



COMMONS REGISTRATION ACT 1965

Reference Nos 202/D/102-3, 110-111,  
112 and 113-114

In the Matter of (1) Abingdon Lane, Cow Down  
East Ilsley Berkshire. (2) Abingdon Lane,  
Several Down, East Ilsley Berkshire,  
(3) Sheep or common down East Ilsley,  
Berkshire (4) Several Down, East Ilsley,  
Berkshire

DECISION

These disputes relate to the following registrations: (1) at Entry No 1 in the Rights Section of the undermentioned Register Units in the Register of Common Land maintained by the Berkshire County Council. They are occasioned by the undermentioned Objections all made by Mr C Loyd.

<u>Register Unit Number</u>	<u>Objection Number.</u>	<u>Noted in the Register</u>
CL.135	29	16 September 1970
CL.148	26	10 August 1970
CL.149	27	10 August 1970
CL.150	165	23 July 1971

(2) At Entries 1-16 and 18-20 in the Rights Section of CL.135 (occasioned by Objection No. 172 and noted on 24 May 1972).

(3) At Entry No. 1 in the Rights Section of CL.148 (occasioned by Objection No. 173 noted on 24 May 1974).

(4) At Entry No. 1 in the Rights Section of CL.150 (occasioned by Objection No. 170 noted on 24 May 1972).

The Objections mentioned in (2), (3) and (4) above were also made by Mr C Loyd.

I held a hearing for the purpose of inquiring into the dispute, at Newbury on 14 September 1978. At the hearing the East Ilsley Parish Council, on whose application the registration in the Land Sections ~~was~~ made, was represented by Mrs C F Lewis, Solicitor: she also represented (a) the applicants for registration in CL.135 the rights numbered 3, 7, 8, 14, 18, 19 (13 had been cancelled), and (b) the applicants in respect of the only right registered in respect of CL.148 and CL.150.

Mr D Child, Solicitor represented the applicant for registration in CL.135 of the right numbered 20.

Mr Loyd and his successor in title, Mr Pearman, were represented by Mr R Purchas Counsel, instructed by Mallam Lewis and Taylor, of Oxford.

In respect of the rights registered in CL.135 to which Objection was made, the position accordingly was as follows:-

Rights No. 3 7 8 14 18 19 Applicants represented by Mrs Lewis.

Rights No. 1 2 4 5 6 9 10 12 15 16 Applicants not represented nor did they appear.

In respect to these or some of them, I understood from Mrs Lewis that, though they had not instructed her, the applicants were content that she would look after their interests in that part of the case she was presenting on behalf of those she did represent.



Rights No 11 No appearance, and notice of no wish to support registration,  
Rights No. 13 Registration cancelled.  
Rights No. 20 Applicants represented by Mr Child who stated that his clients had now withdrawn their application.

The ground for each of the Objections was that in no case did the rights of common exist. Rights of ownership to the land comprised in the four Register Units had not been registered, but for the purpose of this hearing it was not disputed that the Objector Mr Loyd, was the owner of Manor Farm of which the lands were part and that Mr Pearman was his successor in title.

On the application of Mr Purchas and with the agreement of Mrs Lewis, I decided to hear all the disputes together.

### The Evidence

1. (a) One witness was called on behalf of the Parish Council and the applicants represented at the hearing, viz Mr R J Moulton the present Chairman of the Parish Council. He is also the applicant for Right No. 8 (a right to graze): and one of the trustees who are the applicants for Right No 19 (right to take furze).

(b) In the Parish Council Minute Book it appeared that at a meeting held in April 1896 "the meeting was satisfied that the correct time for turning out cows on the Common right was from May 13 until September 29 alternatively as by custom of the Manor Farm Downs and Church Farm Downs". There then followed in the Minute Book two pages later a list of commoners in 1896 under the heading "List of Rights to Cow Common Nr. East Ilsley 1896 copied from Washburn's Valuation 1840". This list specified the names of the Occupiers in 1840, the names of the 1896 Occupiers with brief addresses, and the number of the rights of each Occupier. It contained no particulars of the nature or extent of the rights. A Deed ("the 1941 Deed") dated 3 December 1941 contained what appeared to be in an up to date list of the Occupiers. This was a Deed made between named persons ("The commoners") owning the freehold of specified tenements of the one part and the Agriculture Research Council of the other part. (In some cases the tenant as well as the freeholder was a party). The Deed recited the Commoners ownership and their entitlement to rights of common of pasture over certain land owned by the Research Council ("the Pink Land") By the Deed the Commoners released their rights over the Pink Land in exchange for the grant to them of similar rights over other land ("the Blue Land") owned by the Research Council. Neither the Pink Land nor the Blue Land formed any part of the land comprised in the four Register Units or the subject of these disputes.

