

JW



COMMONS REGISTRATION ACT 1965

Reference No. 216/D/64

In the Matter of Entrance to Dyrham Park,
Trotters Bottom, Hartsmere, Hertfordshire

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.243 in the Register of Common Land maintained by the Hertfordshire County Council and is occasioned by Objection No. 123 made by the Marquis of Salisbury and noted in the Register on 22 June 1972.

I held a hearing for the purpose of inquiring into the dispute at St. Albans on 26 January 1983. The hearing was attended by Mr J R Newman, Solicitor, on behalf of the Hartsmere Borough Council, the successor authority of the former Potters Bar Urban District Council, the applicant for the registration. There was no appearance by or on behalf of the Objector, but by a letter dated 20 January 1983 his solicitors informed the Clerk of the Commons Commissioners that he would "withdraw" the objection. However, the fact that the objection had been made made it necessary for the matter to be referred to a Commons Commissioner, so that the burden of proof lies upon the Borough Council.: see per Walton J. in In re Sutton Common, Wimborne [1982] 1 W L R 647, at p.656. There is a scintilla of evidence in support of the registration in the Statutory declaration made by Mr A C Bonser in support of the application for it. On the other hand, the Register Map shows that the land comprised in the Register Unit consists of two narrow strips between the fences on either side of a road. Prima facie all the land between the fences is part of the highway and is therefore excluded from the definition of "Common Land" in Section 22 (1) of the Commons Registration Act 1965. Faced with this conflict of evidence, I have come to the conclusion that the evidence of the map is of greater weight than that of the statutory declaration.

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

1st

day of February 1983


Chief Commons Commissioner