



COMMONS REGISTRATION ACT 1965

Reference Nos 268/D/464-476

In the Matter of Land known as
Arkengarthdale Common, Arkengarthdale,
Reeth, Fremington and Healaugh,
Hope and New Forest

DECISION

These disputes relate to the following entries in the Land, Rights and Ownership Sections of Register Unit CL 43 in the Register of Common Land maintained by the North Yorkshire County Council:-

1. The registration at Entry No 1 in the Land Section - the disputes occasioned by -
 - (a) (268/D/464) Objection No 015 made by Ethel Walker and noted in the Register on 12 May 1969,
 - (b) (268/D/465) Objection No 0213 made by R Marwood and noted in the Register on 31 Decembr 1970,
 - (c) (268/D/466) the conflicting registration at Entry No 1 in the land section of Register Unit No VG 85 in the Register of Town and Village Greens maintained by the same authority,
 - (d) (268/D/467-468) the conflicting registrations at Entries Nos 5 and 21 in the Rights Section of this Register Unit.
2. The registrations at Entries Nos 1-25 and 27-38 in the Rights Section - the disputes occasioned by -
 - (a) (268/D/469) Objection No 015 above.
 - (b) (268/D/470) Objection No 0213 above.
3. (268/D/471) The registration at Entry No 18 in the Rights Section - the dispute occasioned by Objection No 0121 made by T E B Sopwith and noted in the Register on 14 August 1970.
4. The registration at Entry No 28 in the Rights Section - the disputes occasioned by -
 - (a) (268/D/472) Objection No 0116 made by T E B Sopwith and noted in the Register on 14 August 1970.
 - (b) (268/D/473) Objection No 0377 made by H M Ridley and noted in the Register on 22 June 1971.
5. (268/D/474) The registration at Entries Nos 28-31 and 38 in the Rights Section - the disputes occasioned by Objection No 0467 made by the Minister of Agriculture, Fisheries and Food and noted in the Register on 2 August 1970.



- 2 -

6. The registration at Entry No 1 in the Ownership Section - the disputes occasioned by -

(a) (268/D/475) Objection No 0104 made by Ethel Walker and noted in the Register on 23 July 1970.

(b) (268/D/476) Objection No 015 made by Ethel Walker and noted in the Register on 12 May 1969.

I held a hearing for the purpose of enquiring into these disputes at Richmond on 25 June 1985.

At the hearing the Arkengarthdale Parish Council was represented by Mr Garget of Hunton and Garget, Solicitors of Richmond, Mr G H Walker, Mr W H Atkinson, Mr W C Stones and Mr R Marwood appeared in person and Mr H M Ridley was represented by Mr M Scott of Malcolm E Scott and Co Solicitors of Leyburn.

Disputes Nos 268/D/464, 466, 469, 475 and 476 all relate to two small areas of land in Arkle Town which are also registered as a village green in Register Unit No VG 85 in the Register of Town and Village Greens. Dispute No 466 arises from the conflict between these two registrations. I have already held that the land is a village green and confirmed its registration as such in Register Unit VG 85. It follows that the registration in the Register of Common Land will not be confirmed.

It also follows that dispute No 268/D/464 occasioned by Objection No 015 in the Land Section, dispute No 268/D/469 occasioned by objection No 015 in the Rights Section and disputes Nos 268/D/475 and 476 occasioned by objections 0104 and 015 in the Ownership Section respectively, all of which refer to this village green only, do not arise in respect of CL 43.

Disputes Nos 268/D/465 and 268/D/472 are occasioned by objection No 0213 made by Robert Marwood in the Land Section and the Rights Section respectively which claims that Hope Moor should not be included in the register unit. Mr Marwood appeared in person at the hearing and stated that he wished to withdraw these objections and also to withdraw his own claim to a right in gross to graze 200 ewes on Hope Moor which is the subject of disputes Nos 268/D/472 and 268/D/473 occasioned by objections Nos 0116 and 0377 respectively.

I shall accordingly confirm the registration of Hope Moor and refuse to confirm Mr Marwood's registration of a right of grazing over it.

Disputes Nos 268/D/467 and 268/D/468 arise from a conflict between the registration of the common in the Land Section and Entries 5 and 21 in the Rights Section.

The supplemental plan of Moor Intake, Whaw, which is the dominant tenement referred to in Entry No 5 in the Rights Section, includes enclosure OS 210a of .487 acre. This enclosure is also provisionally registered as part of the common. Mr William Harker Atkinson the registrant of this right and present owner of Moor Intake gave evidence, which I accept, that this enclosure contains





- 3 -

the house and buildings and has been enclosed to his knowledge for at least 60 years. He produced a conveyance dated 10 February 1931 conveying the farm to his father from whom he inherited it in 1942. This conveyance shows 0.S. 210a, .487 acres as part of the parcels conveyed. On that evidence I am satisfied that this enclosure is not common land and shall refuse to confirm its registration as such.

Similarly Mr William Clark Stones the registrant of rights entry 21 attached to Pepper Hall Arkengarthdale gave evidence, which I accept, that OS 348a, 1.027 acres which is registered as part of the common is in fact an enclosed field and has been so for at least 50 years. He produced a conveyance of the farm from his father to himself, dated 18 December 1960, which shows that this enclosure was included in the land conveyed. I shall refuse to confirm the registration of this enclosure as part of the common.