(c) In 1941 and 1942, there were correspondence and discussions between the Lockings Estate ( the then owners of Manor Farm) and the Parish Council with reference to the war time need to plough up additional land. In 1941 the Estate proposed to fence a strip of CL.135 to provide access to water for cattle grazed on the hillside east of the land and in 1942 to plough up 30 acres of CL.135. These proposals were agreed to by the Parish Council, which requested an undertaking that the ground would be returned to grass as soon as the national necessity permitted. This undertaking was, it appears, not given as the Estate referred to the claim available against the Government for compensation to put land ordered to be ploughed back to its original state.



the Estate's letters to the Parish Council the Estate appeared to recognise the existence of rights of way and common rights. The Parish Council also referred to these, but from the copies of its minutes which were produced appeared to be principally concerned with the preservation of public rights of access and amenities. It did not appear that any of the Commoners were consulted with regard to the proposals, though some of the councillors at the Council Meeting were right holders.

(d) At a Parish Council Meeting in October 1946 the question as to "restoring the Common Land to its former state" was raised and it was decided to waive the question until the continuing state of emergency was over.

(e) It was accepted that there has been no exercise of the rights claimed since about 1949. After 1965 when the Commons Registration Act was passed, the Parish Council investigated the position as regards commoners rights and ascertained the up to date owners of the various properties listed in the 1941 Deed. From cross-examination of Moulton it appeared that the various properties in respect of which rights to graze have been registered have, at most, land consisting of domestic gardens, and in two cases garden at all.

(a) On behalf of the Objectors evidence was given by Mr R B Aitchison who was employed as a game keeper on the Lockinge Estate for some 37 years - 1930 to 1968, with a two years break in 1936-8. From his evidence, it appeared that from 1930 to 1939 CL.135 was farmed in part, the remainder being open downland covered by gorse. There was a tenant farmer till 1937 of most of CL.148; CL.149 and 150 were Downland. Before and after the war more of CL.135 was ploughed and has since remained arable. Throughout the whole of his time - and he was out almost every day - he never saw cattle or other animals brought out on the land from the village, and saw no gorse cutting except by a tenant of the Estate, for the purpose of marking out the Gallops. There were walking tracks which were constantly used by people for walking. There was no fencing when he first came, but some fencing started during the war and by the end of the war had been extended to its present stage (shown on plan marked "P2"). Evidence to the same effect was given by Mr William Merrill who had lived all his life (apart from war service) at East Ilsley and was employed from 1924 to 1928 as a shepherd and a tenant of the Lockinge Estate and from 1948 to 1973 as a part time gardener at Manor Farm.

(b) Mr R J Pearman, nephew of Mr D A Pearman and responsible for managing Manor Farm for his uncle, has known the area since 1972 and testified by reference to the plan "P2" as to the state of the existing fences. He had increased the fencing - the fenced parts being used for rotation crops and the unfenced for arable. The whole farm is now taking stock and crops apart from the Warren, which is a wooded area.

Evidence was sought to be adduced on behalf of the Parish Council and the commoners which took the form of notes made by a Mr Osgood who had been asked by the County Council to examine the archives at Reading and has supplied these notes, based on the evidence he had found, to East Ilsley Parish Council. Mr Osgood was not called as a witness. Copies of his notes were produced at the hearing and, I understood, had not previously been seen by Mr Purchas; and he objected to their admissibility. This seemed to me a proper objection and was not seriously contested by Mr Lewis and accordingly the notes were not put in.



the grazing rights The rights registered in respect of CL.135, except for Right No. 19, are rights to graze varying numbers of cattle from the 27 May to 29 September.

grazing rights are registered in respect of CL.148, CL.149 or CL.150. The evidence and submissions on both sides did not differentiate between the various grazing rights regards validity i.e. these rights were treated as standing or falling together. Mr Purchase did refer to Right No. 18 "to pasture 50 sheep" and the fact that the 1896 Minute Book - see paragraph 1 (b) above - contained no reference to sheep; but this, as I understood, was in support of his submission that the Minute Book did not relate to CL.135 at all, and did not lead to a challenge to right No. 18 in isolation).

the right to furze (Right No 19 in CL.135 and the only right registered in CL.148 and CL.150).

