



COMMONS REGISTRATION ACT 1965

Reference Nos 216/D/30
216/D/31

In the Matter of Hunsdon Mead and
Eastwick Mead, Hunsdon, East Herfordshire
District, Hertfordshire.

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 and 3 to 11 inclusive in the Rights Section of Register Unit No CL 91 in the Register of Common Land maintained by the Hertfordshire County Council and are occasioned by Objection No. 85 made by British Waterways Board and noted in the Register on 18 November 1970.

I held a hearing for the purpose of inquiring into the disputes at Hertford on 28 October 1981. At the hearing (1) Mr David Morris Camp on whose application the registration at Land Section Entry No. 1 was made and on whose application jointly with Mr Murray Camp and Mr John Duke Camp the registration at Rights Section Entry No. 3 (being of rights attached to Roydon Lea Farm) was made, was, and the said Mr M Camp and Mr J D Camp were all represented by Mr G D Clegg and (for part of the time) Mr J N Longmore solicitors with/of Longmores, Solicitors of Hertford; (2) Mr Robert George Smith Moncur on whose application the registrations at Rights Section Entry Nos 1 and 5 (being of rights attached to Brickhouse Farm and Briggens Home Farm) were made, was represented by Mr W T S Lee chartered surveyor of Carter Jones, Land Agents and Surveyors of London; (3) Mr John Findlay and Mr George Findlay on whose application the registration at Rights Section Entry No. 4 was made (being of rights attached to Nine Ashes Farm) were represented by Mr P C Findlay (nephew and son); (4) Mr Edward Hales Carter on whose application jointly with his brother Mr Richard John Carter the registrations at Rights Section Entry Nos 6, 7, 8, 9 and 10 (being of rights attached to Eastwick Lodge and Greenman Farm) were made, attended in person on his own behalf and as representing the said Mr R G Carter; (5) Rt Hon Anthony Durant (5th) Baron Aldenham on whose application the registration at Rights Section Entry No. 11 (being of rights attached to Eastend Farm) and the registration at Ownership Section Entry No. 1 (being of the ownership of the part of the land in this Register Unit west of the line HJ on the Register map) was made, was represented by Mr J Trenhaile of counsel instructed by McKenna & Co, Solicitors of London, as also was represented his son Hon George Henry Paul Gibbs.

The land ("the Unit Land") in this Register Unit is in three pieces: one ("Eastwick Mead") being nearly $2/3$ ds of a mile long and for the most part between 200 and 250 yards wide; another ("the Hunsdon Piece") being about $1/2$ a mile long and having a varying width between about 300 and 100 yards; and the remaining one ("the 7935 Piece") being on the most recent OS map No 7935 containing 2.123 hectares (formerly OS No 226 containing 5.201 acres). Eastwick Mead is separated from the Hunsdon Piece by a water way ("the HJ Water") along which on the Register map there is a red line HJ, being the part of the Stort Navigation downstream from the Lock to a point near the south end of Eastwick Mead.



- 2 -

The grounds of the Objection (expressed to relate to the Land Section only) are: "That part of the Board's land shown coloured green on the attached plan as is affected by this registration should be excluded as it is not now common land"; the plan attached shows coloured green a strip which as I scale the plan is about 6 yards wide (by the Lock a little wider). For the purposes of exposition I divide this strip into three parts: (1) one ("the HJ Objection Part") nearly straight along the southeast side of the HJ Water and (according to the Register map) just within the southwest boundary of Eastwick Mead; (2) another ("the Irrelevant Part") adjoining the Stort Navigation at and above the Lock but neither within nor adjoining Eastwick Mead or any other part of the Unit Land; and (3) the remaining part ("the West Objection Part") about 20 yards long or less just within the most westerly part of the north boundary of Eastwick Mead.

In the Rights Section and in the Ownership Section except as above mentioned (Entry Nos 1, 3 to 11 inclusive and Entry No. 1) there are no registrations.

