



COMMONS REGISTRATION ACT 1965

Reference No. 238/D/92-96

In the Matter of Woolbeding Common,
Woolbeding, Sussex

DECISION

1. These disputes relate (1) to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 111 in the Register of Common Land maintained by the West Sussex County Council to which Objection No. 337 was made by the County Surveyor and was noted in the Register on 11 December 1970, (2) to the registration at Entry Nos. 2-4, 7-12, 15-18, 20, 23 and 24 in the Rights Section of the same Registration Unit to which objection was made by virtue of the above-mentioned Objection No. 337, (3) to the registration at Entries in the said Rights Section to which Objections were made by the National Trust as follows: (i) to Entry Nos. 2, 3, 8, 9, 23 and 24 by Objection No. 209 noted in the Register on 30 October 1970 (ii) to Entry Nos. 12, 15, 18 and 20 by Objection No. 595 noted in the Register on 28 July 1972 (iii) to Entry Nos. 10 and 11 by Objection No. 598 noted in the Register on 3 August 1972.
2. I held a hearing for the purpose of inquiring into the disputes at Chichester on 20, 21 and 22 March 1979. The hearing was attended by: (i) Mrs Frankland, Solicitor of the County Council, (ii) Mr P J Mansfield of the National Trust, (iii) Miss C Barran, the applicant for registration of Entry Nos. 2, 23 and 24 and also representing the following applicants - Mr Higgin, successor to M/S D K Heath (Entry No. 9), Mrs K E Bartrick (Entry No. 12), Mr S G West (Entry No. 15), Mr Coote successor to Mr L Bromberg (Entry No. 18) and Mr N D Holbrook (Entry No. 20), (iv) Mr T H Aston and Mrs J A Aston, successors to the applicant Mr O J Aston (Entry No. Mr W T Caulfield (Entry No. 4), Miss A R Brocklebank (Entry No. 8), (v) Miss W Megeney Solicitor of the firm of Thomas Eggar & Son on behalf of Mr John Tylor, successor to M/S I Forshall (Entry No. 10) and of Mr P Forshall, successor to M/S Judith Forshall (Entry No. 11).
3. It appeared from a memorandum dated 4 March 1976 signed on behalf of the County Surveyor, and confirmed by Mrs Frankland that the County Surveyor's Objection No. 337 (which related only to a number of small areas of land as to which the grounds of objection were that they were highway) had been withdrawn. Accordingly I shall confirm the registration at Entry No. 1 in the Land Section of the Register Unit: and the withdrawal of the Objection means that it ceases to constitute an objection to the Entries in the Rights Section.
4. This leaves for determination the disputes occasioned by the National Trust's Objections (paragraph 1(3) above). The National Trust claims to be and is registered as owner of the land comprised in the Register Unit ("the Unit Land"), and this was not contested. The ground of its Objections in all cases is that it has not been established to the satisfaction of the National Trust that the rights exist.
5. In three cases - Entry Nos. 8, 10 and 11 agreement had been reached, as in regard to Nos 8 was stated at the hearing by Miss Brocklebank and Mr Mansfield, and in regard to Nos 10 and 11, appeared from correspondence and confirmed by Miss Megeney and Mr Mansfield. I shall give effect to the agreements by confirming the registrations with the following modifications:- (a) Entry No. 8. In column 4 of the Rights



Section (ix) delete the words "turf" or (ii) delete "to graze 20 sheep, or 20 goats or 4 cows or 4 pigs" and substitute "to graze 4 sheep or 4 goats or 2 cows or 2 pigs", (iii) delete "to cut and take wood" and substitute "to cut and take dead wood. To cut and take weed scrub less than 5" diameter. To cut and take bracken". (b) Entry No. 10. In column 4 of the Rights Section (i) delete "to cut and take underwood" and substitute "to pick up dead wood, to cut and take weed scrub less than 5" diameter", (ii) delete "to take stone" and substitute "to pick up loose stone from natural surface" (c) Entry No. 11. In column 4 of the Rights Schedule delete "to cut and take brushwood" and substitute "to cut and take weed scrub less than 5" diameter".

