



COMMONS REGISTRATION ACT 1965

Reference Nos 31/D/10
31/D/11
31/D/12
31/D/13
31/D/14
31/D/15

In the Matter of Layters Green,
Chalfont St Peter, Chiltern
District, Buckinghamshire

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section of Register Unit No CL. 58 in the Register of Common Land maintained by the Buckinghamshire County Council and are occasioned by Objection No 65 made by Messrs D M Welch, W A Welch and B M Welch, Objection No 66 made by Lieutenant-Colonel Richard Joselyne, Objection No 67 made by Mr Frank Hill, Objection No 68 made by Mr & Mrs D H Ayling, Objection No 69 made by Mr Ronald Thomas Staines, and Objection No 70 made by Mrs M J Joscelyne and all noted in the Register on 21 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Aylesbury on 15 January 1976. At this hearing Buckinghamshire County Council were represented by Mr D M John Assistant County Secretary and their Solicitor, and Mrs M V Weare of 53 Layters Close, Chalfont St Peter attended in person. The file contained numerous letters from Mrs Weare and others including some letters suggesting that these disputes might be disposed of by agreement between Chalfont St Peter Parish Council on whose application the registration had been made, and the Objectors. Mr John said he was not prepared to agree to these disputes being disposed of under regulation 31 of the Commons Commissioners Regulations 1971 (decision by consent) until the County Council had considered the information which Mrs Weare had supplied, and he therefore asked for an adjournment. Accordingly (Mrs Weare agreeing), I adjourned the proceedings.

I held a further hearing at Aylesbury on 22 June 1976. At this hearing

- (1) Mr Derek Malcolm Welch, Mr William Arthur Welch and Miss Betty Margaret Welch
- (2) Lieutenant-Colonel Richard Joselyne, (3) Mr Frank Hill, (4) Mr Donald Harold Ayling and Mrs Joyce Pamela Ayling, (5) Mr Ronald Thomas Staines, and
- (6) Mrs Margaret Joyce Joscelyne were all represented by Mr D Hands of counsel instructed by Sedgwick Turner Sworder & Wilson Solicitors of Watford, (7) Chalfont St Peter Parish Council were represented by Mrs M^H Harris their clerk,
- (8) Buckinghamshire County Council were represented by Mr John as before and
- (9) Mrs Weare attended in person.



The land ("the Unit Land") comprised in this Register Unit is situate on either side of Layters Green Road where it runs southwest just outside the built up area of Chalfont St Peter. The Unit Land is about 350 yards long and (if the road be included) at most places about 50 yards wide; according to the Register it contains 3.68 acres. It is open to the road and mostly grass land; there are a number of trees and some scrub; it is crossed by tracks and paths leading to nearby dwelling houses and other buildings. The Unit Land includes a pond, having an area according to the OS map of 0.524 acres.

The grounds of Objection Nos 65, 66, 67, 68 and 69 are in effect that some part shown on a plan attached was not common land at the date of registration, the Objector having an absolute title to the part at the Land Registry. The grounds of Objection No 70 is that the land shown on the attached plan (being the whole or nearly the whole of the Unit Land) was not common land at the date of registration.

At the beginning of the hearing, I ruled that under the Commons Commissioners Regulations 1971, Mrs Weare had no entitlement to be heard, she not being one of the persons mentioned in regulation 19(1).

Mr John explained that the County Council became concerned with these proceedings when they were asked to agree to a Commons Commissioner deciding to refuse to confirm the registration apparently on the basis that the Unit Land could not be "waste land of a manor" within paragraph (b) of the definition of common land in section 22(1) of the 1965 Act, because even assuming that it was before 1938 waste land of the manor then owned by Rev C A G Moore, it had ceased to be such when as the result of a conveyance dated 1 January 1938 and made by him to Watson Investment Company Limited, the ownership of the Unit Land and the ownership of the manor were severed; he was doubtful whether such a basis was correct and he referred to my decision dated 26 March 1975 in re Yateley reference 214/D/9-13. Believing Mrs Weare, although not entitled to be heard, could give helpful information, he would in exercise of his Council's entitlement to be heard call her as a witness.

Mrs Weare, who is 68 years of age, was born in the Parish and has lived there all her life, in the course of her evidence produced:- (1) a map of the Parish dated 1840 and described as made by the Poor Law Commissioners, (2) some extracts from the Tithe Award for the Parish of Chalfont St Peter, (3) a copy of the County Development Plan as amended to 1958, (4) a copy of a map dated 3 March 1839 showing the estate called Starwell, Mumford and Layters Green, the property of Wm Jones 1838, (5) a copy of the Scheme made in pursuance of the Commons Act 1899 and approved on 3 March 1913 by the Board of Agriculture and Fisheries for the regulation of the Commons of Chalfont St Peter and of the Byelaws made on 6 April 1914 thereunder. She said (in effect):- As she first remembered the Unit Land, at both ends there were across the road gates, being just stone ports with young saplings passed through. During the 1914-18 war, these were replaced by five bar gates, erected (so she understood) by Rev Moor (he died in 1940) or his predecessor. He was Lord of the Manor. The five bar gates went in the early years of the 1939-45 war. Up to then cattle grazed the Unit Land (between the gates), mostly from Hollytree Farm (then farmed by Mr Darvell); Mr Green was the head cowman; cows were driven there daily and collected for the afternoon milking. Mr Green did this ever since she was a child; it was "a common right", there was



not so much traffic(along the road) in his day as there is now. There was other grazing: goats and ponies from the cottages; also pigs and poultry; the pigstys were at the "O" of "Orchard" on the 1839 map (at the south end of OS plot no 449, a little to the west of the southwest part of the Unit Land). There may have been other cattle but Mr Darvell's were the only herd.

