



COMMONS REGISTRATION ACT 1965

Reference No 233/D/8

In the Matter of Wyrley Common, Norton
Cames, Cannock District, Staffordshire

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL. 123 in the Register of Common Land maintained by the Staffordshire County Council and is occasioned by Objection 15 made by Mr E H L Wallace and noted in the Register on 16 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Stafford on 11 and 12 February 1976. At the hearing (1) Mr F Hall on whose application the said registration was made attended in person, (2) Mr E H L Wallace was represented by Mr G C Raffety of counsel instructed by Macfarlanes Solicitors of London, (3) Cannock District Council were represented by Mr T W Badgery solicitor with them, and (4) Staffordshire County Council were represented by Mr C T Gray solicitor in the office of the County Clerk and Chief Executive, and by Mr B Orgill, also of that office.

In the Ownership Section Mr Wallace (the Objector) is registered as owner. The grounds stated in the Objection are: "That the land was not common land at the date of registration".

The course of the proceedings was as follows:- Mr Hall gave oral evidence in the course of which he produced the documents specified in Part 1 of the Schedule hereto. The County Council put in the document mentioned in Part 2 of the Schedule. Oral evidence was then given in support of the registration by Mr F Powell, Mr E Myatt, Mr T Sedgwick, Mr J R Davies, Mr P W Shaw, and Mr R F E Hall in the course of which the documents specified in Part 3 of the Schedule were produced. Mr Badgery then made observations on behalf of the District Council in support of the registration. Oral evidence was next given on behalf of the Objector by Mr D E Compton and by Mr G Slatcher, in the course of which the documents specified in Part 4 of the Schedule were produced.

The land ("the Unit Land") comprised in this Register Unit is in two pieces; one ("the Main Piece") containing about 73 acres and situated a short distance south of the A5T Road (Watling Street), and the other ("the Detached Piece") containing about 2 acres and adjoining the said Road. In the course of the hearing it was agreed that my decision as regards the Main Piece should apply to the Detached Piece, and that I need not therefore record evidence about the Detached Piece. On the day after the hearing I inspected the Main Piece, it having been agreed that I might do so unattended.

The Main Piece is crossed (approximately east-west) by a level strip being the site of the now disused mineral railway which formerly led from Grove Lane Colliery on the west. On the Main Piece and covering about a quarter of it, there is a very large heap of colliery waste forming a hill (in places quite steep) of considerable size; the Colliery has been disused for some years, so



that the heap has not been added to recently, and is now for the most part overgrown with grass. On the northeast and southwest parts of the Main Piece there are some trees and some scrub. During my inspection it was raining slightly and the Unit Land was not at its best; however on a fine day, particularly when the trees are green, the whole would be an attractive place on which to walk, bicycle or ride for pleasure, and the heap of colliery waste would appear much less unsightly than anyone would imagine from any description I can give of it. That the Main Piece does attract persons for this purpose is obvious from the numerous random short lengths of footpath, and the wheel and hoof marks.

The Main Piece is crossed by a public footpath from its southeast corner (at the end of Engine Lane: a rough track leading eastwards over the Canal past the Carver industrial premises towards Brownhills) to its southwest corner (on Lime Lane: a north-south metalled road, B4154), and also crossed by another footpath (on the definitive map a RUPP) also from its southeast corner to a point on its west side (on Lime Lane: where the mineral railway used to cross). Although the Main Piece is fenced from Lime Lane (a post and rail fence and a bank and hedge), access from Lime Lane is easy on foot at the point where the two footpaths enter the Lane, and possible at many other places; there is also easy access from the end of Engine Lane and from the track which leads off the A5 Road and passes by the northeast corner of the Main Piece. At most other points the Main Piece is fenced from the adjoining agricultural land on the south and the rough land (not unlike the Main Piece) on the east, and perhaps also fenced from the adjoining land on the north (there is much scrub and wood here, and I did not walk along the boundary).

