



COMMONS REGISTRATION ACT 1965

Reference Nos: 210/D/419
to 427 inclusive
210/D/464
210/D/465

In the Matter of (1) Land at Cripplestyle, (2) Cranborne Common (main parts), (3) and (4) other parts of Cranborne Common, and (5) King Barrow Hill, all in Alderholt, Wimborne District, Dorset.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Units Nos. (1) CL253, (2) CL179, (3) CL324, (4) CL346 and (5) CL162, and are occasioned by Objections No. 882 (relating to CL179), No. 883 (relating to CL346), No. 884 (relating to CL324), No. 882 (relating to CL179) and No. 887 (relating to CL253) made by the Most Hon Robert Edward Peter 6th Marquess of Salisbury (at the date of the Objections and therein called Viscount Cranborne) and noted in the Register on (885) 26 October 1972, (882) 6 December 1972, (887) 21 October 1972, (883) 11 January 1973, and (884) 12 March 1973; and by Objection No. 1267 (relating to CL253) made by Dorset County Council and noted in the Register on 21 December 1972.

I held hearings for the purpose of inquiring into the disputes at Poole on 17 and 18 June 1980. At the hearings, (1) the Ramblers Association on whose application the CL179 and CL253 Land Section registrations were made (their application also included the CL162 land) were represented by Mrs R Colyer their footpaths secretary for the Dorset Area; (2) Mr Alexander Clifford Butler on whose application the Rights Section registrations were made, and as a consequence of such application the CL324 and CL346 Land Section registrations were made, was represented by Mr Mark Shillingford of counsel instructed by Wilsons Solicitors of Salisbury; (3) the Most Hon Marquess of Salisbury was represented by Miss S Cameron of counsel instructed by Frere Cholmeley & Co., Solicitors of London; and (4) Dorset County Council were represented by Mr J W Fribence of the County Secretary's Department.

The hearings relating to the CL162 and CL253 Lands were first; that relating to the CL169 land was second; and those relating to the CL324 and CL346 lands were third. Because some of the evidence given at the first hearing was treated as given at the second and third hearings, for convenience I give one decision.

The land ("the Cripplestyle land") comprised in Register Unit No. CL253 is a triangular tract of about 23 acres; its north side runs along and is open to the road from Cranborne on the west to Alderholt on the east. The grounds of the County Council Objection No. 1267 are in effect that a 3 foot verge for the road-way should be excluded from the registration. The letter dated 21 May 1980 to the County Council said that the Objection would be withdrawn at the hearing on the grounds that if the registration is confirmed by virtue of section 22(1) of the 1965 Act the highway rights which the County Council consider to exist over the land would not be prejudiced. At the hearing on behalf of the Council, Mr Fribence withdrew the Objection accordingly.



The Land ("King Barrow") in Register Unit No. CL152 is a tract approximately circular containing about 0.35 of an acre. The land is surrounded by the Cripplestyle land from the CL253 registration of which King Barrow is excluded.

Mr David John Holman Pattle who is now vicechairman of Alderholt Parish Council and who at the beginning of the hearing explained that he had no instructions to make any claim on their behalf, volunteered to give evidence, in the course of which he said (in effect):- He had lived in the Parish for 43 years (since he was 3 years old), had served on the Parish Council for about 19 years and had been their chairman for 13 years up to 1980. King Barrow is the top of a hill where there is a tumulus. It is approachable in three directions by public footpaths (marked as such on the Definitive Map), two from the Alderholt-Cranborne Road and one from the lane off such road by the Cripplestyle Chapel. Over a great many years this Chapel in conjunction with another in Alderholt have held religious open air ceremonies on the top of the hill; once and sometimes more often in each year; a great many parishioners of Alderholt attend. He understood that these ceremonies had been held for over 170 years. There is no fence between King Barrow (CL159) and the surrounding Cripplestyle land (CL253).

