



COMMONS REGISTRATION ACT 1965

Reference No. 10/D/3

In the Matter of Haythorn Common,
Horton, Dorset (No.3)

DECISION

This dispute relates to the registration at Entry No.16 in the Land section of Register Unit No. C.L.17 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No.104 made by the Dorset County Council and noted in the Register on 3rd June 1971.

I held a hearing for the purpose of inquiring into the dispute at Wimborne Minster on 9th March 1972. The hearing was attended by Mr. A. Belcher, Clerk of the Horton Parish Council, Mr. W.G. Press, Clerk of the Wimborne and Cranborne Rural District Council, and Mr. J. Simmons, Deputy Clerk of the Dorset County Council.

The objection relates to a part only of the land comprised in the Register Unit. The grounds of objection are expressed as follows:-

"The Highway has been included. The section of road from the South West to the boundary running North just West of the letter box is between fences and the registration should finish on the North West side of this road. The remaining section is unfenced and it is considered that highway rights have been exercised over a width of 20'0" as shown coloured pink on Plan No.4445/4 attached".

If the land to which the objection relates does form part of a highway, it is, of course, excluded from the definition of "common land" in s.22(1) of the Commons Registration Act 1965. However, as Mr. Simmons very fairly pointed out to me, the confirmation of the registration of the whole of the land in the Register Unit would not deprive members of the public of any right which they may have to use part of it as a highway because, although by virtue of s.10 of the Act the registration of the land as common land would be conclusive evidence that it was common land, as at the date of registration, it is provided by s.21(2) that s.10 shall not apply for the purpose of deciding whether any land forms part of a highway.

My jurisdiction in this matter is entirely statutory. It is to decide whether or not to confirm the registration with or without modifications. My decision has effect in relation only to the land included in the registration. If I were to exclude any land from the registration on the ground that it was a highway, that would not be res judicata if the question whether it was in law a highway were later to come before a court of competent jurisdiction. That court might decide that some or all of the excluded land did not form part of a highway, and the result would be that there would be land which was neither common land or part of a highway.



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On balance, in the circumstances of this case it seems to me to be better to avoid the possibility of its being subsequently decided that some or all of any excluded land was not after all part of the highway.

For these reasons I confirm the registration without modification.

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 20th day of March 1972

A handwritten signature in cursive script, appearing to read 'J. S. L. J. J. J.', written in dark ink.

Chief Commons Commissioner.