



COMMONS REGISTRATION ACT 1965

Reference Nos. 14/D/71
14/D/72

In the Matter of Somerford Moor,
Christchurch, Dorset.

These disputes relate to the registrations at Entry No.1 in the Land Section and at Entry No.1 in the Rights Section of Register Unit No.CL.154 in the Register of Common Land maintained by the Dorset County Council (formerly by the Hampshire County Council) and are occasioned by Objections Nos. OB.322 and OB.518 made by Sir George Meyrick and the Trustees of the Meyrick Settled Estates and noted in the Register on 9 October 1970 and on 20 January 1971 respectively.

I held a hearing for the purpose of inquiring into the dispute at Dorchester on 17 April 1975. At the hearing Christchurch Borough Council, on whose application Entry No.1 in the Land Section was made, were represented by Mr. P. Samuel; and Mr. Graham File, Mr Denis Bouchault and Mr. Jaques Labesse (they are the trustees of the Meyrick Estate) were represented by Mr. J. D. Felton, solicitor of Davis and Felton, Solicitors of Salisbury.

The land ("the Unit Land") comprised in this Register Unit and known as Somerford Moor, is in two strips bounded on the west by the River Mude and on the east by Watery Lane, and separated from each other by the recently constructed Christchurch By-pass (A.35). One strip ("the North Strip") is about 300 yards long and between 15 and 25 yards wide and its north end joins Ambury Lane where this Lane makes a left-hand turn to the north. The other strip ("the South Strip") is about 200 yards long and between 25 and 35 yards wide, and its south end is just short of Somerford Road (B.3059) and east of the Somerford Hotel Car Park.

In the Rights Section of this Register Unit there is registered (applicants Mr. D. J. and Mr. P. J. Hewitt) a right of turbary attached to Redesmere, 70 Kings Avenue. In the Ownership Section the Trustees of the Meyrick Settled Estate (owners) and Lt. Col. Sir George D. E. T. G. Meyrick (tenant for life) have been registered as owners of the whole of the Unit Land. The grounds of Objection No. OB.322 are "That the land was not common at the date of registration". The grounds of Objection No. OB.518 are "(1) That the person named as the applicant for registration was not entitled to apply in the capacity stated in the register; (2) That the right does not exist at all".

Mr Samuel relied on the evidence (1) of Mr H. J. Mussel (a signed statement) who for the past 62 years has lived at 29 Portfield Road, and is now aged 87 years (a medical certificate of his ability to attend was produced), (2) of Mr V. J. Luckham (orally) solicitor who was until 31 March 1974 deputy town clerk of the Mayor Aldermen and Burgesses of Christchurch (now borough of Christchurch) and had been employed by the Corporation since 1932, (3) of Mr L. C. Blake (orally) who is the principal planning assistant of Christchurch Borough Council, and who has been dealing with planning matters for the Borough and before them for the Corporation since 1957, (4) of Mrs D. Baker (orally) who is 83 years of age, who has lived at 20 Stanpit for the last 60 years, who was a member of the Council from 1946 - 1970, an alderman from 1958 and mayor in 1968. He also relied on a plan (produced by Mr Felton) of the



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Manor of Somerford perambulated by Sir G. A. E. T. G. Meyrick Bt. and others May 4 and 13 1899, and called as a witness Mr. F. D. Lane who is an auctioneer, estate agent, building society secretary (retired) and travel and insurance agent resident in Christchurch and who said he had come to the hearing to prove common rights.

Mr. Felton relied on the evidence (1) of Mr D. Milligan (orally) who is and has been since 1968 the senior agent in Hampshire of the Meyrick Trustees and has known the Estate since 1950, and (2) of Mr H. W. Burry (by affidavit) who is 77 years of age.

The application for the registration of the right of turbary was made in 1969 by Mr D. J. Hewitt on behalf of himself and his son (then aged 7½ years) and related not only to the Unit Land but also to six other lands including Coward's Marsh, Ogber and Town Common (about these three lands, I held a hearing before this case); he then told me he could not come today. In the application he noted that Redesmere is within the Old Borough of Christchurch.

Mr Mussel said (in effect):- from 1921 and thereafter he turned horses on Somerford Moor during the summer months after notifying Mr Lander the tenant farmer of Purewell Farm owned by Sir George Meyrick, and that Mr Brown who succeeded Mr Lander at Purewell Farm ploughed up Somerford Moor on one occasion during the Second World War and planted potatoes.

The 1899 Manorial plan, showed the Manor as bounded on the east by Chewton Bunny, on the north by a line just north of the Railway, on the west by the River Avon, and on the south by the sea. The Unit Land is within, and 29 Portfield Road is outside, this boundary.