Dispute NO 268/D/471 is occasioned by objection No 0121 by T E B Sopwith to Entry No 18 in the Rights Section by which James Herbert Peacock claimed a right to graze 380 sheep attached to Seal House Farm Arkengarthdale. The objector claimed that the number of sheep should be 268.

No one appeared to support the objection and Malcolm Peacock Allison who is the grandson of the registrant and now farms Seal House Farm, among others, together with his two brothers, gave evidence and produced a letter from the agent of the present owner of the moor dated 5 June 1979 which states that the right attached to Seal House Farm is 380 sheep. In these circumstances I hold that the objection fails.

Dispute No 268/D/474 was occasioned by objection No 0467 in the rights Section made by the Minister of Agriculture Fisheries and Food on behalf of the Forestry Commission. The objection claims that these rights do not exist over an area at the north of the registered land shown on a plan attached to the objection. The land is shown on the register map as verged and hatched in red. I shall refer to it as "the hatched land". The objection was only to five entries in the Rights Section nos 28 29 30 31 and 38.

Miss Pearson of the Treasury Solicitor's Office, who appeared for the Minister, told me that the reason that only these rights had been objected to was that, by the time the objection was made, it was too late to object to registrations made in the first registration period and these entries in the Rights Section were the only registrations made in the second registration period. She submitted however that, since the matter of the registration of all the land provisionally registered was before me as a result of other objections - though not, as she admitted, as a result of this objection - I should consider, not only whether these particular rights extended to the hatched area, but whether any rights extended to it and whether that area should be included in the land registered as common land in the Land Section. She told me that she could call evidence that for some years before the date of registration the hatched area had not been





- 4 -

subject to rights of common but had been fenced in and planted with trees. She referred me to the case of Re Sutton Common [1982] 2 All E.R., 376 ([1982] 1 W.L.R. 647) and particularly to the judgment of Walton J. at page 383 (656-657) a passage which was expressly approved by the Court of Appeal in Re West Anstey Common [1985] 2 W.L.R. 677 per Slade L. J. at page 688. Mr. Scott, who appeared for Mr H M Ridley, one of the rights owners most closely affected by this objection, did not oppose Miss Pearson's submission.

I think the submission is right. A question before me though not raised by this objection is whether the registration of the land provisionally registered as common land should be confirmed. This necessarily involves the question whether any part of the land is not common land. If I am offered evidence that part of it was not common land at the date of registration I should at least consider it. No doubt I have a discretion to refuse to hear last-minute objections which are clearly frivolous or oppressive, but that is not this case. To the extent that I had any discretion in the matter I exercised in favour of hearing the evidence.

I accordingly admitted evidence from Mr Alan Rix who from 1954 to 1957 was district officer of the Forestry Commission for the North East England Conservancy and was in charge of this particular area. He said that Forestry Commission workers under his supervision had fenced in a strip of land which included the hatched land. The work was begun in 1954 and finished in 1955. He told me that the Forestry Commission had no paper title to this strip of land, which lies immediately to the south of a large area acquired by the Commission in 1931 and now an established forest. Before the fencing began Mr Rix went to the agent of the then Lord of the Manor, Sir Thomas Sopwith, and was told that the estate did not claim the land. He was unable to discover any other person who claimed it and it was decided to add it to the forest. Since 1955 it had remained fenced and had been planted with trees. No one had exercised or claimed to exercise any rights of common over it.

This evidence was not challenged by Mr Scott and I accept it. Since, on the evidence, the fencing off of the hatched land was completed by the end of 1955 any title to the ownership of it had, by the time of registration as common land on 1 February 1968, been extinguished under Section 16 the Limitation Act 1939. Without entering into the question of whether that in itself extinguished the rights of common, I am satisfied that the proper inference to draw from these facts together with the fact that no one has appeared to support a claim to exercise rights of common over the hatched land and that Mr Ridley, the rights owner most affected, has, through his solicitor, expressly disclaimed any such rights, is that any rights of common which may have existed over this land had, by the date of registration, been abandoned.

I accordingly refuse to confirm the registration as far as the hatched land is concerned.

There remains the question of the rights registrations, all of which are put in issue by the objections to the registration of the land. The burden of proof of each and every right registered is therefore on the registrant. There are however no specific objections to the rights as such and no one present at the hearing wished to raise any objection. Since the people who have known the





- 5 -

common all their lives and in whose interest it is to object to any improper or excessive claims raise no objection I shall hold that that burden of proof is satisfied by the statutory declaration which each applicant made on applying for registration unless there is something on the face of the registration which appears to be questionable.

I have examined all the entries in the Rights Section and the only one which seems to me to be questionable on the face of it is Entry No 7 made on the application of Mr John Carter Ellerton and Mrs Jeannie Ellerton of Post Office, Reeth in respect of High Eskeleth Farm Arkengarthdale which includes a right "to use sheepfolds". Whether or not such a right exists, it is not a right of common and I accordingly refuse to confirm this registration to this extent.

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 ... 7th day of August 1985

Peter Langdon-Jones

 Commons Commissioner