



COMMONS REGISTRATION ACT 1965

Reference Nos 203/D/7  
203/D/8

In the Matter of Bury Field,  
Newport Pagnell, Milton Keynes  
Borough, Buckinghamshire

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 to 10 and 11 to 180 inclusive in the Rights Section of Register Unit No CL. 4 in the Register of Common Land maintained by the Buckinghamshire County Council and are occasioned by Objection No 17 made by Mr Harold Hill Bailey and noted in the Register on 17 March 1971.

I held a hearing for the purpose of inquiring into the disputes at Aylesbury on 6 October 1977. At the hearing (1) Milton Keynes Borough Council (their predecessors Newport Pagnell Urban District Council were the applicants for the registration in the Land Section) were represented by Mr G Pettigrew solicitor, being the Solicitor of the Council, (2) Mr H Hill Bailey (the Objector) attended in person, (3) Bury Field Commoners' Association were represented by Mrs A M Durbridge a former member of their Committee (she was authorised in this matter by Mr W F Hunt their chairman), and (4) Mr Raymond Frederick Bailey (Entry No 168 in the Rights Section was made on his application) attended in person.

The land ("the Unit Land") comprised in this Register Unit is from north to south a little more than a mile long and in places more than half a mile wide; it contains (according to the Register) about 182.9 acres. Except as below mentioned it is all grass land, divided by a hedge (with a gate) into two pieces. The larger piece ("The Field") contains about 145 acres and is approximately triangular; its east side is a short distance (varying between about 300 and about 50 yards) from the River Ouse (part of the smaller piece and some meadows are in between); much of its south side is a short distance from the High Street (there are buildings in between); there is access from Mill Street (leading off the east end of the High Street) and from the below mentioned Car Park (near the west part of the High Street by the Town Hall). The other smaller piece ("The Meadow") is called Bury Meadow in the Rights Section of the Register; it is to the north of The Field and contains about 38 acres; it is bounded on the east by the River Ouse opposite where this River flows by Lathbury.

The description in the Rights Section of the rights registered (all attached to some land in Newport Pagnell) are all (except as below mentioned) to the following effect:- Over The Field, to stock one head of cattle from 14 May to 11 October on payment to the owner of the land of head money; horses 3/6d,



cows 2/2d, milking cows on Whit Monday pay 4d extra; and to continue the cattle up to 23 December on payment of half the above head money. Over The Meadow, the right to one equal part with all other persons for the time being entitled to a similar right, of grass (having stocked the Common) upon payment to the owner of the land at the rate of 6/10d per nominal acre. Exceptionally as regards The Meadow, the description in Entry Nos 1 to 6 inclusive and 160 to 180 inclusive is "the right to one rood of grass", instead of "the right to one equal part with all other persons..."; and exceptionally also "two rights" have been registered at Entry Nos 17, 51, 76, 90, 102, 107, 123, 127 (?4 rights), 135, 150 and 156 and "three rights" at Entry No 20.

In the Ownership Section, Newport Pagnell Urban District Council have been registered as owners of all the Unit Land.

The grounds stated in the Objection are:- "Objection is made and based entirely upon & within the requirements of the Common Land Act 1965 under which the above Registration was enacted (?executed) - And having secured Ministry Grant to Purchase the Common as Guardians of this Act for the purpose of protecting this Open Space - when not at any time have the Newport Pagnell Urban District Council ever intended to restore the conditions under which they secured this Grant". In the Objection paragraph 6 ("Land/Rights/Ownership") and paragraph 7 ("Registration entry numbers") have been left blank.

Mr Pettigrew suggested that Mr Hill Bailey should explain his Objection.

Mr Bailey mentioned Mr F W Bull (author of the below mentioned History), and said (in effect):- Before 1795 there was much more common land than now. The Lord of the Manor applied for an inclosure and succeeded except as regards Bury Field, which under the Act was distinctly to remain unenclosed. Subsequently in a period from 1866 to about 1899, there were various charters (he Mr Hill Bailey had seen two) by which rights of common were granted; the Lord of the Manor had no right to do this; under one of the charters he (the Lord of the Manor) could put a bull among the cattle! Beyond the Act the Lord of the Manor had no rights. As to the Car Park, he (Mr Hill Bailey) had never been informed of what was proposed. In 1967 (?1962) the Commoners' Association elected a new committee (?officers or chairman) and it became a commercial concern. He (Mr Hill Bailey) went to the Ministry; afterwards he saw Mr Hunt (the Association's chairman).

At this stage I asked Mr Hill Bailey what he wanted me as a Commons Commissioner to do. He said (in effect):- He wanted me to look at the 1795 Act about non-inclosure. He wanted me to notice what had been done on the Common during the war, particularly the factory built on it and the fences, and to order someone to remove the fences (?and factory). He wanted me after the inquiry to pursue the Commoners' Association and find out what they are doing. He wanted the common "to be a common; to return to what it was". He could not understand how the Car Park came to be on it. He did not wish to say any more. I asked Mr Hill Bailey whether in his view the land (the Unit Land) is a common. He said there is no question that it is an "open common; I want it to remain a common as it was and not to become what it is." At this stage he said that he had no axe to grind and retired to the back of the room. I understood he did not wish to say any more, although he did subsequently take ----> part in the proceedings.