Mr Luckham in the course of his evidence produced (1) a conveyance dated 27 August 1952 by which Mr. G. D. E. T. G. Meyrick with the concurrence of his trustees and of Sir G. E. T. G. Meyrick Baronet conveyed 53.105 acres of land to the Christchurch Corporation, (2) an agreement dated 16 May 1952 pursuant to which the conveyance was made, (3) replies dated 1 April 1952 to "Enquiries before Contract" made when the said agreement was in draft. The land so conveyed, is a long piece south of what is now the By-pass, extending from just south of Staplecross Farm to Watery Lane: it included the north part of the South Strip, and is thereon described as "Part 211; Meadow: .714", and as being included in a tenancy dated 3 September 1937 of Stanley Reginald Brown. In the agreement the "Particulars of the Property Sold" included the words "and as regards Ordinance No. 211 to grazing and other common rights (if any)". The Replies (in answer to the question about these common rights) include "the Vendor's Estate Agent informs us that there are grazing rights similar to Barlings but they have not been exercised so far as he is aware for sometime since the last war ...". Barlings (or Barlins) is land near the River Avon west of Stoney Lane and north of Bridge Street, and a little more than a mile to the west of the Unit Land, being one of the 7 lands mentioned by Mr Hewitt in his application, and being within the manor as shown on the 1899 map. The east part of the land comprised in the 1952 conveyance (except O.S. No.211, part of the South Strip) is now a recreation ground laid out since the conveyance was made.

Mr Felton at this stage said that he accepted that the Meyrick Trustees should not have registered themselves as owners of the part of the Unit Land comprised in the 1952



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conveyance, but that he nevertheless contended that I should give a decision over all.

Mr Blake produced a very large plan (about 18 feet by 12 feet) dated December 1938 of the Christchurch Planning Scheme under the Town and Country Planning Act 1931, on which the Unit Land, including the part between the North Strip and the South Strip (being now the By-pass) was coloured green hatched fine brown, in the key shown as "Commons"; the Unit Land was not included in the land cross-hatched (indicating common rights from Lammas to Candlemas). Mr Blake said that this part of the 1938 Plan was prepared on information obtained from Mr Mc Ardle who was at the time said to be the most knowledgeable; the map was open to inspection and no owner or commoner ever disputed it. He described the Unit Land and produced some photographs; on the day after the hearing I inspected it. The North Strip is scrub grass and bracken; Watery Lane is made up for some distance from the north end, but not through to the By-pass; and also from the north end there is a track along the middle of the North Strip (between Watery Lane and the River) which seemed to be an alternative to Watery Lane and to lead to a field on the east; there are some footpaths. The South Strip is similar except there are fewer tracks *and paths*.

Mrs Baker said (in effect):- For two years (in about 1924 or 1926) for short periods she tethered on Somerford Moor a pony; she borrowed it from Mr Mc Ardle; he told her that the houses in Stanpit had commoners rights; nobody asked her to pay; Mr Lander told her that she must tether the pony, because the moor was not fenced, but she never asked his permission to graze the pony. When she knew the Moor it was lush grass; her grazing was during the summer. Stanpit is within the manor boundary (as shown in the 1899 map).

Mr Lane urged me to approach this case geographically and historically. Christchurch had been a port since neolithic times. The Unit Land must have been the way to the port from the lands to the north. Somerford was where the river could be crossed in summer. People using the way would have to leave the cattle somewhere where there was a quagmire; as a matter of law, every tithing should have a common of pasture.

Mr Milligan produced: (1) a conveyance dated 18 February 1801 containing this description "close of moorish ground known as Somerford Moor estimated 2 acres... between Street Field and Hamborough Field ..."; (2) a conveyance dated 25 March 1874 of 282 acres of land to O. J. F. Meyrick which included among 62 entries in the Schedule: "4544: Somerford Moor: Meadow: 2.2.4."; in this conveyance 4544 was included in Purewell Cross Farm without any distinction and without being expressed to be subject to common rights; and (3) the Court Rolls for the Manor of Somerford in two books: ~~(a)~~ (a) from 13 November 1786 to October 1853 and (b) from October 1853 onwards (the last entry being September 1937); in these Rolls there is up to 1811 in each year a presentment of the Commons ~~and commons~~ including Somerford Moor from Midsummer to Candlemas; between 1811 and 1911, the presentment is in these words "also we present Somerford Moor to be thrown Common every year at Midsummer Day to continue so until Candlemas day for ever the same being an ancient common road". After 1910 the wording is "we present Somerford Moor to be thrown Common every year at Midsummer day for ever the same being an ancient common road". Mr Milligan said (in effect):- He had perused the Christchurch Award, and it does not refer to Somerford. The 1899 map mentioned by Mr Samuel was kept with the manorial records. The Manor is held on different trusts from the Unit Land, although they are both Meyrick Trusts. The Moor has become a "backwater", not being used by the Estate for agricultural purposes; he could not remember whether it was used in 1950, but from hearsay



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he understood it to be included in Mr Lander's tenancy. Neither Restmere (Messrs. Hewitt) or Portfield Road (Mr Mussel) are within the manor, as shown on the 1899 map. He had never known anyone exercising any rights of common and in particular exercise any right of turbary; the Unit Land is not suitable for turf cutting; there is no heather.

