



COMMONS REGISTRATION ACT 1965

Reference Nos 27/D/12 to 19 inclusive

In the Matter of Longhorsley Moor,
Longhorsley, Castle Morpeth District,
Northumberland

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 to 7 inclusive in the Rights Section of Register Unit No CL. 113 in the Register of Common Land maintained by the Northumberland County Council and are occasioned by Objection No 54 made by Mr Charles Benjamin Thompson, Mr Kenneth Thompson, Mr Victor Thompson and Mr Gordon Thompson and noted in the Register on 2 March 1971.

I held a hearing for the purpose of inquiring into the disputes at Newcastle upon Tyne on 5 March 1974 and 10 and 11 March 1977, at Alnwick on 22 June 1977 and at London on 15 July and 14 October 1977 and 20 January 1978. At the hearing (1) Messrs C B, K, V and G Thompson (the Objectors) were represented on Day 1 by Mr C B Thompson (one of their number) who attended in person, and on Days 2, 3, 5, 6 and 7 by Miss S Cameron of counsel on the instructions of, and on Day 4 by Mr R S Bradbeer solicitor of, Wilkinson Marshall Clayton & Gibson, Solicitors of Newcastle upon Tyne; (2) Mr Allan McDonald (an application by him in respect of the Land Section Entry is noted in the Register) on Day 1 attended in person; (3) Mr John Lewis Wood (an application by him in respect of the Land Section Entry is noted in the Register) was represented on Day 2 by Mr T Hewitt of counsel instructed by Mitchell Dodds, Solicitors of Morpeth; (4) Longhorsley Parish Council (the registration at Rights Section Entry No 6 was made on their application) were represented on Day 1 by Mr Fryer Spedding of counsel instructed by, on Days 2, 3, 4, 6 and 7 by Mr A F L Patten solicitor with, and on Day 5 by Mr Spencer G Maurice of counsel on the instructions of, Nicholson Martin & Wilkinson, Solicitors of Newcastle upon Tyne; (5) Mr Edward Todd Turnbull (the registration at Rights Section Entry No 2 was made on his application) was represented on Days 2, 3, 4, and 6 (but not on Day 7) by Mr A F L Patten and on Day 4 by Mr Spencer G Maurice (on the same instruction); and (6) Mr William Horsley Storey (the registration at Rights Section Entry No 3 was made on his application) was represented by Mr N Dick solicitor of Charles Alderson & Son, Solicitors of Morpeth.

On Day 1 of the hearing it appearing that neither Messrs Thompson nor the Parish Council were ready to proceed, I adjourned the proceedings without hearing any evidence.

On Day 2 of the hearing (about 3 years after Day 1) oral evidence was given by Mr A C Foreman who has lived in the Parish for 16 years and is now and has been for the last 6 years clerk of the Parish Council in the course of which he produced a number of documents relating to the land; and also by Mr J L Wood, who is and has been since 1954 owner of Whinney Hill and was before then from 1947 the tenant.



At the beginning of Day 3 of the hearing, Mr Wood (by his counsel Mr Hewitt) withdrew from the proceedings, and oral evidence was then given by Mr W H Storey who in 1966 became the owner of Fernrother Farm (his father became owner in 1934 having previously been tenant), by Mr A Anderson who was born in Longhorsley and from 1930 to 1936 worked in the County Engineers Depot at Morpeth, and by Mr R W Turnbull who knew about the grazing from and around Cross Cottage and who is the brother of Mr E T Turnbull named in Rights Section Entry No 2.

On Day 4 of the hearing (about 3 months after Day 3) Mr Patten said that there had been a conference between Mr Maurice of counsel who was advising the Parish Council, and Miss Cameron who was advising Messrs Thompson and compromise proposals had been put forward. After a short adjournment during which (so I understood) Mr Dick was informed about the proposals, I adjourned the proceedings generally to enable negotiations to continue. On the following day I walked over the land, it having been agreed on the previous day that I might do so unattended.

On Days 5 and 6 of the hearing those present agreed that an adjournment was desirable as the negotiations were still continuing.

On Day 7 of the hearing, Miss Cameron said (in effect):- Negotiations had been successful in that the final draft of a deed to be executed by Messrs Thompson, Mr Turnbull, Mr Storey and the Parish Council had been finally approved. Such draft deed contemplated that I would confirm the registration in the Land Section, would refuse to confirm the registrations at Entry Nos 1, 2, 3, 4, 5 and 7 in the Rights Section and would confirm the registration at Entry No 6 in the Rights Section with the modification below mentioned. She accepted that the mere circumstance that those who were represented on that day before me had reached a compromise did not oblige me to give a decision in accordance with it, and indeed except as regards those who were so represented, the terms of the compromise were irrelevant to anything I have to consider. So at least as regards Rights Section Entry Nos 1, 2, 4, 5 and 7, I must give a decision having regard only to the information put before me at the hearing (nearly all of it on Days 2 and 3) and what I saw on my inspection.

