



COMMONS REGISTRATION ACT 1965

Reference Nos. 213/D/309-340

In the Matter of Buckle Wood, Cranham Wood and
Cranham Common in the Parishes of Brimpsfield and
Cranham in the County of Gloucester

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 12 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by Objection Nos. 19 and 20 made by Major W W Hicks Beach and the County Council and noted in the Register on 5 June 1970 and 8 April 1971, and to the registrations at Entry Nos. 1-86 in the rights Section of the same Register Unit in the said Register of Common Land occasioned by the Objections of Major W W Hicks Beach.

I held a hearing for the purpose of inquiring into the dispute at Gloucester on 10 December 1980. The hearing was attended by Mr Limbrick for the County Council, by Mr B N Gibbs F.R.I.C.S for Major Hicks Beach and by Mr Evans of Messrs Treasures, Solicitors of Gloucester for the claimants at Entry Nos. 3, 7, 9, 20, 38, 61 and 86 in the Rights Section and by a number of other applicants in the Rights Section in person.

After evidence by Mr Robert Blair a Senior Officer in the Surveyor's Department of the County Council, the objection made by the County Council as Highway Authority was conceded. The other objection on behalf of Major Hicks Beach was withdrawn.

17 of the Entry applications originally registered in the Rights Section, Nos. 4, 6, 8, 10-13, 17, 33, 45, 52, 54, 56, 70, 74, 79 and 84, were cancelled. A further 7 Nos. 24-25, 42-44, 46-8, and 53, were withdrawn at the hearing. No one appeared to support the applications at Entry Nos. 2, 14, 16, 65, 72, 76-77 and 80-81.

Objections were withdrawn to the following applications (insome cases after the application had been modified) namely Nos. 15, 18-19, 21-23, 26-31, 33-35, 37, 39-40, 55, 57, 59-60, 62, 64, 66, 68-69, 71, 73, 75, 82-3 and 85.

The remainder were contested and I proceeded to hear the evidence. The number in brackets corresponds to the Entry No. of the registration in the Rights Section.

(1) Mr A F Pavey stated that he had purchased his house in 1969. It had been built in 1964. He had taken wood from the woods for fuel but had not himself exercised any of the other rights claimed. He produced a copy of the Particulars of Sale relating to his house, Nilefield Corner, and containing the statement that the property enjoyed the right for the grazing of two animals on the Common and also the right of Estovers.

(3) Mr S F Evans gave evidence that he had lived in his house for just over 21 years. The house had been built about 26 years ago. He had collected



wood from the surrounding woodlands in autumn and winter for fuel and beanpoles.

(5) Mr M E Fullar the present owner of Green Bank ^{wrote} ~~Wrote~~ stating that the property was over 50 years old and enclosed a letter from his Vendor Mrs Hart alleging that she and her immediate predecessor in title had to her knowledge collected wood from the Common.

(7) Mr Dimond had lived in his house since 1972, when he had purchased it from Mrs M Barratt, the original applicant. The house was about 15 years old and Mrs Barratt had lived there for 7 years. He collected fallen branches and beanpoles about 3-4 times each year in the autumn. He had also collected leaf mould. He only went to Buckholt Wood.

(9) Mr D Chamberlayne purchased the site of his house in 1962. His house had been built with a wood-burning fireplace. He collected wood regularly from Cranham Wood. His claim was limited to estovers.

(20) Mrs Newman wrote a letter to her Solicitor, Mr Evans stating that her house Miliduwahad been built in 1953 on two acres of land formally part of Field House. She believed her property was entitled to Estover rights but did not claim to have exercised any such rights herself.

(32) Mr S N Dadd had purchased his house in 1975 from the original applicant. The house had been erected in 1963 on the foundations of two cottages which had been built in about 1750. No buildings were shown on the site in the OS Maps in 1888 or 1923. He had exercised his right to take estovers.

(38) Mr R M Bass had lived in Cranham since 1960. His house had been built in 1959 on land previously owned by Mrs Hillier. At the time of purchase there was a stable on the land which was incase the Tithe Map of 1835 showed that there was then a house on the land. The stable is shown on the 1923 Ed. of the OS Map. He had collected firewood but had not exercised any rights of pasturage. Mrs K P Bass said she had examined the Tithe Map which showed a pig-stye and a cottage, the foundations of which were found in their garden.

