



COMMONS REGISTRATION ACT 1965

Reference No. 210/D/476-482

In the Matter of Burton Heath in the  
Parish of Wool, Dorset

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DECISION

This dispute relates to the registration at Entry No. 74 in the Land Section of Register Unit No. CL 74 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection Nos. 47, 392 and 463 and noted in the Register on 29 March 1971 and to the registration at Entry No. 1 in the Rights Section of the same register unit in the said Register and is occasioned by Objection Nos. 47, 392, 409 and 463 all noted in the Register on 29 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 28 January 1981. The hearing was attended by Mr B F Tarrant (clerk) appearing for the Wool Parish Council, which had made the application for registration in the Land Section. Mrs R Colyer appeared in support of the application to the same effect made by Mrs M Killingback who had since died. Mr Myles Shillingford of Counsel instructed by Messrs Witham Weld and Company, Solicitors of London appeared for the Trustees of the Weld Estate, the Objectors in the Rights Section.

The objections to the Entry in the Land Section were made by local authorities and sought to exclude from registration the site of a house used as a store, the site of a sewage disposal works and a verge 3ft wide adjoining the highway along the southern boundary of the Register Unit. All three objections were accepted by the applicants in the Land Section or withdrawn.

The dispute was originally listed for hearing before me at Poole on 10 July 1980 but was adjourned by agreement.

After notification of the hearing for 23 January 1981, the Commissioners were notified by letter dated 6 January 1981 that the application in the Rights Section was unconditionally withdrawn, and by letter dated 7 January that the objection in respect of the 3ft verge (No. 463) was also withdrawn.

At the opening of the hearing Mr Tarrant on behalf of the Wool Parish Council withdrew the Council's application in the Land Section. But for the withdrawal I should have confirmed the application in the Land Section to which there would then no longer have been any outstanding objection as Mr Shillingford's clients had not entered any objection in the Land Section.

Mrs Colyer was in some difficulty in taking over Mrs Killingback's application which had been made in a personal capacity and not, as in other cases, on behalf of the Rambler's Association. In the end it appeared to me that it was in the public interest that the matter should be dealt with on its merits and



as Mr Shillingford waived any objection to Mrs Colyer putting her case I allowed the matter *to proceed* as a contested application in the Land Section.

In support of the application Mrs Colyer called Mr Tarrant, the Clerk of Wool Parish Council.

Mr Tarrant said that he had lived in Wool since 1953. There was fencing along parts of the Southern boundary from the figure 77 eastwards to the footpath running North-South but from that point to the eastern extremity of the boundary there was no fencing.

He had examined the Tithe Map of Winfrith Newburgh and West Lulworth which showed Burton Common as No. 27a and Winfrith Heath as No. 309a. No Tithe was payable in respect of either. The landowners were shown as the landowners of Winfrith Newburgh and the Occupiers as the parishioners of West Newburgh. The revised apportionment of 1858 showed Weld as Lord of the Manor. As a result of the alternation of the boundaries of Winfrith Newburgh Register Unit CL 74 is now in the Parish of Wool.

#### For the Objector

Mr L A M Prosser of Wool said he was 57 years of age and had been a Farm Manager on the Weld Estate from 1959-64. Barnes was a tenant of Broomhill Farm. He produced a map showing the register unit and surrounding land which had been prepared by Savills Drawing No. 207 dated 16 January 1981.

In 1960 he had been told that grazing rights existed over the area coloured yellow. The remainder of the unit was then scrub land. The land coloured pink on the map (about 30 acres) was let to him by the Weld Estate in 1963 on a yearly tenancy. For a time he kept pig's on the area hatched black. After he became a tenant he proceeded to reclaim the scrub land so that it produced grass. From 1967 to 1969 he allowed a subtenant of Broomhill Farm to feed his cows on the grass. Barnes never kept any cattle on my land. The parts coloured blue on the maps were formerly reserved for duck shooting. At a later date *he* was given a tenancy of this land. The uncoloured area is unreclaimed.

Mr A M R Lumby a partner in Savills of South Trigon, Wareham had managed the Weld Estate since 1968. He produced a *print* of the Auction Particulars used in connection with a sale of the Wool portion of the Weld Estate in September 1925, which included Broomhill Farm but there is no reference to any rights of common. The triangle of land coloured brown on the map was used for wood-cutting.

There were no fences east of the sewage works before 1969. He had never heard of any claims to exercise rights of common. He was unaware that the land had been included in a list of commons sent to the Royal Commission on Common Land by the County Agricultural Executive Committee and the Clerk *to the County Council.*

The witness produced two agreements ~~one~~ dated 20 December 1943 and ~~the~~ 29 December 1950



respectively between the Lulworth Castle Estate and Mr L V Barnes, the applicant in the Rights Section under which the latter was allowed to occupy and fence in 5 or 6 acres of East Burton Heath for three months on payment of rent of 10/-. The land was described as 'on the left of the road from Moreton to Wool immediately adjoining Broomhill Farm'. The occupier *had to* remove the fence at the end of the three months terms and to *indemnify* Colonel Weld against any claims by the Commoners of East Burton Heath or other persons whose interests might have been affected by reason of the enclosure of the land. There appeared to have been agreements on similar terms in December 1950 and 1958.

In a return made to the Royal Commission on Common Land by the Dorset County Clerk and County Agricultural Executive Committee, East Burton Common had been described as 'Type of Common Manorial Waste, Nature of Common Rights and Extent used-Unknown grazed by one or two smallholders.

This view gets some support from the provisions for *evidently* in the agreements made between the Lulworth Estate and Mr Barnes.

For the reasons given by Slade J in *Re Britford Common* 1977, 1 WLR 39 at p. 47, I am of opinion that the registration should be confirmed.

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 15<sup>th</sup> day of April 1981

*James Hammett*

Commons Commissioner