Mrs Colyer in the course of her evidence produced the documents specified in Part I of the Schedule hereto. During Miss Cameron's opening of Lord Salisbury's case in support of the Objections, Mr Shillingford intervening said that an agreement had been made between Mr Butler and those acting for Lord Salisbury as a result of which he on behalf of Mr Butler unconditionally withdrew his application for rights of common over all these lands. The documents specified in Part II(a) of the Schedule hereto were produced by Miss Cameron, and subsequently Miss S C Hamilton, solicitor with Frere Cholmeley & Co gave evidence as to how these documents had been obtained (from the Hatfield archives or other places which put them in the possession or under the control of Lord Salisbury). Save that I have some idea of the appearance of Cripplestyle land having viewed it from the road, no evidence was offered for or against the Rights Section registrations relating to the Cripplestyle land and King Barrow, or any other of these five lands.

The grounds of Objection Nos. 885 and 887 are:- "That the land was not Common Land at the date of registration". By section 5(6) of the 1965 Act, these Objections must be treated as objections to the Rights Section Entries. In favour of my refusing to confirm these registrations, I have Mr Butler's withdrawal. However Mrs Colyer as I understood her being desirous of supporting the Land Section registrations having in mind the words "lands subject to rights of common" in paragraph (a) of the section 22 definition of "common land", contended that I should not avoid the Rights Section registration, or should at least treat the rights registered on the application by Mr Butler as being subsisting at "the date of registration". She contended that Miss Cameron and Mr Shillingford should inform me of the terms of the agreement under which Mr Butler was now withdrawing; Miss Cameron and Mr Shillingford refused to give. Reference was made to the High Court judgement in *Butler v Clwyd* 1976 1 WLR 15 and the discussion of its effect contained in a decision dated 30 January 1980 of Mr Commissioner Morris Smith in re Custard Hill, Gillingham All Saints, reference 210/D/317. On the day following this refusal, Mrs Colyer said, she had telephoned Mr Butler and she gave me a memorandum of what he said, from which I infer that before the conclusion of the hearing she knew the more important of the terms. Without making any findings as to these terms, for the purpose of dealing with Mrs Colyer's contention, I shall assume (as seems most favourable to her) that under the agreement Mr Butler received some substantial collateral benefit from Lord Salisbury. However this maybe, I see no reason for criticising Lord Salisbury's advisers for providing such a benefit; and in my opinion the nature and amount is



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irrelevant to anything I have to determine; even if it were very large, it still would not be evidence that there was over the Cripplestyle Land and King Barrow rights as registered attached to Gold Oak Farm to graze 25 cows and followers, to take sand and gravel, to grass and ferns, and to estovers. Of the existence many such rights at any time I have no evidence at all; there is no need therefore to consider what weight I should attach to his withdrawal if I had such evidence.

As to the possibility of there being any other right of common (nothing to do with Mr Butler):- The presence of a tumulus on King Barrow and any practice of the public to inspect it are not enough to establish any public right; Attorney General v Antrobus 1905 2 Ch.188 (the Stonehenge case). In my opinion even if there could be (which I doubt a customary right for the inhabitants of the locality to take part on otherwise privately owned land in a religious ceremony, such a right is in my opinion not a right of common within the 1965 Act. So these lands can only be rightly registered in the Land Section if they come within paragraph (b) of the said definition: "wasteland of a manor ...".

On this question it was at the hearing conceded that King Barrow and the Cripplestyle land must be considered as one piece. It is open to the road. No evidence was offered as to its cultivation or (except as might be drawn from the 1849 Award) its occupation, such as was offered as below mentioned in relation to the CL169 land. Miss Cameron conceded that it was open to the public and uncultivated; she suggested to Mr Pattle that it was generally accepted that King Barrow and the surrounding land belongs to Lord Salisbury and that he had never while living at Cranborne Manor for 20 years before his father died made any attempt to stop the parishioners having religious ceremonies on it; Mr Pattle said he was sure that Lord Salisbury would not refuse permission for this use of the land, but that the Parish Council would be failing in their duty if they did not claim that it could be so used. Mrs Colyer asked me to look at the land; in the absence of any evidence or suggestion that this piece is not waste land and in the absence of any suggestion that on this question the piece could be divided into different parts or was before the date of registration different from what it now appears to be, and from what I myself saw, (the land was not at its best because it was raining hard), I find that this piece (CL253 and CL162) is not and at all relevant times has been wasteland; open, uncultivated and unoccupied.

