



COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/402
209/D/403

In the Matter of Four pieces
additional to the Forest of
Dartmoor, Lydford, West Devon
District, Devon

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 12 inclusive (8 has been replaced by Nos 22 and 23) and 18, 19 and 20 in the Rights Section of Register Unit No. CL218 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections No. 192 and No. 477 made by HRH Charles Prince of Wales, Duke of Cornwall and noted in the Register on 2 and 1 December 1970 and by Objection No. 1156 made by Devon County and noted in the Register on 11 September 1982.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 14 March 1984. At the hearing (1) the Attorney-General for the Duchy of Cornwall was represented by Mr C Sturmer, the Land Agent for their Dartmoor Estate; and (2) Lydford Parish Council were represented by Mrs Hilary Drake, their clerk.

The land ("the Unit Land") in this Register Unit comprises four pieces all in or near Postbridge, which were at the hearing given the names of: the Runnage Piece, the Merripit Piece, the Boggy Piece and the Drift Piece, without any suggestion that these names were or could be locally used except with reference to these proceedings. The Runnage Piece is a triangular area of open grass land, one side (about 30 yards) being the south boundary of the Widecombe-in-the-Moor to Postbridge road (minor, fit for public motor traffic), near to where this road goes over Runnage Bridge, and another side (about 100 yards) being the west boundary of the road or track leading to Pizwell. The Merripit Piece is an irregularly shaped area of open grassland about 300 yards long and nowhere more than 30 yards wide, one end of which adjoins the Moretonhampstead-Princetown Road (B3212) and near and within one side of which runs a road or track providing access to the adjoining Middle Merripit Farm also to other farms and lands beyond situated on the east side of the East Dart River. The Boggy Piece is an approximately semi-circular pond or boggy area having a frontage of about 60 yards to and on the north side of the B3212 road. The Drift Piece is approximately rectangular about 700 yards long from northwest to southeast and mostly between 30 and 40 yards wide, the southeast end of which is open to the said B3212 road (near the new National Park Information Centre and Car Park), and the northwest end of which adjoins open grassland across which there is convenient access to the Forest of Dartmoor (Register Unit No. CL164) about 1 mile further on; this Piece although in places somewhat wet has along its length a footpath attractive as a recreational walk; it either is or much resembles an ancient drift way. In the Ownership Section HRH Charles Prince of Wales, Duke of Cornwall is registered as the owner of all the Unit Land and this registration being undisputed has become final.

The Grounds of Objection No. 192 (to the Land Section) are in effect that the Runnage Piece is within the East Quarter of the Forest of Dartmoor, is tenanted



and was not common land at the date of the registration. Mr Sturmer said he wished to contend that neither the Merripit Piece nor the Boggy Piece nor the Drift Piece is common land; so I gave (no-one at the hearing disagreeing) leave for the grounds of the said Objection to be amended; but because there might be persons who had not attended the hearing assuming that such grounds would not at it be enlarged, I said that such amendment was conditional upon my decision containing a liberty to apply which would enable any such person to have a new hearing for the purpose of setting aside any part of my decision which might be dependent on this amendment.

The grounds of Objection No. 477 to the Rights Section registrations at Entry Nos. 1 and 2 (applications Mary Ellen White of Lower Merripits and Sarah Ann Sleep of Higher Merripit and Fairholm) are that the Unit Land comprises roadside verges which are not contiguous because of the placing of grids and any stocking of this area would be a serious hazard to road users and its capacity to maintain animals would be minimal. The grounds of Objection No. 1156 to the Rights Section registrations at Entry Nos. 6 and 7 (Mill Cottage and field, and Mill Farm both in South Tawton) and No. 18 (Highlands in Horrabridge) are that the rights do not exist at all.

Mr Sturmer said that as regards the Runnage Piece, he was agreeable to it being treated as within an agreement made about a strip of land between this Piece and Pizwell and recorded at page 4 of my decision dated 30 June 1983 re Forest of Dartmoor (CL164), as a result of which I decided that such strip was properly registered. In support of Duchy Objections as now amended, as regards the Drift Piece and also incidentally the Merripit Piece he produced the documents specified in Part 1 of the First Schedule hereto.

