



COMMONS REGISTRATION ACT 1965

Reference Nos 233/D/15  
233/D/16  
233/D/17  
233/D/18  
233/D/19

In the Matter of The Holms, The Pound  
and Broadheath, Shenstone, Lichfield  
District, Staffordshire

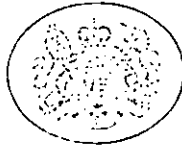
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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 and 2 in the Ownership Section of Register Unit No CL. 76 in the Register of Common Land maintained by the Staffordshire County Council and are occasioned as to the Land Section Entry by (D/19) Objection No 23 made by Mr Michael Roger Hanley, (D/18) Objection No 33 made by Mr Walter John Ryman and Mr Richard Morris Foden (as trustees of H K Foden deceased), and (D/15) Objection No 40 made by the Staffordshire County Council and are all noted in the Register on 27 October 1970, and as to the ownership Section Entries by (D/16 and D/17) these Entries (made on the application of Mr Alfred Charles Smith and Shenstone Parish Council) being in conflict with each other.

I held a hearing for the purpose of inquiring into the disputes at Lichfield on 14 December 1977. At the hearing (1) Staffordshire County Council were represented by Mr S Blower of the Solicitor's Department of the office of their County Clerk and Chief Executive, (2) Mr W J Ryman and Mr R M Foden were represented by Mr A Barker of counsel instructed by Maden & Stretton, Solicitors of Lichfield, (3) Mr A C Smith was represented also by Mr A Barker on the instructions of Hand Morgan & Owen, Solicitors of Stafford, and (4) Mr Cecil Arthur Burton and Mr Jonathan Edgar Burton were represented by Mr H J S Boyland articled clerk with Moseley Chapman and Skemp, Solicitors of Lichfield.

The land ("the Unit Land") comprised in this Register Unit was registered in the Land Section on the application of Shenstone Parish Council and is in their application and in the Register described as "The Holms (north side), The Pound (north side) and Broadheath (east side)"; the plans referred to in the application and in the Register show the Unit Land as being four pieces which for the purposes of exposition I will (dividing the largest into two parts) refer to as (1) the West of the Railway Piece, (2) the East of the Railway Piece, (3) the South of the Brook Piece, (4) the Pound Piece, and (5) the Broadheath Piece. The West of the Railway Piece is a little to the north of the road which crosses the Railway by Shenstone Station; its east boundary is Crane Brook, where it flows nearly parallel with and very near to the Railway fence, and is there about 170 yards long; its west boundary is also the boundary of some land apparently belonging to the Water Authority and is somewhat irregular; for the most part the width of the piece is about 30 yards. The East of the Railway Piece is about 100 yards long from north to south and is bounded on its west side by the fence of the Railway and on its north side by a short length of post and barbed wire fence which separates it from the rest of the largest piece. The South of the Brook Piece is irregularly-shaped being bounded on the north by Crane Brook and being there (if the irregularities of the Brook be disregarded) about 400 yards or a little more long; it is crossed by a public footpath ("the Chesterfield Path") leading from a point on Pinfold Hill (a road so called which runs from the A5127 road



from Lichfield to Sutton Coldfield to a road junction in the middle of the Village near the Railway Station) to a bridge across Crane Brook, and thence northwestwards in the direction of Chesterfield. The Pound Piece is approximately triangular, being about 30 yards long and 15 yards wide, is situate on the north side of and at a bend of Pinfold Hill (a little to the east of the beginning of the Chesterfield Footpath). The Broadheath Piece is also approximately triangular with sides, two a little more and one a little less than 100 yards long; it can be approached from the A5127 road by going eastwards along Broadheath Lane until this Lane at a ford across Crane Brook ceases to be usable by ordinary motor cars, and thence by crossing the footbridge and going down a track for about 100 yards; the Broadheath Piece is on the south-side of the track, being at first glance not easily distinguishable from the adjoining land on the east, north and west.

