



COMMONS REGISTRATION ACT 1965

Reference No. 219/D/1

In the Matter of A Strip of land between the
Royal Cinque Ports Golf Course and the Foreshore
to the North of Sandown Castle, Sholden, Kent

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No.VG.199 in the Register of ~~Common Land~~ ^{Common Land} maintained by the Kent County Council and is occasioned by Objection No. 108 made by the Royal Cinque Ports Golf Club, and noted in the Register on 17 May 1971.

I held a hearing for the purpose of inquiring into the dispute at Folkestone on 21 and 22 January 1980. The hearing was attended by Mr P Clayden, Solicitor, on behalf of Mrs A Wilks, the applicant for the registration, and by Mr John Grove, of Counsel, on behalf of the Objector.

At the time when Mrs Wilks applied for the registration the eastern part of the land comprised in the Register Unit consisted of a length of beach bounded on the east by High Water Mark of ordinary tides and the western part consisted of sand dunes, the western boundary being a somewhat dilapidated post and wire fence.. Since the registration the western part of the land has become the site of a sea defence wall erected by the Southern Water Authority in the exercise of its powers under section 17 of the Land Drainage Act 1976. The sea defence wall was, of course, constructed without reference to the western boundary of the land comprised in the Register Unit, so that the definition of that boundary on the ground would now be a surveying operation of some difficulty, since the post and wire fence has completely disappeared.

There was a considerable amount of evidence regarding the use of the beach and the sand dunes for what may be comprehensively termed usual sea-side recreational activities for many years. It is not now necessary for me to consider whether the persons indulging in those activities on the beach were inhabitants of the locality so indulging as of right, because on 18 January 1980 the Solicitors instructing Mr Grove sent to Mr Clayden a letter in which they stated that the Objector would not oppose the registration of such of the lands as falls between high water mark and the seaward toe of the sea defences, on the basis that the Objector acknowledges that fisherman have used parts of this area to fish from the beach.

I turn now to consider the area to the west of the seaward toe of the sea defences. At the time when the registration was made this consisted substantially of sand dunes, which had a surface of rough grass and some bare sand.



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When the sea defences works were constructed the sand dunes were bulldozed into the beach and the new wall was made with colliery shale.

Although there was evidence that the recreational activities were not confined to the beach, but extended to the sand dunes, the evidence was of a very general character and fell far short of identifying those who had engaged in those activities as the inhabitants of a particular locality or of showing that they engaged in them as of right. But, however this may have been during the years before the passing of the Act of 1965, the position now is fundamentally different from what it then was. It was contended on behalf of Mrs Wilks that the construction of the sea wall is irrelevant to the issue of registration. I find myself unable to accept this contention as sound in law. A right to indulge in sports and pastimes on land is exercisable only over the surface of the land. In this case, so far as the sand dunes are concerned the surface of the land on which sports and pastimes were indulged in no longer exists. It has been destroyed in the course of constructing the sea wall. The subject matter of the right no longer exists and in my view this necessarily involves the extinguishment of the right.

For these reasons I confirm the registration with the following modification: namely, the exclusion of so much of the land as now forms the site of the new seawall.

Mr Grove asked for an order for costs in the event of the objection being upheld. I do not consider that this is a case in which the unsuccessful applicant should be ordered to pay costs.

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

19~~8~~⁵

day of

February

1980


Chief Commons Commissioner