

Land Registry Title Nos HE 47188, HE47092

Property: Garway Common, Garway Hill Common, Black House  
Common, Broad Oak Common

## Statement of Objections by Garway Parish Council

concerning

the application for First Registration of Freehold

by James Alexander Delacour de la Billiere

## Statement of Objections from Garway Parish Council

Garway Parish Council objects to the application for First Registration by James Alexander Delacour de la Billiere. For brevity, we refer to him in this document as "the claimant" and "the applicant" according to the context.

Garway Parish Council is the elected first tier local authority for the civil parish of Garway. The lands named in the application lie within the parish of Garway. References in this document to "the Parish Council", "the Council" "we" and "us" mean Garway Parish Council.

### Summary of our objections

1. Our most fundamental objection to the application is that we assert that Garway Parish Council is the owner of the land of Garway Common, Broad Oak Common and Garway Hill Common and that we have acquired this ownership through adverse possession over a period of 52 years unchallenged . This renders the claimant's case for ownership set out through examination of historical documentation irrelevant
2. We also assert that the historical evidence amassed by the claimant to prove ownership of the common land in question does not prove his case. We offer additional historical evidence, supplemental to that submitted by the claimant, which contradicts the basis of his contention of ownership of any of the common land or manorial waste land he claims.

We also have two further technical objections to the form of the application

3. The area of common land claimed by the applicant as shown on the maps supplied to support the application includes some land and property presently in private ownership by third parties. This is attested by deeds in the possession of the third party freehold owners.
4. There are inconsistencies in the boundaries of the common land in question indicated on the claimant maps as other official documents show different areas and there are even some inconsistencies between official maps from different sources. This may be an objection which can be overcome by some clarity and direction about what constitutes the definitive map, or maps, of the claim.

On the following pages we will present a detailed explanation of the reasons behind each of these objections.

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## Objection 1:

### Garway Parish Council owns the Common land through adverse possession

Since 1960 Garway Parish Council has been the acknowledged owner of the Common land which forms the substance of the claimant's application. From that year to the present date it has continually performed the actions appropriate to ownership and asserted its ownership publicly on many occasions. It has maintained this position without challenge from any person, corporate body or public authority and has done so without reference to or permission from any prior or present putative owner. Parish Council ownership of the common land has been acknowledged by public utilities, a Commons Commissioner, planning authorities, many other bodies and the public at large. The period of the Parish Council's asserted ownership presently stands at 52 years.

The Parish Council continues to maintain the land and regulate the use of the Commons with due regard to the public right of access and the rights of Commoners. This has required significant administration and expenditure over the years. The Parish Council's ownership enjoys widespread public support.

Our claim for ownership by adverse possession is not specific to a rebuttal of the de la Billiere application for First Registration. We would make this objection against any applicant who would appear in the future. We assert our ownership against any alternative claim by any person known or unknown.

We will now give a more detailed account of evidence relating to the above .

#### A brief historical review of Parish Council ownership

The Parish Council's ownership of the Commons has its origins in 1958. In that year the Midland Electricity Board (MEB) were surveying near Garway in order to bring an electricity supply into the White Rocks area of Garway Hill, which had previously been without supply. The proposed route for the supply was over the common land on Garway Hill. MEB attempted to discover the ownership of the land and could find no trace of an owner. They then approached the Parish Council to see if it was able to grant permission for the erection of poles, etc. The Parish Council made its own enquiries through the local and wider community to see if it could trace an owner and it also was unable to find one. In order to facilitate the delivery of electricity to the parish the Parish Council agreed to issue a way-leave to MEB. The line was duly constructed and in 1960 the Parish Council began receiving way-leave payments from MEB<sup>1</sup>. These continue from the MEB's successors today<sup>2</sup>.

From that starting point the Parish Council has continued to assert publicly its ownership of the common land in the parish.

In the 1960's with the introduction of the Commons Registration Act 1965 the Parish Council entered a claim of ownership of the common land in the newly-created Commons Register. The process also defined the boundaries of the common land. As was required by the Act, the ownership claim,

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<sup>1</sup> This sequence of events is recounted in recorded evidence given to the Commons Commissioner re Garway Hill Common in 1977

<sup>2</sup> Western Power Distribution. Please see the note at the end of this section (page 9) about our wayleave payments and the claimant's present attempts to subvert these.

together with any claims for rights in common submitted by commoners, was subject to examination by a Commons Commissioner. This examination was in the form of local public evidential hearings before the Commissioner, who subsequently produced a statement of his Decision on the matters before him.

In respect of common land at Garway Common (Register Unit CL118) this process took place in 1974 before Commons Commissioner A. A. Baden Fuller.

- In his Decision the Commissioner found that there was no-one alive who would attest to any alternative ownership of the common at the time. The possibility of ownership by the claimant's ancestor Mrs Lawley<sup>3</sup> was considered, but rejected on the evidence of those present and the passage of time.
- He observed that the evidence showed that *"over the years the Parish Council had been much concerned with the Unit Land"*
- He noted: *"In my opinion, no useful purpose would be served by any further enquiry into the possible ownership by Mrs Lawley or her successors... The information given by Mr Nuttall<sup>4</sup> as outlined above indicates that the Parish Council have reasonable grounds for claiming ownership, and they need not I think incur the expense of formally proving either that the title of Mrs Lawley has been extinguished under the Limitation Act 1939<sup>5</sup>, or that they have possessory title. For these reasons I confirm the registration [of Parish Council ownership] without any modification."*

So having considered the evidence before him, and there being no contradictory evidence offered, the Commissioner in his Decision note dated 18 December 1974<sup>6</sup> concurred in the ownership of the common land by Garway Parish Council. This ownership was entered in the Commons Register and made final.

There was a similar Decision from the same Commons Commissioner in respect of Garway Hill Common On 5 April 1977. The evidential sessions prior to the Decision once again considered the application made by Garway Parish Council in 1968 to be placed on the Register as owner of this land. The Decision<sup>7</sup> granted this and the ownership of Garway Hill Common was duly entered in the Commons Register in the name of Garway Parish Council and made final. This was on the basis (inter alia) of the following :

- The Commissioner heard evidence about the Midland Electricity Board request in 1958 and the lack of an owner to grant their way-leave.

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<sup>3</sup> Mrs Lawley was the present claimant's great grandmother who had exercised the privileges of Lady of the Manor during the 1920s and 1930s. In our Objection 2 which follows, we examine the historical record and demonstrate through recent research that although the manorial title was exercised, she did not claim ownership of the common.

<sup>4</sup> Parish Council Clerk at the time

<sup>5</sup> Superseded now by the Limitation Act 1980 which has the same effect, and some of the provisions of the Land Registry Act 2002

<sup>6</sup> See our evidence PC 01

<sup>7</sup> See our evidence PC 02. The full decision is 23 pages long and concerns itself largely with commoners' rights. The ownership question is addressed on pages 2 and 3

- He also heard evidence that the Parish Council did not involve itself with matters concerning Commoners' Rights. Commoners were allowed to organise themselves and deal with matters of grazing, etc. There was a Commoners Association in existence to deal with this.
- Evidence was heard that a Commoners Association meeting in 1971 discussed the ownership question and there was a difference of opinion expressed within the Association about whether the members should apply individually for ownership, but the majority favoured ownership by the Parish Council.
- Evidence was heard that the Parish Council intervened when a radio mast was proposed to be built at the top of Garway Hill for Fire and Ambulance communications. The Council organised a public meeting in its asserted role as owner. This was instrumental in ensuring the mast was not built on common land but to one side of the Common.
- Further consideration was given to the possibility of a claim by Mrs Lawley, but was again rejected in the light of all evidence before the hearing.
- Having heard this and a variety of additional evidence the Commissioner in his Decision notice made observations about the then recent history of ownership on Garway Hill Common. It is worth quoting in full:
- *"The ownership application made by the Parish Council under the 1965 Act in 1967 was to some extent wishful thinking, but they were then in possession (subject to the rights of the commoners) being then in receipt of the way-leave rent. Ever since 1968<sup>8</sup> they have received this profit. The approach made by the Police and Ambulance people about the radio mast and the subsequent summoning of a parish meeting to discuss it, is some evidence of reputed ownership. The wooden poles of the MEB are in prominent positions. I consider the description of the Commoners meeting given me by Mr Whistance to be more reliable than that of Mr Edgar Benjamin; in my opinion nothing happened at that meeting which seriously called in question the then reputed ownership of the Parish Council."*
- *"My conclusion is that the Parish Council is now in possession in circumstances which make it practically certain that such possession will not be disturbed; such possession is equivalent to ownership and I can I think reflect it back to the date on which the ownership registration was made<sup>9</sup>."*

This statement by the Commons Commissioner represents a full unqualified acknowledgement by learned counsel, having sight of and sound of evidence pertaining to the facts, that from 1977 onwards Garway Parish Council was in possession of the land of Garway Hill Common and was the legal owner.

Until the recent appearance of the claimant this possession and ownership has remained unchallenged.

As the claimant's basis of claim is the same for all the Commons in question, by extension of the Commissioner's remarks and conclusions we will show that the Parish Council's present possession of all the common land can be demonstrated by the following:

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<sup>8</sup> Probably a typographical error. This should read 1960 in accordance with the evidence given earlier, which can be confirmed by the Parish Council accounts which show the earlier receipt of payments from MEB.

