

COMMONS REGISTRATION ACT 1965

Reference No. 259/D/15

In the Matter of Foots Cray Common,  
Sidcup, Bexley, Greater London

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DECISION

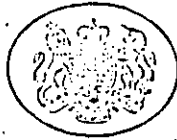
This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL. 166 in the Register of Common Land maintained by the Greater London Council and is occasioned by Objection No. 85 made by the London Borough of Bexley and noted in the Register on 1st May 1972.

I held a hearing for the purpose of inquiring into the dispute at Watergate House, WC2 on 2nd March 1976. The hearing was attended by Mr B N Nunns, the applicant, for the registration, and by Mr A Short, solicitor, on behalf of the Bexley London Borough Council.

The land comprised in the Register Unit consists of an irregular quadrilateral area at the back of some houses in Lansdown Road and two narrow strips of land leading to the road. On the modern Ordnance Map it has the appearance of having been left undeveloped when the houses were built, but maps which pre-date the houses show that this was not the case. The land is clearly shown on the Tithe Apportionment Map of 1840, with the strips being continued as lanes or tracks, what is now Lansdown Road not being then in existence. The land in question has no tithe number on it and is not mentioned in the award. The boundaries of three of the four sides are shown on the 1861 Ordnance Survey map, but the eastern boundary is not indicated and the whole area is shown as the undifferentiated western extremity of an area of woodland, known as Birch Wood. However, later maps down to the present time all show the quadrilateral area as it was in 1840.

There is no entry in the Rights Section of the Register Unit, so any rights of common to which the land may have been subject are no longer exercisable by virtue of section 1(2)(b) of the Commons Registration Act 1965 and the land does not fall within the first limb of the definition of "common land" in section 22(1) of that Act. It therefore only remains to consider whether it falls within the second limb of that definition by being waste land of a manor not subject to rights of common.

Little seems to be known of the devolution of the lordship of the Manor of Foots Cray. It is believed to have belonged to the Trustees of the late Mrs Baugh at the end of the last century. There was, however, some doubt as to whether this land was then in the ownership of the Trustees. The Foots Cray Parish Council were minded to purchase the land, and the Chairman entered into correspondence with the solicitors of the Trustees and of a Capt Vansittart with reference to the ownership of the land. On 27th March 1896 the Chairman reported to the Council that he had not obtained any satisfactory results from his correspondence. It



appears that Capt Vansittart was a member of the Council, for the minutes of the meeting held on 21st April 1896 it is recorded that he observed that, as there were doubts as to the ownership of the Common, the best course would be to obtain the authority of an Act of Parliament empowering the Council to take possession of it for the purposes of a recreation ground. No such Act was obtained, and on 6th September 1897 a special committee was appointed to make further inquiry into the question of the ownership of the Common.

On 1st November 1897 the Clerk reported to the special committee that neither Mrs Baugh's or Capt Vansittart's solicitors could trace any title in their respective clients. On 6th December 1897 the Clerk reported that he had had an interview with the Surveyor to the Lansdown Hull Trustees with reference to their granting a paper title to the Council, and it was resolved that the enquiries be prosecuted and a paper title obtained, if possible. By an indenture made 7th March 1898 between (1) Annie Hull and Julius Alfred Bertram (2) The Parish Council of the Parish of Foots Cray the land in question was conveyed to the Council subject to a restrictive covenant that it should at all times thereafter remain unbuilt upon and might be used as a recreation or allotment ground, but there was no warranty of title. However, any imperfection in the title has long since been cured, since the Council and their statutory successors have remained in the undisputed possession until the present time.

It is by no means certain that this land ever was waste land of the Manor, but if it was, it is so no longer, for the Council of the London Borough of Bexley, as successor to the Parish Council, is now the owner either under the 1898 indenture or by virtue of undisputed long possession. I am therefore satisfied that the land is no longer, if it ever was, waste land of the Manor and so does not fall within the second limb of the definition of "common land" in section 22(1) of the Act of 1965.

For these reasons 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 this 17<sup>th</sup> day of March 1976

Chief Commons Commissioner