

Port Meadow & Associated Land, City of Oxford

Under threat of development by Chiltern Railways

Port Meadow is ancient and famous for being possibly the longest recorded town-common of its type, continuously grazed from before Domesday.

The title name Port* Meadow derives from its belonging to the Freemen of Oxford, Portman being synonymous with freeman. The Freemen of Oxford today each inherit an 'overriding interest' in this land.

Prior to 1835, the administration of the town was by the Corporation elected exclusively by the *Freemen, from within their numbers*. Such privilege was eventually reformed by the Municipal Corporation Act of 1835. However, the Act confirmed [and safeguarded] the rights of the Freemen over Port Meadow.

The very existence of this land has been preserved over many centuries due to the diligent stewardship of the Freemen of Oxford. While the Town/ City Council may now be regarded as the owners of the land itself, the surface of that land is held in the overriding interest of the Freemen of Oxford.

As the beneficial owners of those surfaces, each freeman holds their rights (personally) in 'Gross'. These rights of overriding interest in the land are 'real property' rights.

The rights registered in 1969 under the Commons Registration Act 1965, I understand were for 700 animals [cattle and horses] and the rights to fish from the banks of the Meadow. Rights of grazing were also registered over Wolvercote Common. It is worthy of pointing out that such grazing rights include all herbage and the reasonable safety of animals from flood injury or theft.

Current Action/ Considerations

1. Chiltern Railways may be seen by the wider society as providing 'benefit' to the people of Oxford.
2. Recent changes brought about by the Local Democracy Act bring 'privileges' into question. Freemen may need to find compromises in their arguments against change. (Charter freedoms are questionable under the Act).
3. The Common Lands Commissioners are in the process of being disbanded due to Coalition 'cuts'.
4. Legal arbitration is difficult when differentiating between conveyancing English Land Law and 'Commonland' Law.
5. Custom Law has been weakened as have Commons regulation by statute and the repeals of the Commons Act 2006.

*Port – historically a town with market privileges: a borough. Portman – historically a burgess, especially one chosen to administer town affairs [Freeman of the town] Port'reeve – historically a mayor or principal magistrate [elected by the Freemen of the town] 'Chambers Dictionary.

6. With regard to further protection by registering common lands under the Land Registration Act 2002 – If land and rights are already registered under the Commons Registration Act 1965 then it will not be permissible (L.R. Practice Guide 16 section 5.)
7. Security of Registered rights relies upon the Commons Registration entries approved under the 1965 Act. Some repeals and modifications have been made under the Commons Act 2006 but generally – what was registered back in 1969 (even with errors) will remain untouchable today.
8. Finally it is worth remembering that compulsory purchasing of land by the railways when they were established in the latter part of the 19th century included, not only payments but the provision of replacement lands to compensate for disruptions. Be well aware that law/regulation of common land is not the same as conventional English Land Law.

Recommendations

Obtain expert (sympathetic) advise/support from the following:

- Public Rights of Way Office – for safe sensible pathways.
- Local Access Forum for Oxfordshire (statutory body representing the countryside)
- Oxfordshire /local Wildlife Trust – protecting the landscape.
- Open Spaces Society – founded in 1865 to preserve and protect common land.
- Common Lands Registrar – County Hall records of common lands (photocopies).

Alan Shelley BA DLA FRSA, Freeman of Sudbury, Suffolk, 15 December 2010

*Port – historically a town with market privileges: a borough. Portman – historically a burgess, especially one chosen to administer town affairs [Freeman of the town] Port'reeve – historically a mayor or principal magistrate [elected by the Freemen of the town] 'Chambers Dictionary.

Proposed Chiltern Railways (Bicester to Oxford) Improvements

Ownership of Port Meadow

In response to CRCL/INQ/62 refuting 'beneficial' ownership over the meadow land by the Freemen of Oxford.

The Freemen possess recognized 'rights of common' over Port Meadow and these rights constitute an overriding interest over the land. Such rights are considered 'real property' and are described as profits à prendre.

Chiltern Railways, in their comments re CRCL/INQ/62 1.7, suggest that "these have nothing to do with ownership but rather a burden on ownership". Surely this is the crux of the matter and of the Freemen's argument for recognition. Owners (proprietors) of common land (by law) have no authority to take any actions that may affect the established personal rights attaching to such lands.

Liability of Registered Land to Overriding Interests

As described within note 1.9 – It is recognized that " . . . the Freemen retain their rights of pasture or common". The Freemen are thus entitled to recognition as beneficial owners of the herbage and to the surfaces of the land in order to exercise their long held and established rights of pasture.

