



COMMONS REGISTRATION ACT 1965

Reference No. 212/D/192-193

In the Matter of Rogues Green, Bardfield,
Saling, Braintree D

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 275 in the Register of Common Land maintained by the Essex County Council and is occasioned by two Objections (1) No. 112 made by R Randell and noted in the Register on 27 October 1970, (2) No. 202 made by Essex County Council and noted in the Register on 11 November 1970.

I held a hearing for the purpose of inquiring into the dispute at Chelmsford on 21 January 1981. The hearing was attended by Mr S J Gardner, Senior Administration Officer of and representing Essex County Council, and by Mr H G Austin, Chairman of Bardfield Saling Parish Council.

The applicant for registration was Mr J Turnbull, who I was told has died. Mr Rendall died in 1974 and his Executors were not present or represented.

The Objection (No. 202) is by Essex County Council and is on the ground that the land ("the Unit land") was not common land. There are no rights of common registered, and accordingly the Unit land could only qualify for registration if it were "waste land of a manor". Mr Gardner's case was directed, not to disproving that it is waste land of a manor, but to showing that it is land forming part of a highway and for that reason, excluded from the definition of common land in the Commons Registration Act 1965. Evidence was given by Mr G R Steggall, an administrative assistant in the office of the Chief Executive and Clerk of the County Council.

The Unit land is a strip, varying in its width, which at its NE end leads on to a roadway; at the other end it reaches the parish boundary, beyond which there is a track or lane (not part of the Unit land) which continues in the direction of Stebbing. In the revised definitive map of public rights of way made by the County Council in January 1963 there is recorded on the strip a road used mainly as a public path, and this by virtue of S. 32(4) National Parks Access to the Countryside Act 1949 is conclusive evidence that there was then a highway as shown on the map. The further review carried out in 1971 by the County Council pursuant to the Countryside Act 1968 resulted in a revised draft map showing the Unit land as a byway open to all traffic and this, on publication of the definitive map will be conclusive evidence of the existence of a public right of way for vehicular and all other kinds of traffic.

On the question whether the claimed highway extends the full width of the Unit land, Mr Steggall referred me to a number of old maps which he accepted do not establish that the whole width was a highway and which, in my view, do not throw much light on the question. The 1844 Tithe Apportionment shows the Unit land



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as untithed.

The Unit land is rough land which is not made up, on which there is a track used mainly by horse riders. Mr Austin told me that he uses the Unit land daily for walking and that it is used for recreation mainly by walkers and horse riders. It is bounded on either side by drainage ditches and in part by wide hedges, which are overgrown and not trimmed. In this connection Mr Gardner referred me to the presumptions as to the width of a highway discussed in *Att. Gen v Beynon* 1970 Ch. 1.

The evidence adduced establishes, in my view, a prima facie case that the Unit land is highway. In the present case it is not necessary to make a finding to this effect, as the grounds of the Objection were not limited to the Unit land being highway. There was no evidence before me that the Unit land was waste land of a manor and so qualified for registration as Common Land and in these circumstances I refuse to confirm the registration.

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

23 March

1981

L. J. Morris Smith

Commons Commissioner