(41) Mr D W Hannis had written in July 1973 abandoning his claim to turbary. He claimed the right of estovers and to graze 45 sheep, 35 cattle and 2 horses. His evidence only supported his claim in respect of estovers and grazing 30 cattle.

(43) Mr T W Overs said that he was the owner of Picardy when he had lived since 1957. There were stables on the property when he went into possession. The plan attached to his application only showed the actual site of Picardy but the property he had acquired was larger and included the site of Cherry Tree Cottage, the foundations of which he had uncovered. The failure show this additional land was due to a misunderstanding. The previous owners of the whole property were Lady Strickland and a Miss Deimmer. Before then Miss Carey lived there in the 1950s and 1960s. In his childhood, Sister Ethel Wood had lived there.

(49) Mr E V A Greenaway had lived in his house for 19 years. The house was



built in 1961; the site was $\frac{1}{3}$ acre. Wood and solid fuel were used in the house. His children had grazed their horses on the common. He had never turned out poultry on the common. He had written a letter dated 28 June 1974 excluding the claim in respect of 1 horse and poultry. He no longer claimed a right of turbary.

(50) Mr S G Bowman wrote claiming that his property Selarroc had been built over 30 years ago but offered no evidence that the rights he claimed had been exercised, either by him or the previous owners.

(51) Mr R J C Griffiths gave evidence that the land on which the three properties mentioned in the application had been built was purchased by his grandfather A E Pope in 1924. Northwood had been built in 1924/5 Beechwood in 1928 and Chandos in 1963 and the occupiers had all exercised the right to collect wood for fuel.

(58) Mr C J Berry had purchased his bungalow from his mother-in-law Mrs Head, the original applicant. He produced documents of title which showed that the existing bungalow had been built in 1938, that before 1904 there had been a cottage on the site and that in about 1920, a building had been erected on the site which was first ~~used~~^{used} as a residence and which is now used as a garage. He produced a letter from Mrs Head who had lived in the bungalow since 1948 stating that she had collected wood from the woodlands for fuel and peasticks and so had previous occupiers.

(59) Mr H G Freeman wrote on 5 December 1980 claiming that Rose Cottage was approximately 300 year old and claimed the right of Estovers. He did not refer to the claim to graze two horses. The right to Estovers was not disputed.

(61) Mr G W Hannis, the original applicant had died. Mr D J Tinsey had purchased in October 1973 from Mr Hannis's personal representatives 21.71 acres of Brook Farm, the alleged dominant tenement namely OS Nos. 189, 190, 195, 196, 197 198, 199 (excluding the stream) and 225. Mr Tinsey had not himself exercised any rights of common in respect of the land purchased but wished to be able to exercise rights of grazing. No evidence was produced in support of the existence of any of the rights claimed.

(63) Mr Edward Ronald Myatt gave evidence on behalf of his wife Mrs G H Myatt, the applicant. Mrs Myatt had lived on Sutton Mill since 1946 and had collected wood from the Common. From 1950 to 1960 two horses had grazed on the Common, but no donkeys. The property includes a cottage with a Mill attached. The outbuildings include a stable for two horses, a cart house and a hay loft. The Mill had been in use as a grist mill until the beginning of the century.

(67) Mr A D Pritchard had acquired the property from the original applicant Mrs Henderson. No evidence of the existence of the rights claimed was given.

Daniel's
(78) Mr R H ~~Daniel's~~ said that his parents-in-law and their daughter moved into the property in 1936 and he had lived there for 39 years. The house had been built some time before 1936. His father-in-law and he had regularly



collected wood from the Common for fuel and fencing. In 1947 turf had been taken to make a cricket pitch. He had received a letter from the Estate Office in April 1980 requiring him to cease collecting firewood but he had continued to take wood as before.

Entry No. 86 Mr W T Alden of Monks Ditch Cranham had purchased his house in 1972. He was restricting his claim to Estovers. The house had been leased from the Hicks Beach family in 1910 and the freehold had been sold in 1935. Since he had gone into possession he had collected firewood from the woods on either side of his house regularly once a week.

The following evidence was given on behalf of the objector Major Michael Hicks Beach.

