



In the Matter of Land at Colehill,  
Wimborne D

---

DECISION

These disputes relate to the registration at Entry No. 291 in the Land Section of Register Unit No. CL 291 in the Register of Common Land maintained by the Dorset County Council and are occasioned by two Objections (1) No. 347 made by H J R Bankes and (2) No. 1269 made by the County Council, both noted in the Register on 6 March 1973.

I held a hearing for the purpose of inquiring into the disputes at Poole on 28 October 1980. The hearing was attended by Mrs R Colyer, representing the Ramblers Association on whose application the registration was made, by Mr N Lock, Agent for Kingston Lacy Estates, representing Mr Bankes, and by Mr Holly, of the County Council.

The County Council's Objection No. 1269 related to an area of the land in question ("the Unit land") purchased for a road improvement which was completed before registration was made: Mrs Colyer accepted this Objection.

Objection No. 347 is on the ground that there are no rights of common exercisable over the Unit land. It is indeed the case that there are no registered rights of common, but this still leaves the question whether the land was waste land of a manor and qualified on this ground for registration as Common Land. Mr Lock accepted that it was and is land of a manor but denied that it was waste land.

The Unit land of some 3.8 acres comprises two separate areas which lie some distance apart. From a Tithe Apportionment in 1847 and the plan then made, which were put in by Mrs Colyer, it appears that the two areas formed part of a larger area of pasture of about 83 acres. Evidence was given by Mr Lock: the western area is now covered by trees - oak and chestnut - but there has not been any planting and the growth is a matter of natural generation. There has been a wide swathe cut through to allow the erection by the Electricity Board of an overhead cable which runs in an eastwest line, and is attached to posts in the ground: and the nearby vicarage has rights of access and drainage by agreement with the Objector's Estate. On the south side there is a track, beyond which is land sold to the County Council who fenced their land alongside the track, but there is no fence between the track and the Unit land. The western side adjoins agricultural land, the tenant of which has put up a fence on most of the boundary to prevent his stock going on to the Unit land. Part of the northern side adjoins the road and there are the remains of a barbed wire fence, though not along the north-eastern strip adjoining the road - on that strip however, there is a hedge.

As regards the eastern area, this has a dense growth of naturally generated birch and oak trees, some perhaps 30 years old: there is a track running



- 2 -

from north to south, along which rights have been granted by the Lord of the Manor for access to cottages lying to the south: and a wayleave has been granted for an underground electricity cable running along the southern boundary of the area.

Mr. Eric T. Rhodes who has been employed in the Estate since 1945 said that there had been no changes in the two areas except natural growth of timber, and that dead trees had been taken out and there had been trimming when necessary.

The issue is whether on the evidence the areas are waste land in the sense of being open uncultivated and unoccupied. Mr. Lock submitted that both areas had been effectively managed by the Estate, but in my view the being very limited acts of management - taking out dead trees and some trimming, and granting rights of access and wayleaves - do not amount to cultivation or occupation. He accepted that there had been no fencing of the two areas by the Estate. The fencing put up to the south and west of the western area was by the owner or occupier of the adjacent lands, there has been no inclosure by the Estate and both areas are available to access from one direction or another. In the result I find that both areas of the Unit land are open uncultivated and unoccupied, and waste land of a manor. Accordingly I confirm the registration, with the modification that there be excluded from the land the part which is the subject of the County Council's Objection.

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

13 November

1980

*L. J. Morris Smith*

Commons Commissioner