<sup>9</sup> 1967

A sample list of actions by the Parish Council which demonstrate factual possession and the intention to possess<sup>10</sup>

A: Garway Hill Common

- As noted above, the issuing of way-leaves to MEB et al from 1960 onwards.
- As noted above, the public consultations about the proposal to place a wireless mast on the Common and the actions taken to prevent this.
- As noted above, the statement of ownership submitted under the Commons Registration Act.
- In the 1970s permission was granted by the Parish Council to residents at White Rocks to install a pipeline across the Common to introduce mains water into the area for the first time.
- Signs<sup>11</sup> have been placed by the Parish Council at the entrances to Garway Hill Common stating restrictions such as "prohibiting the use of motor vehicles , etc "by order of Garway Parish Council"
- In 2007 The Garway Hill Commoners Association approached the Parish Council requiring the co-signature of the owner of the Common to make an application for Higher Level Stewardship funding from central government in respect of Garway Hill Common. We supported this application and provided the required signature as owner. This has permitted the complete re-fencing and hedging of the perimeter of the hill common to stock-proof standard and with clearly marked public access points and environmental information boards. This work is ongoing.
- In 2012 the Parish Council authorised and co-organised the Queen's Diamond Jubilee beacon and associated celebrations with Garway Hill Commoners' Association. Costs were shared.

B: Garway Common

- Additional way leave agreements were signed with MEB for electrical lines on Garway Common
- A children's play area was created in 2002 by the Parish Council in one corner of the common with swings and other equipment. This was achieved with the help of a grant from the Countryside Agency<sup>12</sup>. The Parish Council continues to take responsibility for ongoing maintenance of this and other running costs (e.g. liability insurance) and the installation is inspected regularly by ROSPA<sup>13</sup>
- Trees have been planted on the common at Parish Council expense and the health of existing trees maintained

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<sup>10</sup> We are guided in framing this objection by Land Registry Practice Guide 5 on Adverse Possession and in particular the reference to *Powell v McFarlane*, in which Slade J said: "I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so."

<sup>11</sup> Our evidence PC 03 shows examples of these signs

<sup>12</sup> The Countryside Agency is now merged into Natural England, a non-departmental body of the UK Government responsible for the protection and improvement of the natural environment.

<sup>13</sup> The Royal Society for the Prevention of Accidents

- Public seating has been erected by the Parish Council on the common
- A bus shelter has been erected by the Parish Council on the verge of the common
- Signs have been placed on Garway Common stating restrictions, e.g. "No camping, No Tipping by order of Garway Parish Council"
- In 2000 the Parish Council took action against encroachments on the common.
- In 2004 the Parish Council placed a caution on the Land Register against First Registration on the basis of its asserted ownership.
- The grass surface of the Common closest to the centre of the village has been mown regularly throughout summer every year for decades to provide a flat open space suitable for public recreation. In the 1990s the Parish Council paid a contribution as owner of the land to the Garway Sports Club Committee who shared the mowing expense. In more recent years the Parish Council has fully met the expense on its own as a service to the community. The open space has been used with the approval of the Parish Council for cricket, croquet, organised junior football and other ad hoc games and sports. It is also the venue for the annual Garway Fun Day event organised and funded by the Parish Council.
- Other parts of the Common are mowed less frequently with a view to nature conservation, with different habitats being maintained. The common is home to pyramid orchids and is noted as one of the most bio-diverse Commons in Herefordshire.

#### C. Broad Oak Common

- This small isolated patch of scrubland has little amenity value but the Parish Council has asserted its ownership alongside the two other Commons on many occasions.
- Despite the lack of amenity value, the common is mown several times each year at the expense of the Parish Council to avoid it becoming an overgrown tangle.
- Additional way leave agreements were signed with MEB for electrical lines on this land.

#### D. Applicable to all Commons

In 1992 the Council passed a series of byelaws relating to the Common land in its ownership<sup>14</sup>.

In addition there have been many meetings of the Parish Council held in public over the past half century where the Council's ownership of common land in the parish has been explicitly referred to or implicitly understood and many occasions when matters relating to the common land have been brought before the Council by residents for the Council's consideration as owner in possession.

In contrast, the claimant presents no evidence of his factual possession of the common land since our intervention in 1958 and perhaps inadvertently supports our case under the Limitation Act by presenting evidence that he or his immediate family were unaware of even the possibility of his

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<sup>14</sup> Our evidence PC 04 shows the Byelaws for Garway Common

ownership until 1987<sup>15</sup> and did not consider beginning research into the matter until sometime after 1989<sup>16</sup> when the prospect of financial gain was suggested.

We have demonstrated that no one other than ourselves, including the claimant or his predecessors, has performed any action consistent with ownership at any time between 1958 and the present. We will further demonstrate with reference to historical documentation that there is no evidence to support ownership by the claimant's predecessors for an even longer period prior to this. There is instead evidence of denial of ownership by the claimant's predecessor Mrs Lawley in 1944. We will introduce this under our Objection 2 later in our Statement.

We, the Parish Council, are the acknowledged owners of the Commons and such acknowledgement has come over an extended period of time from a wide variety of sources, some of which are listed below:

- Midland Electricity Board and its successor Western Power Distribution. Our original way leave agreements are dated 1960. We entered into additional agreements in 1967 and 1992 as the local electricity network was expanded.
- Commons Commissioner A.A. Baden Fuller in 1977 formally acknowledged our ownership.
- Garway residents. In particular, one former resident was granted permission to plant a memorial tree on Garway Common and makes a voluntary contribution of £100 annually to maintain the common in memory of her mother.
- Garway Hill Commoners Association. There is a history of meetings where the Commoners have sought the views of the Council as owner of the Common over administration and change affecting the Common, and in light of the present challenge, on 30 October 2012 the executive Management Committee of the Association passed unanimously a resolution supporting the Parish Council's continued ownership of the Commons.
- The Parish Council obtained approval from Defra for the construction of the playground in 2002 and an acknowledgement that the Council was the owner of the Common. The grant made by the Countryside Agency was awarded on that basis.
- When an underground gas pipeline was being laid in the vicinity the contractors sought and were granted permission by the Parish Council as owner to temporarily store equipment and pipeline parts on the Common.
- In 2006 a planning application by the Parish Council to build a new Parish Hall on the Common was opposed. The matter went to adjudication by the Secretary of State. Although the Parish Council had its application refused the adjudicator indicated that the right of the Parish Council to bring forward its application as owner of the common was not in doubt<sup>17</sup>.

The foregoing lists of examples are neither an exhaustive record of the Parish Council's actions which establish its possession of the commons nor a full list of outside acknowledgements of its ownership but it is intended to be sufficient to prove the reality of Parish Council ownership. If more information is required it can be supplied.

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<sup>15</sup> Claimant's evidence, Letter from Mr Hillyer to Sir Peter de la Billiere, 9 April 1987

<sup>16</sup> Claimant's evidence, Letter from Sir Peter de la Billiere to his brother, 14 August 1989

<sup>17</sup> It is also notable that one of the objectors was Sir Peter de la Billiere with representation by Mr Harris his solicitor. During the evidence sessions which they attended they did not formally challenge the Parish Council's ownership of the Common, but made their objections on other grounds. There is no reference to a challenge to ownership in the Adjudication.

As the land in question is common land, with attendant rights of public access and overriding rights in common, fencing and enclosing all of every boundary to demonstrate the extent of ownership is neither feasible nor desirable. In the case of Garway Common in particular, the fact that it is open to entry on all sides is part of its character and as owners we have not sought to change this. However the physical boundaries of our ownership are clearly delineated and demonstrated in the statutory maps of the Commons held with the Commons Register<sup>18</sup>. This fact is understood by everyone who has acknowledged our ownership and the public at large.

**On the basis of the foregoing information we submit that Garway Parish Council has established the freehold ownership of the common land which forms the substance of the claimant's application and that his application for First Registration should be refused on that basis.**

Subject to your agreement on this point we intend to bring forward our own application for First Registration of the commons in due course.

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Addendum Note about recent Western Power Distribution wayleave payments

As we were finalising this objection document we realised that there were some recent payments missing which were due to the Parish Council from Western Power Distribution, the successor to the Midland Electricity Board, in respect of wayleaves over our common land. When we queried this with WPD we were shocked to discover that the claimant, through his lawyer Mr Harris in 2011 and 2012, had made unsubstantiated representations to WPD that he was now the owner of the common land and that wayleave payments should in future be made to him. WPD accepted these representations at face value without cross-checking or reference to us (seemingly because it was done on the word of a solicitor) and have been making payments to the claimant. As a result of our enquiry WPD have provided us with copies of the claimant's wayleave agreements dated 30 August 2011 and 7 February 2012 and have admitted with some embarrassment that they have already remitted to the claimant back payments to 2006 amounting to some £1,400, notwithstanding the fact that much of this amount has already been paid to the Parish Council for the same period.

WPD now admit this was an error on their part and wish to make it good. In a letter to us dated 18 October 2012 Mrs Rebecca Harding, a member of WPD Wayleaves Records Team writes, "I have applied a stop to the Wayleaves paid to Lt. Col. De Billiere and reinstated the consents paid to Garway Parish Council until Edward Harris can provide Land Registry documents to the contrary." WPD have since indicated that they will remit in full all missing sums due to the Parish Council.

Notwithstanding the claimant's questionable attempts to subvert the payments made by WPD to the Parish Council, once WPD became aware of the full facts they made it clear to us that they recognise Garway Parish Council as the present rightful owner and will continue to do so until such time as the Land Registry may be persuaded to register an alternative owner.

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<sup>18</sup> LR Practice Guide 5 is helpful here: "Where the land was previously open ground, fencing is strong evidence of factual possession, but it is neither indispensable nor conclusive"

## Objection 2:

### The claimant's ownership claim drawn from historical evidence is incorrect

The basis of this objection is new evidence which contradicts the contention that the claimant has a right of ownership through inheritance.

We make this objection in the full realisation that if the claimant's application is rejected on the basis of our Objection 1 alone, all the historical evidence becomes irrelevant in respect of ownership of the common land. However this leaves the question of the "waste of the manor" and any manorial rights which the claimant may attempt to invoke if even partially successful in his application.

