



COMMONS REGISTRATION ACT 1965

Reference Nos 220/D/18
220/D/19

In the Matter of Harrop Fell (including
Harrop Common and Harrop Fold), Grindleton,
Ribble Valley District, Lancashire

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 to 5 of the Rights Section of Register Unit No CL. 65 in the Register of Common Land maintained by the Lancashire (formerly West Riding) County Council and are occasioned by Objection No 27 made by Mr Peter Wood and noted in the Register on 17 July 1969.

I held a hearing for the purpose of inquiring into the disputes at Preston on 24, 25 and 26 January 1978. At the hearing (1) Mr P Wood (the Objector; Rights Section Entry No 5 was made on his application) was represented by Mr J A Hodgson solicitor of Hodgson & Sons, Solicitors of Preston; (2) Mr Walter James Harrison (Rights Section Entry No 1 was made on his application) attended in person; (3) Mr Thomas Henry Eastham, Mr Harry Eastham and Mr William Eastham (Rights Section Entry No 2 was made on their application), (4) Mr Henry Robinson (Rights Section Entry No 3 was made on his application), (5) Mrs Hannah Waddington, Mrs Vera Wright and Mr John Robert Waddington (trustees of George Waddington deceased; Rights Section Entry No 4 was made on his application) were all represented by Mr I B Dearing solicitor of Steele & Son, Solicitors of Clitheroe; and (6) Mr Jack Marion West and Mrs Zelma West (an application by them in respect of Land Section Entry No 1 is noted in the Register) attended in person.

The land ("the Unit Land") in this Register Unit is by the OS map (1909 edition, 1/2500) divided into three parts:- (1) By far the greatest part ("the Fell") is known as Harrop Fell, contains 206.14 acres, is from north to south a little more than 1½ miles long and is bounded on the east by a fence and bank (with a gate) about 40 yards long from which (775 feet) the Fell slopes up to its southwest corner (over 1200 feet). (2) Another part ("the Common") is an L-shaped piece containing 4.155 acres, is bounded on the west by the said bank and fence, and is bounded at its northeast end by Black Brook (there 675 feet). And (3) the remaining part ("the Fold") is an irregularly shaped piece containing perhaps about ½ an acre (of its exact area I have no evidence), is bounded on its outside by the Black Brook, the walls of the houses and land known as or held with Manor House (Mr & Mrs West), High Harrop Fold (the farm of Mr Robinson), and Lower Harrop Fold (the farm of Messrs Eastham), the entrance gate on the east (across the road leading northeast to Smalden Lane which lane runs almost due north out of Grindleton to Slaidburn), the wall of a croft (part of Lower Harrop Fold) and the walls of the house, buildings and land known as or held with Middle Harrop Fold (the farm and guest house of Mr Wood); but excluded from the Fold (as registered) is an area ("the Central Area") approximately circular on which are some substantial farm buildings ("the Central Buildings").



The rights registered at Entry Nos 1, 2, 3, 4 and 5 are to graze 135 sheep, 25 sheep, 95 sheep, 36 sheep and 80 sheep respectively. Entry No 4 includes a right to take bracken and bedding and Entry No 5 includes turbary and estovers. The rights at Entry Nos 1, 2 and 3 are over the whole of the Unit Land, and Entry No 4 over the Fell only, and at Entry No 5 over the Fell and the Common (defined as I have by reference to the OS map).

The grounds of the Objection are:- "I wish to object to the registration of Harrop Fold as Common Land. This land forms my farmyard with, of course, free access to neighbouring farms and residences, Harrop Common and Harrop Fell, and was not common land at the date of registration. The attached plan shows the area of land objected to". The attached plan shows such area ("the Objection Area") as being all the land which I have above defined as being the Fold (except a narrow strip north of Black Brook) and also the Central Area (such Area is not included in the registration).

