



COMMONS REGISTRATION ACT 1965

Reference No. 220/U/11

In the Matter of Healey or Manstone  
Edge Common, Whitworth, Rossendale  
Borough, Lancashire

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") of the land ("the Unit Land") known as Healey or Manstone Edge Common, Whitworth, Rossendale Borough being the land comprised in the Land Section of Register Unit No. CL164 in the Register of Common Land maintained by the Lancashire County Council. The Unit Land has an irregular boundary; it is between its most north-easterly and south-westerly points about one mile long and has from north-west to south-east a variable width for the most part between one half and one third of a mile. Of all the Unit Land except the Referred Part Mr James Peregrine Dearden is at Ownership Section Entry No. 1 registered as the owner. The Referred Part, about half an acre is all the Unit Land north of the line AB on the Register Map being (1) an L-shaped piece ("the main piece") the north-south part of which is about 30 yards long and 10 yards wide, and the east west part about 30 yards long and about 2 yards wide, and (2) another L-shaped piece ("the connecting piece") being about 3 yards or a little more wide which connects the southwest corner of the main piece with the southwest part of the Unit Land. Of the Referred Part no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference no person claimed to be the freehold owner of the land in question and no one claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Burnley on 9 December. At the hearing: (1) Mr Walter Francis Lloyd who as Secretary of East Lancashire Commons Association in 1968 applied for the Land Section registration and who as owner of Duckworth Farm applied for the Rights Section registration at Entry No. 5, attended in person; and (2) North West Water Authority were represented by Mr J D Prytherch assistant solicitor in their legal department.

Mr Prytherch said he had evidence showing or possibly showing that North West Water Authority were owners of a part of the Unit Land being a strip, or part of a strip about 180 yards long and about 35 yards wide edged green and red on the plan he produced and situated near Brownhouse Wham Reservoir and Hamer Pasture → Reservoir, and along and within the southeast boundary of the Unit Land. This strip is included in the said Ownership Section registration made on the application of Mr J P Dearden; such registration pursuant to a decision dated 6 December 1982 and made by a Commons Commissioner after a hearing on 16 November 1982 became final on 5 May 1983. Considering that I had no jurisdiction on this reference to give any decision about the ownership of any part of the Unit Land within the said Ownership Section registration, I at the hearing refused to consider the evidence about the strip offered by Mr Prytherch.



Mr W F Lloyd made no ownership claim either for himself or on behalf of East Lancashire Common Association, and offered no evidence of ownership. Among the papers sent by the County Council as Registration Authority with this reference are copy letters to them dated 2 November 1978, 12 January 1979 and 24 July 1979 from Becke Phipps, solicitors of Northampton written on behalf of Mr John Greenwood saying (in effect) that he considered he had established possessory title to the land coloured red on a plan (being the main piece of the Referred Part) and thereon shown as OS No. 3939 containing .46 acres, and that a solicitor acting for Mrs Barlow of 33 Greenfield Lane, Smallbridge, Rochdale claimed it was conveyed to her by a formal deed in 1978; and enclosing copy statutory declaration made on 28 and 24 September 1977 by Mr John Greenwood and Mrs Jessie Kitcher. Mr J Greenwood declared that his father Wilfred Butterworth Greenwood from 1914 until his death in 1959 owned Belle Isle Farm, Healey, that the field containing 0.46 of an acre and numbered 3939 was part of and used with the farm, and that in 1960 he (the declarant) sold the farm but did not include the said field in the sale and retained possession thereon. Mrs J Kitcher declared that for 40 years Mr Fred Butterworth Greenwood and his son Mr John Greenwood had successively been in occupation or in possession of the said part and in particular of the said field.

After I had read the declaration, Mr W F Lloyd said that he knew a Mr Bernard Greenwood who died 2 or 3 years ago and who lived at Hindle Pasture Farm, a few yards from the land referred to in the declaration and that his widow lives there now.

On the day after the hearing I inspected the part of the Unit Land that is no more than a short distance from the top end of Highgate Lane, saw the gateway entrance to Belle Isle Farm and the field OS No. 3939 (not I thought very easy to identify) and walked down the connecting piece, a stony and grassy track leading to the rest of the Unit Land.

After the hearing I looked through the papers in the office of the Commons Commissioners there retained relating to the said November 1982 hearing. They included numerous documents relating to proceedings in Rochdale County Court (summons No. 8102618) between the Edith Lucia Barrow (plaintiff) and Bernard Sandiford Greenwood (as defendant) apparently about a right of way alleged by the defendant to be over the plaintiff's land. The papers also included objection No. 11 made under Commons Registration Act 1965 by Edith Lucia Barrow to the inclusion in the registration of the said Main Piece and also the adjoining land OS No. 4238 now hatched violet on the Register map. The Commissioner in his December 1982 decision recorded that Mrs Barrow agreed to withdraw her objection in respect of 3939 and he upheld it as regards 4238.

Although it is possible that Mr Bernard Greenwood is the same person as or somehow connected with Mr John Greenwood who made the said 1977 declaration and it is possible too that Mrs E L Barrow might have some claim to ownership, I think it likely that neither they nor their successors wish to and can claim: the notice of this reference sent to Mrs E Barrow, was returned "gone away"; Becke Phipps about a notice of the hearing sent to them as solicitor for E J Greenwood, in a letter dated 18 September 1985 said (in effect): they were no longer instructed,



they were in late 1979 informed by his widow that he had died, subsequent letters from them to her and requests for payment brought forth no response, and a search in the Probate Registry in 1980 showed no one had taken out probate or letters of administration to his estate.

I have no evidence that either of them or their successors are now or ever have been owners of the Referred Part; in the absence of any evidence of any person being the owner, I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

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 6<sup>th</sup> — day of January 1987

A. A. Baden Fuller

Commons Commissioner