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COMMONS REGISTRATION ACT 1965

Reference No. 214/U/82

In the Matter of Broxhead Common, Headley

DECISION

This reference relates to the question of the ownership of part of Broxhead Common, Headley being the part of the land comprised in the Land Section of Register Unit No. CL.147 in the Register of Common Land maintained by the Hampshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

CLAIMANTS

Following upon the public notice of this reference the following persons claimed to be the freehold owners of parts of the land in question:-

- (1) Mr Anthony Gary Peter Whitfield
- (2) Mr Eric John Arnott and Mrs Veronica Mary Arnott
- (3) A R C Limited
- (4) Captain John Walter Richmond Jeffares
- (5) Mr Arnold Geoffrey Jeffree

HEARING

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Petersfield on 22nd November 1990.

ATTENDANCES

The hearing was attended by Mr Ian Hunt of Hampshire County Council (the Registration Authority), Mr M Veale of Brown-Hoveit Veale Nelson, Solicitors of Grayshott and Mr M R Porter (Estate Manager) representing Mr Whitfield, Mr Douglas of Counsel instructed by Mrs Catherine Davey of Stevens and Bolton, Solicitors of Guildford representing Mr & Mrs Arnott (Mrs Arnott also attended in person), Miss Sue Morton of Herbert & Gowers, Solicitors of Oxford and Mr Peter Lawless (Lands Manager) representing A R C Limited, Mr Harvey and Mr R J Sawers of MacDonald Oates, Solicitors of Petersfield representing Capt. Jeffares (who also attended in person), Mr Jeffree, Mrs Connell (Rights Entry No. 1), Mr G Watts (Rights Entry No.4), Mrs Bicknell (Rights Entry No. 7), Mr J Ellis (Chairman of Broxhead Commoners Association) and other interested persons.

LAND AND RIGHTS SECTIONS OF REGISTER

The land was registered as common land by the Registration Authority without any application. There are about 20 subsisting entries in the Rights section of the Register. The rights include grazing, turbary, estovers and to take sand.

The Land section and the Rights section were confirmed with numerous modifications after many days of hearings before Chief Commons Commissioner Mr George Squibb in 1974.

The history of the land is gone into at length in Mr Squibb's Decision No. 2 dated 22nd November 1974.



OWNERSHIP SECTION

The Ownership section contains one entry only, namely the Secretary of State for Defence, who is registered as owner of the whole of that part of the Register Unit which lies to the west of the B 3004 highway.

MR WHITFIELD'S CLAIM

Mr Whitfield claims ownership of the whole of the Register unit lying to the east and north-east at the B 3004, with the exception of the part lying to the north of the Trottesford Road also known as Picketts Hill Lane.

Mr Veale produced the originals and supplied me with certified copies of:-

(i) A Conveyance dated 14th July 1970 made between (1) Sefton Siegmund Myers and (2) Mr Whitfield

(ii) A Lease dated 5th March 1980 made between (1) Mr Whitfield and (2) Hampshire County Council.

He also supplied me with copies of:-

(iii) An examined Abstract dated 1962 (commencing with an Indenture of 4th January 1906)

(iv) A Statutory Declaration dated 31st May 1962 by Patricia Margaret Elphinstone Barnard

(v) An Assent and Conveyance dated 25th October 1962 between (1) P M E Barnard (2) P M E Barnard A E White and J A Ellert (3) Broadland Properties Limited and (4) Sefton Siegmund Myers.

By the Conveyance of 1970 (which is a good root of title being over 15 years old) several areas of land at Headley including (in Part I of the First Schedule) part of the Headley Park Estate known as Headley Wood identified on Plan A thereto was conveyed to Mr Whitfield. The plan is not too easy to reconcile with the Register Map (which is on a much smaller scale), but some assistance may be derived from the plan on the Assent and Conveyance of 1962 (where the boundaries were more carefully depicted) and also from the plan on the Lease of 1980 (which is based on the large 1 in 2500 scale Ordnance Survey Map).

From a perusal of these deeds I am satisfied that Mr Whitfield is the owner of the part of the Register Unit claimed by him.

Mr & Mrs Arnott

Mr & Mrs Arnott claim ownership of a strip of land running from north to south across the most northerly section of the common and being the access way from Trottesford Farm to the Trottesford Road/Picketts Hill Lane.