At the beginning of the hearing:- Mr Dearing claimed that Rights Section Entry No 4 made on the application of Mr Waddington was not in issue, because his registration did not affect the Objection Area, and relied on a letter dated 9 October 1969 by West Riding County Council to Mr Wood. Mr Hodgson agreed that Mr Wood had no legal objection to this Entry as it now stands and said that he had no objection to any of the other Rights Section Entries except so far as they claimed that their rights extended over the Objection Area. There was some discussion as to the boundary of the Central Area. The road leading to the Unit Land from Smalden Lane is tar surfaced (?tarmac) and continues for more than a quarter circle southeast, south, southwest and west of the Central Buildings. It was agreed that this road could be regarded as the boundary of the nearby part of the Central Area and that it would be easy to mark the rest of the boundary with sufficient precision for practical purposes by continuing the line of the road north and east of, and not far from the Central Buildings. With this boundary the Fold (as registered) on the east and northeast is mostly grass (a bank), on the north rather rough, and on the northwest a small grass triangle (where the tarred road forks near the house occupied by Mr H Robinson), on the west rough grass right down to the Brook, and some hard ground on the south.

It was agreed that the evidence in support of the Objection should be given first. Mr Wood in the course of his oral evidence produced:- (1) A conveyance dated 8 November 1960 by which Mr J H Tattersall conveyed to him "Harrop Fold Farm" containing 283a 3r 20p "more particularly described in the Schedule to a conveyance dated 2 October 1946..."; (2) the said 1946 conveyance by which Mr R and Mr G T Westhall conveyed the same land to Mr J H Tattersall, (3) a map ("the 1978 Map") which he, Mr Wood, had recently prepared for the purposes of this hearing from the OS map, as showing the extent of his farm lands as he believed them to be, (4) a sketch plan he had made of the Fold showing the dimensions of the Central Buildings (he calculated their area as 422 square yards), (5) a note dated 18 December 1964 by which the West Riding County Council debited him with £140.0.0 for his contribution to the making up of the road under the Agricultural (Improvements of Roads) Act 1944, (6) a notification by the West Riding County Council that the Ramblers' Association (an application by them in respect of Land Section Entry No 1 is noted in the Register) accepted his Objection, (7) a recent coloured aerial photograph of the Fold and the surrounding land and buildings, (8) a map ("the 1961 Map") being the OS map 1908 1/2500, overwritten by a student shortly after Mr Wood purchased the farm to show the best way of using it, and (9) a card advertising Harrop Fold Farm Guest House (terms, accommodation, places of interest etc). Mr Wood was questioned at some length by Mr Dearing and shortly by Mr West.



In support of the registration evidence was given by Mr J Fallister (an affidavit sworn on 20 January 1978) and by Mr Henry Robinson (orally). He was born in 1904, his father Mr John Robinson became the owner of Higher Harrop Fold under a conveyance dated 30 March 1915 (pursuant to the will of John Robinson who died on 9 April 1913), and he himself became the owner under an assent dated 28 May 1968 made by himself and another as executor of his father (he died 19 July 1967); he produced a number of documents relating to Higher Harrop Fold and to Old Mary's Farm; part of this last mentioned farm is now the Manor House occupied by Mr and Mrs West and the remainder has been incorporated in Higher Harrop Farm.

On Day 3, after an adjournment for discussion, I was informed that the persons attending or represented as above had reached an agreement one of the terms of which was that all the registrations in dispute should be confirmed and that the costs of these proceedings should, because no agreement could be reached about them, be at my discretion. I informed those present that although parties could ask me to exercise the discretion as to costs conferred on me by section 17(4) of the 1965 Act, I would not exercise any discretion as to costs which would involve my considering the reasonableness of the compromise agreement which, so I understood, related in part to the future management of the Fold (a matter over which I have no jurisdiction). After some discussion, it was agreed that I should proceed on the basis that for reasons with which I need not be concerned, Mr Wood had decided that he would withdraw his Objection and those desirous of supporting the registrations had decided not to call any further evidence; so that in the result I should exercise the discretion conferred on me by section 17(4) as if the proceedings had in this sudden way ended.

On the day after the hearing, I inspected the Fold in the presence of Mr Wood, Mr T H Eastham, Mr F Robinson (son of Mr H Robinson), Mr H Eastham, Mr J B West and Mr H Robinson. For part of the time Mr H Robinson (who had given oral evidence) was present. I also walked the length of the Common being accompanied by Mr Wood, Mr West and some of the others, and was there able to view the Fell as it appeared from its lowest corner.

