



In the Matter of Broadhill Common,
Gnosall, Staffordshire

DECISION

1. These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 69 in the Register of Common Land maintained by the Staffordshire County Council and are occasioned by Objection Nos. 49 and 50 made respectively by Miss E F M Beech and Mrs E P Green and noted in the Register on 27 October 1970. There are corresponding objections to the two Entries in the Rights Section of the Register Unit.

I held a hearing for the purpose of inquiring into the disputes at Stoke-on-Trent on 11 January 1979.

2. At the hearing Mr D J Askin, Solicitor, of the firm of Wragge & Co, appeared on behalf of Gnosall Parish Council which was supporting the registration. Mr E C Selwyn, Solicitor, of the firm of Jeffreys & Powell, appeared on behalf of the successors in title of Mrs E P Green ("the Objector") who was also registered in respect of Entry No. 3 in the Rights Section and as owner of the land. Miss Beech the other objector, who was registered in respect of the other Entry No. 2 in the Rights Section, did not appear and was not represented.

Miss Beech's objection related only to a small area of the land registered ("the Register Unit"), this area being a house with garden, paddock and agricultural buildings, which she purchased in 1958 from the Aqualate Estate, the owners of the Register Unit. I understood that this objection was not resisted by the Parish Council, which was agreeable to the removal of this particular area from the Register Unit. This would still leave Miss Beech's registered right (of grazing and estovers) affecting the remainder of the Register Unit. The Objector did not seek to maintain the registered rights of common under Entry No. 3 which, it was accepted, could not subsist simultaneously with ownership of the Register Unit by the Objector (as tenant for life of the Aqualate Estate). In these circumstances the rights under Entry No. 3 were not material or relevant to the disputes.

3. The evidence adduced on behalf of the Parish Council included documents revealed by a search of the County Records in Stafford. These were (1) an 1839 Tithe Map of Gnosall showing an area of land described as Broadhill Common (2) an Agreement for the commutation of Tithes dated February 1838 (confirmed by an award of the Tithe Commissioners on 31 December 1839) in which the owner of Broadhill Common is stated to be "John Gough as Lord of the Manor" (3) a plan deposited in 1844 indicating the intended route of the railway and showing Broadhill Common. In an accompanying book of reference there is an entry relating to the Common in which the owners appeared as Sir T F Boughey, F G Calthorpe and Lord Hatherton, the occupiers as "the occupiers of houses and land in the township of Beffcote, and the lessees were stated as "None" (4) two valuation lists for Gnosall Parish dated 1850 and 1863, in each of which Sir T Boughey was stated to be the owner (in the 1850 list "as Lord of the Manor") and the occupiers were described as "sundry".



A number of signed statements and letters were put in from which it appeared that some people living on or in the vicinity of the Common had for many years past and down to the 1970's grazed animals and cut bracken.

Mrs Eileen Hart, the Clerk to the Parish Council, gave evidence and verified the documents and produced the statements and letters: in cross-examination she agreed that at one time the occupiers of the properties of the letter writers were tenants of the Estate. Evidence was also given by Mr R G Beech and Mr C Venables. Mr Beech who is 48 years of age had lived at Lindor Farm near the Common all his life; it was originally occupied under a tenancy from the Estate and purchased in 1958. He said that grazing rights on the common had been exercised generally and bracken fetched fairly regularly by people in the neighbourhood. Shown a map of the estate in 1930 he agreed that all the people who exercised rights were then living on parts of the Estate land. Mr Venables who lived at Meadowside, Broadhill said that his family had been involved in grazing animals and taking bracken: he had bought the house from the Estate in 1958.

4. Mr Selwyn, who appeared for the Objector, had since 1957 acted for the Aqualate Estate, the owners of the Common, of which Mrs Green was at the date of the registration of the Register Unit the tenant for life under a strict settlement. She died in 1973 and he now acts for her special executor. By a conveyance on sale dated 26 March 1849 there were conveyed to Sir T F F Boughey, the Manors of Beffcote and Walton, both in the parish of Gnosall and various lands in the parish which included Broadhill Common, the Register Unit. These lands, including the Register Unit were settled, and on 26 April 1926 there was a Vesting Deed declaring them to be vested in the then tenant for life, Sir F Boughey. This Vesting Deed comprised also the Manor of Forton but not the Manor of Beffcote. On the 29 September 1959 there was a subsequent Vesting Deed in favour of the next tenant for life, Mrs Green, which included the Register Unit but not the Manor of Beffcote.

