



In the Matter of Tilbury Green, East Tilbury,
Thurrock B

DECISION

These disputes relate to the registration at Entry No. 1 in the Land section of Register Unit No. VG 221 in the Register of Town or Village Greens maintained by the Essex County Council and the registration at Entry No. 1 in the Land section of Register Unit No. CL 411 in the Register of Common Land maintained by the Council. The disputes arise first by reason of the conflict between the two registrations, and secondly as the result of Objections to both registrations made by Thurrock Urban District Council. This Council was the applicant for both the VG Registration and the CL registration and its successor is Thurrock Borough Council ("the Council").

I held a hearing for the purpose of inquiring into the disputes at Chelmsford on 20 January 1981. At the hearing the Council was represented by Mrs R Stewart, Solicitor, and there also attended Mr Charles Sparrow QC, representing Cory Sand and Ballast Co. Ltd. ("Cory").

The Council wished to uphold the CL registration and not the VG registration which, there being no one interested to maintain, I shall refuse to confirm. As regards the CL registration, there are no rights of common registered; the Council's Objection No. 496, noted in the Register on 16 August 1972, relates to a small strip of land which I understand is a track leading from Station Road to Buckland House, regarded by the Council as in the nature of Highway and I shall exclude this strip ("the highway strip") from the registration.

Cory is registered under the Land Registration Acts as freehold owner of land which includes a section of the Unit Land ("the Cory section") which lies within the red line marked on a map which was produced and which I have marked "C". The Cory section is bounded at the north-west and (partly) at the south-west by a track which is included in the Unit land: to the extent that the track lies outside the boundary of the Cory Section, ownership of it is claimed by Cory on the basis of adjacency to the Cory section or of long user. Cory is concerned at the registration of land in its ownership as common land, but the only Objection to the registration was that of the Council (No. 496): Mr Sparrow acknowledged that Cory was not a person entitled to be heard (Regulation 19(1) of the Commons Commissioners Regulations 1971) but he applied to be heard on behalf of Cory. Mrs Stewart did not oppose the application and said that she left it to me. I decided to hear evidence given on behalf of Cory (Regulation 23(5)).

Mr Sparrow called three witnesses. Mr C G C Sayer a Chartered Surveyor whose firm are Cory's Surveyors told me that the land comprised in the Land Certificate was acquired by Cory in 1977 and is used as a refuse site. The Cory section of the Unit land is roughly triangular in shape and adjoins the track on the NW and SW and it includes the part of the track which turns eastward to Bowaters Farm. The Cory section is used mainly for access, and the refuse tip which is of some 200 yards square is on the south side of the Cory section, though not physically separated from it. The Cory section had not been used in Mr Sayer's time for any other purpose and no one had claimed rights over it. Lorries bringing refuse came from Station Road along the highway strip to the point where the track on the NW of the



Cory section starts: at this point there is a four barred gate carrying the notice "Danger Guard Dogs Patrolling Keep Out". From photographs produced by Mr Sayer it appeared that the Cory section immediately adjacent to the NW and SW track is, as he himself described it, rough and uncultivated and has an untended growth of trees and bush. Mr Sayer stated that Cory is not lord of the manor, but when cross-examined by Mrs Stewart said that he only knew about the lordship of the manor from the Land Certificate and had not seen any title deeds.

Mr Walter Matthews, who is aged 75 and has lived in Stamford le Hope (about six miles away from the Unit land) for some 62 years, had known the area during that time. He was employed in 1937 by Mr Surrudge, a farmer and landowner, who also had a refuse tip south of the Cory section, and his employment continued, apart from the war, until 1975. The land in the Cory section north of the Pond (shown on the map C) was in 1937 very rough with elm trees on it and was not used for anything: the track was not surfaced but had ballast on it. In 1937 there was 'a bit of a gate' at the end of the highway strip - it was hinged but broken with just one pole remaining. About 1955/6 an iron gate was put up by Mr Surrudge, which could be locked and was locked by the last man off the job (the refuse tip). A new gate was put up about 1970 by Mr Hudson which is locked when the men finish work, the keys being held at Buckland House and by some employees. No one used the highway strip and track unless going to Buckland House or to the refuse tip or Bowaters Farm or on to the rough land.

Mr G J Hudson who has been the manager of the refuse tip for ten years said that he had the present gate erected - it is locked every night at 5.00pm. until 7.00am, and there is a 'Keep out' notice. Keys are held at Buckland House, by some employees and by the farmer for access to Bowaters Farm. The Cory section is shrubland, rough and unusable, - the elm trees had been bulldozed.

