



COMMONS REGISTRATION ACT 1965

Reference Nos. 214/D/114
214/D/115

In the Matter of Bramdean Common(part),
Bramdean, Winchester District, Hampshire

DECISION

These disputes relate to the registrations at Entry Nos. 1, 2 and 4 in the Rights Section of Register Unit No. CL 117 in the Register of Common Land maintained by the Hampshire County Council and ~~is~~ occasioned by Objection No. OB 303 made by Mr K W Silk and noted in the Register on 6 November 1970 and (as regards the registration at Entry No. 4 only by Objection No. OB 686 made by Magdalan Cottage in the University of Oxford.

I held a hearing for the purpose of inquiring into the disputes at Winchester on 21 March 1979. At the hearing (1) Mr A N Dowling who was the applicant for the registration at Entry No.1. was represented by Mr Kerr, solicitor of Shenton, Pitt, Walsh & Moss, Solicitors of Winchester; and (2) Mr K W Silk, who in addition to being an Objector, was the applicant for the registration at Entry No. 2, was represented by Mr G L Cox, legal executive with Stewart Green & Co., Solicitors of Winchester.

The land ("the Unit Land") in this Register Unit is (according to the Register) now about 104.4 acres (as originally registered it was about 106 acres, but was reduced by amendments made in 1969 and 1970). The Rights Section registration as they now stand (those at Entry Nos. 3 and 5 made on the application of Mr and Mrs Rowe and Mrs Lundy have been withdrawn) are of rights to graze: (No. 1) 100 cattle and 500 sheep over all the Unit Land; (No. 2) 500 sheep over the part of the Unit Land lying west of the line GH on the register map (that is about 1/10th of the whole) but excluding the parts indicated by "X" and "Y" on the Register Map (being the detached pieces of which that marked X ceased to be part of the Unit Land as a result of the said 1969 and 1970 amendments); (No. 4, made on the application of Mrs P V Oliv 30 cattle or 30 horses on all the Unit Land except the area edged green on an "inset" of the Register map. Entry No. 4 additionally includes a right of estovers.

The grounds of Objection No. OB 303 are:- "The land coloured red on the attached plan is not common land". The plan shows so coloured a triangular area less than 1/2 an acre, being part of the Unit Land detached from the rest and marked "Y" on the Register map. By Section 5(7) of the 1965 Act, this objection is not only an objection ("the expressed objection") ~~to~~ ~~with~~ the inclusion of the area Y in the Land Section (Entry No. 5 being in this Section now the only subsisting entry) but also must be treated as an objection ("the deemed objection") to all the Rights Section Entries. The dispute occasioned by the expressed objection was heard by the Chief Commons Commissioner on 23 February 1977, and by his decision dated 26 April 1977 he confirmed registration in the Land Section with the modification that the land subject to the Objection be excluded. Pursuant to this decision ~~the~~ notice dated 22 July 1977, given by the Chief Commons Commissioner was sent to the County Council as registration authority pursuant to Section 6(2) of the 1965 Act. For some reason which I have been unable to ascertain, the deemed objections was not (as it should have been if the normal course had been followed) ~~was~~ brought before the Chief Commons Commissioner for hearing at the same time as the expressed objection, so that I now have to determine it.



Mr Cox said that Objection No. OB 303 was only intended to put in issue the inclusion of the area Y within the Land Section registration and without any intention of further or otherwise affecting any of the registrations in the Rights Section. I consider I ought to give effect to this intention, and so with the agreement of Mr Cox and Mr Kerr I confirm the registrations at Rights Section Entry No. 1 (Mr Dowling) and No. 2 (Mr Silk) without any modification other than that which is necessarily consequential on the amendments made to the Land Section registration in 1969 and 1970 and on the notice dated 22 July 1977 and given by the Chief Commons Commissioner for the purpose of giving effect to his decision dated 26 April 1977.

As regards the Rights Section registration at Entry No. 4 (Mrs Oliver), Objection No. OB 303 provides no reason why I should not treat it similarly; and Mr Cox and Mr Kerr made it clear that their clients had no objection to my so confirming the registration with or without any other modification. However this Rights Section registration is additionally subject to Objection No. OB 686 made by Magdalen College, the grounds of which stating their effect ~~shall~~ so far as now relevant, are that none of the rights registered exists within the area edged red on the plan attached thereto; the attached plan shows all the Unit Land except the detached piece X and Y.

In relation to this registration at Entry No. 4, ~~they~~ have a letter dated 15 March 1979 signed on behalf of Mrs Oliver:- "We would advise you that we withdraw our claim for Rights of Estover only but wish to retain our registration of Rights of grazing"; and also a letter dated 19 March 1979 signed on behalf of Magdalen College by Linnell & Murphy Solicitors of Oxford and countersigned by or on behalf of Mrs P V Oliver, saying that they had agreed: "The rights to graze 30 cattle or 30 horses over the land comprised in this Register Unit west of line G-H on Commons Register map maintained by Hants County Council and bounded by county roads C127 but excluding that part indicated by the letter X on the Register map".

I consider I ought to give effect to these 2 letters accordingly ~~they~~ confirm the registration at Rights Section Entry No. 4 (Mrs Oliver) with the modification that for all the words in column 4 (including those relating to Estovers) there be substituted:- "to graze 30 cattle or 30 horses over the land comprised in this register unit lying west of the line G-H on the Register map but exclude that part (so far if at all as such part is still in the Lands Section registration) indicated by the letter X on the Register map and with such further modification as are necessary consequential on the amendments made in 1969 and 1970 to the Land Section of this Register Unit and of the direction 22 July 1977 and given by the Chief Commons Commissioner for the purpose of giving effect to his decision dated 26 April 1977.

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 23rd day of April — 1979.

a. a. Baker

Commons Commissioner