The memorandum (Duchy/550) was prepared by Dr Graham Haslam, Duchy Archivist, related almost entirely to the Drift Piece and was to this effect:- In the first decade of the 19th century, the Duchy Council decided to consolidate an awkward situation by transforming the large newtakes running across the central part of the Moor into long leaseholds with obligations to fence. This was made the more feasible because the new turnpike road to Moretonhampstead opened the area to potential improvement. There was no shortage of potential lessees, though they were most often London merchants, probably totally unfamiliar with the rigors of Dartmoor. In 1805 the Duchy began to engross these leases. Three are relevant. Item 1:- of Exchange Farm which was situated west of the East Dart River and straggled the northern side of the turnpike. Item 2:- to Abram Atkins of a farm which was also situated west of the East Dart River and abutted the southern boundary of Exchange Farm, the lease providing as access a road between Exchange and Atkins' farm and the East Dart (undoubtedly to ensure access to the turnpike for Atkins). Also a copyhold tenant Mr Topper of Hartland Farm who maintained enclosures at Braddon Ring and just south of the River, would have needed a right of way from the roads to these fields. Item 3:- to Thomas Hullett, of a newtake mostly east of the River Dart, but a small area west of the River was also included which area included the accessway. These leases clearly indicate that the road (the Drift Piece) was then and presumably still is in private hands but the intent of the leases was to create an access to the northern moor. Between 1808 and 1817 there followed a welter of assignments as the fortunes of the lessees changed and perhaps because they began to understand a little more about conditions on Dartmoor; about the same time John Hullett (presumably kin to Thomas) began to acquire leasehold interests in the general area; the unfortunate Atkins had gone bankrupt (Item 9). In 1813 John Hullett had acquired most of the leasehold interests in the newtakes which



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clustered around the East Dart River. In 1817 he assigned the whole of his interests (Item 10) to the Reverend Williams Vollans and they became known far and wide as Vollans' Tenement, so by this time the access would have meant little because all the leases were in the hands of a single individual. The property about 1844 was acquired by George Freaan and other Plymouth merchants with plans to develop the area by promoting the peat industry; eventually they built the powder mills. This consortium maintained the leases for some time until in the last couple of decades of the 19th century they were transferred to annual tenancies.

Mr Sturmer said that the Drift Piece is now a public bridleway defined on the County Definitive map but thereon shown as a track narrower than the Drift Piece; in recent years it has been used as an accessway for stock driven from the highway onto the Forest; it is so described in Crossing Guide to Dartmoor (Duchy/564) at page 77.

As to the Boggy Piece Mr Sturmer said: as far as the Duchy could ascertain it had never been included in any yearly tenancy or lease, ~~was~~ agriculturally speaking it is of no value being very low lying, ~~and~~ even after prolonged dry spells there is water in it; it is a drainage area for the surrounding fields and roads, and currently a number of withy bushes are growing there.

As to the Merripit Piece Mr Sturmer thought that comparing the pre-1947 Duchy tenancy (Duchy 567) with the OS Map it was then, as it has been since 1945 included in the tenancy of Middle Merripit Farm: he could not trace what happened from 1947 to 1959.