We also regard it as important that the public perception of the historical record should be "put straight" in the places where the claimant's research has led him to a wrong conclusion. Part of the claimant's version of events has been publicised and accepted by some local people. At first sight it is plausible, but when subjected to our detailed scrutiny and additional research, we will demonstrate that a rather different picture emerges.

If our assertion of ownership in Objection 1 is found to be in any way flawed, this Objection 2 shows **that even if we are held not to own the land in question, our evidence demonstrates that the claimant does not own it either.**

To set our objection in context, we paraphrase the claimant's version of events in his case for ownership as follows: He has deduced that his great grandfather Arthur Lawley purchased the Garway Estate and Manor in 1920 and died suddenly, just 2 days after completion of purchase. Ownership then passed to his great-grandmother Elizabeth Lawley who sold everything in the Estate except the manorial title and the common land and waste of the Manor. These then passed by inheritance and other forms of legal transfer to him and as a result he is now the Lord of the Manor and owner of the land in question. It is on this basis that he claims the right to make a First Registration of the freehold interest in the land.

For this argument to succeed the claimant needs to be able to establish that:

- a) Arthur Lawley's purchase included the land in question
- b) Ownership was transferred to Elizabeth Lawley
- c) Elizabeth Lawley owned the manorial title and land in question at the time of her death
- d) Elizabeth Lawley's Will was able to transfer the manorial title and land in such a way that they have become the claimant's property today.

We also note that, being the applicant in this case for a change to the Land Register, the burden of acceptable proof lies with the claimant.

We will show, in our revised historical analysis that :

**1) It is unsafe to assume that the common land was transferred in the 1920 sale to Arthur Lawley**

- 2) If it was so transferred, Mrs Lawley could have sold it in 1921 to a property company**
- 3) In any event, in 1944 Mrs Lawley and her lawyer, who had assisted with the purchase and sale in 1920/21 are on record as saying that Mrs Lawley did not own the common land.**
- 4) In 1968 when Mrs Lawley died, she could not have legally transferred either land or title to anyone.**

### Introduction

The fundamental problem which the claimant has found it necessary to surmount is that the definitive documents - the deeds and paperwork of purchase which should have been in the possession of Mrs Lawley or her legal representatives - are nowhere to be found. Neither are there any family papers nor even old family stories to inform us about any past ownership in Garway by Mr or Mrs Lawley or what exactly was owned and when. Mrs Lawley's will is significantly silent on the matter of Garway. It was not until 1987 that the living members of the family were alerted about a historical connection to Garway and not until 1989 that they considered researching the facts. In the absence of any definitive documentary evidence from within the family, the claimant's case has had to be built by inference and supposition from a variety of external sources.

The claimant and his advisors have conducted extensive research into the public record to try to establish any facts helpful to his case. His interpretation and presentation of the evidence available to him may seem in isolation favourable to his cause, but the same evidence is also open to our alternative interpretation.

We do not deny the authenticity of any of the documents and transcripts presented by the claimant. We embrace them all, but have drawn different reasoned conclusions from them.

We support our alternative view with additional evidence from the historical record which the claimant either does not have, or has chosen to ignore. By reinterpreting the claimant's evidence in the light of our additional new evidence, we can show that the commons were not in the ownership of the claimants predecessors and could not therefore be passed down to the claimant in the manner he maintains.

The most significant new evidence we wish to present is a written denial in 1944 made by Mrs Lawley's solicitor, after consultation with Mrs Lawley, that she owned the commons of Garway. This is such a fundamental document that we wonder why it was apparently omitted from consideration by the claimant's researchers.

In order to fully understand all the nuances of this document, which is part of a sequence of letters, it needs to be seen both in historical context and in the context of the claimant's evidence. For this reason, instead of beginning with the letters directly we will start by examining Arthur Lawley's acquisition of Garway Manor in 1920.

The claimant concludes from his evidence that Arthur Lawley in 1919/20 bought the Garway Estate and manor from the descendents of Ambrose More O'Ferrall, who was the acknowledged Lord of the Manor of Garway between 1880 and 1911, with the intention of selling it off piecemeal. Mr

Lawley put it up for sale at auction in lots on 14 January 1920, which, they admit, was before he had completed his purchase. Documents show that completion was on 24 May 1920 but unfortunately Mr Lawley died 2 days later on 26 May 1920. Mr Lawley was initially believed to have died intestate, but shortly afterwards a will was found dated 1905. Mrs Lawley inherited her husband's property and began to finalise the sale of those properties disposed of at auction in late 1920. In 1921 she sold the remains of the estate and her remaining property in the area to a property company but - it is said - never disposed of the title or the common lands and waste of the manor.

We will now demonstrate that this narrative is incorrect in many details. It was not as simple or straightforward as that, and the discrepancies make the difference between ownership and non-ownership in the present day.

(a) Was the common land available for purchase in 1920?

The claimant's logic is: The More O'Ferrall descendants owned the estate and manor in 1920, therefore they owned the commons and waste. Arthur Lawley bought the estate and manor therefore Arthur Lawley acquired the commons and waste.

The fact is, no actual document of conveyance now exists which details explicitly what Arthur Lawley bought<sup>19</sup>. There is an Abstract of Title dated 24 May 1920<sup>20</sup> (the supposed date of completion<sup>21</sup>) which lists properties on the Garway Estate belonging to Arthur Lawley and a reference to "*All that Manor or Lordship of Garway...*" This document was much duplicated at the time and used to enable the sale of Garway Estate property in 1920/21 and we have found copies of it in the possession of many families in the area who today own the freehold of the sold properties. The Commons are not mentioned in the document, a fact which is acknowledged by the claimant.

To show that title to the common land must have passed to Arthur Lawley in 1920, the claimant relies on a provision of the Conveyancing Act 1881 which allows that "*conveyance of a Manor... shall be deemed to include and operate to convey with the manor... all wastes... commons... as part parcel and member thereof*". This provision was introduced into the Act as a result of some landowners' concerns that in times previous, imprecise conveyancing had resulted in the severance of commons and other features from landed estates. This was because, prior to the Act, anything of that nature which was not expressly conveyed, was not conveyed. After the Act things were less strict.

The Act came into effect on 1st January 1882 and meant that, after this date, it was no longer necessary to expressly convey commons and certain other features of manors. They were assumed to be conveyed if the manor was conveyed. This is the basis on which the claimant believes that

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<sup>19</sup> The claimant presents in his evidence a declaration by Mrs Lawley's personal solicitor James Ogden (he was her solicitor between 1950 and 1968) that any such documents and deeds were probably destroyed as a result of German bombing of Manchester in 1940. Mr Ogden however also states that he had no personal knowledge that such documents ever existed or that Mrs Lawley ever had them. He also says that during his personal and professional association with Mrs Lawley from 1950 to her death in 1968, which would have included the period when she drew up her will, there was no mention of her owning property or a manorial title at Garway. He remained in complete ignorance of Mrs Lawley's Garway connections, even as executor of her will, until Sir Peter de la Billiere told him what he had discovered about it in 2006.

<sup>20</sup> Presented in evidence by the claimant

<sup>21</sup> We will later demonstrate that this date is a convenient fiction arrived at by collusion between Mr Lawley's solicitors, the vendors and the estate stewards.

Arthur Lawley acquired the commons and waste when he acquired the manorial title, despite the lack of any express mention of them in the 1920 Abstract of Title.

However, this assumption requires that the features in question had not already become severed and were still "*part parcel and member thereof*" of the manor, so to demonstrate conclusively that they were available for purchase by Arthur Lawley the claimant needs to demonstrate they were still attached at the time of sale to him.

The claimant presents acceptable evidence that the commons were regarded as part of the manor up to 1858 while Lord Southwell was Lord of the Manor<sup>22</sup>, including a survey of the boundaries of the manor made for him in 1827<sup>23</sup>, but between 1858 and 1st January 1882 when the Conveyancing Act 1881 came into force there were two conveyances of the manor of Garway.

First, Lord Southwell conveyed the manor to Richard More O'Ferrall in 1860 through a marriage settlement entered into when O'Ferrall married Lord Southwell's daughter, and then there was a second conveyance in 1880 when Richard O'Ferrall died. He conveyed the manor to his son Ambrose More O'Ferrall in his will<sup>24</sup>. The claimant offers no evidence to show that the commons were explicitly transferred in either of these conveyances in the manner they would need to be before the Act of 1881. Neither does he offer any evidence of the commons being under the authority of the Lord of the Manor between 1858<sup>25</sup> and the sale of 1920.

At the Hereford County Archive we have seen a copy of an "Abstract of Settlements and Wills dealing with the Garway Estate of the Rt. Hon Richard More O'Ferrall". It is long, written in copperplate script and difficult to read, but there appears to be no explicit mention of commons or waste land contained in the conveyances of the Manor of Garway, although it goes into great detail about the specific properties and land holdings otherwise comprising the estate. If the commons were incorrectly conveyed or not conveyed either to or from Richard More O'Ferrall then they would no longer be the property of the Lord of the Manor to sell.

We make no absolute claim on this point at present, but neither does the claimant offer evidence to the contrary. The matter requires proof and the burden of proof is on the claimant.

**Consequently, our submission is that it is an unproved assumption made by the claimant that the ownership of the land in question was carried forward between the different historical Lords of the Manor up to 1920.**

Next, we turn to the events surrounding the sale and purchase of the Garway Estate and manor in 1920 and its subsequent piecemeal break-up and dispersal.

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<sup>22</sup> Edward Harris Statement of Explanation 3.3.14 and preceding examples

<sup>23</sup> Edward Harris Statement of Explanation pages 5 and 6

<sup>24</sup> A contemporary legal text *Scriven on Copyholds* (1896) notes on its page 5 that the need for express words prior to the 1881 Act applied also to transmission by will.

<sup>25</sup> Claimant's evidence: The last entry in the Garway Court Rolls quoted by Edward Harris in his Statement of Explanation as demonstrating explicit authority over the commons is in 1858 during Lord Southwell's tenure.