As to the substance of these disputes:-

I reject the suggestion that a right to graze sheep cannot properly be registered over land which includes the Fold merely because there being so little grass there, a grazing right over it (considered by itself) would be unreasonable. A small area of land used as a fold for animals before or after they have been grazed on a large adjoining area in exercise of an existing right and as incidental to it, may in my opinion be subject to a right for those entitled so to graze to use it as a fold. In my opinion any such right being incidental to a right of grazing can properly be registered as a right to graze over the large area and the small area regarded as one piece of land (all one common).

The Oxford English Dictionary gives two meanings for the word "fold": (1) a pen or enclosure for domestic animals, especially sheep, and (2) an enclosed piece of ground forming part of a farm as a farm yard. That it would be convenient to Mr Wood if he could treat the Fold exactly as if it was a private farmyard forming part of Middle Harrop Farm is obvious from its appearance; that it is now and has ever been in the past any such farmyard is contrary to its appearance because it is obviously a convenient place for those entitled to graze the Fell and the Common to enclose their sheep before and after doing this.



The name Harrop Fold now and in the past used for describing the group of houses and buildings which surround the Objection Area, presupposes the existence of something other than a private enclosure; no one suggested that the Fold referred to in the name "Harrop Fold" could possibly be anything other than the Fold the subject of these disputes.

So the appearance and the name support the registrations. With the withdrawal of the Objection, I have no difficulty in concluding (quite apart from the considerations below set out in relation to costs) that the registrations were properly made. Accordingly I confirm them without any modification.

As to the costs of these proceedings:-

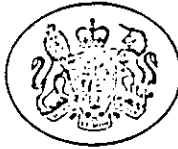
Under the 1965 Act a person may have to apply for a registration or to make an objection to a registration without being able to obtain reliable information as to whether or not the right claimed or the objection made could be supported by the evidence; with the result that many persons have been called upon to support a registration or an objection at a hearing before a Commons Commissioner and be there compelled in circumstances quite beyond their control to litigate difficult questions of fact or law without having any reliable grounds for predicting the result with any certainty. On these and other considerations I conclude that I should not order Mr Wood to pay costs merely because after the hearing my decision is against him.

So to deal with the claim for costs against him I must I think consider what view I would have taken of the evidence put before me without any regard at all to the circumstance that at the end of the hearing the Objection was withdrawn.

The case made by Mr Wood in his evidence in chief was that the Objection Area could not be subject to rights of common because it had been conveyed to him by the 1960 conveyance as part of "Harrop Fold Farm" therein stated to contain 283a 3r 20p. He relied on the words of the Schedule in the 1946 conveyance, which was in two columns, headed "Description" and "Quantity" and containing 11 items; of these 9 ranged from 5a 2r 8p to 137a 0r 31p the descriptions being "Meadow" or "Pasture" with the addition in some cases of "Rough" and "Wet", and in 2 cases including the word "Barn"; the last two items were as follows:-

Garden	0 0 20
Barn and Shippon	0 0 39

Mr Wood said that he was unable to identify any of the 9 items with the fields of the farm he acquired under the 1960 conveyance as they then were, but contended that he could identify the "Barn and Shippon" in the last item with the Central Buildings and the "39" perches in the last item with the Objection Area or the rest of the Objection Area. Any such identification is **contrary** to the present appearance of the Objection Area which whether or not the Central Buildings be included in it (Mr Wood's measurement of 422 square yards makes them 14 perches) is clearly much more than 39 perches (the affidavit of Mr Pallister puts the Objection Area as being 116 perches); further the Schedule does not expressly include any land surrounding the "Barn and Shippon", and even if such words must be impliedly taken to including some land, such inclusion would not naturally extend beyond the Central Area.



Mr Bearing by his cross-examination of Mr Wood satisfied me that much of what Mr Wood said about the possible meaning of the words "Barn and Shippon" and the possible application of the figure "29" to the Objection Area was nonsense; and he succeeded in doing this having regard only to Mr Wood's own documents and to matters which were as much within the knowledge of Mr Wood as of anyone else.