The land ("the Unit Land") in this Register Unit is an irregularly shaped piece of land about $1\frac{1}{2}$ miles long from northeast to southwest. Its east boundary (about $\frac{3}{4}$ of a mile long) is by or just to the east of the road from Morpeth to Longhorsley (A697); to a depth of about 100 yards along this boundary there is much gorse and scrub. Further to the west of this road, the Unit Land narrows so as to be in one place to be only about 150 yards wide although it is generally between 250 and 300 yards wide; on this part there is much grass and obviously the grazing is of value. At its southwest end, the Unit Land is crossed by a side road which runs approximately parallel with the A697 road.

I summarise the voluminous oral evidence given on Days 2 and 3 as follows:- The Unit Land has from time to time been used for horse-racing, sports activities, military training and horse-riding. Various persons have resisted any attempt to enclose it. It has been grazed in varying circumstances by a variety of local persons. The evidence supported the view that the Unit Land was subject to some kind of general right exercisable for the benefit of local inhabitants but provided little support for the existence of a grazing right attached to any individually owned lands except possibly to those farms about which the witnesses gave evidence particularly.



Rights Section Entry No 1 (applicant Mr J M W Swanson) is of a right attached to Lynholme to graze 6 beasts or 12 sheep and/or 24 geese together with common of piscary, turbarry and estovers. Rights Section Entry No 2 (applicant Mr E T Turnbull) is of a right attached to Haredene Farm to graze 30 sheep. Rights Section Entry No 4 (applicant Mr J Fisher) is of a right (not attached to any land) of estovers and turbarry. Rights Section Entry No 5 (applicant Mr R Clark) is of a right (?attached to Muckley Farm or ?not attached to any land) of estovers and turbarry. Rights Section Entry No 7 (applicants Mr T and Mrs E L M McAllister) of a right (?attached to Stonehaven or ?not attached to any land) to graze 6 sheep.

An attempt had been made to obtain the agreement of the above-named applicants or of their successors in title to the proposed compromise. Miss Cameron produced to me: (1) a letter dated 7 January 1978 from Mr T Reid of Lynholme (believed to be the successor in title of Mr Swanson); (2) a letter dated 7 January 1978 from Mitchell Dodds & Co, Solicitors of Morpeth, acting for Mr E T Turnbull; (3) a letter dated 9/1/78 from Mrs D Fisher (the widow of Mr Fisher); (4) a letter dated 26 December 1977 from Mr R Clark; and (5) some copy letters sent to Mr McAllister. As to the possible claims of Mr and Mrs McAllister I have a letter dated 9/1/78 from him sent to the Office of the Commons Commissioners. As to Rights Section Entry Nos land 4, I have no evidence in support of the rights; as I read the letters from Mr Reid and Mrs Fisher they do not wish to claim them. As to Rights Section Entry No 5, although it is clear from Mr Clark's letter that he is against the proposed compromise, I have no evidence in support of the Entry made on his application; in his letter he seems more concerned with the rights attached to Whemley Burn Farm, in respect of which there is no registration. As to Rights Section Entry No 7, the letter from Mr McAllister, although he protests against the compromise, provides no evidence in support of the registration made on his application. As to Rights Section Entry No 2, the letter from Mr Turnbull's solicitors shows that he agrees in principle to the matter being settled on the lines proposed in the deed, and as this will be the result of my decision, I consider I can properly disregard such evidence in support of his registration as was given by his brother. As regards Rights Section Entry No 7, Mr Jopley on Day 7 of the hearing was agreeable to my ³ treating his registration as not having been properly made. *copy to confirm*

Rights Section Entry No 6 (applicant Longhorsley Parish Council "on behalf of the inhabitants of the Township of Longhorsley") is of a right (not attached to any land) to graze 250 beasts together with common of estovers and turbarry. Miss Cameron proposed that such Entry should stand provided that it is modified by substituting "freeholders of the Parish" for "inhabitants of the Township" and substituting "(or an equivalent number of sheep)" for "together with common of estovers and turbarry".

