



COMMONS REGISTRATION ACT 1965

Reference Nos 220/D/46  
220/D/47  
220/D/48  
220/D/49

In the Matter of Hapton Moor  
(part), Hapton, Burnley Borough,  
Lancashire

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DECISION

These disputes relate to the registration at Entry Nblin Land Section and at Entry No 1, No 2 (replaced by Nos 6 and 7), No 3 and No 4 in the Rights Section of Register Unit No CL. 159 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by Objection No 404 made by the said Council (by Mr W G Allport on behalf of the Estates and Industrial Development Committee) and noted in the Register on 19 July 1972 and by Objection Nos 441 and 442 made by The Calder Water Board and noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Preston on 10 May 1978. At the hearing (1) The North West Water Authority (as successors of The Calder Water Board) were represented by Mr G A Hartley their Solicitor, and (2) Lancashire County Council were represented by Mr J A Strong, their senior solicitor.

The land ("the Unit Land") in this Register Unit is U-shaped, and lies between the Burnley-Accrington Road (A679) on the north and Great Hameldon (1343 feet) on the south. The southern and widest part of the U is a little more than  $\frac{3}{4}$  of a mile long and about  $\frac{1}{2}$  of a mile wide. The northwest part of the U adjoins the Road, and this part is between 150 and 250 yards wide from east to west. The northeast part of the U is about 200 yards south of the Road, and this part is about  $\frac{1}{2}$  of a mile wide from east to west. The U partly surrounds Miste Farm.

The grounds of Objection No 404 (County Council) relates only to the part of the Unit Land edged red on the attached plan: being (1) all the north part (about 33 $\frac{1}{2}$  acres) of the west part of the U, and (2) a triangular piece (about 15 acres) at the northwest corner of the east part of the U. During the hearing these parts were called "the Tree Planting sites". The grounds of Objection Nos 441 and 442 (Water Authority) related to all the Unit Land and to all the rights registered in the Rights Section.

On behalf of the County Council oral evidence was given (1) by Mr F W Llewellyn, management surveyor for the County Council's agricultural properties, who produced licences dated 11 March and 31 August 1959 by which the Council were authorised by Burnley Rural District Council (then stated to be the owners) to plant trees and fence the Tree Planting Sites as therein mentioned; and (2) by Mr D Windle who is a forestry officer with the County Council Estates Department, and who has since 1966 been the supervising officer for the planting and maintenance of the Tree Planting Sites.



On behalf of the Water Authority evidence was given by Mr T Earnshaw of Lane House Farm who now holds, and has for the last 12 years held the Unit Land as tenant of The Calder Water Board and their successors the South Water Authority, and who said that none other than himself had grazed it at all.

Mr Strong said that as regards the registrations at Rights Section Entry Nos 6 and 7 (made on the application of Mr J A R Cropper and Mrs F J Harrison, of grazing rights attached to what is or formerly was Barley Green Farm), he had been in touch with the solicitors for the applicants and having regard to the information produced as to the grazing over the Unit Land as done from these farms, he had concluded that the County Council ought not to dispute these Entries. He also said that as regards the registration at Rights Section Entry No 3 made on the application of Mr G P le G Starke as owner and Mr J Potter as tenant of a grazing right attached to Miste Farm), because from the situation of this farm and the evidence of Mr Windle as to the cooperation between Mr Potter and the County Council over the tree planting, he had concluded that the County Council ought not to dispute this Entry. But as regards the registrations at Entry No 1 (made on the application of Mr L Harwood of a grazing right attached to West Hall Farm) and No 4 (made on the application of Mrs I I and Mr H Alderson of a grazing right attached to Higher Hey Farm), Mr Strong said that there were no such special considerations as he had mentioned in relation to Entry Nos 3, 6 and 7, and he therefore contended that the evidence of Mr Llewellyn and Mr Windle ~~established~~ that the Tree Planting Sites had ~~never~~ been grazed, and was sufficient to disprove the existence of these rights.

Mr Hartley said that he also had been in touch with the solicitors for the applicants for the registrations at Entry Nos 6 and 7 and upon considerations similar to those mentioned by Mr Strong, the Water Authority did not wish to dispute these registrations. As regards the registrations at Rights Section Entry Nos 1 and 4, he supported what Mr Strong said applying it to all the Unit Land and relying additionally on the evidence of Mr Earnshaw that there had been no grazing during his time by anyone (other than himself) on the Unit Land.

The maps I have show West Hill Farm and Higher Hey Farm to be less conveniently situated for grazing the Unit Land than Miste Farm and Barley Green Farm. The registrations in the Rights Section Entry Nos 1 and 4 are in question not only because Objection Nos 404 and 441 (relating to the Land Section Entry) are by section 5(7) of the 1965 Act to be treated as Objections to the Rights Section registrations, but because Objection No 402 directly puts the Rights Section registrations in question. The considerations set out above in my opinion provide a reason for treating these registrations differently from those at Rights Section Entry Nos 3, 6 and 7. In the circumstances I confirm the registrations at Entry No 1 in the Land Section without any modification and at Entry No 2 (now replaced by Entry Nos 6 and 7) and at Entry No 3 in the Rights Section also without any modification, but I refuse to confirm the registrations at Entry Nos 1 and 4 in the Rights Section.

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 16<sup>th</sup> day of May 1978

*Commissioner*