Although Mrs Weare has no entitlement to be heard, I have under the 1971 Regulations a discretion as to evidence, see regulation 19(5). When asked if she wished to add anything, she said (among other things):- All the local people used to go down and get twigs and take them home for firewood. People gathered blackberries and elderberries (Mrs Weare produced a bottle of slow wine she had made in 1968). In the old days, we fished in the pond for carp. There used to be a fun fair three times a year on Gold Hill Common (not far away from the Unit Land); the men (bringing the chair waggons etc) used to stop on the Unit Land, grill steaks they had bought elsewhere; this would be until just after the 1914-18 war. Up to 1920 there was another industry at Layters Green: straw plaiting; they used the water from the pond (on the Unit Land) to keep the straw damp. "And of course we played on the Unit Land...it has always been common land; it was only enclosed for grazing (by the gates mentioned): from time immemorial; it was not just waste; it was common land; it has been for centuries".

Mr E J Warren a member of the firm acting as solicitors for the Objectors produced land certificates (or copies) showing the title of the Objectors to the land adjoining the Unit Land and to the parts of the Unit Land mentioned in their Objection:- Messrs Welch of Layters Green Farm (of the two pieces mentioned in the Objection, the smaller on the north is not included in their Land Certificate), Colonel Joscelyne of Willow Tree House, Colonel and Mrs Joselyne (including the pond and land to the northwest), Mr F Hill of Orchard House, Mr & Mrs Ayling of Five Dormers, Mr R T Staines of Greengarth. A substantial part of the Unit Land was not included in the Certificates produced. It appears from the Certificates or some of them that each registered owner traced his title under a transfer made by Watson Investments Company Limited, which transfer contained a covenant with the Company to the effect that the transferee would not excavate or erect or place any building, or obstruct the access of the public to the part of the Unit Land thereby transferred.

Mrs M J Joscelyne who has lived at Willow Tree House since 1953 gave oral evidence in the course of which she described the Unit Land and how it had been used since she had known it.

Mr Hands read an affidavit sworn 21 June 1976 by Mr R F Hill who was born in 1905 and who has lived by the Unit Land ever since, first at 5 Dormers and since 1956 at The Orchard.

At the conclusion of the evidence, Mr Hands said (in effect):- It was agreed that before 1 January 1968 Rev Cyril Ashton Glover Moore, who then conveyed the Unit Land and some adjoining land (including all the land near the Unit Land now owned by the Objectors) to Watson Investment Company Limited, was then Lord of the Manor of Chalfont St Peter and that the Unit Land was waste land of the Manor. He understood that the Company intended to develop the land so conveyed, but was prevented by the war. Mr Hands contended that by 1965 the Unit Land had ceased in any sense to be waste land of a manor by virtue of the severance of ownership, and that it is only open land as a result of the above mentioned covenant made with the Company. He did not concede that any member of the public had any right to enforce the covenant, although it might be that the District Council having acquired some of the land could do so. After Mrs Weare had addressed me, Mr John said being uncertain whether the 1913 Scheme included the Unit Land, he would make enquiries of the Ministry of Agriculture.



Mr John suggested that because re Yateley was then under appeal to the High Court, I should postpone my decision until after the High Court had considered it. He contended (in effect) that if the severance in 1938 of the Unit ^{ownership of the} Land from the ownership of the Manor was, as a matter of law, irrelevant, the evidence shows that the Unit Land was and still is waste land of a manor. The County Council say the Unit Land does not form part of a highway (the made up carriageway which runs the length of the Unit Land is highway, and has been maintained as such during the last century; this way is not included in the registration).

Mrs Harris agreed with Mr John. Mr Hands agreed that I should postpone my decision until judgment had been given in the appeal in re Yateley.

On 25 June 1976 I inspected the Unit Land.

In a letter dated 25 August 1976 the County Secretary sent me a copy of a plan (obtained from the Public Record Office) referred to in the said 1913 Scheme and a copy of a amending Scheme dated 11 December 1954. Clearly the Unit Land is not within the Scheme.

On 5 November 1976 judgment was given in the High Court on the appeal in re Yateley, see 1977 1 ALLER 505, and on 21 March 1977 judgment was given in the High Court as to the effect of the severance of land registered under the 1965 Act as common land from the ownership of a manor on an appeal in re Chewton, see Times Newspaper 22 March 1977.

In accordance with the judgments of the High Court on these two appeals, I conclude that the severance affected by the 1938 conveyance is, as a matter of law, irrelevant in these proceedings. From the documents produced by Mrs Weare, from her oral evidence and from what I saw of the Unit Land on my inspection, I conclude that the Unit Land has at all relevant times been waste land of a manor within the meaning of these words in section 22 of the 1965 Act. I accept the argument of Mr John that the gates described by Mrs Weare do not indicate that the Unit Land was so enclosed as to become occupied; in the Tithe Award, the Unit Land is treated as not titheable; the gates merely show that the carriageway was then a gated highway.

For the reasons set out above I confirm the registration without any modification.

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 14/6 day of June 1977

a. a. Baden Fuller

Commons Commissioner