

Mr Chris Jackson
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Your ref. ICR/035/13

Title No. SH6984

Dear Mr Jackson,

Complaint against the Land Registry

Thank you for your letter of 8th September 2014 and the opportunity to comment on the draft report from Elizabeth Derrington.

First of all I would like to thank you both for the information and careful examination of the facts. However there are of course a few comments and questions which arise. I will try and keep to the paragraph format in the draft report to aid clarity.

Discussions and Conclusions

36. I understand that there *'are no powers to review or overturn any decisions that have been made by the Land Registry on land registration issues, or to comment on points of law and that the only way of challenge is in the courts.'*

Land Registry does however *'have the power, under schedule 4 of the Land Registration Act 2002 to alter the register to bring it up to date or to correct a mistake. Land Registry also has power under Schedule 8 of the Land Registration Act 2002 to pay compensation or indemnity for losses and costs caused by a mistake on the register.'* (para 52),

39. I understand that *'Land Registry has no general responsibility for overseeing land ownership or transactions relating to land, or for deciding issues about ownership or boundaries.'* Their *'job is essentially administrative – to process applications and to respond to requests for information'*.

However these things form a part of any specific land registration and particularly so where the ownership of common land is concerned. Information is what I required, but it took my complaint to IR to reveal, for example, the twelve hand written pages by ALR1?

There are several matters mentioned in these notes which are most pertinent to my enquiries with regard to Broxhead Common.

ALR1 questions, that as Broxhead Common appears to comprise part of the title, - although he stops short of saying that it does,- are notices required? Also *“As Broxhead Common, or at least part of it, forms part of your application, notice has been served on the County Council as registration authority under the Commons Registration Act 1965 in accordance with the established procedure. Once I have the declarations requested above, and provided they are satisfactory, the mapping of your application can be completed fairly promptly, whereupon your application will be referred for executive examination, which may give rise to further requisitions”*

Do we know if further executive examination took place?

Do we know if the applicant has requested a lack of delay in dealing with the matter?

It seems to me that the subsequent long delay occasioned by AJG Solicitors ill health, may have led to further dealings which fell well below the expected standard to fee of a reasonably competent solicitor specialising in property law and the registration of title. No attention seems to have been drawn to the fact that Broxhead Common is subject to and protected by sec.193/4 Law of Property Act 1925, now Sec. 38 CA 2006, nor it seems were any questions asked with regard to the fenced off 80 acres of it. These fences remain illegal to this day. They are not shown on the 1962 conveyance plans from MacAndrew to Myers but are on the conveyance to Mr Whitfield 1970!

It is not surprising therefore that Land Registry received no response from Hampshire County Council in 2002. They have been careful to try and suppress information with regard to their collusion with the landowner and the fact that neither of them have applied to the Secretary of State for the fencing, which therefore remains unauthorised. Further they have removed the 80 acres from the Register of Common Land without authority. Land Registry would therefore not have been able to ascertain that in fact those 80 acres are still part of Broxhead Common and should be shown as such. There is no question that they were ever the demesne lands of any manor.

It appears that the new solicitor for AJG is also being kept in the dark, because she asks Land Registry *‘whether they have received any communication from the Local Authority’*. I would suggest that portrays a certain expectation by a qualified practitioner in this regard?

ALR1 replies that they would not expect to hear from them. But surely an acknowledgement of receipt of notification should have been expected at the very least. Without that there can be no certainty that Hampshire County Council received anything at all.

So why no follow up by Land Registry to make sure, especially when prompted by the replacement solicitor for AJG? This seems to demonstrate a certain lack of due diligence at this point?

I find it very strange that there is absolutely nothing at all in the way of correspondence from Hampshire County Council, because they are inextricably linked with Broxhead Common by the fact that they have rented 105 acres of it from the purported owner, Mr Whitfield since 5th March 1980. They also made themselves a respondent to the case at the Court of Appeal on 23rd September 1978, where the parties came to an out of court agreement and the case was withdrawn.

ALR1 also noted *“where the applicant owns land on both sides of rivers and road, the whole width of the river bed and soil of the road will be included in the registration, but, as regards road, a verbal entry along the following lines will be made. **‘The roads and footpaths in this title are subject to public rights of way’**. The alternative would have been for us to serve notice on the local highway authority in respect of long lengths of road, with consequent further delay”*

This is the first reference I have seen to the public nature of the roads and paths, so please may I know if that entry was ever included in the registration and if so where I can find it? Why did Land Registry not make this information known to me at a much earlier time during my original enquiries? It was in fact crucial to my work as an Access Volunteer to improve off road access for horse riders. It is lamentable to think that Hampshire County Council were not made aware of this fact, for such public rights of way shown on the Definitive Map are only those which were requested by Headley Parish Council in 1965 as part of the Definitive Map Review. Before that time Broxhead Common was open and accessible to the neighbourhood as ‘open space’ with no record of public rights of way.