6. I next consider the dispute in regard to Entry No. 3. This Entry was registered by Mr C J Aston whose current successors are Mr T H Aston and Mrs J A Aston: the rights are claimed to be attached to Old House Woolbeding, which as appears from the relevant Supplemental Map adjoins the Unit Land not far from Pigeon Hill. The particulars of the rights registered include rights of grazing and of cutting bracken, furze and firewood and finally "to take stone", in the case of all the rights over the whole of the Unit Land.

The National Trust and the Astons had reached agreement as regards the grazing rights and (with modifications) the rights of cutting bracken etc, and accordingly the dispute requiring determination was as to the right to take stone. It transpired that this dispute lay within a somewhat narrow compass, relating not to the existence of some right to take stone but to the scope of the right, Mr Mansfield being concerned that the right be limited to picking loose stone from the surface. Evidence was given in support of the claimed right by Mr T H Aston, his mother Mrs F M Aston, Mr George Smithers and Miss C Barran, on which I was satisfied and find that since 1947 the owner of the Old House had taken stone from the Register Unit not only by picking loose stone but by digging up stone lying near the surface and refilling any holes which resulted from the digging. The evidence relied upon by Mr Mansfield viz that of Mr R J Feast and written statements by Mr R J Hall and Miss A L Lascelles was to the effect that rights to take stone from the Unit Land were rights to pick up loose stones, but this evidence did not specifically relate to Old House and did not in my view affect the credibility of the evidence - particularly that of Mr T H Aston and Mrs F M Aston - given as to the scope of the right as exercised. In the result I shall confirm the right but modified to read. "To take stone lying on or near the surface subject to restoring the surface when ever disturbed by the exercise of this right".

In the upshot. I confirm the registration at Entry No. 3 in the Rights Section with the modifications that in column 4 (i) the words "furze" be deleted, (ii) the words "to cut and take firewood" be deleted and the words "to cut and take (a) dead wood and (b) weed scrub less than 5" diameter" substituted, (iii) the words "to take stone" be deleted and the words "to take stone lying on or near the surface subject to restoring the surface whenever disturbed by the exercise of this right" substituted. Modifications (i) and (ii) are those agreed by the parties.

7. Entry No. 2 was registered by Miss Barran as attached to a smallholding at Older Hill, and the rights claimed are (a) to graze 6 cattle or horses or 18 goats or sheep (b) to cut and take fern, gorse, brushwood and firewood - in each case over the whole of the land comprised in this register unit and register units CL 128 and 175. Older Hill is a holding of some 4 acres adjoining the northern boundary of the Unit Land and was bought by Miss Barran's parents in 1924. At that time the house on the holding was (and still is) derelict, but it was clear from the evidence, and Mr Mansfield accepted, that before this rights of common existed and were exercised in respect of the holding. Mr Mansfield's main submission was that such rights had



been abandoned since 1924, such abandonment being established by the fact that the house had been derelict and unoccupied since then and by the lack of sufficient evidence of the exercise of the rights.

Apart from the derelict house, for the rebuilding of which it appeared that planning permission might be necessary, there has also been on Older Hill a two roomed stone and brick building with a tile roof and two external doors, which was originally the washhouse. There is a spring for water and also a piped supply from a nearby property. There are fruit trees on the land and Miss Barran cultivates watercress there. Mr Caulfield, a witness called by Miss Barran, stated that after Mr and Mrs Barran bought the land, there were ponies and cattle there and it was a smallholding in active use. Another witness Mr L Crocker, whose grandparents had farmed Older Hill and whose memory went back to 1919, said that stock from Older Hill grazed on the common in the 1920's and 1930's: and Mr R J Feast, called by Mr Mansfield, said that cattle from Older Hill grazed on the perimeter of the common in the 1920's and 1930's and bracken was cut from Older Hill in the 1930's. Mr D Challen, who has been employed by the National Trust to look after the common since 1962, could not recall Older Hill cattle grazing or woodcutting from Older Hill, but there was some bracken cutting near the Older Hill field, though mainly to keep clear the rights of access.