The documentary evidence referred to in paragraph 1 (a) above related only to rights of grazing and has no relevance to any right to furze, nor do the correspondence and discussions referred to in paragraph 1 (b) contain any specific reference to this right except that from the Minute Book of the Parish Council it appears that at an informal meeting in 1941 with the agent of the Lockinge Estate it was stated that the inhabitants possessed an ancient right of gathering fuel from the furze plantation on the Common. Evidence was given as to the origin of this right or as to any exercise of it, and the evidence of Mr Aitchison and Mr Merrill as to the absence of any gorse cutting (except for the Gallops) during their periods of employment, though necessarily limited to their own observations, was not refuted. Mr Moulton accepted that the right could now only apply to CL.135 which alone has furze; in cross-examination he said that he did not know if there was any furze there. The Warren (part of CL.135) was marked on the Tithe Map of 1839 and was then described as 'Furze Plantation'; Mr Aitchison's evidence was to the effect that the Warren in his time consisted of oaks and brambles, the oaks having been planted before the war came. He also stated that he fixed the gorse to keep the rabbits down, after which the Down <sup>was</sup> ploughed; this it appears is the fire referred to in the letter of 23 July 1942 from the Lockinge Agent to the Chairman of the Parish Council, and affected the area of 30 acres which was ploughed (see paragraph 1 (c) above).

### Conclusions

1) The grazing rights over CL.135: (a) The basis for the claim to these rights is the information to be derived from the Parish Council Minute Book entries for April 1896 (paragraph 1 (b) above). The list of the then occupiers and their (dominant) tenements could (and this was not challenged by the Objector) be traced in most cases through the list in the 1941 Deed to the present applicants in respect of grazing rights. Mr Purchase's challenge here was to the application to CL.135 of the Minute Book entries. I do not accept this; it seems to me that the reference to 'Cow Common' and 'The Manor Farm Down' is sufficient to comprise CL.135 and that the entries do prima facie establish the existence of grazing rights as listed in the entries over this land.

The correspondence and minutes of 1941/1942 (paragraph 1 (c) above) provide some confirmation of this. They would not of themselves, constitute a sufficient basis for a claim to rights of common: the Parish Council appears to have been concerned with the effect of proposed operations on public rights of way and amenities, and their effect on individual grazing rights were not considered nor were those rights asserted. Nevertheless the correspondence indicated that the Lockinge Estate thought that commoners rights over the land did exist.



2) Mr Purchas submitted alternatively that, if the rights of common had existed, they had been abandoned. No evidence was adduced by or on behalf of any rightholder of the exercise of the rights by him or any predecessor in title. It was conceded that there had been no exercise of any grazing rights since 1941 when the ploughing started following the discussions referred to in paragraph 1 (c) above, but if this was intended to imply exercise prior to that date, there was an absence of evidence as to when they were last exercised.

The evidence of Mr Aitchison and Mr Merrill on behalf of the Objector was not refuted and in my view went a long way (it could not, in the nature of things, go the whole way) to establish non-user since the early 1950s. It was said on behalf of the rightholders that the non-user after 1941 was explicable by reference to the arrangements for ploughing made at that time; but having regard to the facts that no rightholder was consulted or expressed any view as to these arrangements, nor has since sought to exercise his rightshor, apparently, objected to the continued operations on the land of the Manor Farm owner, and that the area of 30 acres to be ploughed under the arrangements still left 59 acres available, I do not accept that this suggested explanation is the true one. After the war period it does not appear that any attempt was made to procure the land to be returned to grazing, or that any objection has been raised to the expanded farming operations on the Manor Farm downs since the war.

In the evidence and in all the circumstances, I find that this is <sup>a</sup> case giving rise to the presumption of abandonment by the date of registration of the grazing and accordingly refuse to confirm the registration of any of those rights.

3) I should mention that Mr Purchas made the further submission that the release of grazing rights by the 1941 Deed over the Pink Land operated as a release also of those rights over CL.135, and referred in support of this submission to paragraph 631 of Halsbury's Law of England 4th Edition Vol.VI. I do not think this is right - it may be that a release of part of one common from such rights operates to release the whole of that common, but this is a different case since no rights over any part of CL.135 were released.

The Right to Furze This right is registered in respect of CL.135, CL.148 and CL.150. As to this there was no evidence of the origin or existence of the right and Mr Moulton in his evidence said that it could only apply to CL.135 which alone has furze. I am not satisfied on the evidence that this right existed in regard to any of these commons; if it did, the absence of evidence as to user and the evidence of non-user, as in the case of the grazing rights, leads to the same conclusion as to abandonment. On the ground that the right to furze was in no case satisfactorily established, alternatively that if it did exist it had been abandoned, I would refuse to confirm the registration of this right in respect of any of the three commons. It was not suggested that the registration of the land as common land in any of the four cases could be upheld on the ground that the land is waste land of the Manor. As regards CL.149 no rights of common are registered and there is in my view, no ground for confirming its registration as common land.

As a result, I refuse to confirm any of the registrations to which the Objections relate.

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.

Signed this 5<sup>th</sup> day of July 1979 L. J. Thomas Smith  
Commons Commissioner