



COMMONS REGISTRATION ACT 1965

Reference No. 214/D/116

In the Matter of Slab Common
and Warren, Whitehill and
Selborne, East Hampshire
District, Hampshire

DECISION

This dispute relates to the registrations at Entry Nos 1, 2, 3, 4, 6, 8, 9, 10, 12 and 13 in the Rights Section of Register Unit No. CL 111 in the Register of Common Land maintained by the Hampshire County Council and is occasioned by Objection No. OB 277 made by the Secretary of State for Defence and noted in the Register on 3 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Winchester on 20 March 1979. At this hearing the Secretary of State for Defence was represented by Mr O A A Jonathan of counsel instructed by the Treasury Solicitor; and Mr E A Irvine on whose application the registration at Entry No. 13 was made, attended in person. In support of the registration oral evidence was given by Mr Irvine. Against the registration oral evidence was given by Mr R C Anderson who had as Land Warden patrolled the Bordon area (including Slab Common); and there was produced a statutory declaration made on 31 January 1977 by Mr J J Marsh. At the conclusion of the hearing I said I would inspect the land on 5 May.

Since the said hearing there was received in the office of the Commons Commissioners letters from Mr John H Ellis as chairman of Broxhead Commoners' Association, from Mr H E Wicks of Binsbrook, from Selborne Parish Council and from the Earl of Selborne in which they all asked (in some cases among other things) that the hearing should be reopened. In letters dated 2 May 1979 the Clerk of the Commons Commissioners informed those concerned about the possible reopening of the hearing.

I inspected the land on 5 May 1979 having first spoken briefly to (1) Mr E A Irvine, (2) Mr R C Anderson, (3) Mr John H Ellis and his son Mr Richard Ellis, (4) Mr E H Lucas chairman, and Commander R H S Rodger clerk of Selborne Parish Council, (5) the Earl of Selborne, and (6) Mr H E Wicks. During my inspection I was accompanied (for nearly all the time) by Mr Lucas, Mr Irvine, Messrs J H and R Ellis and Mr Anderson; during the inspection we were joined by Mr D A G Stilwell, Estate Surveyor of the Aldershot office of Property Services Agency. After the inspection, I decided that I would delay giving my decision on the evidence and arguments at the March hearing until I had decided whether or not I would reopen it.

After a further letter of 6 August 1979 in which the Clerk of the Commons Commissioners informed those concerned of the then position, and after considering a letter dated 4 October 1979 from the Treasury Solicitor, I decided to reopen the hearing, and the persons concerned were so informed by the Clerk in letters dated 19 November 1979.



