



COMMONS REGISTRATION ACT 1965

Reference No. 212/D/163-165

In the Matter of The Common Saltings,
Tilbury, Thurrock Borough

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and Entry No. 1 in the Rights Section of Register Unit No. CL 244 in the Register of Common Land maintained by the Essex County Council and are occasioned by Objections No. 129 and No. 130 made by Thurrock Urban District Council and noted in the Register on 29 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Chelmsford on 20 January 1981. The registration in the Land Section was made in consequence of a rights application, and an application to register the land was also made by the Basildon and District HF and CHA Rambling Club ("the Club"). The rights application was made by Mr L J Osborne and is of a grazing right (Entry No. 1 in the Rights Section).

At the hearing the Club was represented by its secretary, Mr R J Carpenter and Thurrock Borough Council, the successor to Thurrock UDC, was represented by Mrs R Stewart, Solicitor. Thurrock UDC, as well as being the Objector, is registered as the owner of the land comprised in the Register Unit ("the Unit land"). Mr Osborne was not present or represented.

Objection No. 129 is on the ground that the Unit land or in the alternative two parts of it were not common land at the date of registration. The two parts are coloured blue on the plan accompanying the Objection, one being the northern section ("the N Section") and the other a section in the south western part of the Unit land ("the SW Section"). Objection No. 130 is an Objection to the Rights Entry and is on the ground that the right does not exist or that the right is misdescribed in a number of respects set out in the Objection.

Mr Carpenter produced a copy of the 1836 Tithe Map Award from which it appeared that the Unit land was then not tithed. Historical records suggest that the then ferry to Higham went from the Unit land in the Manor of Southall. Minutes in the St Catherine's Church Vestry Book from the year 1852 onwards show that at various times in the second half of the last century there were negotiations with the War Department with reference to the Unit land.

As regards the N Section ultimately in 1891 by a Conveyance dated 5 September 1891, this Section was conveyed by the Churchwardens and Overseers of the Parish to the War Department freed from all rights of the Parish or of the Parishioners, and, by a Lease back to the Churchwardens and Overseers, the N Section was demised to them by the War Department for a perpetually renewable term of 99 years in trust for the Parishioners for the purpose of



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depasturing their cattle or stock in such manner as they should determine.

As regards the SW Section, by a Lease dated 18 April 1854 the War Department devised this section to the Churchwardens and Overseers of the Parish for a perpetually renewable term of 99 years on a similar trust for the Parishioners.

These Leases became vested in Thurrock UDC to whom by a Conveyance dated 9 March 1961 the War Department conveyed the fee simple of the two Sections subject to the two leases.

The result of these transactions, in my view, is that such rights of pasturing as the Parishioners may have on the two sections now derive from the trusts in their favour, the rights being those from time to time determined and enforceable by them as beneficiaries under the trust. Such rights would not in my opinion qualify as rights of common for the purposes of the 1965 Act, and no rights were registered except by Mr Osborne. There is no evidence before me of the existence of the right he registered and assuming in his favour that he has exercised such a right, it would as regards the N Section and the SW Section be attributable to the trust, not to an individual entitlement to a right of common. I should add that the trust in relation to the two Sections is, Mrs Stewart informed me, registered as a charitable trust.

The remaining section of the Unit land ("the middle section") - that lying between the N. Section and the SW Section - was the subject of a Declaration by the War Department, made in pursuance of Defence Act 1860, requiring it to be kept free from buildings and other obstructions. In the Declaration, the middle Section is stated to be of some 26 acres and its occupier "the Inhabitants of East Tilbury".

Minutes of the Vestry in the year 1889 and of the Parish Council in 1895, set out grazing rights over the Saltings exercisable by householders, residents and ratepayers. These rights may have been the result of a determination under the terms of the trust in favour of the Parishioners; however this maybe, it is not possible to identify in the Minutes the right now registered by Mr Osborne. That right is registered as attached to Barville Farm in East Tilbury, and it may be that his predecessor in title exercised rights as a householder and ratepayer but, in the absence of evidence, this is a matter of surmise, and all that Mr Carpenter could tell me was that he had been told by Mr Osborne that he still believed he had grazing rights. There is a minute of 1916 to the effect that the Officer Commanding Troops had informed the Parish Council that the Common Saltings would be allowed for grazing purposes between the hours of sunrise and sunset.

Mrs Stewart told me that all three Sections, between which there are no physical boundaries, had been administered by the Borough Council and before it by the Urban District Council as one unit.

It is established by the evidence that in past years there have been grazing



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rights exercisable by the Parishioners, attributable as regards the N and SW Sections to their position as beneficiaries under the trusts, not to their entitlement to rights of common. As I have said the only registered right is that of Mr Osborne, and I am not satisfied on the evidence that he had the right of common he claims over any part of the Unit land, and I refuse to confirm the right. In the resulting absence of any registered rights of common, the registration as common land can only be based on the Unit land being waste land of a manor and this was not suggested. Accordingly I refuse to confirm the registration in the Land Section.

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

A handwritten signature in cursive script, appearing to read 'H. J. Morris Smith'.

Commons Commissioner