Mrs Hilary Drake who has been clerk of the Parish Council since 1967 in the course of her oral evidence produced the statement specified in Part II on the First Schedule hereto and gave her evidence by reference to it, generally supporting the view that neither the Merripit Piece nor the Boggy Piece nor the Drift Piece is common land; she said (in effect):- The Parish Council knowledge is a compound of known recorded historical facts and their understanding of common practice as passed from generation to generation. The Drift Piece was registered on the Definitive map as a public right of way; as a matter of historical record it constitutes part of an ancient North/South trackway consistently in use through time and forming an important route for animal movement (eg Duchy drifts). In contrast to other authorised enclosures Mr Bennett's buildings and enclosures at Archerton stopped short of the Drift Piece despite lawful ability to incorporate it and the boundary actually facilitates orderly animal movement in an area of track where the junction with the busy main road was and remains ungated; it is not common land but a route for access and egress from the Forest most particularly prescribed for the convenience of animal movement. The Drift Piece is open ended against an important and since its inception in the 1790s a very busy road. It is therefore inconceivable that common rights would have been sought from and exercised on a thoroughfare with the risks inherent with herd and flock movement where a few animals sent to graze could be swept onto the highway or swept off to the Forest among the moving stock and either way risking permanent loss to the owner. It would not be conceivable that the taking of sand gravel stone would have been effected on such a thoroughfare. Cattle grids which the County Council installed in 1966 were to keep Postbridge as free as possible of stock roaming from where they had a right, to within the village; their installation must surely lead one to infer that there was no common land within the grids or at least that there was no evidence of the exercising of common rights; nor indeed was there any outcry that the grids deprived stock of access to common land.



Mrs Drake also said (in effect):- The Boggy Piece was totally useless from any and every aspect of common right; it lies under water in the main for part of the year and water is present just under the surface for the rest of the time. At the very best time of year casual pedestrians could not enter beyond a couple of feet and no local would short-cut across it. It is fenced against rather than fenced in. If left in its little isolation it will continue to offer a sanctuary to life that thrives in such conditions. It will not offer up any product of common right and moreover could not ever have done so.

Mrs Drake also said (in effect):- The Merripit Piece, neither the tenant nor the landlord with centuries of records available had any belief or grounds to suppose that it could be common land. The installation of cattle grids brought no outcry that stock would be deprived of access to common land. Its position is such that animals grazing would be off in no time to their own or another's death on the highway.

Mr Kenneth Watson who has since September 1959 been the tenant of the Duchy of Middle Merripit Farm in the course of his oral evidence said (in effect):- There was no reference in his lease to the Merripit Piece being common land. Between him and his family it was spoken of as being "the Green". He was 58 years of age and knew the previous tenant (Mr French) who had been there since he was born (1921) and never mentioned it being common land. His (the witness') use of the Green in connection with the Farm was such things as: loading of concrete, loading of timber and leaving a roller there. Because it was not worth fencing he did not place stock on it; they would not stay there longer than 5 minutes, but would be out on the main road where it is dangerous. He knew that on one occasion Miss White (the applicant for the registration at Entry No. 1) put 3 cows on the Green but they were not there for long; it was before the cattle grids (ie before about 1968). Miss Sleep and Mrs White were two sisters.

All present at the hearing asked me to inspect the Unit Land, which I did on 9 April.

At the hearing it was evident that Mr Sturmer, and Mrs Drake and Mr Watson when contending or saying that neither the Drift Piece nor the Merripit Piece nor the Boggy Piece was common land, were using the words "common land" in the sense of land subject to rights of common, or at least subject to a right of grazing. In this sense I accept their evidence which was consistent with the appearance of these pieces during my inspection. I conclude therefore as regards these three pieces, none of the Rights Section Registrations was properly made.

But from this conclusion it does not follow that these three pieces were not properly included in the Land Section registration: the definition of common land in the Commons Registration Act 1965 includes "waste land of a manor not subject to rights of common"; see sub-section (1) of section 22. At the end of the hearing after some discussion all were agreed that the three Pieces are and always have been of the Manor of Lydford of which HRH Charles Prince of Wales is and he and his predecessor for many years have been the Lord. In my view the various transactions mentioned by Dr Haslam in his memorandum as effected by the documents specified in the First Schedule hereto did not change their status as waste land of a manor. The part of the Drift Piece which is a public footpath, is as highway, by the said section 22 excluded from the 1965 Act definition of



common land; I conclude that the other parts are within the definition. Sub-section (2) of section 21 is I think reason enough for my not complicating the registration by expressly excluding the footpath part from it.