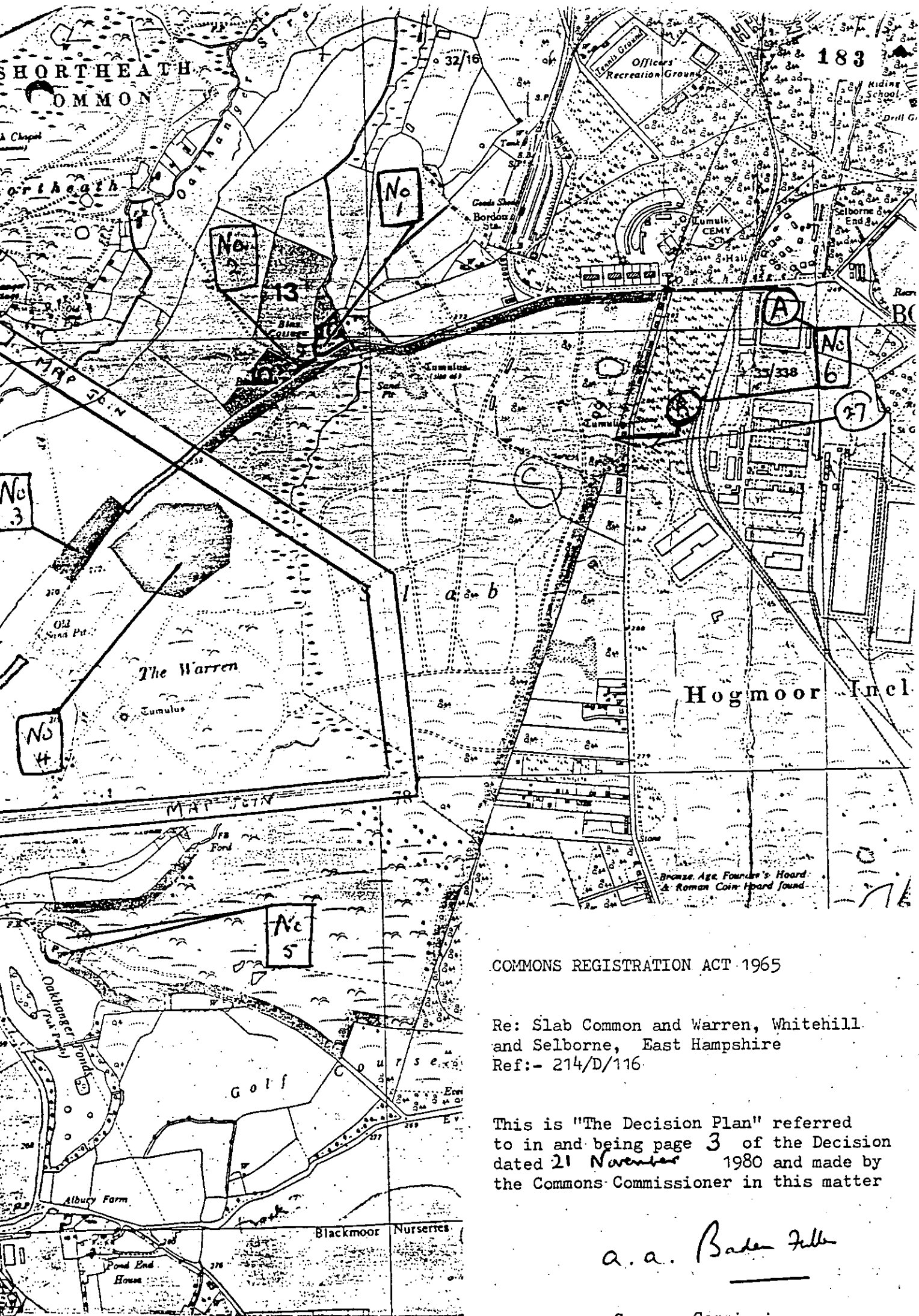
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I held the reopened hearing at Eastleigh on 4 November 1980. At this hearing: (1) the Secretary of State for Defence was represented by Mr R F D Barlow of counsel instructed by the Treasury Solicitor; (2) Selborne Parish Council were represented by Mr E H Lucas their chairman (present also was Mr F A Danks their clerk); (3) Mr and Mrs Brattinga of Beaconsfield, Firgrove Road, Whitehill, as successors in title thereto of Mr Robert Geoffrey Bone on whose application the registration at Entry No. 1 (being of rights attached to Beaconsfield) was made, were represented by Mr John H Ellis (chairman of the said Association); (4) Mr and Mrs P R Humphrey of Larnach, Hogmore Road, Whitehill as successors in title thereto of Mr R G Bone on whose application the registration at Entry No. 2 (being of a right attached to Stone Cottage which has since been rebuilt and now Larnach) was made, were also represented by Mr J H Ellis; (5) Blackmor Estate on whose application by the Earl of Selborne (then and therein called John Roundell Palmer Viscount Wolmer a director) the registrations at Entry Nos. 6 and 9 were made, were represented by Mr Reginald A Palmer his Agent; (6) Mr Harry Edward Wicks and Mrs Joan Lilian Wicks of Binnsbrook, Oakhanger, Bordon as successors in title of Mr Raymond Barker Kirk on whose application the registration at Entry No. 10 (being a right attached to Binnsbrook) was made, attended in person; (7) Mr F Bennett of Chapel Farm, Oakhanger, Bordon as successor in title thereto of Mr A M Chapple on whose application the registration at Entry No. 12 (rights attached to Chapel Farm) was made, was also represented by Mr J H Ellis; and (8) Mr E A Irvine on whose application the registration at Entry No. 13 was made, attended in person.

After a short adjournment and some discussion, it appeared that those present or represented were agreed: (1) that I should as regards the animals therein mentioned modify the registrations at Entry Nos. 1, 3, 6, 9, 10, 12 and 13 as hereinafter provided; (2) that the rights set out in these registrations should not extend to the six pieces of land described in the Schedule hereto by reference to the plan ("The Decision Plan") being page 3 of this Decision and being a plan prepared by myself by combining the plans produced by Mr Jonathan at the 1979 hearing and by Mr Barlow at the 1980 hearing, and by delineating thereon the said six pieces; and (3) that the said six pieces of land should be removed from the Register as it now appears at Entry No. 3 of the Land Section, at any rate so far if at all as they are now included in the registration (my copy of the Register map as regards the pieces Nos. 5 and 6 in the Schedule is not clear).

I consider that I can and should give effect to the paragraphs above numbered (1) and (2) of the said agreement, but that I have no jurisdiction to direct the Hampshire County Council to make any alteration in the Land Section registration which has become final.

Upon the considerations next hereinafter set out the County Council may I think make this agreed alteration if they conclude that the said six pieces were not at the date of registration (31 July 1973 replacing an earlier registration dated 22 February 1969) within the words in the registration: "The tract ... called Slab Common and Warren in the parishes of Whitehill & Selborne", and that the "green verge line" mentioned in the registration has on the register map therein referred to, been mistakenly drawn so as to include the said six pieces. At the 1980 hearing it was agreed by those present including particularly Mr Lucas the chairman of Selborne Parish Council, that in 1968 the words "Slab Common and Warren" did not include any of the said six pieces, so that the land in this Register Unit is in the Land Section described by two conflicting



COMMONS REGISTRATION ACT 1965

Re: Slab Common and Warren, Whitehill and Selborne, East Hampshire
 Ref:- 214/D/116

This is "The Decision Plan" referred to in and being page 3 of the Decision dated 21 November 1980 and made by the Commons Commissioner in this matter

a. a. Baden Fuller

Commons Commissioner



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descriptions. In accordance with the principles of law usually summarised under the legal maxim "falsa demonstratio, non nocet", rather than treating the registration as wholly void, it must be read as comprising only the land truly described and not as comprising the land falsely described. I can only say that having inspected the land, on the information put before me at the hearings, the words "called Slab Common and Warren" appear to be the true description and "the green verge line" appears to be the false description; so in my view the Register as it now stands notwithstanding the green verge line ~~was~~ ^{does} not ~~include~~ any of the said six pieces. For the purposes of avoiding confusion among those persons who are not fully informed of local history, the County Council have I think power under regulation 36 of the Commons Registration (General) Regulations 1966 to correct the registration by redrawing the green verge line on the Register map so as to clearly and unambiguously exclude the said six pieces.

From what was said at the 1980 hearing, I understood that those present or represented (including Selborne Parish Council) were agreed that they would notwithstanding that I had no jurisdiction to deal with this aspect of the matter, concur in applying to the County Council as registration authority to correct the green verge line on the Register map so that it clearly excludes from the Registration all the said six pieces.

In view of the above recorded agreement between Mr Irvine and the Secretary of State for Defence, I express no opinion as to the evidence given at the 1979 hearing.

As regards the registration at Entry Nos. 3, 4 and 8:- Mr J H Ellis produced a letter dated (received) 27 November (1979) from Mr G Bone on whose application these registrations were made; in this letter he said (in effect) that he had sold all the lands to which the rights registered in his application were attached, and was no longer interested in supporting the registrations. In the absence of any evidence by his successors in title, and nobody at the 1980 hearing suggesting otherwise, my decision is that these registrations should not have been made.

Upon the above considerations, I refuse to confirm the Rights Section registrations at Entry Nos. 3, 4 and 8; and I confirm the Rights Section registrations at Entry Nos. 1, 2, 6, 9, 10, 12 and 13 with the modification in each case that in column 4 for the words "the whole of the land comprised in this Register Unit wherever in such column these words appear shall be substituted such words (if any) are needed having regard to any alteration which may hereafter be made to the Register map"; ~~and~~ ^{clearly} indicate none of the rights comprised in the registrations extend to any of the six pieces of land specified in the Schedule hereto (so far if at all that the said pieces are included in the registration), but are only over the remainder of the land in this Register Unit, so that the County Council in choosing the said substituted words may have regard to any alteration such as is mentioned as a possibility in this decision, the Land Section of this Register Unit which they may make under Regulation 36 of the Commons Registration (General) Regulation 1966 AND with the further modifications in column 4 (different in each case) hereinafter set out that is to say:- As regards Entry No. 1, for the words "(a) 10 horses and (b) 3 cattle" substitute "1 horse and 2 tethered or tended goats". As regards Entry No. 2, for the words "(a) 35 cows and (b) 10 horses" substitute "1 horse and 2 tethered or tended goats". As regards Entry No. 6, for



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"(a) 30 cows and (b) 2 horses" substitute "10 cattle and 2 horses". As regards Entry No. 9 for "(a) 30 cattle and (b) 10 horses", substitute "~~10~~ cattle and 2 horses". As regards Entry No. 10, for "(a) 3 ponies and (b) 3 cattle and 3 pigs", substitute "1 and one-half cows and 2 tethered or tended goats and 1 horse". As regards Entry No. 12, for "(a) 20 cattle and (b) 12 pigs and (c) 8 horses", substitute "5 cattle and 1 horse". As regards Entry No. 13 for "(a) 6 cattle and (b) 3 horses and (c) 6 pigs", substitute "2 and one half cows and 1 horse and 2 tethered or tended goats".

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.

SCHEDULE

(The six pieces of land)

1. A piece of land which is northwest of and adjoins Oakhanger Road, which is on the Decision Plan edged with a thick black line, and which is thereon numbered "10" (being the more easterly of the two plots so numbered) and also marked "No. 1".
Note:- At the hearing this piece was said to be part of the land owned and occupied by Mr Harry Edward Wicks and Mrs Joan Liliam Wicks as part of Binnsbrook.
2. A piece of land which is also northwest of and adjoins Oakhanger Road, which is approximately triangular and near to and much smaller than Piece No. 1 and which is on the Decision Plan shaded black and marked "No. 2".
Note:- At the hearing this piece was said to be part of the land owned by Mr Edward Alvin Irvine and occupied with Bins Cottage.
3. A piece of land which is also northwest of and adjoining Oakhanger Road, which is approximately rectangular with a length of about 200 yards and which is on the Decision Plan shaded black and thereon marked "No. 3".
Note:- At the hearing it was said that this is enclosed land held and occupied with an adjoining farm by a tenant of the Secretary of State for Defence.
4. A piece of land which is approximately seven sided and which has on it a Satellite Tracking Station and which is on the Decision Plans shaded black thereon marked "No. 4".
Note:- At the hearing it was said that this piece is wholly enclosed and is used for the purposes of or incidental to Defence.
5. A piece of land which is near to and north of Oakhanger Ponds which is approximately circular with a diameter of about 100 yards or a little less and which is on the Decision Plan surrounded by a thick shaded black line thereon marked "No. 5".
Note:- From the copies of the Register map available at the hearing, it was considered doubtful that this piece was intended by the map maker to be included or excluded from that edged green thereon; it was said that the piece comprises cottages and gardens thereto belonging.



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6. A piece of land which is on the west side of and adjoins Hogmore Lane, which is a strip a little less than 400 yards long southwestwards from the point where Hogmore Lane joins Oakhanger Road, which is at most places about 30 yards wide measured westwards from the Lane and which is on the Decision Plan marked as about 8 plots with buildings on most of them and with a building on and just within the south boundary of the most southerly plot and which is on such plan shaded black with its south and north boundaries marked "A" and "B", and thereon marked "No. 6".

Note: At the hearing from the copy of the Register available there was doubt whether the map maker intended to include or exclude this piece from the Register. It was said that on this piece are a number of dwellinghouses and that it comprises for the most part the gardens and lands held with them.

Dated the 21st — day of November 1980

a. a. Baden Fuller

Commons Commissioner