As to the past use of the Main Piece:- (1) Mr Hall who is 65 years of age and has lived all his life in the Brownhills and Cannock area said (in effect):- It is open land, treated and used by the public as common land open to the public "as indeed it was". Grazing of horses, cattle and goats took place on it. The people who occupied the cottage in the middle put on geese and poultry. He personally had exercised the following "common rights": camping on the land, picnicking there, gathering herbs, nettles, berries, fungus, firewood, and (for garden use) sticks, and fishing in the pools. Scouts, Army cadets and athletes had trained there. Ponies and horses were ridden there. (2) Mr Powell who is 65 years of age and has lived in the Brownhills area for over 60 years said (in effect):- He had frequently wandered over the Main Piece. As a boy he and other boys had camped, fished, played games and gathered wild fruits. It is not fenced in. He gathered firewood, pea and bean sticks, blackberries and mushrooms. Anyone could do these things. Years ago when the district was only a coal-mining area, local coal hauliers grazed their horses there. (3) Mr Myatt who was the tenant of the cottage (pulled down in 1955/57) on the Main Piece for 13 years until 1950, and paid his rent to Wm Harrison Colliery and later to the NCB, said (in effect):- During his tenancy his livestock grazed all over the Main Piece, all goats, geese and poultry; at one time also pigs. Many other animals were on the Common at that time. He gathered firewood, acorns, wild berries, flowers, herbs (such as nettles for pop). He had seen Scouts and young men in uniform there. (4) Mr Sedgwick who was leader of the Army Cadet Force in the Brownhills locality from 1947 to 1965 and ultimately became one of the Senior Captains



of the Staffordshire Army Cadet Force said (in effect):- The Main Piece was one of their favourite areas for outdoor training and exercises, as it gave us good coverage; he had seen goats and other animals grazing, and whenever they wished they picked wild berries etc. (5) Mr Davies who is 63 years of age and has lived all his life close to the Main Piece said (in effect):- As a youth he almost lived on the Common tending cattle; he used to mind those of Princes Knob Farm. Quite a lot of coal hauliers used to turn out their horses loose for grazing. He used to pick sticks and watercress out of the brook. He also dabbled about and fished in the pools. (6) Mr Shaw who is a member (and vice chairman) of the Cannock Chase District Council and a member of the County Council and had lived all his life within $1\frac{1}{2}$ miles of the Main Piece said (in effect):- It had never been enclosed. He had used his "rights" to gather berries and quaker grass (decorative grass) and had also cut and taken pea sticks (he was speaking of what he did when he was 15 or 16 years of age; he is now 70 years old). (7) Mr R F E Hall who is 36 years old confirmed but did not significantly add to the evidence given by his father (Mr Hall, the Applicant).

As qualifying the evidence summarised above, Mr Compton who has managed the Little Wyrley Estate since 1959 (for one year as Sub-agent and subsequently as Agent) pointed out that under the 1960 lease, the lessee covenanted "to keep the demised premises fenced off... in a substantial manner...", and Mr Slatcher of Hall Lane Farm said (in effect) that he had never seen much of the use of the Main Piece which the other witnesses had described as above summarised.

To be properly registered, the Main Piece must be within the definition of "common land" in section 22 of the 1965 Act, which said definition so far as relevant is: "(a) land subject to rights of common...; (b) waste land of a manor not subject to rights of common".

Mr Hall at the beginning of the hearing explained that by applying for the registration he considered he was registering "Common Rights" on behalf of himself and the community; so I will consider first whether the Main Piece is within paragraph (a) of the definition.

Although section 22 of the 1965 Act expressly provides what "rights of common" shall "include", the Act does not define what these words shall mean. In my opinion such rights must be rights of common which are, apart from the 1965 Act, recognised by law. The law recognises that a person may have a right either as owner or occupier of land to which the right is attached or in gross, to graze animals or to take sticks etc from the land of another; but the law does not recognise any right for the public at large or for the inhabitants of a locality to do these things.