In re-examination Mr Wood told me what his vendor, Mr Tattersall, said when he showed him round the farm before the sale; I am not persuaded by this part of Mr Wood's evidence that Mr Tatterall ever said anything to him, which Mr Wood understood to mean that he, Mr Tattersall, thought that any part of the Objection Area other than the Central Buildings was, contrary to the appearance, part of the farm he was selling.

But I accept Mr Wood's evidence that he found it impossible to identify the other items in the 1946 conveyance Schedule with the fields of his farm as they were in 1960 when he bought. Even with the 1909 OS map, I find it impossible to make any such identification. Nevertheless as a matter of law, I cannot treat the 1960 and the 1946 conveyances as altogether void, merely because the land descriptions in them are extraordinarily difficult, and I must therefore on the point raised construe them as best I can having regard to what I find to be the appearance of the land and the other relevant circumstances when they were made. As to the 1960 conveyance, I conclude that the parties intended to convey the same land as was by the 1946 conveyance conveyed. As to this conveyance I am in a difficulty in that apart from slight observations of Mr Robinson I have no evidence about its appearance in 1946. Mr Hodgson said that he had the 1897 conveyance referred to in the 1946 conveyance and that the Schedule to it was the same as the 1946 conveyance Schedule; he did not produce the 1897 conveyance and I do not think I need go back so far. I infer that in 1946 the building which fronts on the Objection Area which is now used by Mr Wood as a residence and as a guest house was then much the same size and shape as it is now; Mr Wood told me that in 1960 when he acquired the property, only the middle part of this building was used as a dwelling house, the remainder being farm buildings; I infer that in 1946 its appearance was much the same as it was in 1960. It is extraordinary that neither in the 1946 conveyance Schedule nor in any other part of the conveyance is there any reference to a farm house; nevertheless I must I think construe the conveyance as including the building which fronts on the Objection Area because it must then have been, as it obviously is now, the most important part of Middle Harrop Fold Farm. My conclusion is that sometime before 1946 this building was wholly a farm building but by some unfortunate oversight the adaptation of part of it as a dwelling house was overlooked; on this basis I think the word "Barn" in the expression "Barn and Shippon" in the last item of the Schedule referred to the building which fronts on the Objection Area and the word "Shippon" refers to the Central Buildings; (together they appear to me to have an area of about 29 perches). This reading is consistent with their place in the Schedule immediately after the "Garden" which I identify as being an area at the back of the building which now fronts on the Objection Area and which may since 1946 have been altered. Accordingly I reject Mr Wood's contention as to the meaning of the words "Barn and Shippon".

The grounds set out in Mr Wood's Objection and the case made on his behalf at the hearing, amounted in substance to a claim that the Fold was in his private ownership. Such a claim is outside anything which the applicants for the now disputed registrations might have reasonably expected as a result of their



applications. Such a claim had in effect been made by Mr Wood independently of the 1965 Act when he unsuccessfully attempted to maintain a fence between the Common and the Fold. These disputes therefore although formally within the 1965 Act, in substance go beyond it, as they raise an ownership issue which even if the Act had not been passed, would have had to have been resolved (if Mr Wood had insisted) by the High Court in proceedings in which he would if unsuccessful have been almost certainly ordered to pay costs.

In the circumstances outlined above, I conclude that in relation to the 1965 Act, the claim put forward by Mr Wood in these proceedings, and the evidence given by him in support of it were vexatious, and that he ought to pay costs. Accordingly I shall order Mr Wood to pay to Messrs Eastham, to Mr Robinson, to Mr & Mrs West and to Mr Harrison the costs incurred by them in respect of these proceedings and I shall direct that such costs shall be taxed according to Scale 4 prescribed by the County Court Rules 1936 as amended. I record for the benefit of whoever may be responsible for taxing such costs that having regard to the reliance placed by Mr Wood on his documents of title, it was reasonable for Mr Dearing to have obtained, to have perused and to have had copies made for my use of the documents of title and other documents relating to the lands of those he represented.

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 14th day of March - 1978

a. a. Borden Fuller

Commons Commissioner