



COMMONS REGISTRATION ACT 1965

Reference No. 37/D/85

In the Matter of land off Highgate
Road, Forest Row, Wealden District,
East Sussex

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL69 in the Register of Common Land maintained by the East Sussex County Council and is occasioned by Objection No. 11 made by Forest Row Hotel Company Limited and noted in the Register on 19 January 1970.

I held a hearing for the purpose of inquiring into the dispute at Uckfield on 6 April 1982. At the hearing (1) Forest Row Parish Council on whose application the registration was made, were represented by Mr P T Bilson their clerk; and (2) Mr Charles Gould Hunt and Mrs Patricia Margaret Hunt of Ashdown Forest Golf Hotel, Chapel Lane, Forest Row, as successors of Forest Row Hotel Company Limited ("the Objectors"), attended in person.

The land ("the Unit Land") in this Register Unit is a strip a little under 80 yards long from north to south and about 15 yards wide. Its south end is open to a road which may be regarded as the east end of Highgate Road a rough track (usable by motor cars but not made up and very uneven) which starts on the A22 road, or as the south end of Chapel Lane a well made up side road which runs between a built up area (dwelling houses). On its west side is land (for the most part narrow) by the Hotel building, by some buildings (formerly stables and coachhouse) now being reconstructed and by two dwellinghouses. On its north side is the fence of the front garden of Dunsdale, another dwelling house. On its west side is land held with a dwellinghouse whose principal access is apparently elsewhere; on this land are several garages or sheds for which the Unit Land is apparently the only access.

In the application made on 22 May 1968, the Unit Land is included among six other pieces of comparable size and shape, some distance from each other, and therein described as "Waste land of the Manor of Duddleswell i.e. odd small pieces of unenclosed waste land in the parish of Forest Row". There are no Entries in the Rights Section. In the Ownership Section, the Hon. William Herbrand Sackville commonly called Lord Buckhurst is registered as owner. The grounds of Objection are: "That the land edged red on the attached plan ... which form part of the property known as the Ashdown Forest Hotel ... was not common land at the date of registration and is not common land". The land so edged includes the whole of the Unit Land (not merely that by the side of the Hotel buildings) and perhaps also a narrow strip outside the west boundary of the Unit Land.

In support of the registration and against the Objection oral evidence was given by Mr P T Bilson in the course of which he produced (1) a proof of his evidence, (2) a copy of a conveyance dated 26 January 1897 by which Frederick Dale Bannister conveyed land being part of Tomsetts Bank Farm, having a frontage on the south to Ashdown Forest of 120 feet and a depth of 243/257 feet to The Southdown and



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East Grinstead Breweries Limited; (2) a copy of a conveyance dated 25 May 1964 by which Ashdown Forest Hotel Limited conveyed land having a frontage on the south side of Ashdown Forest of 120 feet and a depth of 201/205 feet to Henry Blakeney Luff and Alfred Frederick Parker; and (4) a copy conveyance dated 18 September 1968 by which they conveyed the same land described referentially to Forest Row Hotel Company Limited. Mrs P M Hunt and Mr C G Hunt then gave oral evidence in the course of which they produced a draft of the agreement for sale by which they and Mr and Mrs J P Harding in August 1978 purchased the Hotel (they have since bought out Mr and Mrs Harding).

After the hearing I inspected the Unit Land.

As to the Unit Land ever having been part of the property known as the Ashdown Forest Hotel (as in the Objection alleged):-

Mr Bilson said that from 1972 to February 1974 the Parish Council enquired of the Objectors about the grounds of their Objection as it was not contested that the Hotel had rights of access over the Unit Land, and it was not until May 1973 that they received from the Objector's Solicitors copies of the 1897, 1964 and 1968 conveyances he had produced. The 1897 conveyance included a grant of a general right of way over:- "the road or proposed new road delineated on the said plan and therein coloured brown" and a covenant by F D Banister that he would before 30 June 1897 make up and construct the road "with ordinary and suitable metalling and with proper footways on either side"; the land so coloured included the Unit Land and also land of the same width to the north. The parcel of the 1964 conveyance included a general right of way "upon the road on the east side of the premises".