(b) The sale of Garway Estate to Arthur Lawley

We have new evidence that the sale process was not the straightforward but tragic affair presented in the claimant's narrative. Instead it was a confused and difficult process and the parties involved appear to have taken steps to render it opaque to outside scrutiny .

The Hereford County Records Office has a box file of correspondence which relates to the preparation and execution of the sale of the Garway Estate to Arthur Lawley. The claimant's advisers refer in evidence to some of this material<sup>26</sup>. The relevant letters span a period of about 10 months between November 1919 and August 1920. The letters are all addressed to Messrs. Vizard & Son, solicitors of Monmouth who were at that time stewards of the Garway Estate, which is to say the representatives of the Lord of the Manor who administered the estate for him. At the time of the correspondence they represented the Ambrose O'Ferrall descendants who were selling the estate. (Later it appears they were also retained at least for some time by the Lawleys to act as their stewards).

We will refer to this correspondence as "the Garway Sale Letters"

Since the claimant's researchers had access to all of these letters, it might be assumed they looked at all of them as we did. The claimant offers in his evidence the testimony of James Ogden, who was Mrs Lawley's solicitor, which makes reference to his being informed in 2006<sup>27</sup> about the "Vizard & Son collection at Hereford County Record Office" which "have only just been discovered". Our enquiries at the Record Office have confirmed that all the Vizard papers relating to the Garway Estate are held in the same container. To look at one would be to have access to all of them.

The correspondence shows only one side of the conversation. We see the letters sent to Vizard, but we do not see the replies sent back from Vizard. Nevertheless it is possible to make some deductions from what is available.

The first letter dated 13 November 1919<sup>28</sup> is from John D. Wood & Co, London Auctioneers and Valuers, who say they have Arthur Lawley as their client, who is buying the Garway Estate with intention to sell it. They ask for details of the Estate: "*What precisely does it consist of?*" and go on to say: "*Could you also when replying kindly define the rights of the commoners in respect of Garway Common, and the rights of the owner of the Garway Estate in the commons?*".

This second question seems to be phrased oddly if the owner of the Garway Estate was held also to be the owner of the commons. The claimant sees this as evidence of ownership by the O'Ferralls, but the inference can also be drawn that it was understood that the rights of the owner of the Garway Estate fell short of a freehold interest in the commons "in fee simple".

At best the question is ambiguous and does not do much for us to resolve the ownership situation at that time. We cannot know what the answer to the question was, only that John D. Wood & Co were informed of the facts. We will show the significance of this later.

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<sup>26</sup> Claimant's evidence, Edward Harris Statement of Explanation para. 9.1.2

<sup>27</sup> Statutory Declaration of James Herbert Ogden, 20 March 2006, paras. 3 and 5.4

<sup>28</sup> Our evidence, PC 05

Vizard's reply is not recorded but the information requested was evidently communicated quickly as a second letter from Wood dated 18th November 1919 begins "*We beg to thank you for your letter of 17th inst., which give (sic) us just the information we want.*" and requests information about copyholds on the estate<sup>29</sup>. Without details of the "*information*" this does not yet advance our understanding of ownership. After this letter Wood pushed ahead with his preparation for Mr Lawley's auction sale which was set for 14 January 1920.

On 24th November 1919 Vizard received a letter from Boote Edgar, Grace & Rylands, Arthur Lawley's Manchester-based solicitors raising a problem they perceive about the ownership of some copyhold portions of the estate<sup>30</sup>.

Again the Vizard reply is not recorded but we then have a letter<sup>31</sup> to Vizard from Arthur O'Hagan & Son, who were the Dublin-based solicitors for the O'Ferrall vendors. This is dated 2 December 1919 and it reveals the nature of the problem. It seems that when the transfer of ownership of the Garway Estate occurred between Richard More O'Ferrall and his son Ambrose in 1880 the proper procedure was not followed and certain entries were not made in the court rolls of the manor as they should have been. The effect of this was to cast doubt on whether parts of the estate were within the power of the O'Ferrall vendors to sell.

So what we have here to begin with is the first sight of a problem of past conveyance in connection with the Garway property.

Evidently this problem was not an easy one to resolve as it then resulted in a flurry of correspondence between the parties, with counsel's opinion being sought on both sides. It appears that there was some doubt about whether the sale from O'Ferrall to Lawley could go ahead. Without this transfer of ownership Mr Lawley would have nothing to sell at auction.

A letter of 12 January 1920 from O'Hagan to Vizard<sup>32</sup> reveals more of the problem, just 2 days before the Garway Estate auction sale was set to go ahead. O'Hagan reports on advice that Boote, Edgar & Co. had received from their legal counsel.

Counsel says: "*Unfortunately I am not able to advise that Messrs. Vizard's letter of 4th December clears up the difficulties of the copyholds.... The real difficulty is not so much, in my opinion, one of the tenure as one of estate. Insofar as it was copyhold tenure the late A.M O'Ferrall appears to have been only a tenant in tail male and never to have barred the entail.*"

So the problem now perceived was that certain parts of the O'Ferrall's estate were held by the Lord of the Manor in copyhold from another unspecified landlord as tenant and the copyhold could only be passed through the male line. Ambrose O'Ferrall died without male issue and the sale of the estate was being done on behalf of his daughters (and others who held mortgages on some of the property).

This issue was not resolved before the Auction Sale of the Garway Estate which took place on 14 January 1920 in Hereford. We know it was not resolved because we have a copy of another

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<sup>29</sup> Our evidence, PC 06

<sup>30</sup> Our evidence, PC 07

<sup>31</sup> Our evidence, PC 08

<sup>32</sup> Our evidence, PC 09

Counsel's opinion (Counsel to the O'Ferralls) which is undated but which makes reference to "*Messrs Vizard and Son's last letter of 14th January 1920*" and expounds on the difficulty of resolving the problem on the basis of the evidence available, which he says is inconclusive<sup>33</sup>.

It seems unlikely that, with the unresolved questions of O'Ferrall ownership and therefore entitlement to sell still under discussion between the parties' lawyers and agents even on the day of the sale and for some time afterwards, that Arthur Lawley would have entered into a binding agreement to buy the Garway Estate prior to the auction sale. His lawyers who were actively engaged in trying to establish the facts would have advised against this. The claimant admits in his evidence that "it was not strictly true<sup>34</sup>" to state in the 1920 auction sale particulars that Arthur Lawley was the vendor who had "recently purchased" the property from the Trustees of the will of the late Ambrose More O'Ferrall. It would appear from the Garway Sale letters that this statement was actually a complete fiction at the point of sale.

We believe there was no exchange of contracts prior to the sale. At the 1920 auction Arthur Lawley was selling something he did not yet own, and at that stage it was still not certain that it could be bought.

The copyhold problem was temporarily worked around in the conditions of sale. This is another indication that the form of Arthur Lawley's contract to buy was not yet settled. Special Condition of Sale No. 8 says that purchasers should assume that the copyholds will become merged into the estate- thereby confirming that they had not already been so - and also blocks intended purchasers from enquiring too deeply into the matter:

*Condition 8 includes: "... but having become vested in the Vendor who is the Lord of the said Manor the copyhold has or will be merged or shall be deemed to be merged in the fee simple. Every Purchaser shall unless the contrary appears that such copyhold tenure has merged or is to be deemed to have merged and no purchaser shall be entitled to any further evidence of title to the said Manor beyond the conveyance to the Vendor and any further evidence which may appear in his Abstract"*

This text is put forward by Mr Harris as evidence<sup>35</sup> that Mr Lawley was selling as Lord of the Manor. We will prove shortly that this was certainly not the case at that time, and that there were irregularities in the transfer of the manorial title to Mr Lawley at a later date.

We would also say in passing that the auction sale particulars are silent on the question of the ownership of the commons<sup>36</sup>.

Before leaving consideration of the documents of the auction sale we would now look at the full colour map of the auction lots which went with the sale particulars. This was presented in evidence by the claimants.

This map was prepared by the auctioneers John D. Wood & Co in 1920. Comparison of the area of the map with the description of the boundaries of the manor from the 1827 survey by Lord

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<sup>33</sup> Our evidence, PC 10

<sup>34</sup> Edward Harris Statement of Explanation 9.1.3.1

<sup>35</sup> Edward Harris Statement of Explanation 9.1.3.2

<sup>36</sup> This point was also observed by the Commons Commissioner who examined the sale documentation in 1977

Southwell referred to earlier<sup>37</sup> shows that between 1827 and 1920 Garway Manor had already lost or sold a large swathe of land on the north and west flanks of Garway Hill which seems now to be part of the neighbouring Kentchurch Estate<sup>38</sup>. This demonstrates that the area of land attached to the manor was not historically fixed, but could easily be reduced by the actions of various owners.

It has been suggested that the fact that the common land of Garway Common and Garway Hill Common is shown on the map at all is conclusive proof that it was part of the estate. It has also been suggested that the fact it was shown uncoloured indicates that it was retained and not sold by the Lawleys.

Neither of these are safe assumptions, because the map also shows property which was verifiably not part of the Estate in 1920 and this is also shown as uncoloured. An example of this is White Rocks House which lies on the map just below Lot No 53 "White Rocks Plock". White Rocks House is a property of between one and two acres on the map next to the identifier "Pt110". The present owner has property deeds dating back to 1837 which show it to be outside the Garway Estate and in private freehold ownership from that date and probably earlier. There is no mention of Garway Manor in the documents and it was and is completely free from any manorial incidents.

There are other examples we could cite. Therefore we submit that nothing regarding ownership of the commons may safely be inferred from the map's presentation and scope.

