



Reference Nos. 233/D/15-19

In the Matter of The Holme,
The Pound and Broadheath,
Shenstone, Lichfield District,
Staffordshire

DECISION

(on application by Shenstone Parish Council)

This decision relates to an application by Shenstone Parish Council to re-open the hearing I held on 14 December 1977 for the purpose of inquiring into disputes relating to the Land Section and Ownership Section registrations in Register Unit No. CL 76 in the Register of Common Land maintained by the Staffordshire County Council and to set aside my decision dated 13 February 1978 given upon the evidence and arguments at such hearing.

This decision should be read as supplemental to directions given by me about the said application: (1) upon representations made by correspondence in a letter dated 11 January 1979; (2) upon further representations made by correspondence in formal directions dated 13 September 1979; (3) upon representations made at a hearing in London on 25 November 1980 ~~and on 5th~~ in letters dated 11 and 23 December 1980; and (4) upon representations made by correspondence in a letter dated 4 March 1981, which said directions were sent to all the persons concerned.

As contemplated by such last mentioned letter I held a hearing in London on 10 April 1981 for the purpose of finally determining the said application. At this hearing: (1) Shenstone Parish Council were represented by Mr J Haggett solicitor of Moseley Chapman & Skemp, Solicitors of Lichfield; (2) Mr W J Ryman and Mr R M Foden were represented by Mr J Piper of Haden & Stretton, Solicitors of Lichfield; and (3) Mr A C Smith was represented by Mr A Barker of counsel instructed by Hand Morgan & Co, Solicitors of Stafford.

At the hearing Mr Haggett read 10 affidavits by Messrs Thomas, Hanbury, Simpson, Page, Sparshott, Frost, Povey, Addison & Leppard all sworn on 19 October 1980 and relied on the statements on pages 1 and 2 of my September 1979 direction. He claimed that the 1977 proceedings should be re-opened either (1) as of right for lack of any notice to the Parish Council about them; or (2) exercise of the discretion conferred by Regulation 21 of the Commons Commissioners Regulations 1971; or (3) under the inherent jurisdiction of a Commons Commissioner.

Mr Piper against these claims referred me to an affidavit by Mr Neville sworn on 9 March 1980 on behalf of the Parish Council, and he and Mr Barker made contrary claims; about ~~which~~ my views are ~~expressed in my direction~~ (the conflicting claims): —

As to (1) above: I am not persuaded that the 1978 proceedings were wholly void within the legal principles set out in *White v Weston* 1968 2 QB 647 so as to make it right wholly to set aside the 1977 proceedings without any evidence "of merits" such as is mentioned as a requirement in *Evans v Bartlan* 1937 AC 473, page 480.

As to (2) above: ^{for} the reasons given in my July 1978 direction I consider that the application dated 8 August 1978 of the Parish Council was made within the "days" fixed by the said regulation 21. It was conceded that Mr Piper and Mr Barker and if the regulation was applicable the affidavit of Miss Thomas showed the Parish Council ~~had~~ "sufficient reason for (their) absence" from the 1977 proceedings within the meaning of the regulation. As to the exercise of my discretion; the



circumstances of this case are sufficiently similar to those of White v Weston to be reason enough for my favouring the Parish Council if I can. I reject the criticism of the other affidavits read, as not clearly showing that the Parish Council would necessarily succeed at the hearing; to show so much would be more than is requisite, see notes in the Supreme Court Practice & RSC Order 13 rule 9; *The affidavits raise* → questions which might lead to the Parish Council at any new hearing being successful wholly or in part or at least (and this by itself is I think enough) ~~the~~ important parts of my February 1978 ~~written~~ decision ~~and~~ *being in some way corrected.*

As to (3) above:- As a general rule a subordinate tribunal, such as a Commons Commissioner, has given ~~the~~ decision is functus officio and cannot revise or alter it in any way, the remedy of an aggrieved party being by way of appeal or by application to the High Court to exercise its jurisdiction of reviewing acts of subordinate tribunals. There are exceptions to this general rule. No arguments were presented to me at the hearing as to the extent of these exceptions and being of the opinion ~~the~~ Parish Council succeed ~~under~~ the heading (2) above, no useful purpose would be served by my considering ~~the~~ *of* any such inherent ~~jurisdiction~~. All I need say is; if contrary to my opinion regulation 21 is not applicable to this case, I have inherent jurisdiction exercisable at my discretion, I would exercise it favourably to the Parish Council.

Because the Parish Council have conceded that my February 1978 decision so far as it relates to part of the Unit Land therein called the Broadheath Piece was correct, no useful purpose would be served by my setting aside that part of my decision. Nor would any useful purpose be served by setting aside my decision so far as it related to the part of the Unit Land therein called the West of the Railway Piece and the East of the Railway Piece because as regards these pieces the Parish Council were successful. As regards the remaining pieces my decision that the application of the Parish Council succeeds.

Accordingly I re-open the hearing of 14 December 1977 and set aside my decision of 13 February 1978 so far as it relates to the registration of the Land Section of all the Unit Land except the pieces in my ~~decision~~ *decision* called West of the Railway Piece, the East of the Railway Piece and the Broadheath ~~and~~ *and* the registrations in the Ownership Section ~~as they relate~~ *to* any part of the Unit Land ~~other~~. The place, date and time of ~~a~~ further hearing which will now be requisite will be communicated to the parties concerned as soon as practicable. ~~The~~ *The* time of the preparation of this decision it was the intention to hold such further hearing on Tuesday 14 July next at St.ifford.

As to the costs of the said application ~~for~~ which I am now giving my decision:- At the ~~arranged~~ *arranged* hearing now being arranged, under Section 17 of the 1965 Act the costs ~~concerning~~ will be at the discretion of the Commons Commissioner who conducts it. I direct the costs of the persons represented before me at the April 1981 hearing of the said application be included in their respective ~~costs~~ *costs* of this ~~adjudication~~ *adjudication* hearing. ~~There was some discussion at the hearing as to whether I should except from this direction the whole or some part of the costs of those who had been unsuccessful in this decision, or unsuccessful at one or more of the various stages which have led up to it; upon consideration I do not think fit to take any such exception, so my direction~~ the costs of the said application from its commencement to its final disposal by this decision will be costs of the ~~future~~ *future* hearing now being arranged.



In case this decision is within regulation 30(1) of the said 1971 Regulations (as to this I express no opinion) I ~~concluded~~^{stated} that I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by ~~this~~^{any} 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 30th day of April 1981.

a a. Boden Fuller

Commons Commissioner