As to it being wasteland "of a manor":- The 1828 documents show that parts of what was then known as Cranborne Common, were being enclosed apparently on the authority of the Steward of the Manor acting on behalf of the then Marquess of Salisbury as the then Lord of the Manor. I reject the suggestion that from these enclosures I can infer that the unenclosed parts ceased to be wasteland of the Manor within any relevant meaning of these words; the 1830 permission which apparently implemented the enclosure mentioned in one of the 1828 documents is in form a manorial document and indicates that according to the custom of the Manor enclosures for limited periods were permitted; if these enclosures for any reason ceased, the land would I think once more revert to wasteland of the Manor subject to the customs of the Manor. I see no reason for concluding that in some way the land in 1828 known as Cranborne Common had become part of the demesne lands of the Manor to which the customs of the Manor were not applicable.



Mrs Colyer relied on the 1846 Award in which "Cranborne Common" was described as "Heath", as containing 960 acres 3 roods and 6 perches as being in the ownership of the Marquess of Salisbury and occupied by "himself"; this land was treated as not tithable. Attention was drawn to the words "tithe merged" in the "Remarks" column of the Schedule to the 1846 Award, and Miss Cameron referred to Millard on Tithes (3rd edition 1938) at page 138. While the Award may be some evidence that in 1846 the land was in some sense "occupied", I am concerned with the word "unoccupied" as used by Watson B in his description of "wasteland" in Attorney General v Hamner (1858) 27 L.J.Ch. 837. In my opinion in the context in which the word was used in the Award, the words "occupied" and "tithe merged" in it are insignificant when balanced against the present appearance of the land and the inference I can draw from the appearance as to the ways in which in any sense it could be described as occupied by the Marquess of Salisbury.

Miss Cameron contended that the CL162 and CL253 lands had been "severed" from the Manor as a result of the documents next mentioned and referred me to re Box 1980 1 Ch 109. She conceded that the lands and the Manor before the 1915 Resettlement were held together and were not severed by the Resettlement; it was not produced but I understood that by it were dealt with extensive estates including the CL162 and CL253 lands and also about 8 Manors or Lordships including that of Cranborne. By the 1953 conveyance after reciting that the legal estate in the lands thereby conveyed was then vested in the 5th Marquess of Salisbury as personal representative of the 4th Marquess in trust for Gascoyne Cecil Estates Company by such conveyance the lands therein described were conveyed to the 6th Marquess. By the 1974 Deed of Gift the lands therein described were to Gascoyne Holdings Limited, Samos Investments Limited, Mysia Investments Limited ("G, S, & L"). From the descriptions in the 1972 conveyance I can identify the lands thereby conveyed as including the Cripplestyle land and King Barrow. Although ~~some~~ descriptions in the 1953 conveyance are not so easy, I infer that the 6th Marquess under the 1953 conveyance acquired his title to make a conveyance of these lands by the 1972 deed of gift expressed to be conveyed. The origin of the trust mentioned in the 1953 conveyance was the 1936 contract under which although the purchase money was paid on the following day no conveyance of the legal estate was effected before 1953. On these documents I conclude that the legal estate in fee simple in Cripplestyle land and King Barrow is now in G, S, & M under the 1936 contract, the 1953 conveyance and 1974 deed of gift.

and that is part of the 2nd set of documents which I found in any of its documents

As to the legal estates in fee simple in the Manor of Cranborne:- I understood that the original of the 1936 contract was in the London office of Frere Cholmeley & Co, and that being very voluminous it had not been brought to this hearing. Miss Hamilton said (and I accept) that it contained nothing about the Manor relating to these Estates in the 1915 Resettlement. From the documents produced I infer that notwithstanding the 1915 Resettlement, the Manor like the lands expressly dealt with by the 1936 contract and the 1953 conveyance, was immediately before the death of the 4th Marquess (1947) vested in him for a legal estate in fee simple and that he was also titled beneficially. As to the subsequent devolution of the Manor evidence I have is that of Miss Hamilton that it was never expressly dealt with by any document; so the legal estate must now be in the personal representatives of the 4th Marquess, in the 1972 appointment said to have been the 5th Marquess under probate granted on 29 August 1947. From



the probate granted on 28 March 1972 (also recited in the 1972 appointment) it seems likely that, by devolution the personal representatives of the 5th Marquess, namely the 6th Marquess, the Hon E C D Cecil and Mr R E Cavendish (he died 14 August 1972), are also now the personal representatives of the 4th Marquess. So I find that the legal estate in the Manor of Cranborne has been severed from the legal estate in the CL162 and CL253 lands.