The grounds of Objection No 40 (made by the County Council) are: "The area of land known as the Pound is not registrable as Common Land". Mr Blower in support of this Objection said that the Pound Piece was known as the Pound and he produced a map ("SB1") apparently based on the OS 1/2500 map, which he said had been provided by the Parish Council and which showed the Unit Land thereon coloured green; on this map the Pound Piece has been marked (such marking apparently having been added to and forming no part of the OS map) "POUND (the original pinfold)". Mr Blower said (in effect) that although no evidence would be given on behalf of the County Council, they contended (being concerned as registration authority to see that the 1965 Act was properly administered) that land which was or had been a pound or pinfold and over which no rights had been registered, could not properly be registered as common land. He referred me to my decision dated 2 August 1972, re Pinfold, Higham-with-West Close Booth, Lancs, Ref No 20/D/2 reported in the Decisions of the Commons Commissioners published in October 1972 by Commons, Open Spaces and Footpaths Preservation Society, and suggested that such decision of mine so far as it was contrary to his contention had been overruled by the High Court in *Clwyd v CEGB* 1973 1 WLR 151.

The grounds of Objection No 33 (made by the Foden Trustees) are: "That the land was not common land at the date of registration and is owned by the Trustees of H M Foden Dec'd". Although the grounds contain nothing to limit the Objection to any particular part of the Unit Land, paragraph 5 of the form of Objection (printed "Register Unit No") has been completed by inserting the words: CL. 76(Part)", and the Objection was accompanied by a plan which showed edged red the west part ("The Foden Objection "and") of the South of the Brook Piece. Mr Barker said speaking on behalf of his clients Mr W J Ryman and Mr A M Foden that their only concern with these proceedings was to obtain a decision which would result in the Foden Objection "and being removed from the Register, although speaking on behalf of his client Mr A C Smith he contended that additionally to the Foden Objection Land all of the remainder of the South of the Brook Piece should also be removed from the Register.

On behalf of Mr W J Ryman and Mr R M Foden oral evidence was given by Mr Ryman himself, by Mr Charles Henry Foden (he is 70 years of age and is one of the children of the said H M Foden deceased) and by Mr W G Snelson who is and has been since 1952 tenant of the Foden Trustees of all (or most of, see below) of the Foden Objection Land and of much of the adjoining land to the east and south. In the course of his evidence Mr Ryman produced: (1) a conveyance dated 25 March 1920 by which Mr J T Glover and his mortgagees conveyed to Mr Harry Foden First the Shenstone Hall Estate (including Shenstone Hall) containing 398.649 acres as described in the first part of the First Schedule coloured pink on the plan and



Secondly the pieces containing 4.574 acres described in the second part of the Schedule coloured orange on the plan, which 4.574 acres included (according to such part of such Schedule) "pt 342: pasture (subject to Lammas rights): 4.506 (acres)" as to the first described in fee simple and as to the secondly described for the annual tenancy then held by the Vendors from the Ecclesiastical Commissioners; (2) an abstract dated 1934 of the title of the Trustees of Harry Foden to land at Shenstone formerly forming part of the Shenstone Hall Estate which shows that the personal representatives of Harry Foden who died on 12 May 1938, by an assent dated 19 April 1940 and a conveyance dated 18 April 1946 vested in the Estate in Mr Frank Foden and Mr E H Bellamy as Trustees of his well; (3) a probate of the will granted on 18 August 1938 and (4) a deed of appointment dated 18 July 1947 under which Mr W J Ryman became a Trustee in the place of Mr F Foden (he died on 25 May 1946).

Mr A C Smith in the course of his evidence produced: (1) a conveyance dated 8 April 1948 by which Mr E H Bellamy and Mr W J Ryman conveyed to him a plot of land being OS No. 325 and containing 2.577 acres; (2) three letters dated 26 February 1968, 9 March 1968 and 12 May 1968 from the Staffordshire County Council's County Surveyor, Shenstone Parish Clerk and the Lichfield Rural District Council Clerk; and (3) a conveyance dated 23 November 1953 by which the Church Commissioners for England conveyed "ALL THAT...land situate and being part of the Lammas lands of the Parish of Shenstone...containing in all (4a. 1r. 37 $\frac{1}{2}$ p.) as delineated on the plan annexed thereto and thereon coloured red".