I would like to suggest that these facts alone should now raise a caution on the correctness of the acceptance of title under SH6894 by Land Registry. It appears that mistakes have undoubtedly been made and need to be corrected and the Register needs to be brought up to date.

I would please, like to see the matter referred to HM Courts and Tribunal Services for further scrutiny to aid transparency and correct any mistakes.

58. Standard procedures by Land Registry for assessing applications made under the Land Registration Act 1925 must surely include consideration of possible fraud and in this case Broxhead Common comes under the protection of S194 Law of Property Act 1925, now Sec.38 CA 2006? This is legislation under which Land Registry currently work I understand?

59. ALR1 decided to go back no further than the 1962 Conveyance. In fact he could not, as this is the first time that Broxhead Common had been included in a conveyance document. Neither Headley Park or Headley Wood Farm can show it on conveyances before that date. Practise Guide 1 states: "If there is no good explanation for the absence of the original deeds, we may not be able to give an absolute title." It seems to me from the information received that no good explanation has been given for the absence of the original deeds of title to Broxhead Common and I am still not clear how or why or on what grounds, Land Registry have decided to accept Mr Whitfields application?

The unauthorised fencing was erected soon after the sale of Headley Wood Farm to Siegmund Sefton Myers in 1963 and there is a record of complaint by local people in the Committee Minutes of the Hampshire County Council Open Spaces Committee dated 8th December 1964.

60. Land Registry had to be satisfied that the applicant had '*a good holding title*' which as my enquiries have been necessary, has been shown not to be the case. LR1 has said he is "*satisfied that the title was examined properly*" and "*I am content (in the absence of any evidence to the contrary) that the examination of title at the first registration of SH6984 done by the registrar was satisfactory*". But I would ask how that could be so, if verifiable doubt is now being cast as to its veracity?

61. An instance of where procedure may not have been followed is where ALR1 gave instructions for notice of the application to be served on Hampshire County Council but no evidence has been found that this was done. I suspect that it was done, although we cannot be certain, and agree that Hampshire County Council could not have failed to be aware that the registration had taken place. But that would have helped their cause by giving the dismal situation they had engineered more credibility.

So what of the Commoners and their rights and profits a prendre, plus the public interest of customary access to this open space; were they not entitled to know what was happening? If they

had been aware, I am quite sure questions would have been asked by them at that time, especially in view of the fact that questions have not stopped being asked since 1963 when the common was fenced. This can be shown in the reports from the nine Public Inquiries which have taken place over this time albeit the initial three were instigated by Hampshire County Council and the landowner to officially divert bridleways that had been obstructed by the illegal fencing, four were as a result of bridleway claims over the common land to replace but a few of the trails which had been lost, and three as a result of Hampshire County Council objecting to their own Order which they had been instructed to make by a Planning Inspector.

62. If 15 years is thought to be a good root of title, it means that anyone can reside somewhere for that length of time and then be given title. This would probably entail just one conveyance. But surely the original title deed itself should be a requirement or if lost, an explanation as to how and why it came to be so? In the case of Broxhead a statutory declaration had been made by Mr Michael Porter, the Estate Manager for Headley Wood Farm, in December 2001. He states among other things that, *“Neither I nor Mr Whitfield hold any deeds or documents relating to the common including the blue land.”* Please may I know were any questions asked as to the provision of an account of the events that have led to the loss or destruction of the title deeds?

Also in the same document is stated, *“Broxhead Common which has been in the ownership of the Headley Estate for centuries as is evidenced by the estate records.”* Is a total contradiction in terms and should have been enough for ALR1 to proceed with caution and investigate more thoroughly. If he had, he would have found that both Headley Park and Headley Wood Farm have verifiable rights of common but neither were the owners of it, although both properties are contiguous with the common land.

On form FR1, AJG solicitors state: *“All rights, interests and claims affecting the property known to the applicant are disclosed in the title documents. There is no one in any adverse possession of the property or any part of it.”* But Land Registry requires that *‘with any first registration application you have a duty to disclose certain types of overriding interest if they affect the land’*.

Please may I know whether the overriding interests of the commoners profits a prendre (rights) and the public were stated and accounted for?

It is possible that if there is no correspondence with Hampshire County Council they may not have been? This would then have created another gap in the process of registration of title.

64. But she did not say who had made the statutory declaration in support of the application of the registration of Broxhead Common to the title, and neither did she volunteer to send me a copy when she had it in her possession. And yet it is stated at paragraph 39 that is part of Land Registry's job?