As to the beneficial interests:- It is unlikely that they under the resettlement of even date with and refer to in the 1974 deed of gift are the same as are applicable to the Manor under the will of the 4th Marquess. So I find as regard his address there has also been a severance.

Miss Cameron as I understood her, contended that if I had so found, I was obliged by *re* Box *supra* to conclude that the CL162 and CL153 lands were not within paragraph (b) of the 1965 Act definition of "common land". But the judgement of the Court of Appeal in *re* Box was expressed to be on the basis that the land there under consideration had "long ceased to be in any way connected with a manor", see pages 116 and 118. The judgement also dealt in some detail with ownership, but I cannot therefore conclude that the Court thought that being in the same ownership either for a legal estate in fee simple or beneficially is the same thing as being in some way "connected", or that a Manor ceases to be in some way connected because the legal estate or beneficial interests are "severed".

As to a possible connection:- I infer that the Gascoyne Cecil Estates Company were in some way connected with both the 4th and 6th Marquess; from the 1936 contract until his death, the 4th Marquess and then until 1953 the 5th Marquess held the lands in trust for the Company absolutely; in the 1953 conveyance the 6th Marquess (then Viscount Cranborne) is said to hold 564,052 shares and the 5th Marquess executed the conveyance as "Director". After the 1953 conveyance the 6th Marquess (then Viscount Cranborne) became entitled for a legal estate and beneficiary to the lands and so remained until the 1974 deed of gift; I do not attach importance to the 1972 appointment but it seems to me to have been intended to remove a possible doubt about other lands. Because the Objection is expressly limited to the "date of registration", I may not be directly concerned with G, S, & M, although I infer too that they are in some way connected with the 6th Marquess. It is improbable that any of the documents produced were made for the purpose of bringing these CL162 and CL253 lands outside the descriptive words "wasteland of a manor", and it may be that the 5th and 6th Marquess or their advisers have ever since manors were for all practical purposes abolished in 1935, forgotten all about the Manor of Cranborne.

Apart from the documents discussed in the preceding paragraph, from the present appearance of the lands and their history as described by Mr Prattle and before the 1915 documents produced I would find (it being reasonably plain) that they were wastelands of the Manor of Cranborne; in these circumstances it is I think for the Objectors to show that they have "ceased in any way to be connected" with the Manor. In my opinion the documents produced do not show this; indeed from them it is probable or likely that the persons now entitled under the will of the 4th Marquess (not produced) as being entitled to act as or control the Manor for all practical purposes were and are the same as Gascoyne Cecil Estates Company, the 5th Marquess, the 6th Marquess and G, S, & L who can act as owners of or control these CL162 and CL 253 lands; so that the lands had not within the words used in the said judgement ceased to have any connection with the Manor. In short the connecting link is the 6th Marquess.



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For the above reasons my decision is that as regards the Cripplestyle land and King Barrow the Objection so far as it relates to the Land Section fails, but so far as it must by Section 5 of the 1965 Act be treated as relating to the Rights Section succeeds.

At the second part of the hearing I considered the land in Register Unit No. CL179 (Cranborne Common):- It contains about 223 acres. Mrs Colyer in support of the registration relied on the evidence she had given and what she had said as summarised above in relation to the Cripplestyle land and King Barrow; she conceded that some part of Cranborne Common had ceased to be wasteland at the date of registration but was unable to say which parts. The said withdrawal made by Mr Shillingford of the rights registered on the application of Mr Butler was applicable to this CL179 land. On behalf of Lord Salisbury the documents specified in Part II(b) of the Schedule hereto were produced and oral evidence was given (1) by Mr R F Hemsley who is now and has been since 1965 Head Game-keeper of the Cranborne Estate (previously from 1952 he was under Game-keeper), (2) by Miss H A J Brotherton who is and has been since 1960 Hon Secretary of the Dorset Naturalist Trust and (3) by Mr P P Pamment who is and has been since 1975 Head Forester of the Cranborne Estate (since 1970 an under Forester). Two days after the hearing I walked across Cranborne Common along the footpath from the ford (now bridged) by its northeast side to the summit (316) south of Telegraph Plantation on its southwest side.

