



COMMONS REGISTRATION ACT 1965

Reference Nos 31/D/5 to 16  
inclusive

In the Matter of Whitchurch or Prees Heath  
Whitchurch Rural North Shropshire D

These disputes relate to the Registrations at Entry Nos 1 to 4 inclusive and 6 to 12 inclusive in the Rights Section and Entry No. 1 in the Ownership Section of Register Unit No.CL.21 in the Register of Common Land maintained by the Salop County Council and are occasioned by objection No. 45 noted in the Register on 9th November 1971 and Objection Nos 167,168 and 169 and 171 to 177 all noted in the Register on 22 August 1972 and all made by R.G. Ashley and C.H. Goude and Objection No.115 made by Mr and Mrs K.L.Harper and noted in the Register on 15th March 1971.

I held a hearing for the purpose of inquiring into these disputes at Shrewsbury on 10th April 1975.

Miss S.Cameron of Counsel appeared for all the claimants for rights and Mr.Harrold of Counsel appeared for Mr. R.G.Ashley and Mr.C.H. Goude who claimed to be the owners of the land in question and were the objectors to all the Entries in the Rights Section of the Register. Mr. R.S Kelly appeared for theWhitchurch Rural Parish Council. Mr.Harrold proved Mr.Ashley and Mr.Goude's title and Miss Cameron did not dispute their title. In these circumstances it is not necessary for me to refer to the history of the land. Miss Cameron appeared for Mr and Mrs.K.L. Harper who by Objection No. 115 objected to the Entry No.1 in the Ownership Section of the Register and was content that I should confirm that Entry.

Miss Cameron and Mr.Harrold were agreed that I should confirm all the Entries in the Rights Section of the Register other than Entry Nos. 4 and 10 in each case modified in accordance with the table set out below:

Mr.Walter Whitfield gave evidence of his Entry No.10 in the Rights Section of the Register made by his deceased brother J.R.W.Whitfield as the owner of Tilstock Park the title deeds to which were with the official solicitor who had informed Mr.Whitfield that there was no reference to grazing rights in the deeds held by him, notwithstanding that he claimed to have seen a document which referred to a right to graze all animals levant et couchant.

Mr.Whitfield is now aged 55 and came to Tilstock Park with his father when he was aged 3 when his grandfather restarted farming in or about 1923. His father died in 1934. Press Heath was requisitioned during the 1914/18 War and was under requisition immediately prior to its sale by Lord Brownlow to Mr. Parker in 1920. and thereafter Mr. Parker granted a lease for the construction of a golf course on the land. Mr. Whitfield stated that in 1926 his father joined a local common rights protection society and with others put some cattle on Press Heath. This hearsay evidence as to events which took place when Mr.Whitfield was aged 6 was the only evidence given by him as to grazing and he accepted that the



grazing mentioned was in the nature of a demonstration and not the exercise of any identifiable rights.

In support of the claim to take sand and gravel Mr. Whitfield said his father used to take sand and gravel from Prees Heath for concrete on the farm and that he himself had taken a lot of sand from a sand pit at the Northwest corner of Prees Heath during the period 1936 to 1940/41. During the 1939/45 war the heath was requisitioned and used as an airfield and a p.o.w. camp. It was not derequisitioned till 1958. The sand pit referred to above was bulldozed over but at some unspecified date Mr. Whitfield took a little sand of poor quality from an alternative pit.

Mr. Ashley gave evidence and stated that he had lived on Prees Heath for over 70 years that Tilstock Park was about  $2\frac{1}{2}$  to 3 miles from the Heath and was at one time let to a Mr. Davis whose daughter he married. He bought the Heath from Mrs. Parker in 1947, Captain Parker having died in that year. Captain Parker had told him that he had sold sand at 10/- a load. A sand pit was made in the 1930/45 war and later filled in. He had not seen people taking sand before the war. There was no sand pit then. If you dug you would find sand. No people had taken sand after the war.

A survey map dated 1901 did disclose that there were on or before that date various sand pits on Press Heath.

In my view the evidence given by Mr. Whitfield falls far short of establishing any prescriptive right to graze or take sand and gravel. The evidence as to grazing is confined to an isolated instance of grazing by way of communal demonstration when Mr. Whitfield was a boy of tender years. As regards the sand in my view it is possible to reconcile the evidence of Mr. Whitfield and Mr. Ashley. I have no doubt that sand was available on Prees Heath which was a golf course between the wars: the course being reinstated after the 1939/45 war. The golf club would require sand for its own purposes and it is only sensible to assume with sand on its premises, it availed itself of the sand which was available.

I have no reason to doubt that Mr. Whitfield may have taken an occasional load of sand both between the wars and after the last war. Mr. Whitfield's evidence does not however, satisfy me that any sand taken as of right nor indeed if the period of requisition 1941 to 1958 is taken into account, during which period Mr. Whitfield cannot have taken any sand as of right, but which is not to be regarded as an interruption, does Mr. Whitfield's evidence cover a period of 20 years. The period to which Mr. Whitfield speaks of his own knowledge is 1936 (when he was 16) to 1941 and 1958 to the date of his late brother's Entry in the Register 3 March 1970, two periods amounting in the aggregate to 17 years. In my view a few loads of sand were taken to Tilstock Park either by permission or by tolerance, possibly on the part of the golf club, but not as of right.

As regards the Entry No.4 made by Major and Mrs. Turner who were then the owners of Heath Cottage. The evidence in support of the claim to grazing rights was confined to Mr. Whitfield having seen 3,4 and 5 horses grazing near that cottage when it was occupied by Mr. Beckett at the time when he used to pass that way to and from school. He could not say who owned these horses and he could say no more than it was assumed that there were common rights on the Heath.



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For these reasons I refuse to confirm Entries Nos. 4, 8 and 10 in the Rights Section of the Register and I confirm Entries Nos. 1, 2, 3, 6, 7, 9, 11 and 12 in the Rights Section of the Register modified as follows:-

- Entry No. 1 In column 4 substitute "10 cattle or 40 sheep" for "13 cows or 52 sheep or 52 pigs"
- Entry No. 2 Substitute for the Entry in column 5 the words "eight acres of land bearing O.S. Numbers 1129, 1130, 1130A, 1132, 1134, 1144 and 1145 and O.S. Map 1968 Edition for the Parish of Tilstock."
- Entry No. 3 Substitute in column 4 "2 cattle or 1 horse or 2 ponies" in place of "5 cattle or 2 horses or 20 sheep", confirm estovers sand and gravel.
- Entry No. 6 Substitute in column 4 "20 cattle" in place of "20 beasts".
- Entry No. 7 Substitute in column 4 "3 goats or 10 sheep or 5 cattle or 1 horse" in place of "6 goats, 20 sheep, 10 cows, 3 horses" delete the words "peat and turf, air and exercise" confirm sand and gravel wood and brush wood.
- Entry No. 9 Substitute in column 4 "30 cattle" in place of "40 cattle". Substitute in column 5 the words "Bank Farm Ash Magna Hitchchurch" for the whole entry in that column.
- Entry No. 11 In column 4 delete the words "turbary, pannage, air and exercise" confirm 15 Cattle estovers and sand and gravel.
- Entry No. 12. Substitute in column 4 "2 cattle and 1 goat or 20 sheep" in place of "6 cows or 3 horses or 20 sheep".

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

5<sup>th</sup>

day of June

1975

Commons Commissioner