Mr Douglas produced to me the originals of various documents of title of which copies had already been supplied to me by Stevens & Bolton. These included two Conveyances which are sufficient for present purposes:

(i) Conveyance dated 15th October 1965 made between (1) John Ronald Henderson and (2) Fiona Rosemary Diana Cooke.

(ii) Conveyance dated 17th November 1978 made between (1) F R D Cooke and (2) Mr & Mrs Arnott.

These two Conveyances (of which the earlier one is well over 15 years old) clearly include in the land thereby conveyed the strip of land claimed by Mr & Mrs Arnott. It is not necessary for me to trace the title back any further.



I annex to this Decision marked "A" a photocopy of the plan to the Conveyance of 1965. The strip of land in question appears thereon edged in black between the letters "A" and "B". I am satisfied that Mr & Mrs Arnott are the owners of this strip. The situation of the track leading to Trottesford Farm differs slightly on various different plans which were before me, but I was told that the demarcation of the land on the ground is clear, and that the track is fenced on both sides with a post and wire fence.

A R C LIMITED

The land in respect of which A R C claim to be owners is shown edged with black lines on the plan marked "B" which I have annexed hereto. Some of this land falls outside the boundaries of the Register Unit. The approximate area of the land falling within the Register Unit is shown on plan B hatched in black.

The title of A R C to this land falls into two parts, first as to the part which I have marked on the plan with the letter "A", and secondly as to the parts marked thereon with the letter and numbers "B1" and "B2".

Miss Morton on behalf of A R C produced two bundles of title deeds, the first relating to area A and the second to both parts of area B, and I was supplied with photocopies.

Area A

The title to area A commenced with the abstract of a Conveyance of the 5th March 1963 between (1) George Albert Day (2) John Ronald Henderson and (3) David Innes Hadfield. This Conveyance included 2.390 acres of open common land at Broxhead being part of O S. 735 identified on the plan thereto "for all the estate and interest of the Vendor therein". This was followed by a Conveyance of 1st November 1977 between (1) David Innes Hadfield and (2) Amey Roadstone Corporation Limited of the same 2.390 acres of open common land, once again "for all the estate and interest therein of the Vendor". This Conveyance was however supported by a Statutory Declaration by Mr Hadfield sworn on 16th September 1977 that since the date of his purchase of the 2.390 acres he had used it for agricultural purposes and as pasture land without any objection or complaint and without any adverse claim to title or acknowledgement of superior title. Finally there is a Certificate of Change of Name showing that Amey Roadstone Corporation Limited is now known as A R C Limited. The 2.390 acres in question corresponds with area A.

No-one present at the hearing opposed the claim of A R C to be registered as owner of area A. No adverse claim having been made against Mr Hadfield for over 12 years, and none since having been made against A R C, I am satisfied that A R C is the owner of area A, subject of course to the registered rights of common affecting the same.

AREA B

The title to both parts of area B commenced with a Conveyance dated 4th May 1964 between (1) G A Day Limited (2) George Albert Day and (3) Ameys Aggregates Limited. There was a conveyance to Ameys of three separate parcels of land, shown respectively coloured blue, pink and green on the plan thereto. I am not concerned with the blue land, which is the half-moon shaped area to the south of B1. The pink land corresponds with area B1, and the green land with area B2. In each case the property was conveyed to Ameys for "such right estate and interest" as the respective Vendors might have in it. Nevertheless each conveyance was expressed to be made in fee simple, and the respective Vendors



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gave covenants for title as Beneficial Owners. There follow a Certificate of Change of Name, showing that Ameys Aggregates Limited became Amey Gravel Limited, and an inter-company Conveyance dated 11th July 1974 between (1) Amey Gravel Limited and (2) Amey Roadstone Corporation Limited. Finally there is the Certificate of Change of Name showing that Amey Roadstone Corporation is now known as A R C Limited.

No-one present at the hearing opposed the claim of A R C to be registered as owner of areas B1 and B2, and there was no evidence of any adverse claim having been made against A R C or its predecessor companies at any time since 1964. I am therefore satisfied that A R C Limited is the owner of both areas, B1 and B2, subject of course to the registered common rights affecting the same.

