

COMMONS REGISTRATION ACT 1965

Reference Nos 45/1/225  
45/1/242

In the Matter of (1) part of Hook Moor  
in Parlington and in Lotherton, and (2)  
Hook Moor (central part of land so called)  
in Lotherton, Leeds District, West Yorkshire

DECISION

These references relate to the question of the ownership of part of the land which is known as Hook Moor in Parlington and in Lotherton, Leeds District, which is comprised in the Land Sections of Register Unit Nos CL. 469 and CL. 594 in the Register of Common Land maintained by the West Yorkshire County Council and of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner. The said part consists of first the whole of the land ("the CL. 469 Land") comprised in Register Unit No CL. 469, and secondly of the part ("the CL. 594 Referred Part") of the land ("the CL. 594 Land") comprised in Register Unit No 594 which is not registered as HM Land Registry under Title No YK 17113.

Following upon the public notice of these references: (1) Middletons, solicitors of London who had been told that Mrs Y S Trench-Gascoigne had notified the registration authority that she owned these lands, in a letter dated 4 May 1973 said that she had recently died, (2) Mr H T Walker in a letter dated 3 January 1973 (enclosing a letter dated 20 December 1972 to the County Council) and in a letter dated 6 August 1973 provided information about Hook Moor, (3) Mrs D S Oates in letters dated 1 and 6 August 1973 claimed ownership of part of the CL. 594 Referred Part and (4) Savills, Surveyors of London and elsewhere, in a letter dated 30 April 1975 on behalf of Abbey Life Assurance Company as managers of the Lotherton Estate which their clients had purchased from Mrs Y S Trench-Gascoigne in 1973 claimed ownership. No other person claimed to be the freehold owner of the lands in question or to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the lands at Wakefield on 8 April 1976. At the hearing (1) Lotherton Parish Council, on whose application the CL. 469 Land Section Entry was made, were represented by Mr L Cockrem their clerk, (2) Abbey Life Assurance Company Limited and Midland Bank Trust Company Limited were represented by Mr I Leeming of counsel instructed by Clifford Turner & Co, solicitors of London, (3) Mr Arthur Brooke on whose application the CL. 594 Land Section Entry was made and whose application in relation to the CL. 469 Land Section Entry is noted in the Register, attended in person, (4) Mr H T Tempest on whose application jointly with his wife Mrs Heather Tempest the CL. 469 and CL. 594 Rights Sections Entry No 1 was made, also attended in person, and (5) Mrs Oates who claimed part of the CL. 594 Land as above mentioned also attended in person.

The CL. 469 Land which (according to the Register) contains 14.525 hectares (36.02 acres) is approximately square being bounded on the west by the embankment supporting the newly constructed overpass carrying the Great North Road (A1) to the south entrance of the Aberford Bypass, and bounded on its northwest corner by the road A642 from Wakefield which here runs from the southwest under the overpass after which it forks, the north prong, still A642 turning in a half-circle to the north, and then joining the south-going Great North Road traffic, and the south prong (here becoming B1217) leading to Lotherton on the northeast. The CL. 594 Land, which contains (according to the Register) 13.122 hectares (32.42 acres), is in three pieces: one ("the CL. 594 East Piece; about 4/10ths of the whole) lies along the east boundary of the CL. 469 Land, another ("the CL. 594 D Piece, about 1/10th of the whole) lies between the said semicircular part of the A642 Road and the embankment which supports the Great North Road, and the remaining one (the CL. 594 West Piece, about 5/10 of the whole) is on the west side of and adjoins the embankment supporting the Great North Road, and includes the junction of six roads being (1) the A642 Road from the east and from under the overpass, (2) an exit road from the Great North Road, (3) the A656 Road to Castleford, (4) the A642 Road to Wakefield, (5) the road being the south end of or leading to Aberford Main Street (?the old Great North Road), and (6) an access road to the Great North Road. The part of the CL. 594 Land which is comprised in the Land Register Title No YK 17113 is the part of the CL. 594 West Piece which is west of the said exit road south of the A642 Wakefield Road and is marked on the Register map by the lines ABCDEF; possibly, so it seems to me, this Title No also includes a narrow strip of the northwest part of the CL. 594 West Piece.

Mr Leeming said that Midland Bank Trust Company Limited ("the Bank") as nominees Abbey Life Assurance Company ("Abbey Life") claimed ownership of all the Referred Part except the part of the CL. 594 West Piece which is both west of the Bypass and northeast of the line EF on the Register map and a northwest prolongation of this line. In support of this claim, oral evidence was given by Mr S C Reischach, solicitor of Clifford Turner who produced the documents listed in the Schedule hereto. Oral evidence was then given by Mr H T Walker who is chairman of Lotherton Parish Council, has lived in the area since 1952 and in the course of which he described the CL. 469 and CL. 594 Lands, told me something of their history, and of their present possibilities. Oral evidence was also given by Mr Brooke, who said although he was not claiming anything, he would like to see Hook Moor and the bits surrounding it preserved. Finally oral evidence was given by Mrs D S Oates who lives at Ridge Row Cottage (on the Castleford Road between 100 and 150 yards south of the south end of the CL. 594 East Piece); she said (in effect): She had used the CL. 594 D Piece for 10 years, by grazing ponies on it. It is fenced all the way round (apart from a gate) with a wood post and rail fence; the A1 (Bypass) is above this Piece and there is the embankment between. Before 1966, the Piece was all construction work because of the A1 (Bypass) being built; the West Riding County Council when the construction was complete arranged for the Piece to be levelled up. Before the A1 building (of the Bypass) started, the Piece was part of Hook Moor.

