



COMMONS REGISTRATION ACT 1965

Reference No. 212/D/264

In the Matter of land fronting
Rent Cottage, Mount End, Theydon Mount,
Epping Forest District, Essex

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 289 in the Register of Common Land maintained by the Essex County Council and is occasioned by Objection No. 381 made by the said Council and noted in the Register on 18 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Chelmsford on 11 November 1981. At the hearing Essex County Council were represented by Mr S Gardner administrative assistant (countryside) in their Chief Executive and Clerks Department. Also present were Miss Dora Fathers of 12 Theydon Mount and Miss Joy Darby of 42 Theydon Mount.

The registration was made on the application of Theydon Mount Parish Council. I have a copy of a letter dated 4 November 1981 from the County Council to the Parish Council in which they said (in effect):- The County Council as highway authority after further investigations have decided not to pursue their Objection. Representations were received from Mr Fathers of Yew Cottage, Coopersale Common that this land was an area where people played and which his father for 40 years maintained. A Miss J Darby wrote to say that for generations this piece of land has been known as "the green" on which cricket was played and fireworks were had. Even open air meetings were held on it. Against this the Council as highway authority, consider it to be part of the highway and over the years have issued various statutory consents governing its planting and maintenance. The Parish tithe map shows (without tithe charge) a much larger area of land than exists today. Untithed land on that map covers both common land and public roads. At least two of the enclosures against this area are described as "off waste".

Miss Fathers said that Mr Fathers mentioned in the letter was her brother. And Miss Darby said that she was the Miss Darby also so mentioned.

Mr Gardner confirmed what was said in the said letter adding that having regard to section 21(2) of the 1965 Act, it was not necessary for the County Council in these proceedings to claim that any part of the land was highway because my confirmation of the registration would not preclude the County Council in other proceedings so claiming.

Apart from the 1965 Act, land could be both highway and common land; and indeed many commons are intersected by tracks and footpaths which are or may be highways. Although the definition in section 22 of the Act of "common land" expressly excludes "any land which forms part of a highway", section 21 (quoted by Mr Gardner) in effect ~~leaves~~ leaves persons concerned with a registration such as that with which I am now dealing of ~~the~~ the burden of having to consider the highway

relieves



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position. Therefore putting highway considerations on one side, upon the investigations made by the County Council, I conclude that this registration was properly made, and accordingly I confirm it 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 3rd day of December 1981

a. a. Baden Felle

Commons Commissioner.