



COMMONS REGISTRATION ACT
1965

Reference No. 260/D/231

In the Matter of The Sawpit, Latteridge,
Iron Acton Avon (No.1)

DECISION

This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No.CL.440 in the Register of Common Land maintained by the Avon County Council and is occasioned by Objection No.611 made by the former Gloucestershire County Council and noted in the Register on 8 January 1973.

I held a hearing for the purpose of inquiring into the dispute at Bath on 6 December 1984. The hearing was attended by Mrs M M Taylor, one of the applicants for the registration in the Rights section of the Register Unit, and by Mr D Pullen, an Officer of the Avon County Council, the successor authority of the Objector.

The land comprised in the Register Unit is a long strip of grass on the south-west side of the carriageway of the county highway maintainable at the public expense No.B 4059. There is a fence on the south-west side of the strip of grass and a wall on the north-east side of the carriageway, while the strip is open to the carriageway.

Mr and Mrs Taylor are the owners of Sheep House Farm, which comprises fields on either side of the relevant length of road. They applied for the registration of rights of grazing, estovers, and to dig and take away stone in respect of the land comprised in Register Unit No.CL.440 and the land comprised in other Register Units. Whatever may be the position with regard to the other Register Units, Mrs Taylor had no evidence in relation to Register Unit No.CL.440 regarding the taking of estovers and stone. So far as grazing is concerned, Mrs Taylor said that from time to time cattle and sheep are driven along the road from land on one side of the road to land on the other side. These animals are never left to graze on the land comprised in the Register Unit, but they eat some grass during their passage over it.

Even if the road were not a highway, I should not be prepared to regard evidence of the eating of grass by animals using a right of way as evidence of the existence of a right of common of pasture. It is, however, necessary to consider whether the registration the subject of this dispute could be supported by the land in question being waste land of a manor or whether the land is excluded from the definition of "Common Land" in section 22 (1) of the Commons Registration Act 1965 because it forms part of a highway, as is alleged in the grounds of the Objection.



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It is well settled law that there is a presumption that land between a metalled road which is a highway and a fence forms part of the highway. This is a rebuttable presumption, and Mrs Taylor invited me to have regard to the fact that at one time there was a Sawpit on the land in question. This sawpit has, however, not been used for a long time and is now filled up. There is no certainty about the dates of these events, but what is known of the sawpit is consistent with its site having been dedicated as part of the highway after it was filled up. I am unable to regard Mrs Taylor's evidence about the sawpit as rebutting the presumption that the land between the metalled road and the fence is part of the highway.

There is however, a further difficulty in the path of the Objectors. Even if, as Mrs Taylor argued, the highway is confined to the metalled road, as between the lord of the manor and the Objectors, there is a presumption that the strip of land between the road and the fence belongs to the Objectors as the owners of the adjoining land. In that case the land not being in the ownership of the lord of the manor, could not be brought within the definition of "Common Land" in the Act of 1965 as waste land of a manor.

For these reasons I refuse to confirm the registration.

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

11th

day of

December

1984

Chief Commons Commissioner