



Reference Nos 210/D/329
to 334
inclusive

In the Matter of Pamphill Green and
Little Pamphill Green, Pamphill,
Wimborne District, Dorset

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section of Register Unit No. CL 107 in the Register of Common Land maintained by the Dorset County Council, at Entry No. 1 in the Land Section of Register Unit No. VG 5 in the Register of Town or Village Greens maintained by the said Council, and at Entry Nos 1, 2, 3 and 5 in the Rights Section of the said VG Register Unit and are occasioned by Objection No. 55 made by Dorset County Council and by Objection Nos 342 and 345 made by Mr Henry John Ralph Bankes and all three noted in the Register on 11 May 1971, and also by the said two Land Section registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Poole on 19 June 1980. At the hearing (1) Mr Owen Eli Ricketts on whose application the registration at Rights Section Entry No. 1 was made, attended in person; (2) Dorset County Council were represented by Mr J W Fribence of their Solicitor's Department; and (3) Mr H J R Bankes was represented by Mrs R Mackworth, solicitor consultant with Gregory Rowcliffe & Co, Solicitors of London.

The land ("the Unit Land") in these Register Units (the same in both cases) contains (according to the Register) about 30 acres, and is in two pieces, one to the north "Pamphill Green" extending up to a road a little to the south of the Church, and the other to the south "Little Pamphill" extending to the Cawgrove Road. The Unit Land is crossed by a road (connecting the said two roads) ~~with~~ ^{running} from its south-east corner to its north-west side. The Unit Land is open to the said road and ~~with~~ ^{the} two pieces which together make it up are connected by a short and narrow strip most of which is taken up by the said road.

The grounds of the County Council Objection No. 55 relate to the said road. They in a letter dated 9 April 1980 sent to all persons concerned said that the Objection would be withdrawn at the hearing; and this Mr Fribence on their behalf did. So at the hearing (apart from the said conflict) I was concerned only with the Objections of Mr Bankes.

The grounds of these Objections are: (No. 342) "(a) That there are no Common Rights exerciseable over the Village Green; (b) That the Rights Section of the Village Green Register is not appropriate for Common Rights; (c) That the Rights claimed are inconsistent with a Village Green"; and (No. 345) "That there are no rights of common exerciseable over the land in this Register Unit (meaning CL 107)".

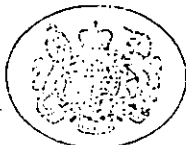
Of the registrations in the Rights Section only one was supported at the hearing by any evidence, being that at Entry No. 1: the right attached to Vine Inn "to graze 3 cows and 1 pony from sunrise to sunset and the right of estovers over" all the Unit Land.



Mr Ricketts who has lived all his life at Vine Inn (born there in 1917) and who is now the licensee of the Inn (having been such for the last 33 years) said (in effect):- His father was the licensee there before him for 50 years up to 1947. The Inn bordered on the Unit Land. It used to belong to Strong & Co of Romsey; it is now owned by Whitbreads; he (the witness) is their tenant. For about 19 years up to about a few years ago he had grazed a cow on the Unit Land. For about 26 years up to about 3 years ago he had also grazed a pony. Before that he had grazed a donkey; it died in 1939 having lived for about 20 years (bought by his father). Of their animals the most they had at any time on the Unit Land was 2 animals. As to estovers, he understood that the Lord of the Manor had a right to take timber but he had a right to fallen branches; he therefore claimed the right to any dead wood (making no claim to any living wood).

Mr Ricketts was cross-examined; but no evidence was given that he had not grazed as he said. I accept his evidence. I reject paragraphs (b) and (c) on the grounds of Objection No. 342; land within the definition of a town or village green in section 22 of the 1965 Act may be subject to a right of common; both the Act and the regulations under it contemplate this possibility. A customary recreational right may in particular circumstances ^{in fact} be incompatible with a right of grazing, but there was no evidence that in this case rights claimed by Mr Ricketts were such. From 20 years grazing as of right, a grant should be presumed, see *Tehidy v Norman* 1971 2 QB 528. The Objections of Mr Bankes are dated 29 September 1970; by analogy with section 16(2) of the 1965 Act, I consider that the 20 year period should be regarded as ending then. Mr Ricketts was not asked to be precise as to the time of the year when the grazing he described started and finished; so I find one cow was grazed ~~before~~ the requisite 20 year period. I make the same finding as regards a pony or a donkey, being of the opinion that in the computation of the 20 year period these animals may be regarded as interchangeable. Mr Ricketts contended (rightly I think) that I should not overlook that cows have calves. As regards the estovers it is not I think enough that Mr Ricketts thought he (and possibly others) had a right to take dead wood; although it may be unlikely that anyone would bother much ~~with~~ those at Vine Inn took such dead wood as they wanted for the house, I am unable to find that they actually took wood with the regularity ~~as~~ to the extent that is to say to establish a right at ~~the~~ law. Upon these considerations, I confirm the registration at the VG Rights Section Entry No. 1 with the modification that for the words: "graze 3 cows and 1 pony" there be substituted "graze not more than 1 cow (with or without her calf following and/or not more than one pony or one donkey)" and that the words "Right of Estovers" be deleted. As regards the said conflict, Mrs Mackworth on behalf of Mr Bankes supported the Village Green registration. Mr Ricketts said that a lot of sport was played on the green; school children played there; maypole dancing in the summer; it was a pleasant spot for people to come and picnic. Mr E J Dunford of 520 Pamphill who volunteered to give evidence said that the Unit Land is enjoyed not only by residents but also by others; it is used for sports such as cricket and football; lots of people come from the high density (population) area nearby and enjoy it. There being no evidence ~~of~~ contention to the contrary I confirm the registration at Entry No. 1 in the VG Land Section and refuse to confirm the registration at Entry No. 1 in the CL Land Section.

As to the registrations at Entry Nos 2, 3 and 5 in the VG Rights Section: they were made on the application of Mr F Webb, Mr M A J Mitchell and Mr H Cherrett and are various grazing rights attached to the cottages specified in the Register. Mr E T Rhodes who is and has been since 1977 joint Land Agent to Mr Bankes and ~~being~~ concerned with this Estate since 1945 first as assistant to his father who ~~was~~ Agent then after 1972 as assistant agent to Mr Pratt, in the course of his evidence said that the Unit Land and the said three cottages ^(see) part of the Estate owned by



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Mrs Colyer asked me before making my decision to inspect the Unit Land. At the conclusion of the hearing I said I did not think it necessary, but that I would do so if I had (as I did on the day after the hearing) have time, and she agreed that I might make such inspection unattended. In my opinion the appearance of the Unit Land is against it being memorial waste; although it is open on the north to a public road made up for motor traffic, that road is minor; the appearance of the Unit Land is consistent with it being originally a field across which a road has been made some time ago for local convenience and left unfenced because by reason of its secluded nature of the surrounding farms, the absence of any important through traffic and its liability to occasional flooding, any fencing was not worth the trouble and expense.

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 10th —

day of July — 1980

a a Baden Fuller

Commons Commissioner