The grounds of Objection No 23 (made by Mr Manley and dated 25 September 1970) are:- "That the area of the land as shown coloured red on the plan attached was not common land at the date of registration" the plan so attached shows the Broadheath Piece. Mr Boyland in the course of his evidence produced: (1) a conveyance dated 15 September 1976 by which Crosswall Investments Limited and Whitwell Limited ("the Nominees") with the consent of Granville Reversionary Company Limited ("Granville") and Henderson (Guernsey) Limited ("Henderson") conveyed to Mr C A Burton and Mr J E Burton the property known as Streetway Farm, Watling Street comprising about 60 acres in Weeford and about 156 acres in Shenstone as specified in the First Schedule thereto and delineated on the plan thereto and thereon edged red, and (2) an epitome of title comprising a list and a number of copy documents or abstracts of documents including a conveyance dated 18 March 1920 by which the personal representative of Mr F C Manley conveyed to Mr Roger Shaw Manley (as devisee under his will) all the Manor or Lordship of Thickbron and the freehold land containing 191 $\frac{3}{4}$ a. 3r. 3p. as particularised in the Schedule thereto, a conveyance dated 2 April 1964 by which Mr R S Manley conveyed to Mr Michael Roger Manley (the Objector) part of the Manley Hall Estate comprising 785.723 acres as described in the Schedule thereto, an assignment dated 11 March 1976 by which certain interests in the land were assigned by Henderson to the Nominees, an assignment dated 18 March 1976 by which certain interests in land were assigned by Mr M R Manley to Granville.

On the day after the hearing I inspected the South of the Brook Piece in the presence of Mr Foden, Mr Snelson and Mr Smith, I inspected the Pound Piece in the presence of Mr Smith, and I inspected the Broadheath Piece in the presence of Mr Boyland. Later I walked over (by myself) the East of the Railway Piece and the West of the Railway Piece.



There is no apparent connection between the five pieces with which I have for the purposes of exposition divided the Unit Land, nor was there any evidence of any such connection, except possibly that the boundaries of the East of the Railway Piece and the South of the Brook Piece adjoin for a short distance and that the name "Pound" suggests that the Pound Piece may at one time have been a pound in some way connected with any nearby common land. In my opinion I ought to deal with each of the five pieces in the same way as I would have done if each of them had been registered with a separate Unit number, and as if these proceedings instead of being one had been five.

As regards the Pound Piece:-

In my opinion the fact that land is or has at one time been used as or known as a pound or pinfold does not by itself establish that the land could not be "waste land of a manor" within these words as used in the definition in section 22 of the 1965 Act of "common land".

Mr Smith under the Commons Commissioners Regulations 1971 had no entitlement to be heard on the question of whether or not the Pound Piece is common land, because not having made any objection to the Entry in the Land Section he is not within paragraph (1) of regulation 19. The circumstance that he had such entitlement in respect of his registration as owner of the Pound Piece (a registration in conflict with another registration in the Ownership Section made on the application of the Parish Council), does not help him. However under paragraph (5) of regulation 23, at a hearing of a dispute as to the registration of land as common land, a Commissioner may take evidence from any person present at the hearing; although this paragraph may have been intended to prevent a registration of land as common land being (against the public interest) lost by lack of support by the person who made it, such paragraph can in my opinion be used for the purpose of establishing that a registration has been wrongly made, notwithstanding that the person volunteering the evidence (as Mr Smith candidly admitted he was) is personally interested in avoiding the registration.

Mr Smith said (in effect):- In 1948 he bought OS plot No 325 which adjoins the Pound Piece on the north and on which now stands the dwelling house in which he now resides. At the time the Pound Piece had been levelled off, although he had heard said that years ago it had been a pound. Shortly afterwards (in about 1950) he planted a hawthorn hedge across the Pound Piece; while doing this he discovered an old metal cattle trough all rusted away. Nobody had ever complained about his hedge, or about the resulting enlargement of his garden. I admit this evidence under regulation 23(5).

Mr Barker conceded that Mr Smith in the 1948 conveyance did not expressly include any part of the Pound Piece, but contended that he had a possessory title at least to the part within the hedge.

On my inspection it appeared that much of the Pound Piece was crossed by the entrance drive of Mr Smith's land (plot no 325), that some of the west part of the Pound Piece was enclosed by a low hawthorn hedge about 3 feet high as described by Mr Smith and that on the part open to the public road (Pinfold Hill) there is a lamp post, a post carrying telephone wires, and a post marking the position of a hydrant..