Mr Raffety contended that in law no grazing right could by use be acquired in respect of the cottage which was in the middle of the Main Piece, because the fee simple owner of the Main Piece and of this cottage have always been the same. However this may be, the evidence of use from this cottage was in my opinion not enough to establish such a right. Mr Raffety also contended that no other rights of common having been registered, there could be none such for the purpose of paragraph (a) of the definition. However this may be, the evidence of use was in my opinion not enough to establish a grazing right attached to Princes Knob Farm or a grazing right held in gross by any coal haulier.



I can think of no other rights of common recognised by law which could exist over the Main Piece, and accordingly I conclude that it is not within paragraph (a) of the definition.

In my opinion I can properly consider whether the things described as done on the Main Piece support the conclusion that it is within paragraph (b) of the definition notwithstanding that Mr Hall and some of the others who supported him thought that the things they described were done in exercise of "common rights". In this branch of the law rights are to be determined in accordance with the things described by the witnesses notwithstanding that those who described these things thought that they were done under some right or title which the law does not recognise, see the observations of Brett and Cotton LJJ in *De la Warr v Miles* (1881) 17 Ch D 535. Further, the Main Piece may be subject to section 193 of the Law of Property Act 1925 (as to which see below) so that the public may have rights of access for air and exercise; such rights are in my opinion not "rights of common" within the 1965 Act, although Mr Hall and others who may, without knowing anything about the section, have exercised the rights thereby conferred, may sensibly have thought they were exercising "common rights".

As to the Main Piece being "of a manor", I had no documentary evidence as to the title or the extent of any manor. However Mr Raffety at the beginning of the hearing said that the Unit Land "although it has been handed down with the Manor for generations is not aptly described as waste land"; and Mr Compton gave evidence to the following effect:- The Wyrley Grove Estate goes back to 1600 and has never been in the market as far as he was aware, and included the Lordship of the Manor of Little Wyrley and Brownhills. Mr E H L Wallace (the Objector) is a tenant for life (here Mr Raffety interposed saying it is a strict settlement) and his mother, Mrs E A Wallace (now elderly) lives at Little Wyrley Hall. The Estate has a considerable area let to tenants (he produced a map showing the Estate); there is an area of about 100 acres which is hand and which they farm themselves. The whole Estate with the Commons contains about 1500 acres; this area includes Brownhills Common (an area much bigger than the Unit Land) now controlled by the local authority.

On this evidence I conclude that the Main Piece is of the Manor, and is therefore within paragraph (b) of the definition if it can properly be regarded as waste land rather than demesne or other land of the Manor. As to this, the differences between the witnesses were not for the most part as to the basic facts (about which the conflict if any was I think unimportant) but as to the conclusion I should draw from such basic facts.

By basic facts, I mean the things described to me as done by persons who gave oral evidence at the hearing. Although it may be that I could treat the signed statements of persons not present at the hearing as evidence of the matters stated, I consider that I ought not so to treat the statements produced by Mr Hall, because they cover much the same sort of matters as those covered by those who gave oral evidence, and I should necessarily have to assume that if those who made these statements had given oral evidence they would qualify and explain them in much the same way as those present at the hearing did. I disregard altogether documents which show that those who signed them support Mr Hall in his conduct of these proceedings; I am concerned to determine whether the Main Piece is within the definition, not with whether it is expedient, having regard to local public opinion that the registration should be upheld.



In my opinion the use of the Main Piece as described by Mr Hall and others as above summarised is some evidence that the Main Piece is and was waste land of a manor, because such use is just the sort of use which is and has been made all over the country in urban areas of any such waste land. I am not certain whether Mr Slatcher intended to dispute such evidence; in case he did, I record that I am not persuaded that the Main Piece was not so used because he said it was not; I think that either he did not see what happened because he had no occasion to go there at the time or did not notice or has forgotten.