It has also been suggested that only tenants of the manor made use of the commons and had rights upon them and that this proves a direct and exclusive connection between manor and commons. Again, evidence from White Rocks house begs to differ. The present owners have common rights of grazing for one horse and one cow. These are entered on the modern register and can be held to be derived from past custom. The owner has photographs<sup>39</sup> of the property from the period 1895-1900 which show the horse being used for pulling a pony trap outside the house and the cow "Beauty" grazing on common land near the house, so we can verify that the rights were being exercised at that time.

As we have established that White Rocks House was not part of the manor, and had not been so for many years this is evidence that the commons were also customarily used pre- 1920 by those who were not tenants of the manor.

Returning to the sale narrative, some properties appear to have been sold at the auction on 14 January 1920, as is evidenced by the Hereford Times newspaper report transcript provided by the claimant. From the date<sup>40</sup> this was a Saturday edition of the newspaper and while the weekday editions are readily available in the Hereford Library, for some reason the Saturday papers are not. As a result we have been unable to verify the newspaper article.

We now turn back to consideration of the remaining Garway Sale Letters:

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<sup>37</sup> Edward Harris Statement of Explanation pages 5 and 6

<sup>38</sup> The owner of Kentchurch, John Lucy Scudamore, had expressed an interest in buying the Garway Manor and its commons from Lord Southwell previously. See Edward Harris Statement of Explanation 11.13. It is evident that some deal was reached for at least part of the land.

<sup>39</sup> Our evidence PC 11

<sup>40</sup> 17th January 1920

Following the auction, negotiations for Mr Lawley's purchase of the estate dragged on into February, with some evident but unspecified progress being made. On 17th February Boote, Edgar & Co write to Vizard: *"We are now getting near completion of this matter..."* referring to the Manor of Garway<sup>41</sup>. However this optimism turned out to be ill-founded and things remained unresolved. The problem was on the vendors side and almost certainly still related to the copyhold issue.

Nearly 3 months later, another letter<sup>42</sup> from Boote, Edgar & Co to Vizard dated 11th May 1920 says *"We expect to hear almost any day that the Vendors are ready to complete the sale to Mr Lawley..."*

It did not happen. Unfortunately for all concerned, Mr Lawley died just 15 days later on 26th May 1920 after contracting pneumonia.

The documentation presented by the claimant in the form of an Abstract of Title is offered to prove he signed the completion documents just 2 days prior to his death. This can now be shown to be a deliberate fiction designed at the time to obscure the fact that he had actually not yet signed the completion documents when he died.

Completion really happened on 5 August 1920 in London, some 10 weeks or so after his death.

This is evidenced by the final two letters in the correspondence from Boote, Edgar & Co to Vizard. The first<sup>43</sup> is dated 18th June 1920 and begins: *"You will no doubt have heard of the death of Mr Lawley on the 26th ulto. The Conveyance of the Garway Estate had been executed by all the Vendors prior to his death but had not been taken up. We are arranging for the Vendors' solicitors to date the same the 24th May and to stamp it so that we can arrange completion as soon as representation is obtained to Mr Lawley's estate. We understand that all the documents in connection with the copyholds are quite ready and presume they can be completed in the same way and Mr Lawley admitted to the Court Rolls."* He finishes with a request that Vizard should date this copyhold documentation and Court Rolls entry to the same date of 24th May and complete it.

There was a further delay waiting for Administration so the final letter from Boote Edgar is dated 6 August 1920 and is a brief note to Vizard<sup>44</sup> which says: *"We completed this matter in London yesterday. You will be hearing from Messrs O'Hagan & Son to that effect and we shall be glad if you will then send us the documents relating to the copyholds."*

From this we can derive that completion took place on 5 August 1920

The National Probate Calendar for England and Wales shows that Elizabeth Lawley was granted Administration of her husband's estate on 6 August 1920, so if she signed completion on 5 August this is another to add to the list of seeming irregularities and problems surrounding the transaction.

As the fiction invented between the parties called for completion to have happened on 24 May 1920, in order to preserve the manorial title, Vizard made an entry in the Court Rolls with that date showing Arthur Lawley to be the Lord of the Manor on 24 May:

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<sup>41</sup> Our evidence, PC 12

<sup>42</sup> Our evidence, PC 13

<sup>43</sup> Our evidence, PC 14

<sup>44</sup> Our evidence, PC 15

*"Manor of Garway in the County of Hereford. Before John Trewen Vizard of the town of Monmouth, Gentleman, Deputy Steward of Arthur Ernest Lawley Esquire Lord of the said Manor on the Twenty-Fourth day of May One thousand nine hundred and twenty..."*

We have shown that this did not take place on the date specified and that Arthur Lawley was not the Lord of the Manor on that date. It seems self-evident that the true facts were obscured at the time in order to avoid awkward questions about rightful tenure and succession after the inconvenient death of Mr Lawley.

Having raised the possibility in section (a) of this Objection 2 that the conveyance of the Garway commons may not have happened due to faulty conveyance in the O'Ferrall era, we now see that an O'Ferrall conveyance was irregular enough in at least one respect which required several months to unpick in 1920. We have also discovered the unseen presence of a second landlord in respect of Ambrose O'Ferrall's property which he held copyhold.

This offers a possible background for the historical detachment of the Commons from the Manor.

We accept that, on its own, this is not conclusive evidence of the detachment, but we point out the possibility, which will have some bearing on the further new evidence which we are leading up to.

#### (c) Elizabeth Lawley and the Garway Estate

Arthur Lawley was initially thought to have died intestate, and Elizabeth Lawley was named as Administratrix, not Executor, of her husband's estate. A will dated 1905 turned up sometime later, so the initial award of Administration was revoked on 6 October 1920. This was replaced by "Administration (with Will)" on 22 October 1920.

This gave Elizabeth Lawley administrative control of her husband's estate but did not make her the sole beneficial owner<sup>45</sup>. As Administratrix she was charged by the terms of the will with the task of realising the value of Arthur Lawley's personal estate. She had powers to sell the property of the Garway Estate and Manor.

We accept that Mrs Lawley then began to sell the Garway Estate piecemeal, as her husband had intended and that by the end of 1921 the estate was sold, first in a series of individual sales (presumably to those buyers who had bought at auction in January 1920) and then in 1921 the sale of the remainder of her property in the Garway area *en bloc* to a property company - Newcombes Estate Company - who sold everything on.

The process of sale to Newcombe shines a further light on the irregularities of the 1920 Lawley purchase. This is derived from a reading of the claimant's own evidence. The narrative is as follows<sup>46</sup>:

On 19 May 1921 there was an auction planned, with Mrs Lawley as vendor, to sell the remainder of the Lawley property in the Garway area, namely the unsold parts of the Garway Estate and the family home at Hilston Park in Monmouthshire, which was a separate estate. This did not take place

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<sup>45</sup> This was stated in 1944 by her lawyers in a letter which we will examine later in this document

<sup>46</sup> Derived from Edward Harris Statement of Explanation, paras 9.2.3.1 to 9.2.3.3

because Newcombe pre-empted the sale with an offer to buy everything. They completed purchase with a contract dated 7 July 1921.

Newcombe then arranged an auction sale of their own on 4 November 1921. Condition of Sale 5 reveals that the old problem of the Garway copyholds was still causing difficulties<sup>47</sup>.

*"5. Some parts of the said Garway Estate were of formerly copyhold tenure, held of the Manor of Garway, but upon them becoming vested in the late Mr Lawley who was also Lord of the said manor, the copyhold merged, or shall be deemed to have merged, in the fee simple. **Every purchaser shall, unless the contrary appears, assume that such copyhold merged, or is deemed to have merged. No purchaser shall be entitled to any further evidence of the Title to the said manor beyond the conveyance to the late Mr Lawley and any further evidence which may appear in his abstract.**"* (our emphasis)

This clause appears to be an attempt to maintain the fiction that Mr Lawley bought the Garway Estate two days before his death and was enrolled as Lord of the Manor that day, both of which we have shown to be false in fact. In the light of what we have already established, the prohibition on purchasers digging too deeply into the title or the copyholds betrays a residual sensitivity on the issues over a year after Mr Lawley's death.

The claimant states in evidence that Newcombe, which still operates in the same business today, have confirmed from a modern inspection of the contract between themselves and Mrs Lawley that they purchased the whole of the Garway Estate and Hilston Park. The Claimant's evidence EHK9 exhibits the contract in question but the version passed to us for inspection does not contain a schedule of properties, although it makes reference to one. This makes it impossible to verify the contention given in their evidence<sup>48</sup> that the commons were not offered for sale by Mrs Lawley and therefore remained in her possession. This contention is based on the unsworn testimony of an unnamed employee of Newcombes Estate Company from a 2006 examination of company archive documents from 1921 which may or may not be complete.

As we have not seen the full documentation we cannot form an opinion, but it was clearly in Mrs Lawleys intention and interest to realise as much as possible from the sale by selling everything.

Simplistically, without firm evidence to the contrary, if the commons were still attached as the claimant contends and Newcombe bought the whole remaining estate then they bought the commons. So the commons would have been lost to the claimant under this scenario. Here we have another possible break point in the ownership of the Commons by Mrs Lawley. She had no reason to specifically exclude the commons from sale if she owned them, and our later evidence will show that she did not own them in 1944.

At the end of 1921, Mrs Lawley, having no remaining connections or any home in the area, moved first to London, then shortly afterwards to spend the rest of her life in Sussex (as we now know, not South Africa as was believed in 1974 at the Commons Commissioner hearings).

Without prejudice to the commons ownership issue, we accept that Elizabeth Lawley was widely regarded as "Lady of the Manor" in the 1920's and 1930's whatever misgivings we may hold about

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<sup>47</sup> Edward Harris Statement of Explanation, para. 9.2.3.4

<sup>48</sup> Edward Harris Statement of Explanation, para 9.2.3.2

the legitimacy of her husband's accession to the title. It is however possible that this was in reality an *ex officio* title only, by virtue of her position as Administratrix of her husband's estate, and that she had no personal right to the title. She was after all not the sole beneficial owner of her husband's property.

