51 of the Highways Act 1835).

By subsection (3) of section 62 of the Law of Property Act 1925 a conveyance of a manor shall operate to convey with the manor all waste to the manor appertaining or reputed to appertain or at the time of conveyance reputed or known to be part of it. The circumstance that the District Council did not under the 1967 conveyance expect to obtain or even think of the Unit Land, does not prevent the conveyance operating as provided by the 1925 Act or make the ownership claim that they are now making in any way unmeritorious.

In the 1841 Award, the Unit Land and its state of cultivation are described as "rough" and it is said to be in the ownership of William John Evelyn and occupied by "himself"; however it is not included (as Milton Heath was) under the heading of "Waste Lands and Commons". However on the 1859 map the Unit Land is shown as a detached part of the Manor of Milton being surrounded on the west side by the Manor of Westcott and on the other sides by the Manor of Dorking, and in the reference it is included under the heading "Waste". Although the title between 1841 and 1939 has not been deduced, there is in the 1939 conveyance a reference to a conveyance dated 27 June 1871 by William John Evelyn to Lachlan Macintosh Rate and it seems likely from the other documents mentioned in the 1939 conveyance that the title could if need be be traced from Mr Rate to Foundling Estates Limited and Sir H M Mallaby-Deeley. Mr Philpott could not by his 1976 letter have meant that the Unit Land was part of the Manor of Wootton, because the Victoria History to which he refers, mentions particularly Milton Gore under the heading of the Manor of Milton, and only incidentally says that this Manor from its conveyance in 1600 to George Evelyn descended with Wootton in the Evelyn family; see (1911) vol 3 page 147. The possibility of Mr J P M H Evelyn being the present owner as suggested by Mr Philpott is negated by the investigations made on his behalf by Chasemore & Richards.

Although as summarised above the evidence I have of ownership amounts only to a little more than that considered in 1972 by the Land Registry, I am in a different position from them in that I am exercising jurisdiction under the 1965 Act in relation to land the registration of which as common land has become final. The evidence considered by itself might be criticised as not adequately negating possible claims by others; but the probability of any such claims ever being made is much reduced by there never having been any objection to the 1965 Act registration which has now become final. In these circumstances I can I think properly differ from (although I do so with some hesitation) the 1972 views of the Land Registry and conclude that the District Council have established their claim. Whether or not the scheme put forward tentatively by the Forestry Commission is a good one, it must I think be in the public interest that it should not fail merely because there is some doubt as to legal ownership. For the above reasons





I am satisfied that the District Council as successor of the Dorking Rural District Council is the owner of the land and I shall accordingly direct the Surrey County Council as registration authority to register Mole Valley District Council as the owner of the land under section 8(2) of the 1965 Act.

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 13<sup>th</sup> day of February — 1978

A. A. Bam *2/16*

Commons Commissioner