The evidence as to exercise of the rights since the 1930's was that of Miss Barran. Until 1941 her parents farmed animals only at Older Hill - in that year they acquired land at Woolhouse on the other side of the common and in 1949 Woolhouse farm devolved on her mother, and Miss Barran is now the tenant of that farm. It is plain that since the war there has been no regular or realistic user of Older Hill for occupation or farming purposes. But Miss Barran said, and I accept, that it was always her mother's idea (her father died young) to rebuild or restore the building: that when horses or ponies are ridden across from Woolhouse they graze on the common near Older Hill: that bracken is cut and firewood collected on the common for use partly at Woolhouse and partly at Older Hill, where the bracken can be used for bedding animals in the washhouse building and firewood for camp fires or meals. Although the exercise of the Older Hill rights as such has, at least since the war, been spasmodic and somewhat ephemeral, my conclusion is that there has been no abandonment of those rights; the evidence as a whole falls short of what is required to establish abandonment viz "a fixed intention never at any time thereafter to assert the right" (see *Tehidy Minerals* and *Norman* 1971 2QB 528). Nor in my view has there been a destruction or alteration of the Older Hill tenement sufficient to result in the extinguishment of the rights.

Accordingly I do not think that the Objection has been established, and I confirm the registration at Entry No. 2.

8. Entry No. 9 was registered on the application dated 27 June 1968 of Miss D K Heath the rights (to cut and take turf or peat, grazing rights, pannage and the right to cut and take wood) being claimed in respect of Cherry Tree Cottage. As I understood the position, Miss Heath and her father were for many years tenants of this cottage which is situated upon (though not included in) the common. In 1958 it was acquired by the National Trust on its purchase of the common: in 1970 it was sold to a Mr Wall and subsequently by him to Mr Higgins, represented at the hearing by Miss Barran.

No evidence, other than a photocopy of a letter apparently written by Miss Heath to Mr Wall in 1973, was adduced in support of the rights. Apart from this



Mr Mansfield claimed, and I think rightly, that if there had been any rights attached to the cottage, they were extinguished when the National Trust became the owner of both the common and the cottage.

I refuse to confirm this registration.

9. Entry No. 12 was registered on the application of Mrs K E Bartrick as tenant of No. 1 Titty Hill, which is situated on the west of Stedham Marsh and separated from the Unit Land by that common. Her successor, Mr K E Bartrick, was represented at the hearing by Miss Barran.

The rights registered included rights to take bracken, wood, sand and stone but the only right it was sought to uphold was "to graze 8 goats or sheep, 2 ponies and 4 cattle". Miss Barran relied on evidence given by Mr Hall and Mr Smithers and the written statements of Mrs Crocker, Mr Leëff and Mr Glazier, but in relation to Titty Hill, these were somewhat nebulous and in my view failed to establish the grazing rights claimed: and it is significant that on 30 March 1973 Mrs Bartrick in a letter to the National Trust stated that "I have always had the rights of Stedham Common but not Woolbeding".

I refuse to confirm this registration.

10. Entry No. 15. These rights are registered in respect of the Post Office, Redford which is situated on the common and was acquired by the National Trust, along with the Unit Land in 1958. There was some evidence in the written statements of Mr Hall, Mr Lines and Mr Smithers as to animals from the Post Office on the common in earlier days, but insufficient to establish the rights claimed. In any event, any such rights were, in my opinion, extinguished on the unity of ownership in the National Trust, and I refuse to confirm this registration.

11. Entry No. 18 was registered by Mr L Bromberg and relates to rights claimed to be attached to Titty Hill. Mr Bromberg's successor, Mr Coote was represented at the hearing by Miss Barran, who now sought to uphold the right "to graze 4 horses or ponies and 10 cattle" but not the rights to cut and take wood and fern. Titty Hill is situated on the west of Stedham Marsh which separates it from the Unit Land.

Miss Barran relied on the written statements of Mrs Crocker, Mr Glazier and Mr Leëff, but as I have said in relation to Entry No. 12, these statements are nebulous and failed to establish the grazing rights claimed. Miss Barran herself gave evidence that in the 1950's she saw animals belonging to the then owner of the Titty Hill property (a Mr Goddard-Watts) on the common: Mr Bromberg acquired the property about 1965, and she rented some fields from him and her animals went from his fields on to the common when they broke out. Mr Bromberg did not himself keep animals, nor does Mr Coote who acquired the property in 1972.

In my opinion this evidence fails to establish the existence of the grazing rights over the Unit Land, and the National Trust produced a letter of 24 September 1973 from MacDonald Oates and Co, Mr Coote's solicitors, which stated that their client "confirms that he has no common right over Woolbeding Common".

I refuse to confirm this registration.