65. ALR1 has stated that where land has been conveyed "*for the seller's estate, right and interest only. The Registry does not accept that a conveyance so worded is effective to pass the legal estate unless there is evidence that the seller really did have a legal estate in the land.*" He says part of the land had been conveyed for the seller's estate, right and interest and evidence had been lodged in the form of a Statutory Declaration, he asked for an up-to-date declaration to be provided. I imagine that this is the one I refer to above which was made in December 2001? If Broxhead Common itself is part or parcel of the estate conveyed for 'the seller's estate, right and interest only, it raises the question yet again as to what evidence was produced to show that the seller really did have a legal interest in the land?

I have already explained why the statutory declaration is disingenuous in my letter dated of 20th January 2014. I believe these matters should be referred to the Tribunal for further scrutiny.

I notice that I may also take application to the courts but this is not a personal matter but one of public interest as I have previously explained. I suspect that what will be required eventually is a relator action in the High Court brought by the Attorney General in the public interest.

I think I can be forgiven for thinking that Land Registry might also have been colluding in the malfeasance of Broxhead Common, because of what became a seriously defensive attitude. When I was telephoned by LLR, nearly the first thing she asked was "how would I like it if someone was trying to take my land away from me". I replied that was not the point, was completely irrelevant and she should not go there.

She talked fast and furiously for the entire length of the phone call, never accepting the few points I managed to make, other than to say that if I had another conveyance I should send it to her.

66. I think you are referring to the case of Ireby Fell? I have only recently read this so it did not influence any of my questions to Land Registry. However it is vastly different and the only similarity is that the Chief Commons Commissioner, was George Squibb QC, who also decided the land and rights sections of the Register for Broxhead Common. He did not in this case concede that Mr Whitfield was the owner of Broxhead Common. In fact he may even have refused to do so, because that did not happen until 1991 under a different Commons Commissioner. On the contrary he

makes an interesting statement on page 14 of his 23 page decision on Rights of common, in which he says:

“Some witness’s spoke of acts done on the western part of the Common, but denied having seen them on the eastern part. I do not believe this evidence, but whether it is to be attributed to faulty observation or recollection or to an over-enthusiastic desire to help Mr Whitfield’s cause seems to be a matter on which it is unnecessary for me to express an opinion.”

I think it is reasonable to assume that Mr Whitfield’s cause was to possess not only the common land but to keep the illegal fencing around the 80 acres of it.

As for my frustration, particularly with the apparent lack of knowledge by LR staff of the Tithe Acts, I think it would not have been too much to hope that they would know that these had been superseded and encompassed by the Law of Property Act 1925, which is part of the legislation they currently work with. They were as you must know, a detailed and useful survey of the land, type and ownership during the nineteenth century.

I have never suggested that any manorial titles were involved.

71. My aim has not been to discredit Land Registry staff or to consider whether or not the title was examined properly. The whole point has been to try and discover on what evidence title of Broxhead Common has been awarded. However at the end of the day I have found:

- No sound justification for registering the common land to SH6984, which I correctly deduced had been registered only on the two conveyances of 1960’s/70 and a statutory declaration by the Estate Manager, Mr Michael Roydon Porter, who was obviously an employer of the applicant!
- That the process could not be complete because of the apparent total absence of any correspondence with Hampshire County Council considering their involvement.
- A lack of concern with regard to the public nature of the road and rights of way across the common so that no notice was served on the Highway Authority, in order it would seem to save delay! I have to ask that as the applicant had delayed over thirty years to register the property, why such haste in 2002?
- Apparent complete ignorance of the Tithe Commutation Acts of the mid nineteenth century
- That it was not revealed to me, that the statutory declaration was by the employer of the applicant despite my request.

- As Mr Whitfield leases the rest of Broxhead Common to Hampshire County Council, why no questions were asked to establish that the applicant is either in actual occupation of the whole of the land or in receipt of the rent and profits from it and without any adverse claim having been made. Until 1978 Hampshire County Council had been sharing the legal fee costs with the Broxhead Commoners Association to establish their Rights under CRA 1965!
- No consideration is shown to have been given to the effect on the commoners, in particular the fencing of 80 acres of common and the immediate effect on profits a prendre or rights of common on the land, or the access rights available to the public under Sec. 193 LPA 1925 and later Part 1 Sec.2 CROW Act 2000, which were/are being obstructed by them. Land Registry Practice Guide indicates these are issues of overriding interest which should be considered.

I appreciate that my complaint has been fully and fairly considered and thank you again for the additional information provided. I am aware of the limitation of powers Ms Derrington has, however it seems to me that there are enough unanswered questions here for a caution to be registered and for the Adjudicator/ 1st Tier Tribunal, to investigate more closely the validity of title given for Broxhead Common which has historically been recorded as a public common, further evidence of which I am happy to supply if required.

Yours sincerely,

Maureen Comber