The cogency of the evidence above summarised is not I think affected by the fencing covenant in the 1960 lease. Mr Compton explained that at the expiration of the lease in his claim for dilapidations he included a sum for the non-performance of this covenant; I am not persuaded that there was any significant fence erected in accordance with this covenant which could have prevented the use of the Main Piece as described by Mr Hall and others, extending over the whole of the Main Piece.

In or shortly after 1967, a shooting syndicate erected barriers preventing or obstructing persons wanting to go on the Main Piece. There were local protests, and Mr Hall wrote to Mrs E A Wallace; I have no copy of his letter, but I have her reply dated 12 December 1969 in which she says she has got in touch with Mr Compton, and I infer from the rest of her letter that she was sympathetic towards whatever Mr Hall wrote. Mr Compton in the course of his evidence said (in effect):- He investigated the complaint and ordered the locks to be removed and the complaints then ceased. The syndicate had the shooting rights rent free; the person in charge who appears to have been too enthusiastic, was asked to leave. He (Mr Compton) thought that but for this person's ill-advised actions, there would have been no hearing before me. In my view the complaints against the shooting syndicate were not merely in relation to the public footpaths, but extended to what they did on the rest of the Main Piece to preserve the shooting, so that the action of Mr Compton prompted by Mrs Wallace having "got in touch" with him, is some evidence that the Main Piece (then either owned by her or her son, the Objector) was in relation to the public in some significant way different from other land which formed part of the Estate and was then in hand. In short his action is some evidence that the Main Piece was, if not waste land of a manor within the meaning of the 1965 Act, at least manorial waste within the meaning of section 193 of the 1925 Act.

Additionally in favour of the Main Piece being waste land of a manor, the maps produced mark it as being Wyrley Common; it matters not I think that over the years there appear to have been encroachments, so that the Main Piece is now smaller than the Wyrley Common as marked.

The principal contentions against the Main Piece being waste land of a manor, were, as I understood them: (1) for a substantial period, part of it was leased to William Harrison Limited and to their successors, the National Coal Board, and used as a mineral railway and as a tip for colliery waste; and (2) the use made of the Main Piece as described by the witnesses summarised above should be ascribed to persons using the public footpaths having casually and without any claim of right wandered off them.



As to (1):- The 1924 lease was first to sixthly of mines and seventhly of the surface delineated on plan No 2; the plan so delineated included the mineral railway strip but not the site of the colliery waste heap. The 1960 lease was of the surface delineated on the plan, and the hud so delineated included the mineral railway strip and the site of the heap; further the 1960 lease provided for a payment of £30 per acre on 76 acres of damaged land as shown green hatched blue on such plan and both the mineral railway strip and the site of the heap are so hatched. The colliery closed in about 1967. Before then many of those who worked there and in the colliery further to the west daily crossed the Main Piece going to work from Brownhills. I infer that the railway mineral traffic must have been considerable and that the damage for which compensation was paid under the 1960 lease so far as it related to the site of the colliery waste heap must have been for its prior use for this purpose without proper authority.

As to (2):- This contention is contrary to the present appearance of the Main Piece and to what I infer it to be like when the Colliery was working, and I reject it as being decisive. But some of the use of the Main Piece was due to its proximity to the footpaths and before 1967 while the Colliery was working, persons would not wish to wander over the mineral railway strip of the site of the colliery waste heap, while it was used for colliery purposes.

