



COMMONS REGISTRATION ACT 1965

Reference Nos 216/D/9
to 17 inclusive

In the Matter of (1) Upper Green,
(2) Ickleford Common and other nearby
lands and (3) The north-west portion of
Upper Green, all in Ickleford,
North Hertfordshire District,
Hertfordshire

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 17 inclusive in the Rights Section of Register Unit No. CL 70 in the Register of Common Land maintained by the Hertfordshire County Council at Entry No. 1 in the Land Section and at Entry Nos 1 to 17 inclusive in the Rights Section of Register Unit No. CL 140 in the said Register, and at Entry No. 1 in the Land Section of Register Unit No. VG 13 in the Register of Town or Village Greens maintained by the said Council and are occasioned by Objection No. 90 made by Mrs Dorothy Perowne Parker and noted in the VG 13 Register on 9 October 1970 and by the said VG 13 registration being in conflict with the said CL 70 and CL 140 registrations.

I held a hearing for the purpose of inquiring into the disputes at Hertford on 13 January 1981. At the hearing (1) Ickleton Parish Council on whose application the VG 13 registration was made, were represented by Mr D P Chapallaz their chairman; (2) Mrs D P Parker was represented by Mr P Gutteridge solicitor of Leeds Smith, Solicitors of Sandy, Bedfordshire; (3) Mr Robert Ernest Saunders of Fairfield, Upper Green, Ickleford who claimed the right registered at CL 70 and CL 140 Entry No. 4 as successor in title of Mr T Olney, attended in person; (4) Mr Gordon William Abbiss of Arnolds Farm, Upper Green who claimed the right registered at CL 70 and CL 140 Entry No. 15 as successor in title of Mr B Arnold, also attended in person; and (5) Hertfordshire County Council as registration authority were represented by Miss A Pegrum of their Record Office.

The land ("the VG 13 Area") in Register Unit No. VG 13 is on the OS map (6" = 1 mile) marked as "Upper Green"; it is approximately triangular with sides (either curved or irregular) about 200 yards long. Its registration was made on 18 October 1967, the applicants being Ickleford Parish Council.

The land in Register Unit No. CL 70 comprises three areas, each consisting of 2 or more pieces separated by roads or tracks, that is to say: the first ("the CL 70 North Area") having a length of about 1 mile from north to south and a width varying between 300 and 100 yards, except at the south where it narrows to two points, one to the east and one on the west side of the road from Ickleford to Cadwell and on the OS map called "Ickleford Common" (on the north) and "Lower Green" (on the south), and being divided near its south end by the said road which there runs in a Z line turning eastwards to pass under a nearby railway bridge; the second ("the CL 70 Upper Green Area") comprising nearly all the VG 13 Area; and the third ("the CL 70 South Area") comprising 2 comparatively small pieces of open grassland situated a short distance south of the Church and near a road junction between 200 and 300 yards south of the CL 70 Upper Green Area. The CL 70 Land Section registration was made on 27 October 1967,



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the applicant being Mr John Dudley Hederley Ward of Ickleford Manor (in his application he describes the land as being 8 parcels, but although I have been unable to identify all his parcels on the Register map, I shall assume the CL 70 Area as above described corresponds with his application. So in the result in October 1967 the VG 13 and CL 70 Land Section registrations came into conflict.

The registrations at Entry Nos 1 to 16 inclusive of the CL 70 Rights Section were made on 21 June 1968 in consequence of 16 applications all in the same form (except as regards numbers of cattle) of rights of grazing over land described in the applications as "the land comprised in register unit CL 70 together with the pieces of land coloured green on plans A and B". As I read the copies of such plans described to me, the lands so coloured are: (a) a triangular area ("the Apex Piece") having sides of about 40 yards at its east end adjacent to the River Hiz and west of Cadwell and (b) some other triangular pieces all included in or near the VG 13 Area. The registrations made on these applications are in the Register expressed as follows: "The right entitles the owner to graze (2, 4, or 6 as the case may be; altogether 38 cattle for these 16 registrations) head of cattle over the whole of the land distinguished by Register Unit Nos CL 140, CL 141 and part of the land registered under Register Unit No. CL 70 namely the triangular pieces of land lying on the west and east sides of Arlesey Road, east of the Rectory and that apex of Lower Green adjacent to the River Hiz and west of Cadwell". It was so I understood at the hearing, never noticed before then by anyone concerned that although the applications were apparently on the basis that the land over which the rights were exercisable consisted of the whole of the CL 70 Area and additionally the Apex Piece and the said triangular pieces presumably not within CL 70 Area, the Registration Authority apparently proceeded on the basis that the Apex Piece and some of the triangular pieces were included in the CL 70 Area and that the registered rights were only exercisable over the Apex Piece and the triangular areas so included and were not exercisable at all over the rest (and by far the greater part) of the CL 70 Area.

The registration in the CL 140 Land Section and at Entry Nos 1 to 16 in the CL 140 Rights Section were made on 20 and 21 June 1968 consequently on the said applications for registration of rights over the CL 70 Area. The CL 140 land is a piece situated near to, and on the opposite side of, the road by The Plume of Feathers Public House, being a piece of open grassland north of and very near to the VG 13 Area and in comparison with it very small. The Land Section registration was made in consequence to the application for the registration of rights such applications being the same as those above mentioned in relation to the CL 70 Rights Section. The registration at CL 70 and CL 140 Rights Section Entry No. 17 was made on 26 February 1970 on the application of Mrs Parker and unlike those at Entry Nos 1 to 16 inclusive were registered as a right over the whole of the land in Register Unit Nos CL 70 and CL 140. The said objection of Mrs Parker is dated 23 September 1970.