As to this first proposed substitution, Miss Cameron produced:- (1) County of Northumberland (Parishes in the Rural District of Morpeth) Confirmation Order 1955, (2) a copy (certified 25 October 1842 of the tithe award dated 4 October 1842 for the township of the Freeholders Quarter with map, (3) a copy (certified 23 November 1847) of the tithe award dated 22 November 1847 for the township of Bigges Quarter with map, (4) a copy (certified 12 November 1847) of the tithe award dated 10 November 1847 for Riddells Quarter, with map, (5) a copy (certified 16 May 1838) of the tithe award dated 16 May 1838 for the Parish of Bothall, (6) a copy of Greenwoods map dated 1828 (showing a racecourse on the Unit Land),

(7) the OS maps for 1862 and 1863, with an explanatory letter dated 27 August 1924 from the Ordnance Survey Office with an extract from the printed list of the plots, (8) the OS maps for 1898, (9) the OS maps for 1949, (10) an abstract of documents relating to the provision of "the In grounds and commons of Longhorsley 1657 to 1664, (11) an agreement dated 20 December 1907 between W J A C J Duke of Portland and Mr C D G Riddell, and (12) a letter dated 8 October 1923 from the Northumberland County District Valuer. These documents read in the context of the evidence of use given on Days 2 and 3, indicate a general recognition over a long period that the "Freeholders" had rights over the Unit Land, and I conclude (as was agreed by those represented on Day 7) that the grazing of which I had evidence could properly be ascribed to a general right exercisable by persons locally known as "Freeholders" under some sort of trust rather than rights exercisable by the individual owners of particular farms. The Parish Council are by operation of law the trustees of parish property, and I can I think properly conclude that they ought to be regarded as the trustees of the right which they have shown to exist.

As to the second proposed substitution, there was no evidence or no satisfactory evidence as to any rights of estovers or turbarry every having been exercised. It may be that the word "beast" used in the registration would without any explanation include an equivalent number of sheep, but it is I think desirable that the registration should be clarified on this point.

As regards Rights Section Entry No 6, the only objection to it is by Messrs Thompson. Under the Commons Commissioners Regulations 1971, the only person entitled to be heard in the resulting dispute are the Parish Council and Messrs Thompson, see regulation 19(2), and there is no reason why I should not give effect to their agreement.

As to Rights Section Entry Nos 1, 2, 3, 4, 5, and 7, there was no evidence, or no satisfactory evidence in support of any of them. Some of the persons who are or might be entitled to support them have (as set out above) indicated no desire to do so. The existence of a general right which I have concluded was properly registered under Rights Section Entry No 6 negatives the existence of any similar right such as is sought to be registered under the other Entry Nos. In these circumstances, I conclude that none of these Entries should have been made.

If Rights Section Entry No 6 was properly made so that the Unit Land is subject to a right of common, it follows that the Unit Land is within the definition of common land in section 22 of the 1965 Act and that the registration in the Land Section was properly made.

I record that in the course of Day 7 Miss Cameron on behalf of Messrs Thompson, Mr Patten on behalf of the Parish Council and Mr Dick on behalf of Mr Storey agreed that provided the Commons Commissioner gave a decision as was proposed by Miss Cameron, they would each execute a deed in the terms of the draft to which reference has been made with such modifications as would secure that such deed would be binding on them even if all or any of Mr Reid, Mr E T Turnbull, Mr R Clark and Mr T and Mrs E L M McAllister do not (as the draft deed now contemplates) execute it and with the further modification that Mr Fisher should be added as another party so that he might execute it if he wished.



It was further agreed between them (this being one of the terms upon which the deed was negotiated) that I should order Messrs Thompson to pay to Nicholson Martin & Wilkinson, Solicitors of Newcastle upon Tyne the costs incurred by the Parish Council in respect of these proceedings, to pay to Charles Alderson & Son, Solicitors of Morpeth the costs incurred by Mr Storey in respect of these proceedings and to pay to J W Mitchell Dodds & Co, Solicitors of Morpeth the costs incurred by Mr Wood in respect of these proceedings, and that I should direct such costs to be taxed according to Scale 4 of the County Court Rules 1936 as amended with the modification that the costs of these proceedings should include the costs of the negotiation, preparation and completion of the deed agreed to be executed as mentioned in this decision and with the further modification that having regard ~~and~~ complexity of the proceedings the Registrar might exercise all discretions which under the Rules might be conferred on him by the Court.

For the above reasons I confirm the registration in the Land Section without any modification, I refuse to confirm the registrations at Entry Nos 1, 2, 3, 4, 5 and 7 in the Rights Section and I confirm the registration at Entry No 6 in the Rights Section with the modification that in column 3 for the words "inhabitants of the Township" there be substituted the words "freeholders of the Parish", that in column 4 for the words "together with common of estovers and turbary" there be substituted "(or an equivalent number of sheep)"; and I shall make an order for costs as above stated.

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 17th day of February ————— 1978

a. a. Baden Fuller

Commons Commissioner

Corrected on page 3, by substituting "Entry No 3, Mr Storey" for "Entry No 2 Mr Hovley", by substituting "referring to confirm" for "treating", and by deleting "as well" having been properly made. a. a. Baden Fuller
1 June 1978