



In the Matter of land in front of the
Bull Hotel, Oxford Road, Gerrards Cross,
Beaconsfield District, Buckinghamshire

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.180 in the Register of Common Land maintained by the Buckinghamshire County Council and is occasioned by Objection No. 119 made by De Vere Hotel and Restaurants Limited and noted in the Register on 2 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Aylesbury on 15 January 1976. At the hearing (1) Gerrards Cross Parish Council on whose application the registration was made were represented by Mr C J Gooderich solicitor of Stewart-Wallace & Co Solicitors of Gerrards Cross, (2) De Vere Hotel and Restaurants Limited ("the Objectors") were represented by Mr G Ryan of counsel instructed by Michael Garston Solicitors of London, and (3) Buckinghamshire County Council as registration authority were represented by Mr D M John solicitor of the County Secretary's Office.

The land ("the Unit Land") comprised in this Register Unit contains (according to the Register) about .41 of an acre and is situate in front of the Bull Hotel, northeast of the Hotel buildings and southwest of the Oxford Road, the A40(T) road. The grounds stated in the Objection are: "That the land...(meaning the Unit Land) was not common land at the date of registration nor at any other material time".

Reference was made to a letter dated 24 September 1968 in which the Parish Council Clerk informed the County Council that the Parish Council had withdrawn their application. Mr John suggested that I refuse to confirm the registration. Mr Ryan and Mr Gooderich agreed. Nobody at the hearing suggested that I should do otherwise.

In these circumstances and notwithstanding that I have had no evidence about the Unit Land, I conclude that I ought to refuse, and accordingly I do refuse to confirm the registration.

Mr Ryan asked for an order under section 17 of the 1965 Act that the Parish Council do pay the costs incurred by the Objectors in respect of these proceedings. In the course of the following discussion, the documents specified in the Schedule hereto were either produced or mentioned by him, Mr John, or Mr Gooderich.

I accept that if the Parish Council had not made any application to register the Unit Land as common land, it would not have been registered, there would have been no reference to a Commons Commissioner, and the Objectors' would not have incurred any costs. In my opinion this circumstance does not show by itself that the Parish Council ought to pay the Objectors' costs. I have not overlooked that in proceedings in the High Court, and in many other tribunals, as a general rule an unsuccessful plaintiff is (in the absence of special circumstances) ordered to pay costs. But in



my view the registration process which is regulated by the 1965 Act and the Rules made under it, and which is started when an application for a registration is made, is not analogous to proceedings in the High Court from the start, although it may become so if, for example, the applicant takes up an attitude at or before the hearing before the Commons Commissioner which shows the costs of some other party are properly attributable to the attitude of the applicant and to nothing else. The scheme of the 1965 Act and the Rules made under it in effect provide for three periods:- The first period which starts with the application and ends with the Objection, and during which there is a chance that no one will object to the application so that the resulting provisional registration may become final without formality; during this period the provisional registration made upon the application cannot be withdrawn. The discussion period, which starts with the Objection (in this case August 1972) and ends when the registration authority becomes obliged to refer the dispute to a Commons Commissioner (in this case 31 July 1973, the actual reference was made on 17 December 1974); during this period the registration authority may (but is not obliged) to cancel or modify a registration on the request of the applicant. The reference period, after the matter has been referred to a Commons Commissioner; this period must conclude with a hearing before a Commons Commissioner unless he gives an agreed decision under regulation 31 of the 1971 Regulations (such a decision in this case could only have been made with the consent not only of the Objector and the Parish Council but also of the County Council and the District Council). Bearing in mind that under the Act, common land and rights of common may be altogether lost if the registration is not made in time, and that there is much land as to which without a costly investigation certainty is impossible, an applicant cannot be criticised for acting on probabilities. It would I think be quite contrary to the scheme of the Act if an applicant were liable to costs merely because he ultimately discovers or is ultimately held by a Commons Commissioner to have been mistaken.

Of the two contentions most replied on in support of the claim for costs, the first was that the application must have been made irresponsibly because it was made in June 1968 and withdrawn in September 1968. I accept that if an application is made without reasonable grounds it may be possible to conclude that any exchange of information during the discussion period would be a waste of time and that the applicant as regards costs should from the start be treated as a hostile litigant. In my opinion this is not such a case. The withdrawal was made during the first period. When informing the County Council, the Parish Council said: "This is due to our having received proof of title to the land". The solicitors for Express Dairy Company Limited (I was told that the Bull Hotel was then owned by Spiers & Pond one of their subsidiaries) when informed of the withdrawal replied by thanking the Parish Council Clerk for his helpfulness. The Unit Land is shown on the Register map as opposite the northwest end of about 80 acres of land known as Gerrards Cross Common. On appearance alone, the Unit Land might have been historically and might therefore in 1968 still be part of this large area. In the ordinary way members of a parish council would be acquainted with the probabilities, and I see no reason for inferring that the Gerrards Cross Parish Council were in any way negligent about the application now in question. Accordingly I reject the suggestion that the Parish Council were ever irresponsible about this (or as far as I know any other) matter.