According to the terms of her husband's will of 1905<sup>49</sup>, which predates any involvement by the Lawley family in the Garway Estate, she personally was entitled to some household and personal possessions, a small bequest, and a small annuity, and because both of the Executors and Trustees named in the will were dead by 1920, she was appointed Administratrix.

Whatever her status in fact, the claimant's evidence from the Court Rolls of Garway is comprehensive and shows that between 1920 and 1935 Elizabeth Lawley performed the function of Lady of the Manor and, as was required of her by the will, she converted into cash all property and virtually all worthwhile residual manorial incidents attached to former manorial property by accepting compensation payments for their extinguishment. These transactions were handled by Mr Vizard her steward in Monmouth and Boote Edgar & Co, who continued as her solicitors, still based in Manchester. Mrs Lawley's role was always performed at a distance. There is no evidence in the Court Rolls or anywhere else of her physical presence in Garway at any time after 1922.

By virtue of chronology, It is convenient here to address a point made by the claimant which he maintains provides evidence of the ownership of Garway Common by Mrs Lawley.

It concerns the fact that in 1933 the Parish Council apprehended they had cause to contact Mrs Lawley as Lady of the Manor for advice regarding an incident with a motor lorry trespassing on Garway Common. Examination of the full scope of evidence provided by the claimant shows that this would have been the first time the Lord or Lady of the Manor was directly recorded in connection with any of the commons since Lord Southwell in 1858. At no time prior to 1933 is Mrs Lawley shown to have expressed any interest or involvement with the commons.

The claimant uses the incident<sup>50</sup>, the facts of which are described in full in the copy of Parish Council Minutes submitted in their evidence<sup>51</sup>, as proof that the commons were owned by Mrs Lawley in 1933. We submit that at best it merely shows that some people supposed that to be the case. When asked to become involved Mrs Lawley seems curiously detached.

If it had only emerged in the process of the 1920 purchase by Arthur Lawley that the Commons were no longer part of the estate and there had been deliberate attempts to suppress knowledge of the irregularities of the land conveyance and succession in 1920/21, the Parish Council would not necessarily know the facts in 1933. The passage of time since anyone locally had dealt with any Lord of the Manor over issues of the Commons would also make everyone's knowledge unreliable.

In the event, when pressed to intervene in the matter, Mrs Lawley communicated through her agent Mr Tanner that she felt there were "*few privileges remaining to the Lord of the Manor*" and it was the Parish Council which made the decision in the end how to proceed with the matter. They decided to invoke powers invested in Parish Councils under the Local Government Acts.

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<sup>49</sup> Claimant's evidence EKH4

<sup>50</sup> Edward Harris Statement of Explanation, Para 14

<sup>51</sup> Claimant's evidence, EKH1, pages 22-27

This does not make a convincing case for an owner (Mrs Lawley) exerting rights of ownership. If she were the owner of the Common she would have had every right to take action. Section 14 of the Road Traffic Act 1930 prohibited driving of motor vehicles on common land without the permission of the owner. Mrs Lawley could have made everyone's life easier by saying " I do not give my permission". Instead she did nothing and said her powers were limited. We submit this is evidence not of ownership, but of non-ownership.

Similarly, if the Parish Council had somehow confirmed that Mrs Lawley did own Garway Common, they could have said "Please use your powers as owner to prevent this happening again", but they do not appear to have followed through on this either and instead used their own existing statutory powers. Once again this does not speak with any clarity of Mrs Lawley's ownership.

By this time in the mid 1930's, with virtually all the manorial incidents extinguished, we submit the Garway Manor was an empty shell with no physical reality. Elizabeth Lawley was the titular Lady of a Manor which consisted of nothing. This would explain why she never talked about it or kept a record of it in her personal papers. The title by this time was meaningless, if it could be held to exist at all in reality.

In 1939, Mr Vizard, who had been the steward of Garway, died. In another piece of additional correspondence we have discovered in the Hereford Record Office, dated 10 November 1939<sup>52</sup>, it is evident that the news had just been communicated to Manchester together with a suggestion that Mrs Lawley's solicitor might like to take charge of the old manorial records of Garway. In the letter Boote Edgar & Co write back to the Monmouth solicitors Vizard & Son:

*"We are in receipt of your letter of yesterday's date and regret to learn of the death of Mr Vizard. We dealt with several Compensation Agreements which were arranged by Mr Vizard and we understood that there were several others outstanding but they were, as you say, of very trivial amounts so that we do not think it is worthwhile going to any further trouble in the matter. We do not think Mrs Lawley would wish to have the Court Rolls as she was only resident at the property for a comparatively short time. It might be that the Record Office in Chancery Lane would be interested in them if they are of considerable antiquity."*

There is an attempt at closure with this letter. The implication of this is that, now that Mr Vizard was gone, no one at the old Monmouth firm could see any point in continuing a relationship with the defunct manor and were having a clear-out of old paperwork. Both parties were agreed that any remaining compensation agreements would cost more to administer than could be got in fees. No one wanted the records of the manor, and it was clearly no longer a going concern.

Boote Edgar & Co were sorry to hear of the death, but it was not a matter of any business importance to them.

The records found a home in the Hereford Library and Museum<sup>53</sup> before ending up in the County Record Office where they can be found today. With the declared state of desuetude of the manor, it might be expected that this was the end of the matter.

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<sup>52</sup> Our Evidence PC 16

<sup>53</sup> Our Evidence, letter from FC Morgan, Hereford Librarian, to Vizard & Son welcoming the donation of the Court Rolls of Garway, PC 17

However the next recorded correspondence between Boote Edgar & Co and Messrs Vizard & Son would prove extremely revealing in the context of the current claim before the Land Registry.

(d) The Chantry Letters, 1944 - proof that the Commons were not owned by Mrs Lawley

With the full historical background in the open we can now produce for examination the significant new evidence referred to at the beginning of this Objection. It is a sequence of correspondence dating from mid 1944. It comes from the same archive file box in Hereford County Record Office that contained the Garway Sale Letters of 1920. A diligent researcher who found those would also find what we are about to examine.

Like most of the Garway Sale Letters, the new correspondence is again between Boote Edgar & Co of Manchester and Vizard & Son of Monmouth. We call this new correspondence "the Chantry Letters" for reasons which will soon become clear.

**We will now demonstrate these letters prove that by 1944 the Garway Manor had lost all meaningful existence and - more significantly - show that Mrs Lawley and her solicitor at that time knew that there was no common land in Lawley ownership.**

Letter #1<sup>54</sup> dated May 26th 1944 is from Ann Dearden, the owner of a house called "The Chantry" on Garway Hill and is intended for Mrs Lawley. There is no address for Mrs Lawley on the surviving version of the letter, which appears to be a re-typed file copy. The salutation is "Dear Mrs Lawley" but in the context of the exchanges which follow it may be inferred that the original was forwarded swiftly for action at Boote Edgar & Co, her solicitors.

Mrs Dearden explains in the letter that she has recently purchased the Chantry property and has been referred to Mrs Lawley by the solicitor Mr Vizard of Monmouth (presumably by now the "Son" in Vizard & Son has taken over the firm) as she wished to contact the Lord of the Manor. The issue she wished to raise related to a large ash tree which was blocking her "*beautiful view*"<sup>55</sup>. She was trying to find the right person to ask about cutting six feet off the top of the tree to improve matters. It is clear from the text that she had been led to believe by someone that the Lord of the Manor had some say in the matter, or perhaps as a new arrival she was just covering herself. She also says "*our two immediate neighbours would have no objection*".

In the first place, it is immediately clear from this that by 1944 the Garway Manor had no steward. Had Vizard (junior) been steward he would have dealt with the matter on behalf of Mrs Lawley and would not have referred Mrs Dearden on to her personally. If someone else had been steward, Vizard would have referred Mrs Dearden to that person instead.

In the second place, we can work out the position of the tree. The Chantry today still stands at White Rocks, Garway Hill. It occupies about half of a freehold plot of land which is totally surrounded by common land. The other half is occupied by its next-door neighbour Chantry Cottage which also still stands. Chantry Cottage would have been one of the "immediate neighbours" referred to. The other

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<sup>54</sup> Our Evidence, PC 18

<sup>55</sup> Our evidence PC 19 shows a photo of the view today

would have been Rock Mount which was, and is, across the track and slightly further up the hill. There are no other neighbours up that track.

If you stand in front of The Chantry today you can still see the view which Mrs Dearden admired, although further tree growth has continued to degrade it. Standing in this position today you can deduce without doubt that the tree which concerned Mrs Dearden was on common land and close to the rocky outcrops which give White Rocks its name<sup>56</sup>. This contention is supported by the fact that the only two neighbours in the vicinity who could possibly take an interest "had no objection" which implies they did not own the tree themselves. There is no other property within 150 yards or more. The common land is the only place where the tree could have stood.

The next letter in the sequence, Letter #2<sup>57</sup>, was sent by Boote Edgar to Vizard and is dated 6th May 1944. From the context this is a typing error and the proper date should be read as 6th June 1944 since it makes direct reference to the Dearden letter of 26 May. The letter opens with "*We enclose you a copy of a letter dated 26th ult to Mrs Lawley and as she mentions your name we thought we had better communicate with you about it.*"

Boote continues: "*Mrs Lawley of course sold this Garway Estate some years ago and **we do not therefore understand why it is suggested that she could give permission to cut a tree which is presumably on land belonging to someone else***". (our emphasis in bold throughout)

He then goes on to say: "*Incidentally **Mrs Lawley was never the sole beneficial owner of this estate, but had the legal estate as the Administratrix of her husband's will and his estate was closed and distributed soon after the sale of this property. We shall be glad if you can give us any explanation as to the position and the reason for this letter***".