Mr Hemsley described the fences round the Cranborne Common as he had known them since 1952. (At that time the railway was in operation). Miss Brotherton said that since her Trust had had a lease of part of the land of the Common they had tried to prevent persons using the footpath (the one along which I walked) from wandering off it and disturbing plants and other things of interest to naturalists. Mr Pamment described how the Common had been planted between 1960 and 1970, explaining that plantations had not before 1970 extended south of the Nature Reserve.

It was not I think disputed by Mrs Colyer that the parts of this CL169 land north of the Nature Reserve had by reason of the planting described by Mr Pamment on 23 March 1970 (the date of registration) ceased to be wasteland. Although much wasteland has been preserved as a nature reserve without having thereby ceased to be wasteland, it is not a necessary attribute of a nature reserve that it shall be wasteland; indeed if nothing is done to the vegetation on, or about people walking over, a nature reserve, it may cease to be of any real interest to a naturalist. This CL169 land is remote from human habitation; apart from the footpath above mentioned and one or two other paths, it would be difficult to walk over; indeed Mr Pamment warned me of the danger of getting lost or stuck in damp patches (he offered to guide me if I wished); and the need for this was obvious during my inspection. Although the warning off of persons who might wander from the footpath as described by Miss Brotherton may not amount to very much, I think enough to enable me to find as I do that the Trust are in occupation of the Reserve. Notwithstanding that the plantations south of the Reserve, were made after the date of registration, it would not I think be sensible to find that at that time this particular part of this CL169 land was still wasteland. I reject Mrs Colyer's contention that a piece of land at some time properly described as wasteland and which is bit by bit planted for forestry purposes ceases to be wasteland bit by bit to the extent of the bit



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which has been planted. In considering whether this CL169 land was wasteland at the date of registration, it must I think be treated as one piece. At that date it was still all in the process of being developed as a Nature Reserve and for forestry purposes; in my view it ceased to be wasteland when this development can be fairly regarded as having started notwithstanding that there were at the time, compared with the whole, small parts on which nothing had yet been done. Further the act of planting trees is not necessarily the first significant event; preliminary chemical fertilisation as mentioned by Mr Pamment is also significant. Bearing in mind the general remoteness of Cranborne Common and it having been fenced for a substantial time before the date of registration and its general unsuitability for random walking by the public I find that all of it ceased to be wasteland before the date of registration.

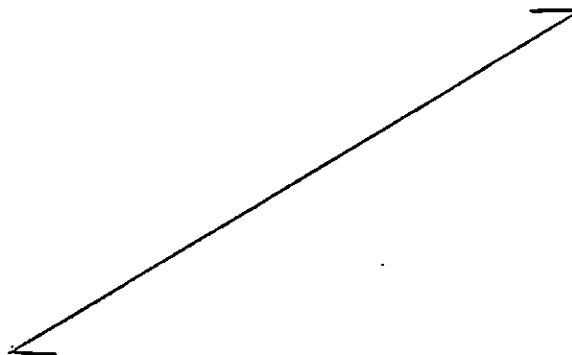
So quite apart from the documentary considerations above discussed in relation to the Cripplestyle land and King Barrow which are equally applicable or inapplicable to this CL169 land, I conclude that it is not within paragraph (b) of the 1965 Act definition because none of it was wasteland at the date of registration. So my decision is that the Objection succeeds both as regards the Land Section and the Rights Section.

During the third part of the hearing, I considered the lands in Register Units Nos. CL324 and CL346. These contain about 12 acres and about 70 acres respectively and they adjoin the lands discussed above or some of them. They are not the subject of any application by the Ramblers Association. The withdrawal by Mr Shillingford of Mr Butler's application for rights extended to these lands. The Land Section registrations were made in consequence of his application for rights. As the application has been withdrawn, in the absence of any evidence in support of either the Rights Section or the Land Section registration, my decision is that these registrations were not properly made.

Upon the considerations set out above I confirm the Land Section registrations in Register Unit Nos. CL162 and CL253 without any modification. I refuse to confirm the Land Section registrations in Register Unit Nos. CL169, CL324 and CL346. And I refuse to confirm the Rights Section registrations in all these five Register Units.