Mr Pettigrew contended in effect that there was really no objection for me to consider; however because it seemed likely that the Unit Land was of considerable local importance, I suggested (without ruling against Mr Pettigrew's contention) that it might be in the public interest if he called evidence (perhaps briefly) as to the circumstances in which the registrations had been made.

Mrs A M Durbridge who has lived at the Mill House (near the southwest corner of The Field, by Mill Street) since 1938 (she is in the process of moving) in the course of her oral evidence produced a History of Newport Pagnell by Fredk Wm Bull (1900) and Mr Pettigrew read from it pages 179 et seq headed "BURY FIELD AND PORT FIELD". She said (in effect):- The owner of Mill House was entitled to two rights (registered at Entry No 51). They (since 1938) had never put any stock on the Unit Land or paid anything in respect of their right, yet she had always understood that a right was attached to Mill House. When they first went there, she understood that you did not have to graze yourself but could sell the right to someone who could graze. For two years they allowed a local butcher to exercise their right in return for a leg of lamb each year. During the war the land was requisitioned by the Ministry of Agriculture and Fisheries and farmed by the War Agricultural Committee; they paid a sum which was divided 48% for the Commoners and 52% for the landlord; during these war years the common holders merely received their share of this 48%. At the end of the war the affairs of the Common Holders were a little disorganised; the buildings referred to by Mr Hill Bailey had been put up by the War Agricultural Committee, and they were not removed although an undertaking had been given that they would be removed. After derequisitioning (she could not remember exactly when but thought it was about 1949 or 1950), the land-lord (then Mr M Knapp) let the land and continued to pay 48% to the Common Holders. In 1962 a new committee was formed of the Commoners' Association which sought to establish (among other things) who were the Common Holders and if possible to secure the removal of the buildings and the concrete approach road to them. The buildings occupy about 1686 square yards and the Committee was advised that the proportion of grazing taken by this area was so small compared with the rest of the land (180 acres) that the Common Holders had no substantial complaint and that by reason of the lapse of time since the end of the war it was too late to do anything. However a list (or lists) of Common Holders was prepared; this was published so that people could examine it. Ever since the war the Unit Land had been grazed by a tenant of the landlord (meaning the owner of the Unit Land; Newport Pagnell Urban District Council became the owner in 1969). The rent was divided 48% to the Common Holders. She remembered a football club used to play before the war on the Unit Land and there was some football there after the war; however there was a big foot and mouth disease scare and it was decided that it was unsafe to play.

After some discussion among those present, it was agreed that Port Field referred to in the 1900 History is west of the Unit Land.

After a short adjournment, Mr Durrant said that he had ascertained from the County Records that Port Field at Newport Pagnell was the subject of an Inclosure Act passed in 1794, that a copy of such Act was available, and he understood an Award was made under it in 1795.



Mr F Palmer who is a local government officer of the Milton Keynes Borough Council and who has been employed by the Newport Pagnell Urban District Council from 1940 up to the time when the Borough Council took over, in the course of his oral evidence produced a copy of a deed of covenant dated 14 May 1969 by the Newport Pagnell Urban District Council with the Buckingham County Council.

This deed recites a conveyance dated 3 April 1969 and made by Mr M P Knapp and others under which the said District Council in consideration of £30,000 became the owner of the Unit Land. By the deed, in consideration of £8,985 contributed by the County Council to the said £30,000, the District Council covenanted that the said land would not be used otherwise than for the purpose of a public open space or a public recreational pleasure ground without the consent of the County Council and that no differentiation should be made in the use of the said land as between residents in the urban district and residents in the remainder of the County.

Mr Palmer said (in effect):- When the District Council purchased they continued the practice which had been previously followed, of letting the grazing rights by public tender initially annually and later for periods of two years and then later for periods of three years and currently negotiations for 4-year letting have just been concluded; the rent is split 52% to the owners and 48% to the Common Holders. The buildings mentioned are open fronted brick buildings asbestos-roofed used originally by the War Agricultural Committee. When the District Council acquired the land, these buildings were subject to a lease to F James & Sons which still had about 4 or 5 years to run; they are still let but the rent of the buildings (£1,800 annually) is not shared with the Common Holders; they receive → 48% of the grazing rent (currently £3,550 annually).

Mr R F Bailey in the course of his oral evidence said he was interested not only because he had acquired a right about 6 years ago but because he is a member of the Milton Keynes Borough Council being the elected representative of the Newport Pagnell ward. He was anxious that the registrations should go through without any further delay and he explained to me his reasons, making a number of observations on the matters which had been previously discussed at the hearing.

On the day after the hearing accompanied by Mr Hill Bailey and by Mr Palmer I walked round The Field and viewed The Meadow from the above mentioned gate which leads into it.

