



In the Matter of a piece of land called Alder Rise containing 0.84 of an acre or thereabouts in the parish of Lytchett Matravers in the County of Dorset

DECISION

This dispute relates to the registration at Entry No. 1 in the Rights section of Register Unit No. CL 297 in the Register of Common Land maintained by the Dorset County Council and is occasioned by Objection No. 880 made by A R Mannall Esq and noted in the Register on 6 March 1973.

I held a hearing for the purpose of inquiring into the dispute at Poole on 8 July 1980. The hearing was attended by Lytchett Matravers Parish Council and Mr A R Mannall. Mr Edward Tory who was aged 63 gave evidence in support of the claim for rights. He had lived in Lytchett Matravers all his life (apart from war service). His father and grandfather also lived in the village all their lives.

"After Monmouth's rebellion in 1685 the quarters of certain rebels were exhibited on the site by order of the Mayor of Poole. This was evidence that the site was public land. Before the enclosure in 1829 the site was part of the common waste of Matravers Manor. In the Tithe Apportionment of 1839 the site (891⁷) was shown as not paying tithe and was described as a gravel pit. The Trenchard family who were Lords of the Manor may have given the site to the village.

The OS map for 1889 shows the site as unfenced and open to the road. No other part of Hurtick Road was shown as unfenced. In 1920 a fence was erected by an estate employee but it was removed on the following night.

Between the wars I have been to the site with my father and my grandfather or with one of them to collect sand for such purposes as building a pig-sty or a cattle-shed on their farm and to cut heather for use as insulating material or to cut bracken as litter. I have seen other persons doing the same.

After 1945 and until 1970 I have taken sand from the site in small quantities to preserve the alleged right. The sand was used to make loam. I have seen the owner of the Rose and Crown and his son cutting gorse on the site. I have seen ponies staked on the site to graze. Since 1940 goats have grazed on the site and still graze to this day.

All the rest of the parish land has disappeared including the Maypole.

Plot 891⁷ in the Enclosure Award was part of the Enclosures of the Manor. The Villagers were entitled to house-bote, stile-bote, cart-bote, plough-bote and gate-bote and turbary and grazing.

In the report of the Tithe Commissioners the site was not apportioned to any person.

Until a system of public collection of rubbish was introduced the site was a rubbish dump for the village.



Mr A R Mannall, the objector, produced a Conveyance to him of a plot of land OS 568 of 0.952 of an acre which included the area shown on the register plan stated to be 0.84 of an acre. The Conveyance ^{was} made on 3 February 1960 between J H L D Trenchard of the one part and Mr Mannall of the other part, and Mr Mannall appeared to have a good paper title to the land thereby conveyed.

Mr Mannall's evidence was that when he purchased his property a Mrs Riggs was keeping goats on it. Since 1960 there has been a dispute between Mrs Riggs and himself as to whether or not the goats were kept there with his permission and this dispute is still unresolved.

In 1963 he had applied for permission to develop the land as two building plots. Permission was refused and his appeal to the Minister was unsuccessful. In connection with this appeal he received a copy of a letter written to the Minister by the then Clerk to the Lytchett Matravers Parish Council alleging that there were ancient public rights for local residents to draw sand from the site without let or hindrance. This was the first intimation he had of the existence of such a claim.

In 1963 he had purchased 4-5000 bricks which he stored on the land for a period of 6-12 months. In 1964-5 he had on two occasions cut approximately 50 square yards of turf. In no case had there been any complaint.

In 1971 he had employed a contractor to level the site which involved filling in the remains of the old sand pit. He was not aware of any sand having been dug from the site since 1960.

He referred to a private Act of Parliament (58 Geo. III) authorising the enclosure of land in the parishes of Lytchett Matravers and Lytchett Minister ^{alleged that} in the Enclosure Award the land which he now owned was conveyed to William Trenchard. He admitted that in the Tithe Apportionment for the Parish of Lytchett dated 1 June 1837 no rent charge was apportioned to the land which he now owned.

input
The piece of land which is the subject of this reference was registered in the Land Section of the Register of Common Land maintained by the Dorset County Council in consequence of an application made by the Lytchett Matravers Parish Council at the end of December 1969 of an alleged right of common for parishioners to draw sand, gravel and/or other minerals from the site, a right described as being held in gross. The site was described as a gravel-pit in 1839 in the records of the Tithe Commissioners. The pit appears to have been worked out at the latest by the end of the Great War and the site was thereafter used as a public rubbish dump until regular rubbish collections were instituted.

The evidence in support of the claim related to the acts of Mr Tory (who gave evidence on behalf of the Parish Council), his father and grandfather since the end of the Great War. These acts were taking sand for building pig-styes and cattle-sheds on their farm. Cutting heather for insulating purposes and bracken for litter. Since 1945 Mr Tory said he had taken sand from the site in small quantities to preserve the right but not after 1970. The sand used to make loam. Other persons had grazed ponies and goats on the site and had cut heather and bracken.



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Until the beginning of February 1960 the site was owned by Mr J H L D Trenchard whose family had been Lords of the Manor at least since 1829. On 3 February 1960 Mr Trenchard sold the site to Mr A R Mannall, the objector, who is still the owner. In 1963 Mr Mannall stored a quantity of bricks on the site for 6-12 months and later on two separate occasions cut and removed 50 square yards of turf from the site. Throughout the period of Mr Mannall's ownership a Mrs Riggs has kept her goats on the site. In about 1971 Mr Mannall had the site roughly levelled which included filling the remains of the sandpit. He claimed that no sand had been dug from the site since he became the owner. In 1971 he brought a fibreglass motor cruiser on to the site and two weeks later it was burnt out. This happened shortly after he had lodged his notice of objection in November 1970. Police inquiries did not discover who was responsible.

In 1963 Mr Mannall had unsuccessfully applied for planning permission to build two dwellings on the site.

The evidence of user so far as it relates to the right claimed, shows that user was appurtenant to the family farm and not in gross. It is apparent that at least since 1920 the site was of ~~22~~²³ commercial value and Mr Trenchard as owner and Lord of the Manor had no interest in putting a stop to such user as the parishioners made of the land. In my opinion the user alleged falls far short of what is required to support a presumed Crown Grant or Charitable Trust which are the only ways in which a fluctuating body could acquire the right claimed.

For these reasons I refuse to confirm either 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

29th

day of

September

1980

George Herbert

Commons Commissioner