CAPTAIN JEFFARES

Captain Jeffares' concern is with the vehicular access track to his dwellinghouse known as Stone Cottage formerly known as Ivy Cottage from the Trottesford Road (Pickets Hill Lane) via the track marked A-B on plan A. This access track runs along the northern boundary of the common and is included in the Register Unit.

Mr Harvey produced to me the original and supplied me with a copy of a Conveyance dated 26th September 1963 between (1) John Ronald Henderson and (2) John Walter Richmond Jeffares. This was a conveyance to Capt. Jeffares of Ivy Cottage and the land edged red and coloured blue on the plan thereto in fee simple and of the land coloured blue but not edged red (that is to say, the access track) for all the estate and interest of the Vendor therein.

I annex to this Decision marked "C" a photostat copy of the plan on the Conveyance of 1963 on which I have marked the Cottage and the track with those words.

No-one present at the hearing opposed Captain Jeffares' claim to be registered as owner of the track, the use of which he had enjoyed without adverse claim since 1963. I am therefore satisfied that he is the owner of this track.

Mr JEFFREE

Finally I come to the claim of Mr Arnold Geoffrey Jeffree who is the owner and occupier of The Bungalow, Trottesford Farm. This property was conveyed to him by a Conveyance dated 21st October 1963 and made between (1) John Ronald Henderson and (2) Mr Jeffree. The conveyance was in two parts, as to the land edged pink on the plan annexed thereto in fee simple and as to the land edged blue thereon for all the estate and interest of the Vendor therein. I annex hereto marked "D" a photocopy of that plan on which I have inserted the words "edged red" and "edged blue" to indicate the parts so coloured on the original.

The land edged red, as I understand it, never formed part of the Common. The land edged blue, on the other hand, on which the bungalow itself is built, appears to have been an encroachment on the common.

In 1970 Mr Jeffree put in an Objection, No. 252, to this piece of land being included in the registration. Mr Squibb in his Decision No. 1 dated 22nd November 1974 said with regard to this objection:-

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"Mr Jeffree has a house on a small plot of land at the northern extremity of the land comprised in the Register Unit. It was agreed by all parties that Mr Jeffree's property, although it appears from the Ordnance Survey map to have been at some time enclosed from the Common, ought not now to be included in the Register Unit. It was also agreed that some other small areas ought to be excluded from the Register Unit. The land to be excluded has been indicated on a plan prepared by the County Council".

The plan prepared by the County Council was on such a minute scale that it is impossible to tell therefrom how much of Mr Jeffree's land was excluded from the Common. I have no doubt however that it was Mr Squibb's intention that the whole of the land included in Objection No. 252 (being the land I have marked as "edged blue" on plan D) should be excluded from the Register Unit.

Mr Jeffree told me that he had lived at The Bungalow since 1963, and nobody had ever disputed his claim to the land I have marked as "edged blue", although he had recently had a disagreement with Captain Jeffares as to his access. If therefore any part of Mr Jeffree's land remained within the Register Unit I should have been satisfied as to his ownership of it.

Assuming however that I am correct in concluding that no part of Mr Jeffree's land remains within the Register Unit I have no jurisdiction to deal further with the matter.

CONCLUSION

I shall accordingly direct Hampshire County Council, as Registration Authority, to register the following as the respective owners of the land stated against their names, under Section 8(2) of the 1965 Act:-

- (i) Anthony Gary Peter Whitfield as the owner of the whole of the Register Unit lying to the east and north-east of the B3004 highway, with the exception of the part lying to the north of the Trottesford Road (Pickets Hill Lane).
- (ii) Eric John Arnott and Veronica Mary Arnott as the owners of the strip of land shown on plan A edged in black between the letters A and B thereon.
- (iii) A R C Limited as the owner of the land shown on plan B hatched in black and marked thereon with the letters and numbers A, B1 and B2.
- (iv) John Walter Richmond Jeffares is the owner of the strip of land shown on plan C and marked thereon with the word "track".

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 25th day of March 1991

Mati Rottis

Commons Commissioner

COMMONS COMMISSIONERS CAUSE LIST

BEFORE: Mr Martin Roth, Commons Commissioner, at Council Chamber, East Hampshire D.C. Penns Place, Petersfield, Hampshire.

SCHEDULE

Thursday 22nd November 1990 at 10.30.am

<u>Reference No.</u>	<u>Register Unit No.</u>	<u>Particulars of Land</u>
214/U/82	CL.147	Broxhead Common, Headley