As I understood Mr and Mrs Hunt they came to the hearing intending to take no part in the proceedings and having previously consulted the solicitor who advised them when they purchased the Hotel. They said (in effect):- They thought the conveyances copies of which were produced by Mr Bilson were held by their solicitor, but they had not thought of bringing them to the hearing as they never intended to make things difficult for the Parish Council. Since their purchase, they assumed they had a right of way over the Unit Land (or at least the part by the Hotel), and had so used it. Hotel guests parked their cars on it. Those living in the houses fronting on the Unit Land and those using the sheds and garages above mentioned also used the Unit Land, and they and members of the public from elsewhere parked their cars on the Unit Land. The old stables and coach house now being re-built (they are within the 1964 conveyance land), are not now part of the Hotel ("unfortunately they were sold off before we had a chance of buying them"). They keep the part by the Hotel of the Unit Land in good condition: twice a week a man cleans it and sweeps it down.

I conclude that the Objectors under their title deeds had in the Unit Land no interest greater than a right of way over it. When I made my inspection, I noticed that the surface of the Unit Land (apart from a small strip, in places perhaps a ditch, on the east side) was in good condition apparently made up well enough for the present use. According to my recollection Mr and Mrs Hunt said they had arranged for this; however this may be, in the absence of any evidence, I conclude that the Objectors never had any possessory or other title to the Unit Land and that accordingly it did not (as alleged in the Objection) form part of the property known as Ashdown Forest Hotel.



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As to the Unit Land ever having been "waste land of a manor"; these words being the only now relevant part of the 1965 Act definition of "common land":-

Mr Bilson said (in effect):- In October 1966 the Agents of Lord Buckhurst, he being locally reputed to be Lord of the Manor of Duddeswell, approached the Parish Council about odd pieces of land which appeared to have no recognisable owner, and in March 1968 asked whether the Parish Council claimed any title to the Unit Land, and saying that if they did not, it not appearing to belong either to the Hotel or to the adjoining property, they would assume it was part of the waste of the Manor. The Parish Council did not claim title, so on this basis they applied for the 1965 Act registration.

As to the present day position, he understood that the four private residences have a right of way over the Unit Land and that their occupiers are concerned as to the preservation of their rights so the Parish Council believes it is acting in their interest and in the interest of all other parishioners in seeking to maintain the registration, they being the natural custodians of rights which are exercised by many people in common.

Bearing in mind that if the Objection had never been made, the registration would under section 7 of the 1965 Act have become final without any reference to a Commons Commissioner, I was at the hearing in the absence of any support for the Objection inclined to the view that I had evidence enough of the Unit Land being at the date of registration and now, waste land of a manor. But during my inspection I formed a different opinion, because the Unit Land appeared to be a road and quite unlike extensive open grassland on the opposite side of Highgate Road which appears to be and to have been much used by the public in general (except the parts used for cricket from the nearby pavilion and for golf from the nearby Royal Ashdown Forest Golf Club House), and quite unlike anything in popular language described as waste land of a manor. The copy of the 1897 conveyance now seems to me cogent evidence that at that time the Unit Land as well as that which was thereby conveyed and on which the Hotel now stands and also much other land to the north and west was part of Bank Farm owned by F D Bannister and therefore could not then have been waste land of any manor. Although at the date of registration many thought that land which could popularly be described as common land came within the words "waste land of the manor" the Court of Appeal has made it clear that none such land was properly registrable unless at the time it was "connected with a manor" see re Box 1980 1CJ 109. I realise that Mr and Mrs Hunt and those now owning or occupying the lands fronting the Unit Land may if they cannot agree amongst themselves and with any local authorities which may be concerned, may have difficulties in maintaining the Unit Land for the benefit of themselves or for the public; but however this may be I shall not help the resolution of these difficulties by allowing the Unit Land to remain on the Register with no better result than by section 10 of the 1965 Act it will thereby be deemed to be something which it is not.

For these reasons I refuse to confirm the registration.

Because at the hearing Mr Bilson may have been misled as to the decision I was likely to give, I give to the Parish Council, to Mr and Mrs Hunt and to Lord Buckhurst liberty within six weeks of the date on which notice of this decision is sent to them to apply to the Commons Commissioner that the hearing be re-opened so that they can if they think fit offer further evidence or argument in support of the registration. Any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners.



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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 1st — day of July — 1982

A. A. Baden Fuller

Commons Commissioner