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.

TURN OVER





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SCHEDULE

(Documents produced or referred to)

Part I: on behalf of the Ramblers Association

- 10 June 1980 Letter from Secretary of Ramblers Association to Mrs Colyer.
- 28 April 1846 Tithe Award (produced from County Archives) for Tithings of Cranborne and Holwell in the Parish of Cranborne (confirmed 18 September 1847, with map annexed dated 1844).
- 11 July 1958 Report of Royal Commission on Common Land.
- 1956 (about) Copy return of Dorset County Agricultural Committee prepared for the use of the Royal Commission.
- 18 June 1980 Memorandum by Mrs Colyer of her telephone conversation on that day with Mr Butler.
- 12 February 1973 Copy letter from Mrs Colyer to Secretary of Ramblers Association.

Part II: on behalf of Lord Salisbury
(a) Cripplestyle Land and King Barrow

- April 1928 New enclosures of Waste.
- 1828 New enclosure.
- 15 April 1830 Permission at the request of Henry Fry to enclose wastelands part Daggons Busnes for 21 years if his son (then aged 7 could so long live the weekly rent of 2s/6d; signed "for the Marquess of Salisbury by the Steward of the sd Manor".
- 1915 Resettlement (referred to) for the benefit of the then Marquess of Salisbury and his family of lands at Cranborne expressly including the Manor or Lordship of Cranborne.
- 23 December 1936 Contract (not produced but recited in 1972 appointment by which JEHG 4th Marquess of Salisbury agreed to sell to Gascoyne Cecil Estate Company the lands described in the Schedule thereto (the 1972 appointment recites the then entitlement of the 4th Marquess these lands for an estate in .
- 24 December 1936 Receipt (not produced but recited in the 1972 appointment) for all purchase monies due under the 1936 contract.
- (4 April 1947 JEHG 4th Marquess of Salisbury died).

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- 4 April 1953 Conveyance (produced) by Gascoyne Cecil Estates Company and RAJ 5th Marquess of Salisbury to REP 6th Marquess (then and therein RAP Cecil, Viscount Cranborne) of lands in Cranborne and Pentridge and elsewhere including "Common Lands; in hand; 632.600 (acreage)".
- 3 August 1966 Conveyance (produced) by Gascoyne Cecil Estates Company to Gascoyne Holdings Limited of equitable interest (First Schedule refers to 1936 contract).
- 23 February 1972 RAJG 5th Marquess of Salisbury died.
- 25 September 1972 Appointment of new Trustees by his surviving personal representatives of legal estate in properties subject to the 1936 contract "now remaining to be conveyed".
- 11 March 1974 Deed of Gift (produced) by REP 6th Marquess of Salisbury to Gascoyne Holdings Limited, Samos Investments Limited to Trustees for sale under a settlement of even date of lands including First "land at Cranborne Common and King Barrow, Alderholt aforesaid: 29.54: in hand: (plan) 3 edged mauve and FOURTHLY including "150, 151(d), 151 and 152 (Camborne Terrier), Woodlands, Cranborne Common, Land, Cranborne Common, various woodlands (description): 137.10, 106.90 and 970.80 (acreage): Ministry of Agriculture, Dorset Naturalists Trust, Perlprat Developments Limited (tenant).
- (b) About Cranborne Common
- Map showing lettings of the CL179, CL324 and CL345 lands.
- 15 May 1963 Lease REP Cecil (Viscount Cranborne) to the Dorset Naturalists' Trust Limited of 106.90 acres as delineated on plan (proposed Nature Reserve) for 21 years from 25 March 1963.
- 23 January 1968 Lease by REP Cecil (Viscount Cranborne) to DAR Earl of Crawford and others of 837.6 acres (including parts of Cranborne, south of the Nature Reserve) for 199 years from 25 December 1967 (Forestry lease).
- 13 May 1970 Assignment of the said lease to Perlprat Developments Limited.

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30 May 1980

Paper produced to Mr Pamment showing plantations
with dates on Cranborne Common with map of the
"compartment Nos. referred to".

Dated this 24th — day of November 1980

a. c. Baden Fuller

Commons Commissioner