On the documents produced by Mr Reischach I am satisfied that the Bank is the owner of the CL. 469 Land, the CL. 594 East Piece, and so much of the CL. 594 West Piece as is neither within the Land Registry Title No YK 17113 nor land not claimed by Mr Leeming. The northeast and southwest parts of the CL. 469 Land,



both now part of arable fields, appear in the documents of title as part of Beckside Farm. The CL. 594 East Piece appears in the documents of title as part of White House Farm. The central part of the CL. 469 Land now common land and the claimed part of the CL. 594 West Piece appear in the documents of title as part of Hook Moor. It was generally accepted at the hearing that Hook Moor and the surrounding lands as shown on the 1973 Plan were reputed to be part of the Gascoigne Estate and there is no reason why I should not give full effect to the documents of title produced. The minor technical defect in the title (discovered by Mr Reisbach) has been remedied as appears in a note to the Schedule hereto.

As to the CL. 594 D Piece:-

Mr Walker (in effect) said: We had a series of meetings with the West Riding County Council Road Committee and they agreed that they would give us land which they had purchased from the Gascoigne Estate so that it would become part of Hook Moor; the road was completed in 1966; the D Piece is the land which has been substituted for the part of Hook Moor which was taken for the A1 Bypass. Of this transaction Mr Reisbach said he had no documents with him, although he recollected that a few weeks ago when examining the documents of title noticing there had been a land exchange about the Bypass but he did not then realise that it was the D Piece which was given in exchange.

By Part III of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act 1946, provision is made when common land is compulsorily purchased for "the Minister to be satisfied that there has been or will be given in exchange for such land other land not being less in area and being equally advantageous to the persons if any entitled to rights of common or other rights and to the public and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested and subject to the like rights trusts and incidents as attached to the land purchase". Although no one produced any documents which I suppose from what Mr Walker said must have come into existence, when the site of the Bypass was purchased; from the 1973 and 1974 conveyances which included the CL. 549 D Piece, and from the other documents of title which show that it and much of the site of the Bypass must before it was built have been part of the Gascoigne Estate, I conclude that the Minister was satisfied as contemplated by the provision and accordingly all necessary documents were made with the result that apart from any possessory title of Mrs Oates, the Bank is now the owner.

Any possession Mrs Oates had of the CL. 594 D Piece was taken from Ridge Road Cottage (formerly known as Hook Moor Cottage). This Cottage is shown on the said documents of title as part of the Estate, and I understood from Mrs Oates that she holds it from them as tenant. Accordingly any ownership she acquired of the CL. 594 D Piece would accrue to her tenancy for the benefit of herself and the Estate as her landlords.

Further the possession of Mrs Oates is less than the 12 years by the Limitation Act 1939 required to extinguish the title of the person dispossessed.

For this reason, I reject Mrs Oates' claim, although I do so with some regret, because I understood that since 1966 nobody else has wanted the CL. 594 D Piece, and her grazing of it has kept it in good condition for the benefit of everyone concerned.

Having regard to the above considerations I am satisfied that the Bank is the owner of all the CL. 469 Land and of the part of the CL. 594 Land on its behalf claimed by Mr Leeming, and I shall accordingly under section 8(2) of the Act of 1965 direct West Yorkshire County Council as registration authority to register



Midland Bank Trust Company Limited of 27/32oultry, London EC2 as the owner of the whole of the land comprised in Register Units CL. 469 and of the part of the land comprised in Register Unit No CL. 594 which is not registered at the Land Registry under Title No MK 17113 and which is both west of the Bypass and east of the line EF and its prolongation on north-southern along the edge of the made up part of the road leading to Linn Street, Aberford.

In the absence of evidence, I am not satisfied as to the ownership of the remainder of the CL. 594 Referred Part, that is the land which is both west of the Bypass and east of the line EF and its said prolongation, and it will therefore 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.

## SCHEDULE

SCR1	7 March 1974	Conveyance by Abbey Life to Bank of Beckside Farm, White House Farm and other lands forming part of the Lotherton Estate as conveyed by the below mentioned conveyance dated 21 November 1973
SCR2	21 November 1973	Conveyance by P H Bryan Cook and 2 others as personal representatives of Mrs Y S Trench-Gascoigne (she died 18 January 1973) of the land described in the Schedule and delineated on the plan annexed
SCR3	1973	Auctioneer's plan of the Lotherton Estate
SCR4	-	Epitome of Title
SCR5	5 April 1960	Conveyance (by way of gift) by Sir A D F Gascoigne to Mrs Y S Trench-Gascoigne
	1 January 1927	Conveyance (gift) Colonel F R T Trench-Gascoigne to A D F Gascoigne
SCR6	21.11.73	Note about Title
SCR7	16.11.73	Result of researches and perusal of Title
SCR8	21 November 1973	Statutory declaration by Mr M L Smith about southwest part of CL. 469
SCR9	1976	Draft of conveyance already engrossed by the said personal representatives of Mrs Y S Trench-Gascoigne to Bank of the said southwest part of the CL. 469 Land

Note: After the hearing a conveyance dated 15 April 1976 in the form of the said draft executed by the said personal representatives was sent to the Office of the Commons Commissioners.

Dated this 5<sup>th</sup> day of July —

1976

*a. a. Braden Fuller*

Commons Commissioner