On appearance the Pound Piece is either private land or highway verge. Nevertheless I think I should give my decision on the assumption (likely but not I think proved) that there was on it some time before 1948 a pond, from which Pinfold (11) takes its name. But this assumption is not enough to establish that the Pound Piece was at one time "a pond, or a piece of land of a minor" within the meaning of the section 22 definition. The evidence outlined above and its present appearance is against this, and I conclude therefore that on the facts the Pound Piece should not have been registered. I need not therefore express any opinion on the point of law raised by Mr Blower.

As regards the Broadheath Piece:-

The documents produced by Mr Boyland show that Messrs Burton are the successors in title of Mr Penley who made the Objection. Nevertheless regulation 19(1) confers on them no entitlement to be heard in support of the Objection. Whether or not I have an implied discretion to hear them, clearly under regulation 23(5) I may have regard to the evidence of Mr Boyland.

On the map annexed to the 1920 conveyance, the Broadheath Piece corresponds as to a very small part to the northwest corner of plot no 358, and as to far the greater part to plot no 360 in the Schedule included with other "Plantations" as "ditto 2: 3: 34:" and "ditto - : 3 : 22". In the 1964 conveyance the two plots numbers are included being therein described as "Plantation Broadheath 2.960" and "do. do. .986".

The Broadheath Piece is at a lower level from much of the surrounding land, and like that adjoining on the east, north and west has on it a large number of trees some of which must have been planted; the boundary of plot 360 is reasonably distinct but it seems likely that the inclusion on the registration of any part of plot 358 was a mistake. Much of plot 360 appears to be or at one time to have been a pond.

On appearance it is possible that the track to the north of the Broadheath Piece was at one time more important than now and that the pond was of some value to users of the track. The OS map marks land not far away on the north as "Broad Heath" so it is possible the adjoining land was at one time heath land of which this Piece was part. It may be that for these reasons the Broadheath Piece has been regarded by some as being common land within the popular meaning of these words. I can think of no other reason why the Broadheath Piece could be regarded as common land within any meaning of these words; neither its appearance nor the map in my view are any evidence that it is within the meaning of the 1965 Act section 22 definition. The descriptions above quoted from the conveyance, copies of which were produced by Mr Boyland was against the land being any different from that adjoining on the east, north and west; indeed apart from the differences in the vegetation as a consequence of the land being damper, there was no apparent difference. I conclude therefore that on the evidence of Mr Boyland and from what I saw on my inspection that the Broadheath Piece should not have been registered.

As regards the South Brook Piece:-

This is divided by a fence into two parts ("the Footpath Area" and "the Foden Area"). This fence is not very substantial but it is cattle-proof and has existed at all relevant times; it is along a line approximately north-south, from a point a



little to the west of the middle of the north boundary of OS plot no 324 (area 2.464) to a point on the Brook. The Foden Objection Land comprises the whole of the Foden Area and also the adjoining east part of the Footpath Area up to a line drawn northward from the northwest corner of OS plot no 325 (area 2.577).

Mr Foden said (in effect):- In 1920 his father bought the Shenstone Estate including Shenstone Hall. In 1922 the family went into possession and he lived in the Hall until 1932; he still lives in Shenstone; he had always known the Footpath Area as "the Lammas Land" on the Holm, that is land on either side of the Chesterfield Path; it was mown occasionally but generally they grazed it all the year round with cattle and not sheep.

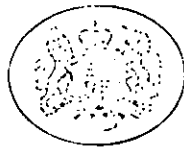
Mr Snelson said (in effect):- He had known the land since about 1936; his father took over the tenancy in 1939 (being that which he himself took over in 1952). His father was tenant of the Foden Area and also tenant of the Footpath Area; neither he nor his father grazed the Footpath Area during the Lammas period (meaning August to February); but from February to August they grazed both the Foden Area and the Footpath Area. He never knew any part of the Foden Area being called Lammas Land. To graze the Footpath Area he left a gap in the fence for the animals to come through from the Foden Area.