Alan Shelley

Statement in Support of Oxford Freeman's Claim regarding

Beneficial Ownership of Port Meadow

My argument of 'overriding interests' in the land is supported by the case material supplied by Chiltern Railways CRCL/INQ/62.

- 1) Reference to paragraph 1.9 – Registration under the LRA 2002 “Oxford City have registered as proprietor - - - which includes profits à prendre. “Thus, the Freeman retain their right of pasture or common”
- 2) From Appendix B of CRCL/INQ/62 ‘Extract from A History of the County of Oxford’
 - a) Page 13 of 24, fifth paragraph “Part of the eastern edge of Port Meadow was sold for construction of the Oxford to Banbury railway opened in 1850 [post1835 Act] a common hall agreed the purchase money for a ‘capacious school’ for freemen’s children. [NB. Although this money was applied elsewhere, it is significant proof of ownership that the income from the sale was claimed by the Freeman].
 - b) Page 12 of 24, conclusion of paragraph 6 under ‘Port Meadow’. “By 1970 c210 freemen had registered grazing rights in Port Meadow, sharing between them pasture for not more than 700 beasts”.
- 3) ‘Real Property’ (Appendix C of CRCL/INQ/62, Extract from Megarry’s Manual)
Page 421 Sect.2. ‘Nature of a profit à prendre’
 1. Classification – as to ownership – a profit à prendre may be enjoyed:
 - (ii) by one person in common with others; this is known as a profit in common.
 - a) A profit Appurtenant – This is a profit, whether several or in common, attached to land by act of parties etc., [NB. The Freeman may possibly consider the profit as ‘in gross’].

This concludes my argument that the Oxford freemen clearly have ‘real property’ (overriding interests) over the Port Meadow and are therefore ‘Beneficial Owners’ of the surfaces.

Registration of Rights over Port Meadow, Oxford

Update to actions – information 19 December 2011

Informed by Howard Crapper that Oxford City Council has registered Port Meadow without making any reference to the Freemen or of their rights.

'The Freemen have been reluctant to register as proprietors as they could not afford to run day to day management themselves'. They are now looking at legal options to get name and rights included (Notice) to put off would be purchasers. The City Council has returned application documents

Documentation: Ref. Stephen Ewens, Solicitor & Notary Public, Partner of HMG LAW LLP Solicitors
126 High Street Oxford

AN1 (No 2) Doc. Land Registry Application to enter an agreed notice. Completed form Title No ON 293757 re Land at Port Meadow, Wolvercote, Oxford. *Interest to be protected by an agreed notice over the whole estate. In payment of action cheque £50. Applicant – The Freemen of Oxford Key No. 737960 HMG Law LLP, Oxford ref. SEE/107809 (Phone 01865 24466, Fax 01865 721263)*

Application to enter an agreed notice protecting interest: *The historic rights over Port Meadow enjoyed by the Freemen of the City of Oxford including in particular the rights of common preserved since the Commons Registration Act 1965.* Application is with the consent of the registered proprietor Oxford City Council – **the Council has returned the form unsigned.** This is presumably because the Land Registry will not accept a request for notice where rights are capable of registration under LRA 1965.

A copy of Practice Guide 15 re Overriding interests and their disclosure has been highlighted where 'an interest capable of being registered under LRA 1965 cannot be disclosed'

Also a copy of Practice Guide 19 has been highlighted to indicate registration under LRA 1965 cannot be protected by notice.

My Comments:

The situation regarding Port Meadow is similar to that of the Freemen's meadows at Sudbury. Rights of the freemen to graze the lands were held for many centuries. Under the requirements of the Commons Registration Act 1965, rights were registered and by implication they would become protected under the Act.

The subsequent Land Registration Act 2002, initially required that all land and interests be registered 'for greater protection'. To confuse matters in some ways, the Commons Act of 2006 has intimated that previous Acts concerning common lands have been repealed. This may be a 'red herring' in that rights registered under the 1965 Act are currently being deemed to be protected (as under that Act).

Now, having said that Port Meadow is similar to that of Sudbury meadows, the situation will also be similarly found throughout the Country. Any attempt to 'independently' register rights will be rejected by the Land Registry (as capable of registration under LRA 1965).

- References (FEW Papers)
1. 'Sudbury Common Lands' (re registration procedure)
 7. 'Opinion on Freemen's Property Rights'
 9. 'Voluntary Registration' (only works in partnership)
 13. 'Freemen's Lands Tribunal' (risky expense)
 15. 'Freemen's Beneficial Rights' (requires testing in Court)

Much depends on the confirmation that 'rights' registered under LRA 1965 will remain protected. Howard's comment about the day to day costs of running (after registration) of the Meadow! I presume may refer to a former suggestion of forming a 'Commons Council' under the 2006 Act.

For my part, I would repeat the following:

- 1) How are the rights entered in the Common Lands Register? Copy of actual entry please.
- 2) How are the rights employed? Are they sold/let annually to one or several graziers?
- 3) How are the benefits deployed? Are they transferred/distributed? Are the benefits used for clearly charitable purposes?

Alan Shelley 22 December 2011

Town and Country Planning Act 1947
Section 82: - land held by Local
Authorities for statutory purposes.

Port Meadow, Oxford
Determined by Section 92 of the
above named Act - the Minister
determined that an area of 350 acres
or thereabouts was acquired by
the Council "long since and held
by the Council on 1st July 1948,
on which appointed day, Section 82
applies.

The land was registered under
the Commons Registration Act 1965
(including the Freeman's rights)
and this became final in 1970.
The wording (requested) is not
known to AS. The City Council
were recognised as the 'Proprietor'
Port Meadow is registered under LRA
2002 - Title ON 293757 20-09-2010.

Oxford Freeman re 'Port Meadow'

(As at 5 January 2012)

- 1) Agreement in 1985 Oxford Act is a little ambiguous (requires analysis of wording).
- 2) Actual wording of recording under the Commons Registration Act 1965 is necessary.
- 3) "Joint meetings with City Council" do not suggest a 'Charitable Committee' managing the income from grazing.
- 4) This may be more acceptable if it can be proved that all income/rent is ploughed back into the maintenance of the land.
- 5) *Aide Memoir*

With regard to the potential sale of all or parts of the land – there is nothing in law to prevent the sale of such common lands. Developments are restricted by or sanctioned by the Minister of State. A legal defence could reasonably prevent development over the larger area of the land, based upon historical claims and the freemen's surface rights.

Regrettably there is no standard duty of notification by the landowner/proprietor or by HM Land Registry when selling any lands recorded under CRA 1965. In consequence new owners may not be aware of any rights or restrictions over their newly purchased property.

NB. I complained of this situation, on behalf of Freeman, to Defra at a National Common Lands Seminar, 13 September 2005 (in writing and a copy is held by FEW Archives). My attempt was to have this 'notification' requirement included in the 2006 Commons Act but it was rejected on the grounds that it was too burdensome on the Land Registry!!

In conclusion, for the time being, we may generally have to rely upon our good relationships with proprietors and upon any testing of the registration under 1965 Act. Also of the modern approaches to the 'Town Acts' that were generally produced to provide fair means for town development.

Alan Shelley, Officer Without Portfolio, FEW, 5 January 2012.

Registered 'Ownership' of Port Meadow by the City Of Oxford

Justified or not? (Reviewed by Alan Shelley 8.02.2012)

For centuries, dating back even before the Norman Conquest, the Freemen of Oxford enjoyed privileges including the rights to graze the extensive Port Meadow. The Municipal Corporations Act, 1835, while stripping the freemen of their personal governing powers it did however, safeguard the freemen's grazing rights.

In a talk on the 1835 Act, given at Oxford in 1998 by Charles Sparrow, he drew attention to the difficulties caused by misunderstandings. He emphasised "debate about the Freedom should found itself upon the realities".

Here are the realities, concerning registration of Port Meadow, leading up to the present situation:

- Freemen held grazing rights over Port Meadow since time immemorial.
- Until 1835, the regular supervision of the Meadow was the responsibility of the City bailiffs, thereafter of the Sheriff.
- The 1835 Act protected the Freemen's (property) rights over Port Meadow.
- A Sheriff, appointed by the City Council, as 'Conservator' need not be a freeman.
- The Commons Commissioners required the Meadow to be registered under the Commons Registration Act 1965 and registration, including the freemen's rights, became final in 1970. NB. The City Council was recognised as the 'Proprietor'.
- At that time there were c 210 freemen with registered grazing rights in Port meadow, sharing between them pasture for not more than 700 beasts.
- An Oxford Act of 1985 has been mentioned, containing reference to Freemen's rights over Port Meadow, the wording of this is unknown to AS.
- Oxford City Council have registered Port Meadow under the Land Registration Act 2002 Title number ON293757 Edition date 20.09.2010, as follows:

(20.09.2010) The Freehold land, being Port Meadow, Wolvercote, Oxford
And – Title absolute:

(20.09.2010) As Proprietor: Oxford City Council of Town Hall, Blue Boar Street, Oxford, OX1 4EY.

- Following a dispute over future work (already arranged by the Council) to be carried out on Port Meadow. In March, 2011, Colin Cook, the Sheriff of the City and Conservator of Port meadow, offered to add a sentence to the City Council's constitution (for action in full council meeting) to read as follows:

"Matters relating to ownership and management of Port Meadow, including access, works, agricultural and public activities will be subject to consultation (and agreement) with the Freemen of Oxford and the Wolvercote Commoners, having regard to their respective rights on the Meadow".

- Howard Crapper, for the Freemen of Oxford, 19 December 2011 has indicated to FEW, his disappointment that the Oxford City Council registered Port Meadow and without any reference to the Freemen or their rights.

NB. HM Land Registry is unable (even if Oxford Council had requested) to apply any such Notice. The grazing rights are subject to the Commons Registration under the 1965 Act.

(See AS View Point 'Protection from Deregulation' 23 December 2011, we must rely on CRA 1965).

The Case of Port Meadow, Oxford

Background Notes

As was the case with most towns and cities, following the Municipal Corporations Act 1835, the old Corporation's lands were transferred into the 'proprietorship' of the new Council.

The rights of the freemen, being personal and "in gross" were safeguarded under the Act. These 'Freemen's lands' are held "in Sole Vesture" and as such the surfaces of the land are the "beneficial property" of the freemen.

It follows that the City Council should not apply any changes (to the surfaces) without agreement from the freemen. Way-leaves and tracks over (even temporarily) should be compensated by payment to the freemen by the City Council.

In those instances of registration, such as Town & Country, Land Registry or of the Common Lands Registration Act, 1965 – the Council are correct in describing themselves as the "proprietors" of the land.

Regrettably, as there does not appear to be any differentiation in the eyes of the Land Registry between such land holdings and those of standard freehold, we have the experience now encountered.

Suggestions made by the developers for Chiltern Railways doubted that the Freemen of Oxford could claim any beneficial ownership over the Meadow. Freemen's grazing rights were argued, recognised and agreed.

It has also been recognised that the City Council is the proprietor (freeholder) of the land. Under agreements dating back many decades the City council has managed the land. The City Sheriff is the 'recognised Conservator'.

The land was registered in 1969 under the Commons Registration Act, 1965. The City Council is recorded as Proprietor. Actions by the City Council to register the land under the LRA 2002 do not appear to be provocative.

NB. If the Freemen anticipate any greater income resulting from 'beneficial ownership' of the land surface, then they would need to form a charitable foundation approved by the Charity Commissioners. Any income (profit) after management costs of the Council would need to be distributed for the benefit of the local (Oxford) community.

There does not appear to be any grounds for legal 'Estoppel' – the City Council are not denying the freemen. Conclusion:- It is imperative that the Freemen maintain the goodwill apparently enjoyed in the past.

On the question of 'legal estoppel'. (In contesting registration) This would be the subject of "an agreement in principle"

- Yes, I agree that the City 'could' be seen to be precluding – by denying a truth.
- But, surely they are not, in their minds, doing that. As far as I can see, no changes – to things previously – have changed.
- As I understand it, the Council have not denied the grazing rights of the Freemen.
- That agreement in principle remains unchanged.
- I worry that by legally contesting the 'proprietor' position of the Council, the Freemen could be taken to task and lose any potential goodwill (to no advantage).
- Unfortunately, the Oxford Freemen cannot expect to gain greater control over the land since the recording of registration under CRA 1965 has never been contested.

OoOOOoo

- Port Meadow was registered in 2010 by Oxford City Council – under the LRA 2002
- Freemen's grazing rights are registered under CRA 1965
- The grazing rights cannot be secondly registered under the LRA 2002
- Management of the Meadow is carried out by the City Council under the direction of the City Sheriff, the authorised Conservator – an office held since 1835.
- Meetings between the Sheriff and representatives of the Freemen are held at intervals
- There does not appear to be any provocation to support an action for legal estoppel.
- The Sheriff has indicated his willingness to inform the Freemen of events anticipated in advance of any further potential actions.
- It is imperative that Freemen in all towns and cities maintain a good rapport with their local authorities.

Alan Shelley, February 2012

THE FREEMEN'S RIGHTS IN PORT MEADOW

(From R.A.J.Earl)

With regard to Oxford, the Domesday Book (1086) records that *All the Burgesses have common pasture without the wall, which pays 6s 8d*. Historians are agreed that *Burgess* is synonymous with *Freeman*.

Ever since the Municipal Corporations Act of 1835, when the Freeman began to lose control of local government, there has been an argument about the ownership of Port Meadow. In the ensuing period, the opinions of many eminent lawyers were sought (*see below*) and these, without exception agreed that the City held the Meadow in trust for the Freeman, and that the Freeman were its beneficial owners.

The charter of Henry II, gave to Oxford "*all liberties, and customs and laws and quittances which they had in the time of King Henry, my grandfather, and especially their gild merchant, with all liberties and customs, in lands and in woods, pastures and other accessories and they are to have all other customs and liberties and laws of their own which they have in common with my citizens of London*". King John etc also confirmed this charter.

The problem was summed up in 1952 when Mr. Harry Plowman, the Town Clerk of Oxford wrote: "*Before the Municipal Reform Act, 1835, the electorate and the City Council were composed entirely of Freeman*". Therefore before this date the question of who owned Port Meadow was of no practical importance having regard to the identity of interests of the Freeman and the Council although it was only the latter body which was incorporated. The Act of 1835, in abolishing the rights and privileges of Freeman, expressly excepted any they possessed in respect of property so that in Oxford the effect of the exception was to preserve whatever rights the Freeman had in Port Meadow.

Ever since the Act of 1835 the question of the ownership of Port Meadow has been in dispute between the Council and the Freeman, the latter contending that the freehold of Port Meadow (with the exception of Weir Island which is not regarded as forming part of the Meadow) had always vested in the Freeman while the Council maintained that it, the sole corporate body concerned, could alone be the owner of the freehold of the Meadow.

In June 1840 the Council took the Opinion of Sir Frederick Pollock, of Counsel (who later became Lord Chief Baron of the Exchequer), on this point. His Opinion was that as the then Council represented the pre-1835 Council for all purposes, the freehold of the Meadow was vested in it but the beneficial enjoyment of the Meadow belonged to the Freeman.

There was a report in *Jackson's Oxford Journal* for October 9th 1841, of a decision by Revising Barristers on a claim by certain Freeman representing the whole body of Freeman, which at that time numbered 2500, to vote as freeholders by virtue of the alleged ownership of the freehold of the Meadow by the Freeman. This claim was dismissed, the Revising Barristers holding that the Meadow was the Council's corporate property, the Freeman's rights over it being in the nature of a license (or arrangement) which the Act of 1835 rendered irrevocable but did not raise into an estate.

In 1852 an attempt was made to clarify the whole position in relation to the Freeman by the promotion of a Bill in Parliament by the Council. There was, however, considerable opposition to this by the Freeman and the Bill was dropped.

Counsel's opinion was again taken by the Council in 1889 when Mr. J. Ashton Cross confirmed Sir Frederick's opinion that the fee simple of Port Meadow was vested in the Council; in support of his opinion he quoted judgements given as far back as 1561.

It is perhaps proper to mention that it is inconsistent with the Council's contention, that Section XIV of the Buckinghamshire Railways Act, 1850, which authorized a railway company to purchase parts of Port Meadow, should recite that 'the line of the said intended Railway will pass over the Port or Town Meadow of the City of Oxford which is part of the ancient possessions of the Freeman of Oxford, subject to certain rights thereon ...'. The proceeds of the sale were to be used for Freeman's children and the purchase money was to be paid to 'the Treasurer of the said City', who, however, had to deal with it as directed by the Freeman's Committee. The section provided that any land purchased for the purpose mentioned (namely the school) 'shall be conveyed to the Mayor, Aldermen and Citizens of Oxford who shall hold the same (as bare trustees) in trust for the Freeman of the said City and to be disposed of from time to time as the said Freeman shall in Common Hall direct ...'. The reference to the Council holding as bare Trustees in Trust for the Freeman has given rise to a mistaken impression among some of them that it relates to the Council's tenure of Port Meadow itself and the loose drafting of some of the recitals (for which of course this being a private Act the Council was in no way responsible) can for what it is worth be prayed in aid by the Freeman in support of their view about their rights in Port Meadow'.

But see the paragraph below about the Port Meadow (Oxford) Act, 1853.

Despite this statement by their former Town Clerk, who was also a respected lawyer, and the legal opinions given by learned Counsel (for which also see below) the present City Council is, it seems, reluctant to accept that the Freeman are the beneficial owners of the Meadow.

On the other hand, the Freeman's General Committee, judging from reports of early Common Halls and of correspondence etc., has never deviated from the contention that the Freeman are, at the very least, the beneficial owners of Port Meadow. However, supported by the opinion of Mr Charles Sparrow QC, there are some who are fully convinced that the City Council only holds the Meadow as bare Trustees in trust for the Freeman.

In addition to the Counsel's Opinions obtained in 1840 and 1889, and the report of the Revising Barristers, other opinions were obtained in 1967 and 1981.

R.A.J. Earl

Commons Registration Act, 1965

Miscellaneous Committee Minutes Re Port Meadow Oxford

30 November 1967

The City Solicitor had obtained Counsel's Opinion from Mr D.H. Mervyn Davies regarding the ownership of Port Meadow. Mr Davies had advised that the owner of the Meadow was the City Corporation who held it in trust for and subject to the rights of the Freeman.

7 March 1968

It was decided to register, in accordance with the Commons Registration Act, 1965 (CRA 1965) only the Freeman's beneficial rights in Port Meadow and Wolvercote Common, for the Oxford Freeman as a body.

14 November 1968

The Freeman's rights, as a body, had been registered, as required by the CRA 1965 on 11 July 1968.

7 February 1972

The Chairman and the Hon. Secretary had met the Town Clerk about the Freeman's fishing rights. The Town Clerk had said that as the Freeman had registered, under the CRA 1965, they only had the right to fish from the banks of Port Meadow, they had lost the right to fish elsewhere.

18 October 1972

The Hon. Secretary, R.A.J. Earl, had objected to two registrations made for Port Meadow and Wolvercote Common under the CRA 1965. As a result, one registration had been withdrawn.

14 October 1973

The Hon. Secretary had objected to a registration made under the CRA 1965 by a Mr Tollett of Wolvercote. As a result, Mr Tollett had reduced his application for 700 animals to two animals.

4 December 1974

The Hon. Secretary expressed his concern about the way in which Oxford Freeman's rights in Port Meadow had been registered under the CRA 1965. The rights had been registered in the names of individual Freeman and he feared that those Freeman whose names did not appear on the list would have no rights. The Commons Commissioners were to be asked if the Freeman's rights had been registered as a body – as the Town Clerk had agreed to do at the time of the registration.

5 March 1975

The City Solicitor, Mr Nixon, was of the opinion that the rights of future Freeman, where Port Meadow was concerned, were covered by the registrations made under the CRA 1965.

12 November 1975

The City Solicitor had suggested that the Freeman admitted after the closing of the Commons Registration list would have no grazing rights.

25 May 1977

The Hon. Secretary had obtained a photocopy of our application for registration under the CRA 1965 and it showed that we had deemed ourselves to be a body corporate for the purpose of holding the rights.

27 April 1978

It was thought that the registration of the Freeman's rights in 1968 had been unnecessary (and were invalid) because the rights had been given by Royal Charter.

18 June 1986

The County Solicitor had heard from Counsel who said that people with registered grazing rights could let them by deed. This meant that as far as Wolvercote people were concerned, only those on the register (CRA 1965 register) could let their rights.

29 January 1987

A letter had been received from the City Secretary & Solicitor which said that as a result of the CRA 1965, he considered the City to be the beneficial owner of Port Meadow. It was suggested to him that an independent Counsel's Opinion be obtained.

R.A.J. Earl

Land Registration Act 2002 (Entry for Title ON293757)

A Letter from Stephen Ewens of HMG Law LLP, Solicitors on behalf of the Freeman, dated 9 Sept. 2011 addressed to J Franklin, Legal & Democratic Services, Oxford City Council.

Refers to an unwritten convention between the Freeman and the City Council, that nothing would be done as regards Port Meadow without consultation with the Freeman of the City Of Oxford. This had been crystallised by a change in the constitution understood to have been initiated by former Sheriff Colin Cook in April or May 2011, to the effect that in future there would be consultations with the Freeman. This is believed to have been confirmed by Councillor Susanne Pressel to have been included in the constitution. It is proposed (by HMG) that an agreed notice be filed – Form N, as follows:

"No disposition of the registered estate by the Proprietor is to be registered without a written Consent signed by the Freeman of the City of Oxford or their Conveyancer"

Variously received by email from Alan Fallows and recorded by Alan Shelley November 2013.

Port Meadow and Wolvercote Common

Commons grazing and 'double registration'? *Rights in Vicinage*

19 May 2016 Email from Howard Crapper to AS

Dear Alan, there has been the suggestion from Wolvercote Commoners that with the two Commons abutting each other that double registration could double the number of grazing rights allowed. The two Commons being Port Meadow and Wolvercote Common – divided by a single dry ditch which the animals cross to and forth with ease.

Howard. NB Julian Munby is a respected historian and good friend of Port Meadow.

Re attached Email of 18 May 2016 from Julian Munby to Howard Crapper, Simon Lowry and others. Dear All, following on from Simon's suggestion, I finally got to the Law Library today and looked at a number of textbooks on commons, on the subject of double registration of grazing rights (all occurring in discussions of grazing on neighbouring commons by right of vicinage). The attachment gives the relevant pages from: -

Honey & Cousins, *Gadsden on Commons* (2012)

Paul Clayden, *Our Common: The Law and History ...*(2003)

Ubhi & Denver-Green, *Law of Commons and of Town and Village Greens* (2006)

On my reading of Gadsden [3-92] it would seem that duplicate registration of Rights in Vicinage (RiV) was actually encouraged by the Commissioners, but not applied consistently nor recorded as any different kind of right. In 1975 Commissioner Settle found that RiV were not a right *in rem* and therefore were not registerable. G. concludes that "the registers are inconsistent in the registration of vicinage, and that their presence, unidentified in some cases, requires investigation behind the registers to ascertain the true nature of registered rights."

Clayden [2.7] points out that a different finding for the New Forest (which is exempt from registration) "did not overturn Settles view".

Ubhi & Denver [4.3.3] doubt that RiV should have been registered, while recognising that registration was inconsistently applied.

These report a consistent view of the law, and none of this would appear to give any comfort to those exercising duplicate rights by doubling their grazing numbers, and there is no trace in what I have seen of acceptance of the double registration as to producing double grazing rights.

As I have previously suggested, the logical position is either that the double registration of RiV (as instructed in the 1960s) does not lead to any doubling of grazing numbers; *or* if double registration was effective in creating full rights, then those graziers should therefore quadruple their grazing numbers, as registration would produce complementary rights of vicinage on the other common – which is patently absurd.

It is absolutely clear what happened on Port Meadow and Wolvercote Common that Rights in Vicinage were registered by double registration, as participants have reported. Accordingly graziers, while freely enjoying their RiV grazing should refrain from exercising double rights because they do not have separate full rights on each common.

What remedy exists under the 2006 Act to clarify the matter in the Register, I have not investigated, and if there is no means of annotating the Register to record rights as being merely RiV, then it may be that mutual de-registration is the only option. More research required!

As far as the Management Plan is concerned, I think it can state as a matter of fact that the double registration was RiV (acting under instruction) and it was never the intention that these should be interpreted as creating any duplication of grazing rights.

Now that I have consulted the textbooks, any further legal update since 2012 would be welcome. Yrs Julian.

Julian Munby 26 Oakthorpe Road, Oxford OX2 7BE 01865 558802 jtmunby@gmail.com

AS to Howard C., 19 May 2016

These circumstances are unusual and very difficult to resolve (morally and financially). I would not expect any changes re RiV to be acceptable for a 'favourable' change to the 1969 registration under 'changes permissible through the 2006 Commons Act.

If the registration authority is happy to allow the original record to remain, I would assume this to be the better course of action. Deregulation could possibly result in your payments being severely reduced.

The origins of the RiV would have been in the discussions (to register commons) by the 1958 Commission when 'intercommoning' was being considered. I can fully understand how commoners of Wolvercote would also have had rights of vicinage over Port Meadow. This was probably managed by the Freeman's Hayward in yesteryears.

Unfortunately, and this was the case with most registrations throughout the country under the 1965 Registration Act, inaccurate registration of animals and of grazing rights were accepted. If they were not disputed – leading to a rather lackadaisical procedure. All undisputed entry's were fixed at the 'cut-off' date (early 1970s).

A decision made by the Commons Commissioner 12 January 1976 clearly advises that 'a right holder of common of pasture over Wolvercote Common is entitled to a right over Port Meadow – "which is the subject of this registration" Reference is made in 1850 to "the common meadow or common ground called Portmeade and Wolvercott". An earlier reference in 1649 stated that rights only applied to common of pasture by reason of vicinage and any desire [by Oxford] to enclose the land, would be "hindered by the inhabitants of Wolvercott".

I believe there is a clause in Section 27 of the Oxfordshire Act 1985 [about Freeman's rights in gross, subject to those on the Freeman's Roll?]. Rights would [in consequence] be retained in perpetuity.

Many householders of Wolvercote registered rights 1965 – 1972 to holding more rights than the Freemen. The 'whole' being treated as 'one meadow (*Crossley 1979*). The CRA quantified the animals grazing and not their management. 30 licences per year to non freemen and up to 30 licences to Wolvercote people. Freemen and Commoners receiving payments appropriately.

Single Payment Scheme (Rural Payments Agency) Ref 'Commons with more eligible area to allocate' – Both Port Meadow (CL1) and Wolvercote (CL2) have, for the past 10 years had 'more area to allocate'. A claim form can apply to receive SPS entitlements that should have been received in the years from 2009 to 2014.

Viewpoint – With Port Meadow and Wolvercote Common being contiguous, it causes a problem of apparent undergrazing of the rights registered. This in turn suggests (incorrectly) eligibility for payments outstanding – I think!!?

Howard, I don't know if this is useful to you but it is a difficult one to advise your combined actions. Best wishes, Alan

20 May Email from Howard C to AS

Dear Alan, really appreciate your depth reply. I do have a problem though in understanding your concluding Viewpoint. I would like to respond to Julian Munby in a constructive way and supporting the Freemen. I don't want to leave a crack of daylight from which the Commoners can come back at me. Howard

20 May, AS reply to HC

Howard, I am in the dark as far as knowing how the freemen registered their rights [words recorded in the register] over Port meadow. If we assume that only the Wolvercote Commoners double registered by way of RiV, then Julian (who is clearly in the picture and able to advise locally) is the best man to take it further.

The graziers are not entitled to double registered rights but can of course graze all the land under rights of vicinage. You will need to check your registration (of the freemen's rights) and maybe, both of you together, visit the City Hall where I assume the registers are maintained.

Although I am not surprised that this has happened it does not cause a problem unless you are claiming payments on a management plan that is exaggerating use-age of rights. If the registrar at City Hall cannot correct or add an explanation to the registration (correction to registers under 2006 Act) then you will need a joint discussion with Julian and co on how to proceed. Alan S.

NOTES

Port Meadow CL1 = 325 acres/ 132 ha

Wolvercote CL2 = 75 acres/ 30 ha

Right in Vicinage – The produce of letting grazing land or common pasture rights out for use of other peoples animals. The right of commoners on contiguous unfenced commons to allow animals to stray over the boundary without facing a penalty. Common right – *pur cause de vicinage*.

See also undated extract, 'Management History' [Oxford] 1985 by Alison W. McDonald

Intercommoning at Oxford

Management History of Port Meadow and Wolvercote Common

Undated extract on common pastures by A.W. McDonald

[In the distant past] Oxford Freemen shared grazing rights with the commoners or manorial tenants of Wolvercote, Binsey and Medley (whose rights were attached to their arable land).

Managing or stinting the grazing rights was at first very simple. Each Oxford freeman was allowed one beast and Wolvercote commoners were restricted to one beast per yardland. In the 14th century when the population probably declined significantly, stinting may have lapsed. It would have been revived in the 15th century, when the growth of the wool industry increased the value of pasture for sheep grazing. Quarrels over rights to graze over rights involved freemen and commoners. This smouldered until, in 1562, an Intercommoning Agreement was arrived at and signed by the Lord of the Manor of Wolvercote and the Mayor of Oxford (*Turner 1880*).

By 1569 there were between 400 and 450 freemen and the regulation of stints became very sophisticated. Eight beasts to the Mayor down to one beast to each of the common freemen – on condition that owners had somewhere to keep their animals over winter. Three or four 'drives' (roundups) per year ensured that there were no illegal or diseased animals on the pasture. The Corporation Act 1832 [5] reduced the Freemen's dominion over Oxford and the system broke down.

By 1972 the Freemen's grazing rights were registered, under the Commons Registration Act 1965, as part of those of the Freemen body and so would lapse when individual freemen died. The Freemen of Oxford remedied this anomaly by inserting a Clause in Section 27 of the Oxfordshire Act 1985. The clause enabled the Freemen's grazing rights to be retained in perpetuity.

Oxfordshire Act 1985 p30 cxyiv part VI.

The above transcribed by AS in conjunction with discussions regarding 'Rights in Vicinage' by Commoners of Wolvercote.

Alan Shelley, May 2016.