Mrs Stewart produced copies of relevant parts of the East Tilbury Tithe Apportionment and Tithe Map of 1836. On the map the Unit land appears very much as it does on the Register map, with tracks to and from Buckland House, the Cory section and Bowaters Farm, the Cory section, as the major part of an unenclosed area of land named 'Tilbury Green' on the Tithe map. There was also produced a tracing of a map of 1834 showing the same unenclosed area named on the map as 'The Green'.

This tracing was produced by Mr R J Carpenter, an officer of the Ramblers Association, and is of a Court of Sewers map in the County Record Office: Mr Carpenter told me that on later such maps of 1842 and 1861 the area was similarly shown. In a Statutory Declaration made on 30 November 1973 Mr J T Watkins, a Surveyor in the employ of the Council, stated that he made inspections of the Unit land on 27 November 1969 and 15 November 1973: on both inspections the land was open uninclosed and uncultivated except that on the second occasion he found that a path (which is part of the Unit land lying to the west and some distance from the Cory section and the SW track) had been ploughed and now formed part of a field.

There are no rights of common registered over the Unit land, and accordingly the evidence was directed to the question whether the Unit land or, more particularly, the Cory section, qualified for registration as "waste land of a manor". Before expressing a view as to the effect of the evidence, the position of Cory in the matter requires consideration. No Objection to the registration was made by Cory



or its predecessor in title and it is of course now far too late for an Objection to be made. Under the Regulations Cory is not a person entitled to be heard and the fact that I have heard the evidence tendered on its behalf does not put Cory in the position of an Objector, nor indeed have I any jurisdiction to create or accept that position. The Council's Objection to the registration is on the grounds that the highway strip was not common land at the date of registration. Mrs Stewart, naturally enough, did not ask under Regulation 26 to put forward any additional grounds of Objection in respect of the Cory section: the evidence adduced on behalf of Cory did not bear on the only ground of Objection it is open to me to consider, and in the absence of a ground of Objection relating to the Cory section, I am not prepared to give a decision which goes beyond the ambit of the ground of Objection before me. In this connection it is to be observed that any person interested in the status of the Unit land as common land would have seen that the only Objection related to the highway strip ~~and~~ have had no occasion to take any steps to give evidence or make representations at the hearing as he might have done had he known that the Cory ~~strip~~ ^{section} would be in issue. For these reasons, I do not consider that the status of the Cory section is open to me to decide.

As this case may go further, I will state my findings on the evidence:-

- (1) The Cory section was at the date of registration and is still waste land in the sense of being open uncultivated and unoccupied. It is closed to access along the highway strip by the gate, but it is still accessible from the opposite direction along the track which turns north west and leads into Station Road opposite Gravel Pit Farm and Cottage: it is uncultivated: and although it is in the private ownership of Cory, there is no evidence of ^{physical} ~~typical~~ occupation by Cory or any other person.
- (2) On the balance of probability, the Cory section historically was waste land of a manor. Mrs Stewart said that on a search of the records it was uncertain to which manor it belonged but that it could be one of three which she named. The fact that the particular manor is not established is not, in my view, fatal to a contention that it is waste land of a manor.
- (3) Land which has in the past been waste land of a manor does not (in the absence of rights of common) qualify for registration as common land if it has been severed from the manor: (Re Box Hill Common 1980 Ch. 109): and it is probably the case, though as far as I am aware it has not been so decided, that severance after registration results in the land ceasing to be common land. There was no evidence as to severance before registration: the land which included the Cory section was purchased by Cory in 1977 and Mr Sayer said that Cory is not lord of the manor, which he only knew from the Land Certificate. I was not referred to anything in the Land Certificate which bore on the lordship of the manor: these may at some date have been a severance of the lordship of the manor and the Cory section but I am not satisfied on the evidence that this has occurred.

Mr Sparrow referred me to a passage in the judgement of Goff J in *C E G B v Clwyd County Council* 1976 1 WLR 151 at p 158 (letter H) where he refers to the onus of proof. In the present situation in which Cory is not an Objector or a person entitled to be heard, I cannot see that any question of onus of proof as between



Cory and the Council arises. My overall view of the evidence is that the Cory section was waste land of a manor, that it has continued to be open, uncultivated and unoccupied and that severance from the manor has not been established.

In the result, I confirm the registration in the Land Section of CL 411 modified by excluding the highway strip.

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