



In the Matter of the grass verges in East Street and West Street, Corfe Castle in the parish of Corfe Castle, Dorset

DECISION

This dispute relates to the registration at Entry No. 39 in the Land section of Register Unit No. CL 39 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 468 made by Dorset County Council and noted in the Register on 29 January 1971.

I held a hearing for the purpose of inquiring into the dispute at Poole on 10 July 1980: The hearing was attended by the Dorset County Council and the Ramblers Association, Mr D S Harper, Solicitor and Mr D Clayden, Solicitor, appeared for the County Council and the Association respectively.

Mr F A Lipscombe who had been Divisional Surveyor for the Council for No. 5 (Purbeck) Division of the County since April 1974 produced a Map scale 1/2500 showing coloured pink the areas in East and West Streets which are considered by the Council to be highway. He had direct knowledge of the areas from April 1974 and the records in his department went back for many years. Apart from the carriageway the area generally consisted of pavements and grass verges and it was apparent from inspection that both pavements and grass verges ^{are} open to public passage and ^{are} used by the public for the same purpose.

Since April 1974 ^{gully emptying} he had carried out new drainage works, kerbing and the renewal of the stone paving ^{generally updating} footpaths and carriageway surfacing in both streets. Grass cutting and sweeping and ^{are} carried out regularly each year as and when necessary. Traffic orders have been made relating to the two streets and waiting restrictions are in force. Street lighting is maintained by the County Council. In the current financial year re-kerbing and footpath works in East Street were scheduled. The County's road programme contained proposals for providing additional footpaths in both Streets when funds were available.

In cross examination Mr Lipscombe agreed that where a householder was willing to cut the grass on the verge adjoining his property the Council would raise no objection so long as the work was done adequately. Grass was cut by the Council 3-4 times a year on average.

Mrs Rachel Margaret Lloyd, who lives at 95, West Street and gave evidence for the Association, had lived in Corfe Castle for the past 14 years, produced a Schedule showing the results of personal inquiries of the occupiers of premises in both streets made during the previous month. The Schedule gave detailed measurements of the verge outside each property and showed whether maintenance was done by the occupier, the Council or some other person.

I was also shown a Tithe Map for the area for the year 1844 in which what appear to be the highway and the verges are coloured orange and were shown as not subject to tithe. I was also shown what purported to be an extract of a Indenture of 1762 by which the Barons and Inhabitants of Corfe Castle conveyed to Henry Bankes all the Town Land and Town works lying and being in the streets of the Borough.

Mr Harper contended that the highway was the area over which the public has the right to pass and repass. He relied on the ^{sum} ~~prescription~~ that the limit of the highway was



marked by the fences on either side.

Mr Clayden argued that this ^{um?}prescription only applied if the fences were erected with reference to the highways and did not apply to steep banks. The boundary of a squatter's house was fixed by reference to the edge of the waste rather than the edge of the highway. Some verges were not manorial waste, but he claimed that most of the verges were manorial waste. He also relied on the decision (Ref No. 10/D/3) of the Chief Commons Commissioner relating to Haythorn Common.

The presumption as to fencing applies unless some reason can be found for supposing that the fencing was put up for a different purpose, see ~~para~~ ^{see} Warrington J in Offier v Rochford RDC (1906) 1 Ch 342 at p 354. This view was followed by Goff J in Attorney General v. [unclear] (1970) Ch 1 at pp 12-13. I am unable to find any reason ^{synon} for not following the presumption in the present case. The objection appears to relate to the whole of the land.

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

8th

day of

September

1980

George Harker

Commons Commissioner