12. Entry No. 20 was registered by Mr N D Holbrook and relates to a right "to allow 80 beasts, cattle or horses to stray over the Unit Land", claimed to be attached



to Stedham Mill Farm. I do not think that such a right is a right of common registerable under the Act of 1965; in fact there was no evidence of the existence of such a right^{of} of grazing rights over the Unit Land. In December 1972 in a written note to the National Trust, Mr Holbrook stated that he was willing to withdraw his claim.

I refuse to confirm this registration.

13. Entry No. 23 was registered on the application of Miss Barran as tenant of Woolhouse Farm in respect of grazing rights attached to that property. The right as registered is "to graze 40 cattle, horses or donkeys or the equivalent number of sheep, goats or geese over the land comprised in this register unit and register units CL 128, 142 and 175".

Woolhouse Farm is situated near but not contiguous with the south-western corner of the Unit Land and there is access from the Farm to the Unit Land by a track or tracks over an intervening copse. It has been in the ownership of the Barran family since the 1940's. The Farm is also near to Stedham Marsh (CL 175) and Oakham Common (CL 142). Stedham Marsh is contiguous to approximately one half of the western boundary of the Unit Land: the boundary between the two marks, I understand, the parish boundary and there has always been what Miss Barran described in cross-examination as a substantial bank some 3 feet high on the boundary, on the top of which there are stakes or oak trees. In his evidence Mr George Hall, who was called as a witness by Miss Barran and confirmed his written statement stated that the boundary had stakes but no fence on it when he was young (i.e. in the early 1900's) and that there were still gateposts at one point. Both he and Mr G Smithers (in cross-examination by Mr Mansfield) stated that cattle could go across the boundary without difficulty.

The evidence adduced by Miss Barran as to the user of the Unit Land by Woolhouse Farm animals consisted partly of written statements and partly of oral testimony. Until the late 1930's Woolhouse was farmed by a Miss Scrimgeour: the relevant written statements relating to user in her time (those of Mr Luff, Mr Thompson, Mrs White, Mr Terry), are in such abbreviated terms that without an opportunity for eliciting more detail they afforded no very clear idea of actual grazing rights exercised by Miss Scrimgeour, nor did this emerge from oral testimony (including written statements confirmed on oath). Mr Caulfield said that Woolhouse ponies were all over the shop: Mrs Crocker in her statement referred to "loads of goats and ponies about 50 cows and heifers", and in cross-examination said that Miss Scrimgeour grazed them on both Stedham Marsh and Woolbeding Common: Mr Smithers referred to "60-80 ponies loose on common not herded, 40 goats loose": Mr G Hall stated that "40 ponies roamed Woolbeding Common as well as Stedham".

As regards the evidence of user of grazing rights since the Barran family farmed at Woolhouse, Mrs Vernon Barran (Miss Barran's mother) said in a written statement that "at Woolhouse the ponies roamed the common free all over Woolbeding and Stedham Marsh. Cows and goats might be turned out too if they did not stray too far". Mrs B Newman in a written statement said, speaking of the years 1950-8 in which she was employed at Woolhouse, that they "used to graze 10 or so cattle loose on the common (including Woolbeding Common) on several days every year. Ponies and horses were grazed in smaller numbers more frequently. There averaged on the two properties (i.e. Older Hill and Woolhouse Farm) 10-16 cattle, 2 carthorses and 15 or more ponies. We also often grazed animals when passing between the two properties and several other fields on the common which Mrs Barran rented".



Miss Barran in her evidence said that "from 1935 to the present day some use has occurred on approximately 50 days per year Woolhouse grazed large numbers of ponies and goats (loose) and a few cattle. Latterly I have grazed small numbers of horses and cattle both tethered and when herding them between the different fields we have rented on the common, also escaped animals".

Of the evidence adduced by Mansfield in regard to this Entry, I think that all that is relevant to refer to is the written statement of Mrs A Lascelles; in this she says that the Woolbeding Estate, including Woolbeding Common, was in the ownership of her family from 1791 to 1959 and that "Woolhouse has no rights over Woolbeding Common. At one time ponies from Woolhouse, grazing on Stedham Common, would stray on to Woolbeding Common and had to be rounded up and returned".

