

In the Matter of Green Lane, Old Hills,  
Powick, Hereford and Worcester(N.V.I).

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 112 in the Register of Common Land maintained by the former Worcestershire County Council and is occasioned by Objection No. 60 made by the Trustees of the Madresfield Estate and noted in the Register on 5 February 1971.

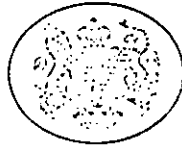
I held a hearing for the purpose of inquiring into the dispute at Worcester on 30 November 1977. The hearing was attended by Mr V F Bohn, the applicant for the registration at Entry No. 2 in the Rights Section of the Register Unit, and by Mr J D Schooling, solicitor, on behalf of the Objectors. I also gave leave to Mr Bohn to represent Mr E C Lanay, Mr H Parsons, Mr G S Holland, Mr D H Thomas, Mr W L Rees-Pinchen, Mr N Knibbs, and Mr N A Saunders, the applicants for the registrations at Entry Nos. 1, 4, 6, 7, 9, 10, 11 in the Rights section of the Register Unit.

The land comprised in the Register Unit is of variable width, but is fenced on each side and consists of a long narrow strip which abuts at each end onto an area of land known as Old Hills. Old Hills is comprised in Register Unit No. CL 28, which has become final.

So far as these proceedings are concerned, the history of the lane and the land comprised in Register Unit No. CL 28 begins with the tithe apportionment award for the parish of Powick made in 1841. The land comprised in Register Unit No. CL 28 is there described as "Common" and is shown on the map with the number 1178. The lane has no separate description or number and is shown on the map as open at its northern end to the land comprised in Register Unit No. CL 28 and at its southern end as divided from that land, presumably by a gate.

Mr Bohn's case rested on the fact that in 1841 the lane was open to cattle on the common known as Old Hills and must therefore be taken to have been subject to the same rights of common as Old Hills.

The lane was not regarded as part of the common when the Scheme of Regulation for Old Hills Common was made under the Commons Act 1899 on 21 December 1954, not being shown as part of the common on the map referred to in the Scheme. It is registered as a public footpath in the Definitive Statement relating to the former Rural District of Upton upon Severn made under the National Parks and Access to the Countryside Act 1949. It consists of two Ordnance Survey parcels - O.S. 620, which is described in the Definitive Statement as a "narrow fenced-in parcel of land", and O.S. 621, which is described as a "fenced-in occupation road". Where the line indicating the path on the Third Revised Definitive Footpath Plan is narrower than O.S. 620 it runs along the western side, but there is nothing in the Definitive Statement to indicate that the public right of way does not extend over the whole width of O.S. 620, and by virtue of section 32(4)(c) of the Act of 1949 the particulars contained in a statement as to the width of a public path is conclusive evidence as to the width thereof. In my view the proper construction of the Definitive Statement is that the whole width of O.S. 620 and O.S. 621 forms part of the path.



Since the definition of "common land" in section 22(1) of the Commons Registration Act 1965 excludes any land which forms part of a highway, it follows that the lane does not fall within that definition, even if it is subject to rights of common, as to which I am by no means satisfied.

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 19<sup>th</sup> day of January 1977.

Chief Commons Commissioner