I have copies of letters to Hertfordshire County Council: (1) dated 1 December 1970 from Hilliard & Ward Solicitors of Chelmsford on behalf of Messrs R J and E H Carter, (2) dated 14 December 1970 from Longmores (above mentioned) on behalf of Messrs Camp, and (3) dated 18.7.73 from Mrs A M Findlay all in effect agreeing the Objection. I have also a letter dated 13 August 1981 from British Waterways Board ("BWB") to the Clerk of the Commons Commissioners saying: "Following correspondence with Longmores acting for D M Camp Esq, agreement has been reached on the basis of the boundaries indicated in British Waterways Board's drawing No 81/210 a signed copy of which is enclosed herewith. On the understanding that this plan will be acceptable as defining the limits of the Board's ownership, objection is therefore withdrawn by this letter". The 81/210 drawing is different from the Objection plan in that it is based on a more recent OS map and on it is edged green the whole width of the River Stort Navigation from the east end to the southwest end of Eastwick Mead.

Mr Trenhaile said that he was agreeable to the Land Section being modified so as to give effect the Objection but not on the basis that it is admitted that BWB own the land. This basis being contrary to their said 1981 letter, I adjourned the proceedings for a short time so that those present could consider how I should proceed, the absence of any representations of BWB at the hearing being apparently due to a mistake on their part as to the effect on other persons of the agreement they had reached with Mr D M Camp.

On resuming all those present at the hearing were agreed that the rights of common as registered, at least as regards the parts of the Unit Land to which BWB had made no objection were properly registered. It being impossible in the absence of BWB to reach any decision by agreement, I decided to hear such evidence as might be offered.

On behalf of Lord Aldenham and Mr Gibbs oral evidence was given by Mr E Kwok articled clerk with McKenna & Co in the course of which he produced the following documents (now held by their clients Bankers): (1) an assent dated 27 November 1953 by which Rt Hon Walter Durrant (4th) Baron Aldenham as personal representative of Rt Hon Herbert Cockayne (1st) Baron Hunsdon (he died 22 May 1935) assented to the land described in the Schedule vesting in himself;



- 3 -

(2) copy probate dated 31 December 1969 of the will of W D (4th) Lord Aldenham (he died 30 May 1969) in favour of Hon Sir Geoffrey Cockayne Gibbs; (3) copy of probate dated 22 December 1975 of Mr G C Gibbs (he died 6 July 1975) granted to Mr Stephen Cockayne Gibbs and Mr Roger Geoffrey Gibbs; and (4) a conveyance dated 8 April 1980 by which they as personal representatives of W D (4th) Lord Aldenham after reciting that by virtue of an assignment dated 24 June 1975 made by A D (5th) Lord Aldenham the Hon G H P Gibbs had become entitled to the property thereafter described, conveyed to him the Briggens Estate more particularly described in the Schedule hereto. Mr Kwok said that the 7935 Piece mentioned in the schedule had since been sold.

Mr E H Carter in the course of his evidence said (in effect):- He had lived in Eastwick Lodge Farm all his life (born 1942); his father came there in 1933; on his father's death in 1963, he and his brother succeeded him. Eastwick Mead notwithstanding it is on the Register map divided by a red line ABCDEFG, is one large field: permanent pasture. Between it and the nearest of the Stort Navigation (on the Register map they are shown as adjoining) there is no fence; on the south side of the waterway where it adjoins Eastwick Mead there are numerous bushes (hawthorn) and some trees. There is some pleasure traffic on the Navigation, but little or no industrial traffic. And so it has always been since he remembered except the bushes and trees have grown and in 1955 a sewer was laid under Eastwick Mead, the manholes to which, every 200 yards are above. He could remember some horse drawn traffic on the water, but not for the last 15 years approximately; any such traffic is now impossible under the bridge (Cinder Bridge), near the east end of Eastwick Mead. It is now impossible to use the south side (of the HJ Water) as a towing path because of the hawthorn trees, although it is possible to walk. The hawthorns and trees growing there indicate that for many years there was no traffic drawn by horses on this side.