I see no reason for ascribing a village green status to the Merripit Piece merely because Mr Watson and his family call it "the Green"; its appearance and situation is against it having in law any such status. Land does not cease to be waste land of a manor merely because it may from time to time have been included in lease or tenancy of adjoining land; this Piece has never been occupied in any relevant sense and its appearance and its past use of it as described by Mr Watson is consistent with it always having been and with it still being waste land of The Manor of Lydford. And I so conclude accordingly.

Upon like considerations I conclude that the Pond Piece is also waste land of the Manor of Lydford.

So in accordance with my said conclusions my decision as regards the said three Pieces is as stated in the Second Schedule hereto subject to the liberty to apply as therein set out.

As to the Runnage Piece the grounds of Objection No. 192 put all the registrations about it in question and in the absence of any evidence or argument in support of them but for the concession next mentioned I would have concluded that none of them was properly made. However Mr Sturmer pointed out that this Piece adjoins the north corner of that part of the Forest of Dartmoor (CL164) at page 4 of my said CL164 decision dated 30 June 1983 called "the Pizwell Duchy Land", and that it was agreed at my CL164 hearing that the north part of the Pizwell Duchy Land was part of the Forest of Dartmoor over which extended all the Rights Section registrations applicable generally to the Forest (CL164). On this basis he conceded that the Rights Section registrations about the Runnage Piece should either stand unmodified or be avoided or be modified so as to make each the same as the corresponding CL164 registration as it was or will become under my said CL164 decision. I consider I can properly act on this concession and my decision as regards the Runnage Piece is accordingly.

On the above considerations my decision as regards all the registrations is as stated in the Second Schedule hereto which Schedule should be treated as part of this decision.

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.

TURN OVER



FIRST SCHEDULE
(Documents produced)

Part I: on behalf of the Duchy

Duchy/550	February 1984	Memorandum from Duchy of Cornwall office (prepared by Dr Graham Haslam, Duchy Archivist).
Duchy/551	--	Copy plan of unenclosed land situate in the Forest of Dartmoor agreed to be granted on lease by HRH the Prince of Wales to Thomas Bridge.
Duchy/552 (Item 1)	5 April 1805	Copy of said lease for 99 years at a yearly rent of £9.11s.3d during the term plus extra rent from 1835 and from 1865 with obligation to fence off Drift Lane.
Duchy/553	--	Copy plan of unenclosed land situate in Forest of Dartmoor agreed to be granted on lease by HRH Prince of Wales to Abraham Atkins.
Duchy/554 (Item 2)	5 April 1805	Copy of said lease for 99 years at a yearly rent of £7.10s. during term plus additional rents from 1835 and from 1865 with a right of access up to Drift Lane.
Duchy/555 (Item 3)	10 April 1807	Lease with plan to Thomas Hallett.
Duchy/556 (Item 4)	31 August 1808	Copy assignment by Thomas Bridge to John Bridge of Hound Hill (otherwise Round Hill, Lower Watern).
Duchy/557 (Item 5)	1 August 1808	Copy assignment to Thomas Bridge to Abraham Atkins of Exchange Farm.
Duchy/558 (Item 6)	31 March 1810	Abraham Atkins to John McLachlan of Exchange Farm as a security.
Duchy/559 (Item 7)	29 September 1810	Copy assignment by Benjamin Paterson to John Hullett of Farm House.
Duchy/560 (Item 8)	28 April 1813	Assignment by Mrs Helen Mary Hullett to John Hullett of premises in Dartmoor.
Duchy/561 (Item 9)	4 June 1813	Copy assignment by M Kymer and J Jackson assignees of the estate of Abraham Atkins a bankrupt to John Hullett.



Duchy/562 (Item 10)	17 July 1817	Assignment from John Hullett to the Revd. William Vollans of leaseholds in the East Quarter.
Duchy/563	1805-1818	Extract from map showing customary freeholds and early enclosures on Dartmoor surveyed by W Shillibeer.
Duchy/514	--	Extract from page 73 of Guide to Dartmoor by Crossing:- "Drift Lane".
Duchy/565	1905	OS Map 25 ins = 1 mile; No. 1338 = .366 acres.
Duchy/566	1935	Copy of the lease; Prince of Wales and John Henry Bailey of Higher Meredith from 25 March 1935 for 7 years.
Duchy/568	7 Septmeber 1959	Copy tenancy agreement by HRH Duke of Cornwall to Kenneth Watson from year to year of Middle Merripit Farm and other land containing 418.387 acres, with memorandum of additional land added later.