Mr Burry said: "I remember the land known as Somerford Moor which lies along Watery Lane. Certainly during the period 1905 to 1919 Somerford Moor was fenced, and I clearly remember a bank with a fence on it on the western side of Watery Lane. To the best of my recollection Somerford Moor was farmed by Mr George Lander. I do not remember it being used other than as a pasture. I cannot remember the land being thrown common at any time of the year."

The information I have about the Unit Land as outlined above, is various. Each item considered by itself indicates a possible conclusion, but such conclusion is contrary to that indicated by one or more of the other items. I must I think consider each possible conclusion, and weigh up as best I can the information I have for and against it.

In my opinion the Unit Land is not subject to any right of turbary such as is claimed by Messrs. Hewitt. Apart from the statutory declaration of Mr. D. J. Hewitt in support of his application for registration, I have no evidence supporting the right and no information as to how it could have originated. The Unit Land is different from Town Common over which in other proceedings before me rights of turbary were established. Mr Milligan's evidence and the appearance of the Unit Land is against there being any such right. I conclude therefore that paragraph 2 of Objection OB.51 is established.

As to the Unit Land being in 1968, when the registration in the Land Section was made, subject to some other rights of common:-

In my opinion the Unit Land was not in 1968 subject to a right to graze horses particular to 29 Portfield Road. The land is outside the Manor. To establish a right by prescription either under the 1852 Act or at common law, or a right under some presumed lost grant, I should require more information than that given me by Mr. Mussel; without knowing why and in what circumstances he, before turning out his horses, notified Mr Lander (the tenant of the owner), I cannot say that his grazing was as of right.

In my opinion the Unit Land is not subject to any rights of grazing exercisable by persons having residential property in the Old Borough of Christchurch, being rights such as I, in other proceedings before me, held to have been established over Coward's Marsh, Ogber and Town Common. Although a declaration by Mr Mcardle in such proceedings was relied on, and although he was consulted by Mrs Baker before she grazed his pony, and by the Council before the 1938 plan was coloured, the above quoted references to the Unit Land in the Manorial Court Rolls are against there being any such rights, and in the absence of evidence directly supporting them, I conclude that no such rights over the Unit Land have ever existed.

In my opinion the Unit Land in 1968 was not subject to grazing rights originating under the customs of the Manor of Somerford. I have not overlooked the above quoted



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references in the Court Rolls to the Unit Land, and I assume in favour of the rights that the presentments, notwithstanding the slight changes in wording in 1811 and 1910, were always intended to mean that the Common was thrown open from Midsummer to Candlemas, and that the Rolls are evidence against the owner. But even assuming such rights existed at one time, against their existence having continued in modern times, I have the 1874 conveyance, the 1905-1919 fencing described by Mr Burry, and the absence of any recent exercise. If the Unit Land had been actually grazed in accordance with the customs of the Manor, the references to it in the Court Rolls would I think have been detailed not general; I consider the presentments above quoted as indicating a yearly practice of repeating without much thought the presentments of the previous years, rather than as a record of actual grazing done in exercise of immemorial rights. The circumstances in which Mrs Baker in 1924-26 tethered the pony she borrowed from Mr McArdle, were not I think such as to point to then existing and recognised grazing rights exercisable as of right by the then tenants of the Manor or by any particular class of such tenants.

Although animals being driven along a highway may often graze the grass growing on the verges, and although it may be that as incidental to the use of the highway, a person driving his animals along it, may have a right to permit such animals to graze the verges, it is I think clear that such a right is outside the 1965 Act, because section 22 expressly states that common land in the Act does not include any land which forms part of a highway. So, although from the appearance of the Unit Land now, I am attracted by the views expressed by Mr Lane, I cannot under the Act give any effect to them.

In the result, I conclude that the Unit Land was not in 1968 subject to rights of common within the meaning of paragraph (a) of the definition in section 22 of the Act of common land. Upon like considerations as are outlined above in relation to possible manorial grazing rights, I conclude also that the Unit Land, if it ever was waste land of a manor, had sometime before 1968 ^{ceased} to be such and was not therefore ~~then~~ within paragraph (b) of the definition.

For the above reasons, I am of the opinion that the registrations now under consideration should not have been made, and accordingly I refuse to confirm them.

I reach this decision with some regret, because some of those who took the trouble to give me the benefit of their local knowledge, may think that the Unit Land should in the public interest be regulated in some way. Nevertheless, extraordinary as the Unit Land is, I cannot I think bend the provisions of the 1965 Act which seem to me to be inapplicable, merely because it may be expedient. However it is possible section 193 of the Law of Property Act 1925 which was mentioned at the hearing, may if it was applicable to the Unit Land in 1926, still be applicable, see section 21 of the 1965 Act.

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 24th - day of October 1975

a. a. Baden Fuller

Commons Commissioner.