It seems that the complexity of the registrations as above summarised resulted from them having been made at different times on the application of different persons; and because not enough consideration was given as to how they should fit in with each other, there is some confusion. This confusion was to some



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extent simplified by a letter dated 14 July 1980 from Oswald Hickson Collier & Co, solicitors of London written on behalf of Mr D J H Ward calling attention to letters dated 24 June 1968 and 23 April 1971 written on his behalf to Hertfordshire County Council and saying he did not object to the registration made on his application being modified so it did not conflict with the registration made on the application of the Parish Council, and by a letter dated 8 January 1981 by which Ickleford Parish Council saying that they withdrew their application for registration of the land edged red on the plan annexed to the Objection made by Mrs Parker.

At the hearing Mr Gutteridge said that he understood that Mr J W D Ward had died recently (in October or November 1980 Mrs Parker thought) and had as Lord of the Manor been succeeded by Mr Anthony Ward. I understood that all those present or represented at the hearing agreed that effect should be given to the objection made by Mrs Parker, that the conflict between the VG 13 registration and the CL 70 and CL 140 registrations should be resolved in favour of the VG 13 registration, that the registered rights of grazing are not exercisable of VG 13 Area but were as had always been the intention of the applicants exercisable over the whole the VG 70 North Area.

In support of this agreed solution to the disputes, oral evidence was given by Mr D P Chapallaz who has lived in the parish for 12 years been a member of the Parish Council for 6 years and their chairman for 3 years. He said (in effect):- The VG Area is in the centre of the village surrounded by residential property, the church and the village school; it is open grassland with some ornamental trees on it; also on it is a village notice board and some seats and a memorial to HM George V (adapted as a bus shelter); it has been used for various village functions including various sports and recreations by inhabitants of the parish for fund raising; also for informal games of football and so forth by the children; it is also used as a meeting place particularly for people visiting the school waiting there to collect the children at it. It had been so used as long as he could remember and understood it had been so used previously. Grass on the VG 13 Area is cut by the County Council; he had never known it to be grazed by cattle; the reason being its situation in a populated area and lack of fencing it would be impracticable to graze it. The Parish Council accepted that land mentioned in the Objection made by Mrs Parker was not part of the village green. The CL 70 North Area was grazed.

About 10 days after the hearing I inspected CL 70 South Area, the VG 13 Area and (by driving my motor car along the track which for about $\frac{1}{2}$ mile runs northwards by Lower Green Farm entrance to a point on the east side of Ickleford Common) the CL 70 North Area.

Upon the evidence of Mr Chapallaz and what I saw on my inspection I consider I ought to give effect to the solution of these disputes discussed and agreed at the hearing. The appearance of the VG 13 area is against it being subject to any



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rights of grazing; and although the south part the CL 70 Area may because it is open and because a road carrying much motor traffic crosses it, be difficult to graze effectively it is reasonable to suppose that rights of grazing exist over it just as much as over Ickleford Common which appeared to be easily grazeable.

I have no note or recollection of anything being said at the hearing as to what I should do about the CL 70 South Area. Having concluded that rights of grazing as registered are not exercisable over the VG 13 Area I consider I ought to reach the same conclusion about CL 70 South Area. Notwithstanding there may be no rights of common exercisable over it, I consider that its inclusion in the Land Section registration should stand; because the registration was made on the application of the reputed Lord of the Manor at a time when it was not known whether any person would apply to register any rights of common, I conclude that it has at all relevant times been wasteland of the Manor and therefore within the definition of common land in section 22 of the 1965 Act.

I have no note or recollection of any person at the hearing explaining the mention in the CL 70 Rights Section registrations at entries Nos 1 to 16 inclusive of the land in Register Unit No. CL 141. It seems likely that the CL 141 registration is of a small piece of land registered in much the same circumstances as above described in relation to the CL 140 land and that it became final in the absence of any objection or conflict. If this is so I cannot modify the words in the CL 70 registrations referring to it.

Upon the considerations and for the reasons above set out:- I confirm the registration at Entry No. 1 in the VG 13 Land Section with the modification that there be removed from the register the land edged red on the plan annexed to Objection No. 90 made by Mrs Dorothy Perowne Parker; and I refuse to confirm the registration in the VG 13 Rights Section which ~~are~~ as a result of the registrations at Entry Nos 1 to 17 inclusive in the CL 70 and CL 140 Rights Section by regulation 14 of the Commons Registration (General) Regulations 1966 are deemed to have been made therein. I confirm the registration at Entry No. 1 in the CL 70 Land Section with the modification that there be removed from the register all the land registered at Entry No. 1 in the Land Section of Register Unit No. VG 13; I confirm the registrations at Entry Nos 1 to 16 inclusive in the CL 70 Rights Section with the modification that all the words in column 4 relating to each of these registrations which come after the words "cattle over" there be substituted "the whole of the land in this Register Unit except the part of it south of the area known as Upper Green and over the whole of the land in Register Unit No. CL 141"; and I confirm the registration at Entry No. 17 in the CL 70 Rights Section with the modification that in column 4 there be added at the end "except the land south of the area known as Upper Green". I refuse to confirm the registrations at Entry No. 1 in the CL 140 Land Section and at Entry Nos 1 to 17 in the CL 140 Rights Section.



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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 2nd — day of March — 1981

a. a. Baden Fuller

Commons Commissioner