Mr D J Annis, said he was 47 years of age and had lived in Cranham all his life. He had been gamekeeper and forester all his life. He had recently challenged persons gathering wood near Monk's Ditch and some of them had offered payment. ~~He did not~~ challenge persons carrying wood. Mr Daniels asked if there were tops for sale. Mr Alden had asked him for permission to collect wood. He had seen some people collecting leaf-mould but no one collecting turf. Some children go to the stream but there was no real fishing.

In cross-examination he said that he had left school at the age of 15 and his first job was as a motor mechanic. He had collected wood which was lying on the ground. He had seen Mr Alden in July and the latter had asked if he could have what wood was left. My orders were to stop people taking timber but not those taking firewood. Some villagers have gone into the woods with chain-saws and Land Rovers. The persons who asked for tops in July last paid for them. He was responsible for 650 acres of woodland. He had never seen pigs grazing on the Common nor anyone cutting turf. His house is first below the old sanitarium. He knew that villagers had always been allowed to take wood for fires.

Mr John Henry Bowstead Wakeman said that he was 57 and had lived in Sheepscombe for the past 31 years. Before then he had lived in Woodchester. His sister owned Saltridge Common Wood but was not Lord of the Manor. Only random checks are possible to prevent the unauthorised taking of wood or timber. As the owner of a Common he had attended a meeting of Cranham Parish Council in 1971, when he had expressed the opinion that the owners of houses built after 1900, probably had no rights of common.

Mr Evans then made submissions on behalf of his various clients.

Mr Gibbs for the land owner said that his clients policy had been to accept claims to estovers only in respect of the old-established properties. He submitted that there was no evidence to support claims for rights other than estovers except in those cases in which such claims had been accepted.

During the hearing it became apparent that some applicants had put themselves at a disadvantage by limiting the land in respect of which they were claiming rights of common to the actual site of their house. Gardens and paddocks were not shown on the plan attached to their applications. This was due to



incorrect advice, given I am sure in all good faith, but well meaning advisers. When this occurred I treated the application as if it showed the full extent of the land owned by the applicant.

In one case Mr Gibbs applied to have an objection registered when he had failed to lodge within the time prescribed. This application I refused.

Mr Gibbs, rightly in my view, conceded claims to estovers where the claimant lived in a house or cottage when had been built in the previous century. It does not however follow that houses built after 1900 could not have acquired a right to estovers. The right could be acquired under the Prescription Act 1832 by enjoyment for the period required by that Act as interpreted by Section 16(2) of the Commons Registration Act 1965. The right could also be acquired under the doctrine of a lost modern grant by user for a period of user shorter than it is required under the Prescription Act 1832, if the dominant tenement ~~is~~ built on land, where there had in the past been a building which had enjoyed the right but which had fallen into disrepair.

The claims at Entry Nos. 1, 3, 7 and 9 were all based on prescription under the Prescription Act 1832, but in no case did the evidence establish user for a period sufficient to satisfy the requirements of the statute. All must therefore fail.

In the case of the claim at Entry No. 5 the evidence raised a prima facie case of user for over thirty years and as the evidence was not challenged this Entry will be confirmed.

Entry No. 20. This house was built until 1953 and the applicant did not claim to have exercised any rights to estovers. This claim must therefore fail.

Entry No. 30 Mr G Pratt wrote a letter in support of his application. His claim was accepted by Mr Gibbs subject to the deletion of any reference to leaf-mould.

Entry No. 32 Mr R Dadd had purchased his house in 1975. The house was built in 1965 but research had shown that it had been built on the site of two cottages built in the 18th century. No buildings were shown on the site in the O.S. Maps published in 1888 and 1923. I am satisfied that a case is made out for a right to estovers under the doctrine of lost modern grant. Mr Dadd submitted that if judicial notice were taken of conditions in the 18th century he could claim other rights. In my view I was not entitled as a matter of inference to assume that any other rights were in fact enjoyed by the occupiers of the cottages.

Entry No. 33 Research undertaken by Mr Bass and his wife showed that though their house was not built until 1959, the Tithe of 1838 records an 'Inclosure from common and cottage' on the site, some of the foundations of which could be identified today. A stable built before 1923 is still standing and was in use when the present house was built. Mr and Mrs Bass also own three acres



of pasture land elsewhere in Cranham which were acquired after they had purchased their house. They rely on the ownership of this land *to as an answer to* the objection to their application for rights of pasturage under the doctrine of levancy and couchancy.