Conclusion. It is in my view established by the evidence that at various times since the early years of this century animals - particularly ponies - from Woolhouse have been on the Unit Land and when on it have grazed. But there is no evidence as to the origin of the grazing rights claimed, and on the evidence as a whole I am not satisfied that any such rights have been acquired by prescription. There are similar rights of grazing registered in respect of Woolhouse Farm over Stedham Marsh to which no objection has been taken: and it may well be that, as Miss Barran says in her statement, "all the elderly inhabitants made no distinction between the grazing of animals on the two commons". She submitted, inter alia, that the rights of grazing claimed over the Unit Land could be upheld as rights of common by reason of vicinage, this being a case of inter-commoning between the two adjoining stretches of common land - Stedham Common and the Unit Land: and she referred to paragraphs 2-18 and 2-19 of Harris and Ryan on the Law relating to Common Land. It is open to doubt whether a right of common by reason of vicinage is capable of registration under the Commons Registration Act 1965, but I think it unnecessary to consider this question, since the conditions required to establish his right are not all satisfied in this case: in particular (i) there is no sufficient evidence that the rights are mutual between the commoners of the two stretches of land (ii) such a right would not justify a claim based on rights of common over Stedham Common to turn out animals upon Woolbeding Common. Entry No. 23 must, in my opinion, depend upon the existence of the claimed rights for Woolhouse over Woolbeding Common independently of the existence of similar rights over Stedham Common

In this connection it is significant that Miss Barran's application to register the rights was, in its original form, for grazing on Stedham with "right to stray" over Woolbeding. It seems to me that the user of the Register Unit during the period of ownership of Woolhouse by the Barran family is attributable to the straying from Stedham Common and the passage of animals between Woolhouse and Older Hill or other fields on the common rented for the purposes of Woolhouse: and user so explicable would not suffice to establish a prescriptive right of grazing attached to Woolhouse. Nor, as I have indicated, is the evidence of user by Miss Scjingsour adequate to establish the acquisition of grazing rights by the predecessors in title of the Barran.

For these reasons I refuse to confirm the registration at Entry No. 23.

14. Entry No. 24 was also registered on the application of Miss Barran as tenant of Woolhouse Farm and the right claimed is "to cut and take wood over the land comprised in this register unit and in register units CL 128, 142 and 175".

Here again the evidence adduced by Miss Barran consisted partly of written statements and partly of oral evidence. I do not think it is necessary to analyse this evidence in detail. The written statements of Mrs Heron, Mrs Newman, Mr J A Ricketts



and W L Ricketts and the oral evidence (confirming written statements) of Miss Barran and Mr G Hall sufficiently establish in my opinion that prior to and since the last war firewood for Woolhouse has been regularly taken from the common: nor did the evidence called by Mr Mansfield displace this conclusion. It is true, as Mr Mansfield submitted, that to some extent this may have been referable to the exercise of the right to wood claimed in respect of the Older Hill property, but on balance I think the collection of firewood continued in respect of Woolhouse independently of Older Hill. But I am not satisfied that the right was more than one in respect of firewood: and I will confirm the registration with modifications which give effect to this right and at the same time are in line with other entries acceptable to the National Trust. The modifications are that in column 4 of the Rights Section (i) after the word "take" insert the word "dead", (ii) add at the end "to cut and take weed scrub less than 5" diameter".

- 15 To summarise my decisions:- (1) I confirm the registration at Entry No. 1 in the Land Section. (2) As regards the Rights Section (a) I confirm without modifications the registrations at Entries No. 2, 4, 7, 16, 17, (b) I confirm the registrations at (i) Entries No. 8, 10 and 11 modified as stated in paragraph 5 above (ii) Entry No. 3 modified as stated in paragraph 6 (iii) Entry No. 24 modified as stated in paragraph 14, (c) I refuse to confirm the registration at Entries No. 9, 12, 15, 18, 20 and 23.
- 16 Miss Barran asked for an order for costs, but in the result she has only partly succeeded and I make no order. Miss Megeney asked for costs in relation to the dispute as to Entry No. 11: it is true, as she said, that essentially the National Trust have conceded this right, but Mr Mansfield stated that in 1973 the National Trust asked for proof of the rights and received no reply, and had itself ascertained most of the evidence. Miss Megeney's firm only came into the matter in 1977 and did research to ascertain the rights. In all the circumstances I think the National Trust, acted reasonably in the matter and I make no order as to costs.

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

2c August

1979

L. J. Morris Smith

Commons Commissioner