The second contention in support of the claim for costs was that the Objectors (or their solicitor) genuinely and unsuspectingly assumed that they had on their hands a contest and only discovered that they had not (after they had incurred costs) as a result of the reply dated 30 December 1975 to their letter to the Parish Council dated 19 December 1975 and that this mistaken assumption was due to the failure of the Parish Council Clerk to write to the Objectors or their solicitor when he



received from the County Council the notice dated 4 August 1972 of the Objection, and I suppose also failed to write to the Objectors when he received from the Clerk of the Commons Commissioners his letters dated 21 April 1975 and 28 November 1975 notifying first that the reference had been made and secondly that the hearing would be 15 January 1976.

I accept that if the Parish Council Clerk had written to the Objectors or their solicitors the Objectors' mistaken assumption would have been dispelled. But I do not accept that this inactivity of the Clerk was the only inactivity which contributed to the mistaken assumption. The Objectors or their solicitors when they purchased the Hotel in 1970 might when making their other local searches have searched in the 1965 Act Register (I was told that it was their search in July 1972 which disclosed the registration) and might then have asked their vendors about the registration and then have learnt of the withdrawal. When the discussion period started the Objectors' solicitors might have realised that they knew nothing of the case of the Parish Council and had in their grounds of objection stated nothing about their own case. There is nothing in the Act or the Rules stating who is to start the discussion; the circumstance that the County Council sent to the Parish Council Clerk a copy of their letter dated 21 August 1969 to the solicitors for the Express Dairy Co did not I think impose on the Parish Council or their Clerk any duty to make a note to the effect that it was for him when the discussion period began to initiate the discussion: at that time they had, as far as I know, no reason to suppose that the ownership would not continue as it was in 1968.

The 1965 Act and the Rules made under it were at all now relevant times new and not generally understood even by persons with high professional qualifications; it would I think be quite unrealistic to describe the inactivity of the Parish Council or their Clerk or the inactivity of the Objectors or their solicitors as involving any sort of breach of duty as the word "duty" is generally understood. The best I can do on behalf of the Objectors is to consider whether the inactivity of the Parish Council or their Clerk is, as the decisive or the main cause of the mistaken assumption, significantly different from the inactivity ~~from~~ the Objectors or their solicitors; that is significantly different in relation to the discretion conferred on me by the said section 17. In my opinion there is no significant difference.

For the above reasons I do not think fit to make any 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.

SCHEDULE

1968

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| 26 June | Application by Parish Council for registration |
| 23 July | Registration made, CL.180 |
| 20 September | Letter from Parish Council to Express Dairy Co Solicitor notifying resolution of Parish Council to withdraw their application |



- 24 September Letter from Parish Council to County Council withdrawing application
- 24 September Letter Express Dairy Co Solicitor to Parish Council thanking for helpfulness
- 10 October Letter from Express Dairy Co Solicitor to County Council referring to withdrawal and assuming that "in due course you will be sending me the necessary notices etc to enable me to arrange for this to be done"

1969

- 21 August Letter County Council to Express Dairy Co Ltd (copy to Parish Council) (replying to letter of 10 October 1968) "After your Company has given formal notice of objection to the Parish Council, the County Council could on the application of the Parish Council cancel the provisional registration..."

1970

- 27 July Conveyance by Spiers & Pond Ltd to Objector (not produced)
- 1 May Second Objection period begins

1972

- 13 July Official certificate of search issued to Objector (not produced)
- 28 July Objection, O.119
- 31 July Second Objection period ends
- 2 August Objection noted in the Register
- 4 August Notices of Objection sent by County Council to Parish Council

1974

- 17 December Reference to Commons Commissioner

1975

- 21 April Notification by Clerk of the Commons Commissioners to the Parish Council and others of reference
- 28 November Similar notification of hearing 15 January 1976



- 19 December Letter Objectors' solicitor to Parish Council asking for withdrawal of application in order that prospective hearing may be avoided, alternatively furnishing grounds upon which the Parish Council would rely
- 30 December Letter Parish Council to Objectors' solicitors sending copy of letter of 24 September 1968

Dated this 2nd day of February — 1976

a. a. Boston Fuller

Commons Commissioner