



In the Matter of Hanger Down, Cornwood,
Devon (No.1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 114 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 710 made by Mr H P Burrows and noted in the Register on 9 February 1971 and the conflicting registration at Entry No. 1 in the Land section of Register Unit No. VG 71 in the Register of Town or Village Greens maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Dartmouth on 22 May 1980. The hearing was attended by Mr K Verrinder, Solicitor, on behalf of the Trustees of Reginald Percy Farr, deceased, the applicants for the registration at Entry No. 2 in the Rights section of the Register Unit and Mr R Midgley, Solicitor, on behalf of Mr Burrows and also on behalf of Mrs J Passy, the widow and successor in title of Wing-Cdr C W Passy, an Objector to the registration at Entry No. 2 in the Rights section of the Register Unit. There was no appearance on behalf of the Cornwood Parish Council, the applicant for the registration.

Mr Burrows's Objection related only to a copse called Hanger Down Clump, which it was agreed should be excluded from the Register Unit.

The registration at Entry No. 2 in the Rights section of the Register Unit, which if confirmed would support the registration the subject of these disputes, is to graze 8 bullocks, 6 ponies, and 30 sheep and is stated to be attached to a farm known as Whingreen, which lies to the west of the land comprised in the Register Unit.

Whingreen Farm was acquired by the late Mr R P Farr on 23 December 1923. Among his title deeds was a deed of covenant made 24 December 1848 between (1) James Northmore (2) Philip Horton and William Rew. The parcels of this deed are followed by a long string of general words, including "Commons and Common of pasture and of turbarry and other commonable rights to the said several messuages or dwellinghouses land and hereditaments respectively belonging or appertaining in the several parishes of Cornwood Holme otherwise Holme and Buckfastleigh in Devonshire". This deed related to considerably more land than Whingreen Farm. Whingreen Farm alone was the subject of a conveyance made 31 December 1881 between (1) John Mortimore (2) Mary Mortimore (3) William Edwards (4) Sarah Dorothen Kelly with (*inter alia*) "moor feedings commons and Common of pasture turbarry and other commonable rights to the said hereditaments described appertaining or held occupied or enjoyed therewith or reputed to be part thereof or appurtenant thereto".

These deeds alone fall far short of proving that the rights the subject of Entry No. 2 are attached to Whingreen Farm. To do that they would have to be supplemented by evidence showing that the rights had been exercised by the occupiers of the farm.



-2-

Although Whingreen Farm adjoins Hanger Down, there is no direct access to the down from the farm land, the only access being along a gated road which leads to tracks across the down. Mr Michael Farr gave evidence that he and his father had turned out cows, ponies and heifers onto the down without any arrangement with the owner and without the stock having been turned off the down. The FARRS last kept animals some years ago, when the farm was let. Mr Farr said that the first tenant, a Mr Stephens, may have put stock on the down. The tenant during the last ten years has been a Mr Cannon, who was said to have paid a rent to Wing-Cdr Passy for the right to graze on the down. Mr Burrows, who has known the area for 21 or 22 years, never heard of rights of common on the down. Mrs Passy, who has known the down since 1961, said that her husband had grazed the down with his own stock, that later the grazing had been let to a Mr Moysey, and that she never knew of anyone else grazing there.

On this evidence I am not satisfied that any rights of common over Hanger Down had been exercised by the occupiers of Whingreen Farm before the conveyance of 1881, and the evidence is insufficient to prove the acquisition of rights of grazing by prescription since 1881.

There was no evidence that Hanger Down was subject to any other rights of common or that it was waste land of a manor not subject to rights of common.

For these reasons I refuse to confirm the registration.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

19~~th~~

day of

June

1980

Chief Commons Commissioner