Mr D M Camp in the course of his evidence said (in effect):- He is the Pinder of the common meads of Hunsdon and Eastwick (Herts) and Roydon (Essex), having been appointed as such by Roydon Parish Council; that was why he applied for the registration of the Unit Land as common. He produced "Rules and Regulations" (printed) subscribed "By order of the Courts of the respective Manors", by which (among other things) it was provided that the right as regards cattle and horses should commence on Old Lammas Day and as regards sheep on Martinmas Day and that the Pinder was empowered to impound animals as therein provided and for all animals so impounded to make the charges therein specified. The River Bank adjoins the common land so there is nothing to stop the commonable animals using it; because there is no distinct boundary between the river and the Common Land, the existence (on paper) of any given boundary could not (in fact) have the effect of excluding commonable cattle. He understood that any person owning land adjoining a common who wished to exclude commonable cattle must fence against them.

On the day after the hearing, I inspected the Unit Land by walking along the west and north boundary of Eastwick Mead.

I will first consider the HJ Objection Part.



In these proceedings I am concerned to determine: (1) whether rights of common as claimed exist; and (2) whether the land over which the rights do exist is properly described in the Land Section. I am not concerned to determine who is the owner of the land, although evidence such as would be relevant if ownership was in dispute would generally be relevant to the existence or non-existence of rights of common.

As to there being rights of common over the Unit Land with the possible exception of a strip about 6 yards wide near the HJ Water, I am satisfied because such existence was agreed by those represented at the hearing, was implicit in the evidence of Mr Carter and Mr Camp, was in accordance with the appearance of the land when I inspected it and in accordance with the statutory declarations made in support of the Rights Section registrations.

So I am concerned with the propriety of the description in the Land Section: "That land known as Hunsdon Mead and Eastwick Mead as edged in green on ... the Register map ...". The Register map is based on the OS map of 6 inches = 1 mile, and on it the boundary between the HJ Water and Eastwick is indicated by a single narrow line (almost straight). Neither the OS map nor the Register map marks or in any way distinguishes between: (i) the edge of the water, (ii) the line of the highest part of the nearby bank (the bank apparently prevents flood water escaping over Eastwick Mead which is nearly everywhere only a very little above the level of the water as I saw it, so obviously flood water but for the bank would escape over most of it); (iii) the line of the bottom of the said bank on the Mead side (a line not at all straight because the bank is of very varying widths); (iv) any footpath along the top of the bank (for most of the length of the HJ Water there is no footpath, the well grown hawthorn making it impossible to walk along with any pleasure); (v) the path apparently used by pedestrians from the south corner of Eastwick Mead to the Lock (so far as I traced it is some distance from the waters edge, so that walkers can proceed on comparatively level ground avoiding the irregularities of the bank and the much overgrown hawthorn) (vi) any towing part that there might have been (now hawthorn is so dense it would be impracticable to tow any industrial or similar boat from the bank, and I noted that on the most recent OS map "towing path" is marked on the other side of the HJ Water).

Whatever lack of precision there may be in the green edging on the Register map, the registration must I think be read with the words "known as Hunsdon Mead and Eastwick Mead". The possibility of being able to imagine circumstances in which a court might be in difficulty in determining within a few inches the exact line of the boundary of the land within this description, does not I think make the description objectionable. The description as it is now is essentially in accordance with common form. If any such circumstances do arise, the boundary can be determined by a court in the usual way in accordance with established legal principles; in my opinion the description is not uncertain in any sense which could now be relevant.

But contra, the effect of modifying the Land Section registration only by "excluding (as contemplated by the grounds of Objection) the land shown coloured green on a plan attached to it would give rise to uncertainty. The green colouring marks nothing which is now identifiable at all on the ground even assuming that the green colouring was intended to go up to the waters edge;



- 5 -

it is unrealistic that I should now scale up the plan and treat the excluded land as being for the whole of its length exactly 6 yards from the waters edge everywhere nowhere more and nowhere less.