In 1958 there was a sale by auction of certain portions of the Aqualate Estate, among which was (lot 11) the area which is the subject matter of Miss Beech's objection to registration as common land (see paragraph (2) above). Miss Beech was the purchaser of this lot, of which she was at the time the tenant of the Estate on a yearly tenancy under an Agreement made in 1950.

Mr Selwyn stated in evidence that he had found nothing further bearing on the questions in issue in these disputes. Mr Norman E Shergold gave evidence; he is a senior assistant and building surveyor employed since 1961 by Smith Gore of Newport who are agents for the Estate. Originally he was involved more in the management of the estate but in the last 6 or 7 years had dealt with tenants and local inhabitants. There is a number of trees on the common, both on the edges and on the common itself - some mature Oak, Beech and Scotch pine and some 30 pines planted during the last 3 to 4 years. He had never seen stock grazing on the common or people collecting bracken, nor on recent visits any sign of bracken having been cut.

5. Mr Askin for the Parish Council submitted (a) on the evidence the land was common land in 1839 (this Mr Selwyn conceded) and that Miss Beech had registered rights of common which she had been exercising before and since 1958 (when she ceased to be the tenant and became the owner of her property); alternatively (b) that if rights of common were not established, the Register Unit was waste land of the



manor. Mr Selwyn's submissions were to the effect that (a) although Broadhill may have been subject to commoners rights early in the 19th Century, after the 1849 conveyance the Estate owned the lands, or substantially all the lands to which those rights were attached, so that those rights were extinguished by unity of ownership, (b) that, if the common was waste land of the Manor, it ceased to be so after the 1926 Vesting Deed which comprised the common but not the relevant manor.

As regards the question whether the land was common land as being subject to rights of common (s.22(1)(a) of the 1965 Act), having regard to the decision in *Central Electricity Generating Board v Clywd C.C.* 1976 1 WLR 151, it is material to consider only the registered rights of which, in the circumstances of this case, only that registered by Miss Beech is relevant. Her property was part of the common and belonged to the Estate until 1958 and any rights of grazing or estovers previously exercised in respect of the property could, on the evidence, be referable only to the tenancy of the property. Nor in my opinion does the evidence of exercise by her of grazing rights since she acquired the property in 1958 sufficiently establish the acquisition of such rights by prescription. The conditions of sale at the auction in 1957 included a Stipulation (No. 3) that each lot is sold subject to and with the benefit of all rights of way and other rights and Casements, and in the particulars of lot 11 there is a note that the lot is sold with the benefit of all rights of way as at present enjoyed along the defined tracks on Broadhill Common, but I cannot construe the words as relating to rights of grazing or providing for the grant of such rights, nor was the conveyance to Miss Beech produced to support a contention to this effect. It was suggested by Mr Askin that rights of grazing or otherwise enjoyed by tenants (including Miss Beech) of the Estate might have been rights in gross, but there was no evidence that this was so. On this part of the case I conclude that Miss Beech's rights of grazing and estovers have not been established and that the registration of the Register Unit as land subject to rights of common has not been established.

As to the alternative basis for registration viz. that the Register Unit is waste land of a manor not subject to rights of common: the documentary evidence did not show of which manor it was land, but Mr Selwyn and Mr Askin accepted that the only relevant manor was that of Beffcote. Mr Selwyn agreed that the common was open and uncultivated but submitted that as the title to the common itself derived from the 1926 Vesting Deed and that Deed did not include the manor of Beffcote, the land was no longer waste land of a manor within the statutory definition. Having regard to what, as I understood, was common ground between the parties, I find that the common was waste land of the manor of Beffcote, but had ceased to be such prior to the Vesting Deed of 1926. The fact that Beffcote manor was not, whereas another manor (Forton) specifically was, comprised in the Vesting Deed indicates that the Register Unit had then ceased to be part of the manor of Beffcote and having regard to the decision in *Box Parish Council v Lacey* 1979 2 W.L.R. 177, it was not in my opinion waste land of a manor within the meaning of S.22 1(b) of the 1965 Act, as to qualify for registration as common land.

For these reasons I refuse to confirm the registration at Entry No. 1 in the Land Section and Entry Nos. 2 and 3 in the Rights Section of the Register.



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

20th

day of

August

1979

L. J. Harris Smith

Commons Commissioner