It was not until a late stage in the hearing that it was realised by all those present that the Foden Objection Land based on the 1920 conveyance does not correspond with the Foden Area. The first Schedule to the 1920 conveyance includes "pt 432 Pasture. 2.687" and "pt 432 (subject to Lammas Rights) 2.031" and the second schedule includes "pt 342 (subject to Lammas Rights) 4.506". The plan in the 1920 conveyance is somewhat rubbed and is not very easy to read; in my view it is clear enough that the Foden Area corresponds with pt 432 (2.687) and the Footpath Area with pt 432 (2.031) + pt 342 (4.506). Mr Foden and Mr Snelson when giving their evidence (as they made clear on the inspection) did not realise and had apparently never known that the ownership of any part of the Footpath Piece could (contrary to what might be inferred from the fence visible on the land) belong to the Foden trustees.

By the 1973 conveyance there was conveyed to Mr Smith the land described as being "part of the Lammas Lands of the Parish of Shenstone...containing in all... (4a 1r 37 $\frac{1}{2}$ p)...delineated on the plan annexed..." Such plan shows the Footpath Area not included in the Foden Objection Land.

Mr Barker emphasised that the 1920 conveyance was expressed to be "subject... as to the pieces of meadow land marked "pt 432 subject to Lammas Rights" on the said plan to such rights of pasturage (if any) during the Lammas season August to February as may be subsisting in respect thereof".

As to the Foden Area, nothing was said by any of the witnesses and there was nothing in any of the documents produced which would suggest that this could in any sense be common land within the 1965 Act section 22 definition. On my inspection it was apparent that it was liable to flooding now particularly at the east end, and Mr Foden expects that when the mill a short distance lower down the Brook is in use (it is not now in use) it was flooded much more frequently; its appearance and situation in my view in no way support the suggestion that it might be common land. My conclusion is therefore that it was not properly registered.



As to the Footpath Piece I have as set out above considerable evidence that it was known as Lammas Land. Land so described is generally commonable land held in severalty during part of the year but when the crop has been gathered it is thrown open (usually on Lammas Day, 1 or 12 August) for grazing by the severalty owners and possibly the other classes of commoners. Clearly Lammas Land which is subject to rights of common of this kind is within the 1965 Act section 22 definition; but land is not within the definition merely because it may have been at one time properly so described. Both Mr Foden and Mr Snelson said that they had never known grazing on the Footpath Area otherwise than by themselves. ~~But although I have evidence that this area was owned in severalty by the Ecclesiastical Commissioners, and their successors the Church Commissioners and Mr Smith as their successor and by Mr J T Glover, and by Mr H Foden as his successor by his Trustees in succession to him; and that as between them the land was (at any rate until 1973 when Mr Smith purchased part of it) grazed by Mr Snelson and his father and grand-~~father~~ under leases made ~~then~~ by the Ecclesiastical Commissioners and the Foden Trustees.~~

However the land ~~might~~<sup>may</sup> have been grazed in the past, the facts summarised above do not in my opinion establish that it was at the date of registration (28 June 1968) land subject to rights of common or waste land of a manor. Accordingly my conclusion is that it was not properly registered.

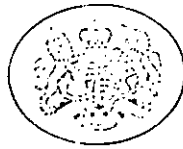
In my opinion I am not precluded from giving effect to this conclusion as regards the whole of the Footpath Area merely because Objection No 33 was intended by its maker to apply to part of it only. The Objection is not clearly subject to any such limitation. Further the evidence in support of the Objection to the part applies to the whole, and I consider I ought to give effect to it, notwithstanding that Mr Smith may incidentally benefit.

As regards the West of the Railway Piece:-

At the hearing I had no evidence about this land at all. On my inspection it appeared to be waste land, such that the public might possibly obtain some benefit from its continued registration. If it had been registered separately, there would have been no objection to it and the registration would have become final by section 7 of the 1965 Act. I consider that I ought to produce the same result, and accordingly I conclude that the registration was properly made.