Part II: on behalf of Parish Council

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Statement by Mrs Hilary Drake marked to Lydford Parish Council.



SECOND SCHEDULE

1. I confirm the registration at the Land Section Entry No. 1 without any modification.
2. Subject to the liberty to apply hereinafter set out (A) I refuse to confirm the Rights Section registrations specified in Part I of the below set out table; and (B) I confirm the registrations specified in Part II of the said table with the modification that for the words "the whole of the land in this register unit" substitute the words "the part of the land in this register unit near (that is within 400 yards) of the Runnage Bridge" and with the further modification if any specified in the third column of the said table.

Table

Unit Land Entry No. and name of applicants	CL164 Entry No.	Other modification if any
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Part I: registrations of which confirmation is refused

(5) Semaj John Dance and John Henry Dance	322	N/A
(8) Replaced by Nos. 22 and 23; Albert Leslie Banbury	388 replaced by Nos. 1040 and 1040	N/A
(19) Maidwyn Harries and David Crowther	1026	N/A

Part II: registrations confirmed modified as above and as in Column 3

(1) Mary Ellen White	448	No other modification
(2) Sarah Ann Sleep	449	No other modification
(3) William John Wedley and 3 others	814	Delete "Piscary"



(4) Semaj John Dance and John Henry Dance	821	No other modification
(6) Ellen Amy Joyce Worthington	833	Delete "piscary" and delete "wild animals, birds"
(7) Vera Ellen Knapman	834	Delete "piscary" and delete "wild animals, birds and"
(9) Ernest Rowland John Pugsley	891	For "stray" substitute "graze"
(10) Kenneth Cyril Heard	908	In column 5 delete from "Place comprising OS No. 809..." to "...1337, 1338" and from "Part East Bowerland ..." to "...Okehampton Hamlets"; and in column 4 delete "Estovers, Turbary, Piscary, To take stone and gravel", and for "200 cattle, 120 ewes and 150 ponies with progeny", substitute "143 cattle, 255 ewes, 107 ponies".
(11) Albert Harold Phillips	909	For "stray" substitute "graze"
(12) David Moore and Rosemary Hooley	980	Delete "Piscary"
(18) Henry Shearer Taylor and Elizabeth Rutherford Taylor	1025	No other modification
(20) John Albert Thomas Hodge	1027	Delete "Estovers, Turbary, Piscary, take sand and gravel and stone" and for "45 cattle, 375 sheep, 10 ponies" substitute "58 cattle, 282 sheep 8 ponies"

3. I give to any person concerned to establish that any of the Rights Section registrations should extend to the Drift Piece, the Merripit Piece and the Boggy Piece or to any of them, liberty to apply to re-open the hearing for the purpose of adducing evidence and arguments in support of such extension. Any such application should be made within THREE MONTHS from the day on which this decision is sent out (or such extended time as a Commons Commissioner may allow) should in the first instance be by letter to the Clerk of the Commons Commissioners stating the correction to this decision which the



applicant wants and summarising the evidence and arguments in support. A copy of the application should be sent to the Duchy of Cornwall, Estate Office, Bowhill, Bradninch, Exeter and for their information to Devon County Council as registration authority. As a result of the application a Commons Commissioner may direct a further hearing. Of such a further hearing notice will be given only to the persons who on the information available to the Commons Commissioner appear to him to be concerned with the registration in question. Any person who wishes to be given notice of any such further hearing should be letter inform the Clerk of the Commons Commissioners as soon as possible specifying the registration the further hearing about which he might wish to attend or be represented at.

Date this 17th — day of September 1984.

A. A. Baden Fuller

Commons Commissioner