Letter #3 is dated 9th June 1944 and is again from Boote to Vizard<sup>58</sup>. Evidently Vizard had replied to letter #2 but this has been lost. Letter #3 however rehearses the significant parts of it as follows:

*"We are obliged for your letter of yesterday's date and observe that you are writing to Mrs Dearden that the person to give permission to cut the tree is the owner of the land on which it stands, which should put the matter to rest. **We still do not understand why it apparently did not occur to her to ask the owner and why she should enquire from Mrs Lawley who disposed of this estate about 20 years ago.**"*

Vizard had also evidently raised some question relating to residual manorial rights, Boote dismisses it by concluding:

*"You will remember that subsequently through your office there were several Agreements of extinguishment of Manorial Rights where only very trivial amounts were involved and we agree that it is not worth while bothering with any outstanding ones as they are more trouble than they are worth."*

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<sup>56</sup> A single ash tree of suitable age still stands there and the passage of years has allowed it to grow larger. Our evidence PC 19 shows a picture of the tree today.

<sup>57</sup> Our Evidence, PC 20

<sup>58</sup> Our Evidence, PC 21. As in the case of the Garway Sale Letters, we only see the Boote Edgar side of the conversation and must infer the Vizard replies from context.

- This repeats the opinion expressed in the earlier correspondence of November 1939 on the death of Mr Vizard senior.

By a surprising quirk of timing, the next letter in sequence is about a new request from a Garway freeholder wishing to buy out one of these "trivial" manorial rights on his property called The Quab. This was the first such request since 9 years previously in 1935<sup>59</sup>. This Letter #4<sup>60</sup> is dated 14 July 1944.

Letter #5<sup>61</sup> of 28th July 1944 from Boote to Vizard, alludes to some disquiet by Mrs Lawley about her authority to sign the Compensation Agreement for The Quab, which Boote has evidently reassured her about. It then goes on to reveal that the Chantry matter had not been quite "put to rest" as hoped. Boote writes: "Mrs Lawley had occasion to write to us about another letter she had received from Mrs Dearden ...". He continues:

*"You will remember our previous correspondence with you about Mrs Dearden's previous letter when you informed us that you had written to her that she should get the consent of the owner of the land to cut the tree in question. She now writes to Mrs Lawley saying 'thank you for giving us permission to cut off the top of the ash tree' but Mrs Lawley points out to us that she has never given her such permission and we gather has never written to her. She now writes her saying that 'just below her garden there is a spring of water which comes out of the rock, gathers in a natural pool and from there runs away to waste down the hill' and asking for permission to put in a tank below the spring to catch the 'waste water'."*

- This spring and pool exists and can be identified today and is also certainly on common land.
- While Boote was reassuring about Mrs Lawley's right to sign the Compensation Agreement as Lady of the Manor, he continues to maintain to Vizard that the land is not owned by her.

The next paragraph of Boote's letter continues in a familiar vein:

*"As in the case of the tree she gives no information about the ownership of the land or even whether it is on her own land or on adjoining property, presumably the latter, but so far as we know **Mrs Lawley having sold the whole estate is not in a position to grant any such permission** and we do not know why after your letter to her Mrs Dearden should approach her."* (our emphasis)

The final paragraph from Boote runs as follows:

*"As we mentioned before we presumed from her (Mrs Dearden's) previous letter, although you did not confirm it, that you were acting, or had acted, for her, perhaps in connection with the purchase of this property and we shall therefore be glad if you will write again to her, if you agree, to the same effect that **this is a matter for the owner of the adjoining land and does not concern Mrs Lawley**. As Mrs Lawley is rather concerned about the statement about her giving permission to top the tree, we should be glad if you would also refer to this and point out that **Mrs Lawley gave no such permission as, so far as she is aware, she is not in a position to do so.**"*

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<sup>59</sup> This fact comes from an inspection of the Garway Court Rolls which shows the immediately prior entry to 1944 is on 14 December 1935

<sup>60</sup> Our Evidence, PC 22

<sup>61</sup> Our Evidence, PC 23

- This paragraph also acts as further confirmation (if it were needed) that Vizard & Son were no longer concerned with the active stewardship of Garway on a continuing basis. Boote Edgar did not really know why Vizard was involved at the start of the correspondence and thought he was acting for Mrs Dearden. The Quab business was an unexpected one-off which had popped up at the same time as the Chantry issue, otherwise the two men might never have needed to continue to correspond. Vizard is also clearly unable to work out (as we have so easily done) the likely position of the tree and spring from the description of local features. It presents a picture of the younger Mr Vizard as someone without a recent interest in, or local knowledge of, the former estate lands.

But the Chantry saga continued. Letter #6<sup>62</sup> dated 1 August 1944 is from Boote to Vizard<sup>63</sup> and contains a great deal of special significance to the de la Billiere claim to ownership of the Commons. It is clear from the preamble that the letter is in response to a letter received by Boote from Vizard the previous day. It appears from the context that Vizard may have finally worked out that the tree and spring must be on common land, but Vizard is uncertain about ownership and asks Boote about it.

The substance of Boote's reply to Vizard begins:

*"In regard to the fourth paragraph of your letter **we do not recollect any reference to waste or common lands in connection with this estate.** The inspection lotting and sale were dealt with by an eminent firm of London Estate Agents who were well used to these country estates and we think would have raised the matter if there had been anything in it."*

"London Estate Agents" appears to be a reference to John D Wood and Co who organised all the auctions in connection with the sale of the Garway estate in 1920 and 1921. They were the people who first asked the question in 1919 about the "rights of the owner of the Garway Estate in the common land" and got an unrecorded answer. If anyone knew about the ownership of the commons, they did.

His second paragraph deals once again with Mrs Dearden's repeated pleas for permission and reiterates once again that **"Mrs Lawley is not inclined to give any permission whatever in connection with these matters as it is not clear that she has any right to do so"**.

The significance of this sequence of letters cannot be overstated.

- In these letters we have the solicitor firm which had acted for Arthur Lawley in the purchase and conveyance of the old Garway Estate and Manor in 1920 and which had then acted for his widow Elizabeth through the piecemeal sale of the estate property and the final *en bloc* sale - this firm, with presumed access to client records of that transaction, and perhaps other staff who might be able to personally recall the transaction, has in 1944 stated in effect that : **We don't recollect that Mr or Mrs Lawley ever owned the Commons and Waste of Garway, and we don't think it could possibly be the case.**

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<sup>62</sup> Our Evidence, PC 24

<sup>63</sup> The salutation on Boote's letter is "Dear Mrs Lawley" but I believe we can infer this is a typist's error from the text of the letter itself. It is addressed to Messrs Vizard & Son.

- Also, the matter has clearly been discussed with the client and **Mrs Lawley shares that opinion** and so is reluctant to be drawn into the matter of the tree and spring on common land.
- This is all despite the fact that Mrs Lawley has just agreed to sign a manorial compensation agreement at the same time as Lady of the Manor. This fact indicates a **complete separation between the manor, the title and ownership of the common land.**
- It is also clear that **neither Mrs Lawley nor her solicitor knew who owned the common land**, or they would have suggested an alternative course to Mrs Dearden. This adds additional credence to the idea that the land was never purchased by the Lawleys.

In the final document of the Chantry Letters, Letter #7 dated 4 August 1944<sup>64</sup>, we find Vizard has evidently responded to Boote's last letter<sup>65</sup>. Letter #7 is Boote's reply to that. Boote is sounding rather terse with Vizard :

*"We are in receipt of your letter of the 2nd inst. We cannot carry the matter further after this lapse of time. We are quite satisfied that the London firm of auctioneers which we mentioned would sell everything that was saleable. Mrs Lawley never lived on the Garway Estate but on the adjoining Hilston property and Mr Lawley only bought the Garway Estate just before his death. They had not then been living very long at Hilston and it is now many years since she left the district so that **you will appreciate that she is not interested in it.**"*

The recorded correspondence ends there. The Court Rolls show an entry for 25 July 1944 in relation to extinguishment of manorial rights on The Quab and that is the final entry<sup>66</sup>. In fact, that and the Chantry letters are the last evidence of the existence of the Manor and Estate of Garway to be found anywhere in the public or (so far as we know) the private record.

**We submit that the Chantry Letters are the best and most direct evidence yet unearthed which speaks directly to the true facts of the Lawley ownership of the commons and waste of Garway, since they contain the testimony and reported testimony of those who participated in the purchase of 1920 and the subsequent sale process in 1921.**

**They say that Elizabeth Lawley did not own the land in question in 1944.**

**They also, in passing, indicate that neither did the land reside in Arthur Lawley's trust. Mrs Lawley was Administratrix of the will and could have either given permission or referred the matter to any other trustee who might have been appointed afterwards. She did neither, and denied all knowledge of the land. Therefore we submit the land could not be passed by inheritance to the claimant by that route.**

This renders irrelevant the two conveyances prepared by the claimant's advisers which purport to transfer ownership of the commons to the claimant, since they cannot convey what is not owned.

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<sup>64</sup> Our Evidence, PC 25

<sup>65</sup> Chantry Letter #6, PC 24

<sup>66</sup> We suppose that the book of the Manorial Rolls must have been retrieved from Hereford Library to make this entry

The case for his present-day ownership put together by the claimant is shown to be based on incomplete data and erroneous conclusions drawn from false assumptions. The claimant may sincerely believe that he owns the land, but he is wrong.

#### (e) The Deeds of the Garway Estate and Manor

The claimant's evidence contains some surprising admissions which further support our conclusion drawn from the Chantry Letters

Sir Peter de la Billiere (born 1934), Mrs Lawley's grandson, attests in his statement<sup>67</sup> that he never heard Mrs Lawley make any reference to ownership of the Garway Commons and Wastes during her lifetime although he regularly spent time with his grandmother until her death in 1968. He also states that his brother who spent even more time at home knew nothing about it either. He further states that Mrs Lawley was mentally competent and in full charge of her affairs until late in life. There is no suggestion that in 1944 or afterwards she was ignorant of, or unable to deal with, her own financial and property matters.

