



COMMONS REGISTRATION ACT 1965

Reference Nos 210/D/211

In the Matter of About 23 acres of Land,
Portland, Weymouth and Portland,
Dorset (No. 1)

DECISION

This dispute relates to the registration at Entry No. 71 in the Land section of Register Unit No. CL 71 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 446 made by the Clerk of the former Dorset County Council and noted in the Register on 1 June 1971.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 23 September 1976. The hearing was attended by Mr N Butterfield, of Counsel, on behalf of the Crown Estate Commissioners, the applicants for the registration, and Mr D S Harper, solicitor, on behalf of the Dorset County Council. Mr Butterfield also appeared for the Commoners and Court Leet of the Island and Royal Manor of Portland, the applicants for the registration of rights of common over the whole of the land comprised in the Register Unit.

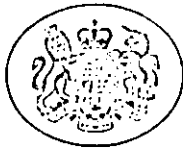
Mr Butterfield informed me that his clients were prepared to agree to the exclusion from the Register Unit of the land shown on plans which he handed to me.

The land remaining the subject of dispute consists of strips of grassland adjoining the metalled road, known as Weymouth Road, which leads to Ferrybridge, the road link between Portland and the rest of the county of Dorset. The applicants claim that the road was laid out over common land and that the width of the highway is limited to the metalled part. It is alleged in the Objection that the disputed land has been maintained as highway.

There has been a road along the general direction of the present road for a long time, probably for centuries. It is shown on a map made by Francis Webb in 1800. At that time it led to the ferry which preceded the present Ferrybridge. The bridge was constructed under the powers of "An Act for making and maintaining a Bridge over the River called 'The Portland Ferry' in the County of Dorset, with proper Approaches thereto" (5 & 6 Will, IV, c. 1xx), passed in 1835.

The Commissioners appointed under the Act were authorised to set out and make the approaches to the bridge over the lands, tenements and hereditaments of the owners and occupiers named in a list deposited with the Clerk of the Parliaments. It therefore appears that the approaches were designed as a new road in substitution for that which formerly led to the ferry. The deposited plans show that the approach to the Portland end of the bridge was to be approximately a mile and a half long and was to be constructed at the end nearer the bridge on an embankment.

Section 43 of the Act provided that after the payment of compensation the Commissioners could enter upon the land to be acquired, whereupon the fee simple, together with the yearly profits and all the estate use, trust, and interest of all parties in it was to vest in and become the sole property of the Commissioners. The bridge and the approaches were constructed in accordance with the deposited



plans and were later transferred to and vested in the former Dorset County Council by art. I of the County of Dorset (Portland Ferry Bridge) Order 1894, confirmed by the Local Government Board's Provisional Order Confirmation (No. 17) Act 1894 (57 and 58 Vict., c.cxxv).

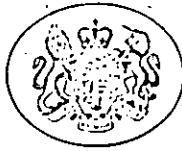
A part of this embankment is comprised in the land which it has been agreed should be excluded from the Register Unit. In my view, the whole of the land taken for the construction of the embankment lost its status as common land when it was acquired by the Commissioners in the exercise of their statutory powers and should therefore be excluded from the Register Unit.

The part of the road to the south of the approaches appears to retain its original form, though with a modern surface. The land on either side is open and uncultivated and subject to rights of common. The question for my determination is how wide a strip of land must be deemed to have been dedicated as a highway.

No assistance can be obtained in such a case from any legal presumption. Where there are no fences on either side of a road there is nothing to raise the presumption that one part of the open land beyond the actual road more than another has been dedicated: see per Blackburn, J. in Easton v. Richmond Highway Board (1871), L.R.7 Q.B. 69, at p.75. On the other hand, a highway may exist which is not a metalled road at all, and it is extremely common for part of a highway to be metalled and the remainder to be left unmetalled. Mr Harper argued that this is such a case.

I have, therefore, to see whether there is evidence which leads to an inference that land beyond the metalled road has been dedicated as part of the highway. The evidence upon which Mr Harper relied was the maintenance of such land by the highway authority. This maintenance has taken the form of mowing by employees of the County Council. The width of the land so mown has varied. It was formerly mostly 6 feet, but recently, as an economy measure, it has been only 3 feet. The verge has never been seeded or laid out: it is covered with what was described as sand-dune vegetation, mostly grass and pinks. Mr A J Stewxbury, who gave evidence for the applicants, stated that the County Council had never cut the grass to his knowledge, but I accept the evidence of Mr G J King, who has been responsible for the supervision of the work, that it has in fact been done at regular intervals.

In my view, such mowing would not confer upon members of the public a right of passage over land which had not previously formed part of the highway. The most that could be said of it is that it may have indicated the area which those concerned accepted as part of the highway. However, I find myself unable to regard it as such an indication in this case. In the first place, there is no clearly defined strip, for the width of the mown area has been dictated by reasons of economy. Secondly, about six or seven years ago a part of the road in question was widened for about 1,000 feet, the additional land being taken into the bounds of the metalled carriageway. There can, in my view, be no doubt that in this part of the road the right of passage does not extend beyond the metalled carriageway. Nevertheless, the mowing has continued along the side of this part. When I find the mowing being carried out on land which is clearly not part of the highway, I am unable to regard mowing on other land as an indication that the land on which it has taken place is part of the highway.



As I understand the law, where a metalled road runs over open land the metalling indicates the width of the highway unless there is some evidence from which it can be inferred that some of the land on either side has been dedicated as a highway. In this case, I find myself unable to draw such an inference from the mere fact of the mowing, and there has been no other evidence from which such an inference could be drawn.

For these reasons I confirm the registration with the following modifications:- namely, the exclusion of the areas which Mr Butterfield stated that the applicants did not wish to be included together with the embankment constructed on the land acquired under the Act of 1835. These areas were indicated on plans, copies of which will be attached to my direction to the registration authority.

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 17th day of March 1979

Chief Commons Commissioner