



COMMONS REGISTRATION ACT 1965

In the Matter of land adjoining former site
of Barton Cottages, Throwleigh, West Devon
District, Devon

DECISION

These said disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1, 2, 3 and 4 in the Rights Section of Register Unit No. CL131 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No. 758 made by the said Council and noted in the Register on 25 January 1971 and by Objection No. 903 made by Throwleigh Parish Council and noted in the Register on 9 July 1971.

I held a hearing for the purpose of inquiring into the disputes at Exeter on 10 November 1983 and on 7 February and 10 April 1984. At the hearing Throwleigh Parish Council was represented by Mr F J Woodward solicitor of Burd Prickman & Brown, Solicitors of Oakehampton. There was no other attendance or representation at the hearing although Mr Woodward at the 1983 hearing said that Mr W D Hepworth of Meadowsyde Cottage who had written a letter dated 29 September 1983 to the Clerk of the Commons Commissioners, had been present shortly before the hearing began and had agreed with him that the proceedings should be adjourned. Accordingly without hearing any evidence or argument I adjourned the proceedings. At the adjourned hearing on 7 February 1984, on the application of Mr Woodward or without hearing any evidence or argument I adjourned the proceedings a second time.

The land ("the Unit Lane") in this Register Unit is between 50 and 100 yards from the Cross (near a pond) in the middle of the village of Throwleigh, has a frontage to the road from there of about 20 yards. The land Section registration was made by Devon County Council as registration authority without application. Of the said 4 registrations in the Right Section, those at Entry Nos. 1 and 4 are expressed as "To stray". The grounds of objection No. 758 expressed as being to the Land Section registration are "the land was not common land at the date of registration and no common rights exist over it"; by subsection (7) of section 5 of the Commons Registration Act 1965 I must treat this objection as being an objection to all 4 Rights Section registration. Grounds objection No. 903 expressed as being to Rights Section registration at Entry No. 2 are "the right as claim does not exist".

I have the following documents:- (1) letter (yellow form) dated 11/11/81 to County Hall signed W J Wedlake (on of the applicants for the Rights Section registration at Entry No. 2) referring to Objection No. 758 and in effect agreeing to the Unit Land being removed from the Register and to the Rights Section registration at Entry No. 2 being cancelled; and a like yellow form dated 29-2-72 so signed referring to Objection No. 903 and agreeing to the said Rights Section registration being cancelled; (2) a letter (yellow form) dated 25/3/71 to County Hall signed E Gore (the applicant for the Rights Section registration at Entry No. 3) referring to Objection No. 758 and in effect



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agreeing to the registration being amended by removing the Unit Land from the Register; (3) the said 1983 letter from Mr Hepworth in which he says:-

The ruined former Barton Cottages were demolished and a house erected on the site. This was completed in 1975 when I bought the house. I am given to understand on the site of my house and which is covered by my title deeds, there is a small piece of Common land. I am unable to precisely identify its boundaries and position but the area almost certainly amounts to less than 200 sq. yds.. The area lies west of the house and is partly occupied by three flower/shrub beds. The remainder is covered by tarmac and forms the only access from the public highway to my garage. I dispute the rights of any other person over this area and so far as I can establish no use has been made of this area for many years

And (4) letter received 2 April 1984 from Mr F J Woodward saying that the Throwleigh Parish Council and the Throwleigh Commoners who he represented, accepted that the Unit Land is not common land and that there are no common rights over it and that its provisional registration as common land should therefore not be confirmed.

For the reasons set out under the heading "Straying" in my decision dated 30 June 1983 given in the matter of the Forest of Dartmoor (CL164), I consider that a right "to stray" should in the absence of special circumstances (of their being any in this case I have evidence) be avoided. From the information summarised above I conclude that none of the registrations in question should have been made and I therefore refuse to confirm them.

I am required by regulation 30(1) of the Commons Commissioners Regulation 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 2nd day of July _____ 1984

A. A. Baden Fuller