The claimant concedes there are no extant deeds which prove that the Commons and Wastes were ever purchased by Arthur Lawley. The evidence from the claimants for the existence at any time of such deeds in Lawley ownership is merely a supposition via the 2006 Statutory Declaration by Mr James Ogden (who, as a young recently-qualified solicitor, joined Boote, Edgar and Co. as a junior member of staff in 1944). He admits he never saw them, or heard of them, says he expects they must have existed, but if they existed he thought they must have been lost due to an air raid in Manchester which damaged the solicitors premises in 1940<sup>68</sup>. He admits this is pure conjecture and further admits that he never came across any Statutory Declaration made by any partner or employee of the firm of Boote Edgar & Co or its successors explaining the loss of the Garway Estate deeds.

His conjecture that they must have once existed is unconvincing and is not based on any evidence whatsoever. Instead, his contribution on this matter is undermined by the Chantry Letters.

There is no mention of destroyed documents in the Chantry Letters, where they might have been cited as a reasonable explanation of the problems they were seeming to have in understanding the basis of Mrs Dearden's requests. The other telling point in Mr Ogden's evidence is that no-one at the firm thought it necessary to replicate the title if it had been destroyed on their premises. This should have been a legal duty to protect a client's interests. It would seem that any documents held by Boote Edgar & Co on behalf of the Lawleys which might have been destroyed in the air raid were deemed to be of no consequence to any ownership.

**We submit that the relevant deed documents were unknown to Mr James Ogden simply because the Commons and waste were either never acquired by the Lawleys in 1920, or were sold with the rest of the estate to Newcombe in 1921.**

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<sup>67</sup> Sir Peter de la Billiere Statutory Declaration

<sup>68</sup> James Ogden Statutory Declaration paras, 5.1, 5.2.1, and 5.2.2

So to underline the point, the Chantry Letters taken together, we submit, are conclusive contemporary testimony from a legal firm with a duty of care to its client Mrs Lawley, that in 1944 (1) Mrs Lawley did not own any property formerly belonging to the Garway Manor or Estate, and (2) Mrs Lawley is described as having declared that she has no interest in the manor.

Given the source of this information is a firm of lawyers, and the letter was addressed to a firm of lawyers, it may be reasonable to construe the words in legal terms. The Legal Dictionary defines an interest in this context as:

*" interest n. 1) any and all, partial or total right to property or for the use of property, including an easement to pass over a neighbouring parcel of land, ... a possibility of acquiring title upon the happening of some event, or outright title."*

If such a construction is admissible, Mrs Lawley's lawyer is stating that his client disavows all rights to any land connected with Garway.

In any event, the Manor of Garway had demonstrably ceased to exist by 1944 if not before. The sale of all the estate property by 1921 left the manor with no demesne<sup>69</sup> lands and the lack of tenants in freehold meant that the traditional Court Baron, which dealt with property matters on the estate could no longer ever meet<sup>70</sup>. The other feature which defines a manor in law is the services due to the Lord. By 1921 no one was bound by service. All these are known as the "material causes" of a manor and without them a manor was held to have no meaning.

#### (f) Inheritance of Title

Even if, despite the strength of the forgoing evidence and arguments, the manorial title ("Lord of the Manor of Garway") could be said to have a continuing existence in some form detached from the land of the former Manor, so that Elizabeth Lawley could still pass the title on to her descendents, there remains one further obstacle to its transmission to the claimant through Elizabeth Lawley's will of 1968.

A manorial title with no land attached is held to be a "seignioriness in gross", that is, a seignioriness (or title) held by itself, an incorporeal seignioriness, termed by the French feudists of old as "*an fief ex l'air*", which might be loosely translated as "a castle in the air".

The significance of this in law is that the protection granted by the Conveyancing Act 1881 which, as previously examined, allows conveyance of certain features of manors without express words, does not apply to a seignioriness in gross. Elizabeth Lawley's will of 1968 did not expressly mention anything about the Manor of Garway so it did not convey the title onward.

The same argument would apply in the case of any assumed transmission of the manorial title directly to the claimant from Arthur Lawley's will.

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<sup>69</sup> Desmesne - land held in the estate for the use of the Lord alone. Commons, if present were not part of the demesne.

<sup>70</sup> The Court Baron's legal constitution demands at least two freehold tenants to act as jurors in any issue. By 1922 at the latest there were no freehold tenants left on the manor.

### **In conclusion**

The explanation of our Objection 2 has been necessarily long and involved since it required detailed explanation of our additional evidence and rebuttal of those parts of the claimant's version of truth where we could demonstrate that he had reached a false conclusion through reliance on partial documentation.

We have reached our different conclusions by embracing all of the historical evidence presented by the claimant and supplementing it with additional evidence. The historical documents we have added are freely available and were there to be found by the claimant.

We do not doubt the good faith of the claimant. He sincerely believes that his family owns our commons, but he has been led to that position by incomplete research. It is possible that his advisers have approached their research with preconceptions and simply stopped looking any further when they thought they had found what they were looking for. On the other hand, we have started from a position of trying to verify their submitted research to establish the truth of the matter and in the process have found the additional evidence which we have presented here. This has revealed a bigger, different and more complicated picture of events.

To summarise, we submit under this objection that:

1. We have demonstrated that it is unsafe without further explicit documentary evidence to assume that the common land was conveyed correctly as a part of the manor to Richard O'Ferrall and Ambrose O'Ferrall.
2. We have demonstrated that there were evident previous conveyancing problems with the O'Ferrall estate which caused difficulties and delays for Arthur Lawley's purchase in 1920 and that this supports the possibility of (1)
3. We have demonstrated a number of irregularities in the completion of the sale to Arthur Lawley, which occurred after his death and not before as the documents claim.
4. We have proved that in 1944 at least, no one with any knowledge of the 1920 purchase or the 1921 sale believed that the commons and waste belonged to Mrs Lawley, and Mrs Lawley disavowed all interest in them
5. In the circumstances which then pertained by 1968 the title of Lord of the Manor was a seigniorship in gross and has not been legally transmitted to the claimant from Mrs Lawley's will or through Arthur Lawley's will of 1905.
6. As a result the claimant's case for ownership of land and/or manorial title is not proven.

**We submit therefore that on the basis of the full historical evidence the Registrar should disallow the claimant's application for First Registration.**

### Objection 3:

#### The land being claimed contains land and property in 3rd party ownership

As part of our response to news that an outside claim of ownership of the local common land was before the Land Registry, the Parish Council called a special public meeting on 30 August 2012 to make local residents aware of the facts of the claim. A second purpose was to enable residents to see how the claim might impact on them individually as property owners, since only the Parish Council had received a detailed notification. Residents examined the supplied plans and drew our attention to two particular places where private property was apparently being absorbed within the claim for ownership of common land. These are:

A. Black House Common: This triangular piece of land is shown on the deeds of Garway Court Farm as being part of the land belonging to that farm. Its freehold owner, Mr John Francis stated that the farm and its land was acquired by purchase from Elizabeth Wright Lawley when the Garway Estate was broken up and sold in 1920. Examination of the map of lotting for the 1920 auction offered in evidence by the claimant shows that the area now referred to as Black House Common was part of Lot 29 "Garway Court" in field 507. Mr Francis also stated that he had never had reason to regard the land in question to be anything other than an integral part of his field. There is no evidence on the ground which would indicate it was ever fenced off or otherwise separated from the rest of field 507.

B. Land which is part of Lower Caste, Garway Hill: This property adjoins the boundary of Garway Hill Common. It was also sold freehold in the 1920 break-up of the Garway Estate. At that time it was listed as Lot 44 "Lower Caste" comprising a cottage with 3 plots of land. One of these plots, marked "Pt78" on the lotting plan is an island within the land of the common and is used by the present owners, Paula and Richard Wilson, as a vegetable garden.

We have advised the freehold owners of the above-named properties to contact the Land Registry to make their own cases for objection as they are directly affected by the claim. There may be others who have contacted Land Registry as a result of what they learned from our Public Meeting, but we are not aware of them. We note that some highway land is included in the claim and this may be a matter for Herefordshire Council to consider as the highway authority.

This objection is a technical one - that the description of the land claimed in the application is flawed, since it includes land and property which was previously sold out of the Garway Estate and therefore cannot form part of the commons or waste of Garway Manor.

The Parish Council accepts that there may need to be a revision of the Commons Register to take account of both of these assertions of freehold ownership . We would have no objection to a change of ownership in the Commons Register to reflect a properly established fact of different ownership in the case of either of these properties.

## Objection 4 :

### Definition of the boundaries claimed under the application

There are inconsistencies in the boundaries of the common land in question indicated on the claimant maps as other official documents show different areas and there are even some inconsistencies between official maps.

Our objection is that without a definitive map showing clear and accurate boundaries of claim we, and others who may be affected, cannot assess exactly what is being claimed. This may be a technical objection which can be quickly overcome by clarity and direction from Land Registry about what constitutes the definitive map, or maps, of claim.

(Note: For clarification, Objections 3 and 4 do not overlap. The properties described in Objection 3 are consistently shown as part of the claimed land in all maps supplied to the Parish Council in connection with the claim. The inconsistencies referred to here under Objection 4 are in other parts of the maps.)

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This concludes the statement of objections from Garway Parish Council.

Date of statement : 3rd December 2012

Signed by Malcolm Walker, Acting Clerk to Garway Parish Council

Signature:

Address:

email to : parishclerkmw@btinternet.com

Witnessed by Malcolm Howard, Vice-Chairman, Garway Parish Council

Signature:

Address: