



In the Matter of Little Common,
Broadheath, Malvern Hills District,
Hereford and Worcester

DECISION

This dispute relates to the registrations at Entry No.1, No.3, No.4 and No.5 in the Rights Section of Register Unit No.CL.94 in the Register of Common Land maintained by the Hereford and Worcester County Council and is occasioned by Objection No.26 made by Mrs Ruth Annie Horton and noted in the Register on 27 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 2 July 1975. At the hearing Mrs Horton was represented by Mr A W Budd, Solicitor of Pugh, Fisher, Holyoake and Foster, Solicitors of Droitwich, and Mr James Robert Heath on whose application the said Entry No.4 and No.5 were made, attended in person. Neither Mrs Alice May Purvis nor Worcester Co-operative Society Limited, on whose application the said Entry No.1 and No.3 were made, attended or were represented.

The land ("The Unit Land") comprised in this Register Unit contains (the areas in this paragraph are from the O.S. map) 2.221 acres. It may be entered from the public motor road (Lingins Lane) which runs west from Upper Broadheath to Berrow Green. From this entrance, which is about 300 yards from the cross roads by Broadheath Common (a much larger area than the Unit Land), there is a track (suitable for motor vehicles) which runs near the west boundary (about 250 yards long) of, and inside, the Unit Land. The width from west to east varies, being little more than the width of the track at its south end, then broadening out to 80 yards or more and then narrowing at the north end to about 20 yards. Apart from the track and some patches of grass here and there, the Unit Land is for the most part scrub and apparently neglected. The track continues north becoming after the entrance to Yew Tree Cottage, a grassy lane leading up to Broadheath Grange Farm and the entrance to Rose Cottage.

Mrs Horton is the registered owner of all the Unit Land. Entry No.1 is of a right attached to a small holding of about 4 acres east of the Unit Land to graze 30 ducks and 40 poultry. Entry No.3 is of a right attached to Brookend Farm and Oldbury Farm to graze 20 cattle. Entry (a) No.4 and (b) No.5 are attached (a) to a holding of 0.861 acres known as Yew Tree Cottage and (b) to a holding of 2.306 acres known as Rose Cottage, to graze (in each case) 4 sheep and three lambs, or 2 cows or other bovine animals, or 1 horse or pony or ass, or 3 goats and their kids. The grounds stated in the Objection are: "That the right does not exist at all".

Mr Heath in the course of his evidence produced (1) a conveyance dated 20 September 1960 by Mr R C Maylett to himself, (2) a conveyance dated 29 September 1913 by Mr S T Richardson to Mr R C Maylett, (3) an abstract dated 1913 of his title, (4) a conveyance dated 6 May 1878 by Mr D Hooper and others to Mr R Richardson, and (5) a conveyance dated 8 June 1868 by Mr T Povey and others to Mr D Hooper and another. All these documents comprised the Yew Tree Cottage holding and included the words "Together with all rights to depasture on Broadheath Common".



- 2 -

Mr Heath described the use he had made of the Unit Land since 1960; he had depastured 1 horse for the last 2 years regularly and prior to that occasionally: he had never had a sheep or a cow. He could not say whether it had been grazed before 1960 by Mr Maylett; his widow died 3 months ago, so no evidence of this was obtainable.

Mr Budd said the Objection had been made by Mrs Horton because her agent Mr C W Jennings had been no use of the Unit Land. There was some discussion as to how it might be used advantageously and Mr Jennings said that the first difficulty was that no one knew who was entitled and these proceedings would help to clear this up.

After an adjournment, Mr Heath produced the following further documents: (6) a conveyance dated 11 January 1968 of the Rose Cottage holding by Mr C C G Pearce in two pieces first the larger (the west part) being the dwelling house with the land adjoining "Together with all rights of common mines and minerals ways *water courses* easements or appurtenances", and secondly the smaller (the east part) containing Oa. 1r. 37p. (alongside the lane) "but exclusive of the common and commonable rights on Broadheath Common"; (7) and (8) two conveyances of one and of the other of the said two pieces, both dated 30 October 1969 and by Mrs E M Maylett to Mr Pearce; (9) an abstract dated 1967 of Mrs Maylett's title to the first piece as personal representative of Mrs C C Maylett (she died 2 April 1927) as (10) a conveyance dated 19 November 1870 by Mrs S Packwood to Mr R Clarke of a half share of a messuage and land (the first piece). Mr Heath said that Rose Cottage was when he purchased it in the occupation of a tenant who has grazed a goat mainly in the lane area (the above mentioned grassy lane).

After the hearing I inspected the Unit Land.

In my opinion, the Broadheath Common mentioned in the 1868, 1878, 1913 and 1960 conveyances either was or included the Unit Land (it may also have included the grassy lane above mentioned, between the two there is no obvious division), and accordingly these conveyances are some evidence of Mr Heath being entitled to some "rights to depasture" on it. I decline to infer (as was suggested by Mr Budd) that these rights have been lost because there was no evidence of use before 1960 or because Mr Heath kept his horse for pleasure and not for his business. The holding is conveniently situated for grazing from it on the Unit Land and it would be extraordinary if over the years it had not been so grazed. Mr Heath is I think under no obligation to define the rights he claims more definitely than he did in his application for registration: the numbers of animals registered are I think reasonable having regard to the area and appearance of the holding and the Unit Land.

My decision is therefore that Entry No. 4 was properly made.

As regards the larger piece of the Rose Cottage holding: the general words above quoted from the 1968 conveyance (they are used also in the 1967 and 1870 conveyances) are not evidence that the rights so generally described were: when the conveyances were made appurtenant to the piece. The entrance to Rose Cottage is some distance from the Unit Land (being in a lane which runs west from the front of Broadheath Grange Farm to a field gate) so the holding is not conveniently situated for grazing from it on the Unit Land. The grazing described by Mr Heath as having been done by his tenant was not on the Unit Land; although it may be that historically the grassy lane was part of the land known as the Common, it has not been included in the registration made under the 1965 Act.



- 3 -

My decision is therefore that Entry No.5 should not have been made.

In the absence of any particular evidence about Entry No.1 and No.3, having regard to the maps I have and what I saw on my inspection, I conclude that these Entry Nos. should not have been made.

For the above reasons, I refuse to confirm the registrations at Entry No.1, No.3 and No.5, and I confirm the registration at Entry No.4 without any modification.

At the hearing it was agreed that I should make no order for costs.

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 21st —

day of August

1975

a. a. Baden Fuller

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Commons Commissioner