Reading the grounds of Objection, without any explanation I find them incomprehensible; so to this extent Mr Pettigrew's contention as to the sufficiency of the Objection succeeds.

However under regulation 26 of the Commons Commissioners Regulations 1971, a Commons Commissioner may if he "thinks it just in all the circumstances" allow an objector to put forward additional grounds of objection not stated in the Objection. As I understood Mr Hill Bailey he wished me to find that the Unit Land had been irregularly used in that: (a) instead of being grazed by animals owned by Common Holders, it had become "commercialised" by becoming a source of income for persons who did no more than allow or not object to one person grazing the land; (b) the buildings ought not to be there and should be removed; (c) public access to the Unit Land was not as free as it might or could be; (d) the surface levels and the grass of the land might or could be improved for the public benefit; (e) the car park arrangements should not be as they now are.



In my opinion the word "Objection" in the 1965 Act and the Regulations made under it, mean objection to a registration made under the Act, see section 5. So a Commons Commissioner has no jurisdiction to consider an objection to the way in which common land is being used or dealt with unless such use or dealing in some way throws light on the question whether the registration should or should not have been made.

As to the Rights Section Entries:- There is no general rule that a right of common of pasture shall only be exercised by grazing animals belonging to the owner of the right; so long as the number of animals permitted by the right is not exceeded, the person entitled to the right may license another person to exercise the right, see *Davies v Davies* 1975 1 QB 172 at page 177. I know of no reason why a person entitled to a right should not accept money (or a leg of lamb) for licensing some other person to exercise it; indeed the circumstance that a person has been regularly paid a sum of money in respect of a right of common, is some evidence that such right exists.

As to the Land Section Entry:- None of the findings which Mr Hill Bailey asked me to make could lead to the conclusion that the Unit Land was not properly registered under the 1965 Act. I have no jurisdiction to regulate things done on or in relation to common land, and accordingly I refuse to make any findings such as Mr Hill Bailey suggested.

For the above reasons I decline to exercise any discretion I have under the said Regulation 26, and conclude that in these proceedings there is (as Mr Pettigrew contended) no substantial objection for me to consider. However whether or not the regulation requires or enables me to confirm the registrations without considering any evidence, I will express an opinion as to the effect of that given by Mrs Durbridge and Mr Pain.

The Rights Section Entries are substantially in accordance with the "careful statement" prepared by Mr W B Bull dated April 1872 and set out in the History (1900) produced. Milton Keynes Borough Council (the present owners) accept that the rights registered in accordance with the History are properly registered, and having regard to the acts done by their predecessors as described by Mrs Durbridge, I find it difficult to imagine how they could have done otherwise. I have looked at the Newport Pagnell Inclosure Act 1794 (34 Geo 3 c. lxxxiv); it provides for the inclosure of Port Field, then being arable land, ley meadow, pasture and swerd ground of about 900 acres; I can find nothing in the Act about Bury Field or Bury Meadow; the 1795 Award, which was not produced to me, may mention it. However this may be, the circumstance that the owners of the Unit Land (and others) have for many years acted on the basis that it is subject to rights of common as claimed is evidence that the rights exist; ~~the~~ claim is not based only on the History (Mr Hill Bailey suggested that this History was or may be in some respects unreliable); it is based on the History and the activities of the successive owners and others being in accordance with the History. If Mr Hill Bailey had made no objection, the Rights Section Entries would have become final under section 7 of the 1965 Act; in my view I can, notwithstanding the lack of detail in the evidence of Mrs Durbridge and Mr Pain, properly give full effect to such evidence, and find as I do, that the rights do exist as claimed and that the Rights Section Entries were properly made.



As to the Land Section Entry, Mr Hill Bailey handed me a newspaper cutting stating that a "Royal Commission that inquired into the question of rights of way and open spaces especially mentions Bury Field at Newport Pagnell is not common land as usually understood by law". The only reference I can find to Bury Field in the Report of the Royal Commission on Common Land 1955-58, is in Appendix IV, being a memorandum by Professor L Dudley Stamp, on The Geographical Distribution of Common Land; he says (at page 215): "In north of Buckinghamshire, outside the Chiltern country, the few large commons include...the carefully controlled waterside grazing of Bury Field, Bury Meadow and Midsummer Holme at Newport Pagnell (186 acres in all) some of which is used for cricket and other games but is far from being the common land generally understood by the public". I am concerned, not with the general understanding of the public, but with the definition of "common land" in section 22 of the 1965 Act; "...means - (a) land subject to rights of common...". Having concluded for the reasons given above that the Unit Land is subject to rights of common, it necessarily follows that this Entry was properly made.

For the above reasons I confirm all the registrations without any modification.

For the benefit of those who were criticised by Mr Hill Bailey (as set out above) for their management of the Unit Land, I record that it must not be thought that I agree with these criticisms. Mr Pain made some observations in answer, but I refused to allow him to proceed, because for the reasons above stated, the criticisms were outside the scope of the 1965 Act. In my opinion the criticisms should not have been made in these proceedings.

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 2nd day of November — 1977

a. a. Baker Fuller

Commons Commissioner