



COMMONS REGISTRATION ACT 1965

Reference Nos. 210/D/286-291

In the Matter of Corfe Castle Common,
Dorset

DECISION

1. These disputes relate to the registrations in the Land Section and the Rights Section of Register Unit No. CL 34 in the Register of Common Land maintained by the Dorset County Council and are occasioned by the Objections mentioned below.

Land Section

Entry No. 34 Objection No. 467 made by the Clerk to the Dorset County Council and noted in the Register on 28 January 1971

Rights Section

Entry Nos. 1-12 Objection No. 467 (as above)

and Nos. 14-17

Entry No. 4 Objection No. 431 made by Mr H J R Bankes and noted in the Register on 28 January 1970

Entry No. 15	Objection No. 1126 made by Mr H J R Bankes	} Noted in the Register 15 March 1973
Entry No. 16	Objection No. 1127 made by Mr H J R Bankes	
Entry No. 17	Objection No. 1220 made by Mr H J R Bankes	

2. I held a hearing for the purpose of inquiring into the disputes at Weymouth on 21 November 1979.

At the hearing there appeared (1) Mr Holly of, and representing, Dorset County Council (2) Mrs Mackworth, Solicitor, on behalf of Mr Bankes and his successors. (3) Mr P Clayden of, and representing, the Ramblers Association (4) Mr R A Spiller, Chairman of and representing Corfe Castle Parish Council and also one of the Trustees of Corfe Castle Charities who have registered a right of common (Entry No. 11) (5) Mrs R M Lloyd, who has registered a right of common (Entry No. 4). (6) Mr P A Brown who has registered a right of common (Entry No. 1).

3. The registration as common land was made on the application of Mr Bankes, and there are supporting applications noted on the Register by Corfe Castle Parish Council and by the Ramblers Association. The Objection by the County Council is on the ground that an area delineated on the plan attached to the Objection (Plan No. 4445/12) is highway, and the question accordingly is whether this area should be excluded from the land ("the Unit Land") comprised in the Register Unit.

4. There is a tarmac road about 10 feet wide across the common leading from the end of West Street in the village, where it is gated, to the other side of the common where there is a cattle grid, and beyond that it continues as a track to Blashenwell Farm. No party concerned resisted the exclusion from the Unit Land of the tarmac road as it exists. The area, however, to which the County Council's objection relates is some 30 feet wide - that is to say, the existing road together with a 10' verge on either side. A considerable number of the parties



concerned consented, or did not object, to the exclusion of the 30' wide area, but so far as this involved the exclusion of a 10' verge on either side of the existing road it was opposed by Mrs Lloyd, Mr Spiller and Mr Brown.

The common (which I inspected) is immediately accessible from the road on either side, there being no fences or hedges between the road and the common. Mr Holly, for the County Council, had no evidence of user or otherwise to indicate that the verges were to any extent part of the road, but referred to the presumption that verges form part of the highway. In my opinion this presumption does not apply in the circumstances of this case: see Halsbury's Laws of England 3rd Edition, Volume 19 page 75 where it is stated that "where a metalled road crosses unenclosed land, there being no ditch or other physical feature to indicate other limits to the highway, the proper inference is that the *via trita* alone forms the highway, unless public user of adjoining land for the purposes of traffic is proved." In this connection, on my inspection I found that along considerable stretches of the road the verges did not continue at the level of the road but comprised grass banks or shrubs at the edge of the road, and there was nothing to indicate any public user of the verges as part of the highway.

In the result, I see no basis for excluding from the Unit land the whole area claimed by the County Council and I shall confirm the registration at Entry No. 34 in the Land Section modified only so as to exclude the area comprising the existing hard road.

5. As regards the Objections made by Mr Bankes to four of the Rights: (a) Entry No. 4. The Objection was withdrawn on the terms, agreed to by Mrs Lloyd, that the Right does not extend to a small area of the Unit land. This area is indicated on a plan (marked "A"), and I shall confirm the registration of this Right modified so as to exclude this area.

(b) Entry No. 15. The Objection is on the ground that the rights do not exist. In the absence of any evidence as to the existence of these rights, the Objection is, in my view, entitled to succeed and I refuse to confirm the registration.

(c) Entry Nos. 16 and 17. The Objection is on the ground that the rights do not exist and again there was no evidence of their existence, but the Objector was prepared to withdraw the Objection on the same terms as mentioned in (a) above. I shall accordingly confirm the registrations, modified if necessary as in (a): it does appear from the Register that Right No. 17 is already so modified.

6. The registration of the remaining Rights will be confirmed, though they will of course be subject to the modification to the registration in the Land Section mentioned in paragraph 4 above.

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

14 February

1980

L. J. Morris Smith

Commons Commissioner