The applicants have not exercised any rights of common for a period long enough to enable them to acquire a title under the Prescription Act 1832. Their only chance of making a successful claim is by virtue of a lost modern grant based on enjoyment by the owners and occupiers of the buildings which formerly existed on the site of their present house. The amount of land which these applicants own today is not relevant to the consideration of what rights their predecessors exercised in the last century over the common. This is a case in which I can and do find that under the doctrine of lost modern grant these applicants are entitled to rights of estovers and to pasturage in respect of one beast on the common. My reason for so finding is that all owners of tenements in Cranham in the last century would have taken wood for fuel from the common as part of their way of life and that the existence of a stable *presumpt* ownership of at least one beast which again would have grazed on the common.

Entry No. 41 On the evidence this claim succeeds in respect of estovers and the right to graze 30 cattle.

Entry No. 43 Mr Overs claimed rights of estovers and to graze one horse or one beast and in my opinion he has made out his case.

Entry No. 49 This claim can only succeed under the Prescription Act 1832 and the period of user proved is insufficient.

Entry No. 50 Mr Bowman's claim fails for lack of evidence.

Entry No. 57 This claim succeeds but only in respect of the properties 'Northwood' and 'Beechwood'. The period of user in the case of Chandos is insufficient.

Entry No. 58 There is evidence to establish the right to estovers whether under the Prescription Act 1832 or by virtue of a lost modern grant.

Entry No. 59 The claim to be able to graze two horses fails for lack of evidence.

Entry No. 61 This claim also fails for lack of evidence.

Entry No. 63 These claims succeed except in respect of the right to graze donkeys as to which there was no evidence.

Entry No. 67 This claim fails for lack of evidence.

Entry No. 72 The claim to estovers succeeds but the claim to a right of turbarry was only supported by a single instance in 1947 when turf was taken for a



cricket pitch. In any event this would appear to have been done for the benefit of the public rather than for a private purpose. The claim for a right of turbary fails.

Entry No. 86 If a right of taking timber was exercised during this period of the Lease, the right would pass to the purchaser on a sale of the freehold, unless expressly excluded. On this basis the claim to estovers succeeds.

Finally a conflict in column 5 of the Register register at Entry Nos. 82 and 83 where both applicants claimed in respect of the same three fields was resolved by agreement. *The application at Entry No. 82 in the Land Section is subject to the exclusion of the land mentioned in objection NO 90 and 11*

For these reasons I confirm the applications, the Entry Nos of which are set out in the First Schedule with such modifications as are there mentioned and I refuse to confirm the applications the Entry Nos of which are set out in the Second Schedule.

in the Rights Section

The First Schedule

Part I

Entry Nos of the applications confirmed without modification:-

- 5, 15, 18, 19, 21, 23, 24, 27, 28, 29, 31, 33, 34, 35, 37, 39, 43, 55, 57, 58, 60, 62, 64, 66, 68, 69, 71, 73, 75, 85 and 86.

Part II

Entry Nos. of the applications confirmed with modifications:-

No.	Notice of Modification
22	Exclude right to graze one pony
30	Limited to estovers only
32	do
38	Limited to estovers and the right to graze one beast
40	Limited to estovers
41	Limited to estovers and the right to graze 30 cattle
51	Limited to estovers and to the properties 'northwood' and 'Beechwood'
54	Limited to estovers
63	Delete words 'or donkeys'
72	Limited to estovers
82	Add in Column 5 'excluding' O.S. Nos. 82, 147 and 149
83	Add in Column 5 'excluding' O.S. No. 82

The Second Schedule

Entry Numbers of Applications which are not confirmed:-

- 1, 2, 3, 7, 9, 14, 16, 20, 24, 25, 42, 44, 46, 47, 48, 49, 50, 53, 61, 65, 67, 72, 76, 77, 80 and 81.

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.

Amended in accordance with para 33 of the Regulations of 1971

17th day of March 1981
George Henshaw
G. v. 85

day of *March* 1981

George Henshaw