The considerations outlined above being both for and against the Main Piece being waste land of a manor, I must balance them as best I can. I accept that there is no general rule that land which was at one time waste land of a manor must forever remain such; but since 1 January 1925, the Main Piece is peculiar in that being then in the Urban District of Brownhills, if it was then manorial waste, its status as such was to some extent fixed by section 193 of the Law of Property Act 1925. The 1924 lease provides no support for the view that anything more than the mineral railway strip had at the commencement of the Law of Property Act 1925 ceased to be "manorial waste"; having regard to the size of the strip when compared with that of the rest of the Main Piece, its use in 1925 for railway purposes is I think of no significance. I accept the contention that the use of part of the Main Piece for the deposit of colliery waste is some evidence that it ceased to be waste land; but waste land does not cease to be such merely because some waste product is spread over it; if the Colliery had continued, perhaps the Main Piece would have ultimately ceased to be waste land; - but when such use stopped, no more than one quarter of the Main Piece had been so used, and the land had now (apart from a change in the level) gone back to what it was before such use started. In my view in determining the effect of the use of the Main Piece while the colliery was in operation, I can have regard for what happened afterwards.

Balancing the conflicting considerations as summarised above as best as I can, I conclude that the evidence established that the Main Piece was manorial waste at the commencement of the Law of Property Act 1925, and was in 1970 when the registration was made and still is waste land of a manor within the meaning of the 1965 Act.



In view of the agreement above mentioned about the Detached Piece, my conclusion applies to the whole of the Unit Land, and accordingly I confirm the registration without any modification.

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.

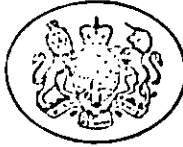
SCHEDULE
(Documentation)

Part 1. Produced by Mr Hall

FH1 & 2	Statements by himself
FH3	Letter dated 6 November 1969 from Cannock UDC about clearance of footpaths and erection of signs
FH4	Statement dated 8 February 1976 by J Thacker
FH5	Statement dated 10 February 1976 by W E Gurillam
FH6	Statement dated 20 January 1976 by S Williams
FH7	Letter dated 2 February 1976 by J Smith
FH8	Statement dated 22 January 1976 by D E Joslin, K (?) Tryen, P H Joslin, T H Cross and R A Molyneux
FH9	Approval and support dated 12 November 1969 by G G Holloway on behalf of Brownhills W M Social Club
FH10	Statement dated 30 November 1970 by W Buckley
FH11	Statement dated 2 October 1971 by D Harrison
FH12	Statement dated 6 September 1974 by G Davies
FH13	Statement dated 2 January 1970 by R Fryer
FH14	Statement undated signed by 30 employees of Carver Engineering Co
FH15	Support dated 1 March 1970 signed by 68 persons of Brownhills
FH16	Statement dated 6 November 1970 signed by 53 persons (signatures collected from Brownhill West and Norton Canes)
FH17	Support dated 9 October 1969 signed by 18 persons
FH18	Letter dated 27 November 1969 from R C Regan (Brownhills Branch Secretary of National Union of Vehicle Builders)
FH19	Letter dated 12 December 1929 from Mrs E A Wallace to Mr Hall
FH 20, 21 & 22	Letters dated 7 November and 8 December 1968 and 29 January 1969 from B Swan, Research Secretary of the Central Committee of Commons Registration
FH19 (bis)	OS map (about 25 inches to the mile)

Part 2 . Produced by the County Council

C/C.1 Copy Rights of Way definitive map



Part 3. Other Statements in Support of Registration

RFEHL	Statement by Mr R F E Hall
TSL	Statement by Mr T Sedgwick
JRD1	Statement produced by Mr Davies
EM1	Statement by Mr Myett
FPI	Statement by Mr Powell

Part 4. Produced by Mr Compton

Counterpart lease dated 9 January 1960 by Mrs E A Wallace and Mr E H L Wallace to the National Coal Board for 14 years from 25 December 1960.

Counterpart lease dated 22 May 1924 by F S Goodwin and another to William Harrison Limited of mines etc for 37 years from 25 December 1923.

OS map (6" = 1 mile) showing the Little Wyrley Estate.
Six recently taken photographs of the Main Piece

Dated this 25th day of May ————— 1976

a. a. Bain Fuller

Commons Commissioner