As regards the East of the Railway Piece:-

At the hearing about this land also I had no evidence. But its appearance is extraordinary in that (so far as I could find) any person seeking access to it (even on foot) would at some point wonder whether he was not doing something which was wrongful as against some adjoining landowner. The west boundary is a well constructed fence of the Railway land. The north boundary is a substantial post and barbed wire fence above referred to, sufficient to discourage all except a determined pedestrian from any attempt to climb through or over it. The west boundary is a well grown hedge, apparently separating it from wholly private land. The south boundary is open to the adjoining field on the south and there is little if any difference in the vegetation on either side of this boundary; yet the adjoining field has no obvious public entrance except at a point behind some buildings fronting on the nearby public road, by which there is a discouraging notice. However from the other side of the Railway, there is



a substantial brick bridge wide enough to carry vehicles over Crane Brook and thence across the Railway Line; here too my supposed access-seeking person would be discouraged because the bridge has no sides, and although he could easily get onto the Railway line from the west side, there is a substantial continuous fence on the east side.

The appearance of the East of the Railway Piece suggests that there was at one time opposite the brick bridge an accommodation crossing. During the hearing Mr Smith handed me a letter in which he said there was such a crossing but it was demolished 50 years ago. Quite apart from such letter, I inferred the former existence of such a crossing from the appearance.

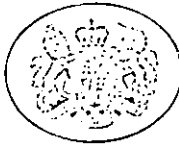
In my view I ought to reach the same conclusion as regards this Piece as I have done as above stated as regards the West of the Railway Piece. The result may be somewhat strange, but I assume that the Parish Council when they applied for the registration realised this.

The Ownership Section Entry No 2 (made on the application of the Parish Council) relates only to the Pound Piece and the Broadheath Piece. The Ownership Section Entry No 1 (made on the application of Mr Smith) was intended by him to relate only to part of the South of the Brook Piece which was by the 1953 conveyance conveyed to him, that is the west part of the Footpath Area. As a result of my decision, that these lands are not properly registered, their registration in the Land Section will be cancelled, and in accordance with section 6(3) of the 1965 Act, the County Council as registration authority will be obliged to cancel the Entry in the Ownership Section applicable to the land so removed from the Register. It is I think clear under the 1965 Act that my jurisdiction to consider the ownership of any land is conditional upon such land being registered under the 1965 Act; accordingly I refrain from expressing any opinion as to the ownership evidence offered at the hearing in support of Ownership Section Entry No 1, because such opinion could not have any legal effect.

The said two Ownership Section Entries refer to a red-verged line and a green-verged line on the Register map. None of the maps supplied to me have marked on them any such lines; so it is just possible that one or both of these Entries could be read as being applicable to the West of the Railway Piece and the East of the Railway Piece, being the only land which will as a result of my decision remain registered. Being of the opinion that Mr Smith cannot on the evidence offered by him properly claim the ownership of any of these Pieces, and no evidence of ownership having been offered by the Parish Council, I formally conclude that the Ownership Section Entries so far if at all as they could apply to these Pieces were not properly made.

For the above reasons I confirm the registration at Entry No 1 in the Land Section with the modification that there be removed from the Register (1) the part of the land east of the Lichfield-Sutton Coldfield road, A5127, being the part known as "Broadheath", (2) the land adjoining Pinfold Road being that known as or reputed at one time to have been the Pound, and (3) all the land by the side of Crane Brook which is north of the short length of post and barbed wire fence marked on the OS map scale 1/2500 produced to me on 14 December 1977 by Mr S Blower and thereon shown as approximately west-east from a point on the fence of the Railway land to a point on the northwest boundary of plot no 474 (area 2.836 acres) or which is north of the boundaries as shown on such map of plot nos 322, 323, 324, 325, 326 and 431; and I refuse to confirm the registrations at Entry No 1 and 2 in the Ownership Section so far if at all as they are not by subsection (3) of section 6 of the 1965 Act wholly cancelled by the registration authority as a consequence of the foregoing modification of Entry No 1 in the Land Section.





Because the description in the Land Section of the land as "the Holms (north side), the Pound (north side) and Broadheath (east side)" may as a result of this decision be no longer applicable, I give to the Shenstone Parish Council and to the County Council liberty to apply to me within 6 weeks from the date on which notice of this decision is sent to them as to the modification if any which should be made in these words; any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners.

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 13<sup>th</sup> - day of February 1978

A. A. Baker

Commons Commissioner