I record that a landowner who desires the Land Section description to be more precise may I think properly object to the registration on that ground. But if the existing description is apparently good enough for all known existing purposes, such an objector must I think himself state with precision where the boundary line should be and provide evidence why such boundary should be adopted. In this case I have no such statement or evidence. It is I think irrelevant that Messrs Carter, Camp and Findlay agree the objection; I infer they did so because obviously from a grazing point of view its exclusion was of no practical consequence and because except in the most unlikely event of BWB erecting a fence, their animals would continue to graze as near as they could get to the water's edge. Further such agreement is in no way binding on Lord Aldenham, Mr Gibbs and Mr Moncur.

On appearance alone I conclude that the rights of common such as I have found exists over all the Unit Land with the possible exception of a strip of land about 6 yards wide near the HJ Water, exists over the whole of what is now known as Eastwick Mead down to as near the waters edge as the land so known extends. If questions hereafter arise as to the number of inches between the boundary of the land known as Eastwick Mead over which rights of common are exercisable and the waters edge, these questions can I think be determined by the court as an ordinary boundary dispute without any insuperable difficulty. In the absence of any evidence from BWB, I conclude that the Land Section description as it is at present requires no modification.

I am not concerned at all with the Irrelevant Objection Part. As regards the West Objection Part, compared with the HJ Objection Part it is very small; my conclusion about it is the same. I am not concerned with the claims put forward in the BWB August 1981 letter; so far as not dealt with above, they are outside the grounds of objection and no application has been made by BWB under regulation 26 of the Commons Commissioners Regulations 1971 to put forward any additional ground.

Having decided that I will not modify the Land Section registration, it would not I think be just by reason of the said 1970/73 letters to modify the Rights Section registrations made on the application of Messrs Camp, Carter and Findlay. I am not now concerned with any agreement they may have made about ownership on the line set out in the said August 1981 BWB letter; Mr Longmore said that I would not be thought be departing from any correspondence there had been between his firm and BWB about his client accepting the objection if for a reason quite apart from his acceptance of the objection I did not give any effect to it.

For the above reasons I confirm without any modification that the Land Section registration at Entry No. 1 and the Rights Section registrations at Entry Nos 1, and 3 to 11 inclusive.

Mr Trenhaile pointed out that the Ownership Section registration is in the Register marked ("Registration Provisional") and asked me to confirm it.



- 6 -

I suppose it was so marked because the Land Section registration until the Objection is disposed of by a Commons Commissioner remains provisional; but as I understand the 1965 Act and the Regulations made under it, when the Land Section registration pursuant to my decision becomes final, the Ownership Section registration will without any decision of mine become final and the County Council as registration authority will by administrative action delete the words ("Registration Provisional"). However this may be, I have in these proceedings under Section 6 of the 1965 Act no jurisdiction to add to or subtract from the Ownership Section. So far as the Ownership Section registration does not extend to all the Unit Land there will be further proceedings before a Commons Commissioner under Section 8 of the 1965 Act. So as not to prejudice any such further proceedings, I express no opinion, because (it being unnecessary for me to do so) as to the contention of Mr Trenhaile that the documents produced by Mr Kwok do show that Mr Gibbs owns that part of Eastwick Mead between the lines HJ and the line ABCDEFG right down to the water's edge of the HJ Water.

It may be that if BWB had been represented at the hearing and had offered evidence, this decision would have been different. Under regulation 21 of the Commons Commissioners Regulations of 1971 a person entitled to be heard at a hearing (such as BWB) can apply to a Commons Commissioner to set aside his decision and re-open the hearing; before publishing this decision, I have directed a letter to be sent to BWB drawing their attention to this regulation. However nothing in this decision should be taken by them as encouraging them to make such an application; on my inspection, I was left with the impression that the determination within a few inches of the exact line across which commonable animals could not lawfully be grazed would not be worth the trouble and expense involved, and if BWB are (as their August 1981 letter seems to indicate) only concerned with ownership, they will in the section 8 of the proceedings above mentioned be free to make any ownership claim supported by such evidence as they may have available. If they intend to make any such ownership claim, they should notify the County Council as soon as possible, so as to secure when the section 3 reference is made by the Council to the Commons Commissioners the necessity of giving notice of such proceedings to BWB is not overlooked.

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 26th day of February 1982

A. A. Baden Fuller

Commons Commissioner