



In the Matter of Strips of Manorial Waste at  
Hawkenbury in Headcorn and Sutton Valence, Kent

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 155 in the Register of Common Land maintained by the Kent County Council and is occasioned by Objection No. 215 made by the County Surveyor, Kent County Council and noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Maidstone on 7 February 1979.

At the hearing Mrs C M Gane appeared on behalf of the County Council and no else attended. The applicant for registration, Mr Nightingale, had by letter applied for an adjournment: The County Council was not prepared to agree to an adjournment and I did not accede to the application.

The strips of land in question form the verges on each side of a length of the highway known as Hawkenbury Road, and the ground of the objection is that they are part of the highway.

Evidence was given by Mr R A Curtis who from 1963 to 1973 was employed by the County Council as an engineering assistant at the Divisional Surveyor's office, Staplehurst and since 1973 as Assistant Divisional Surveyor at the same office. The length of Hawkenbury Road concerned is within the area covered by the office.

Both sides of the road are, for the most part, flanked by grass verges beyond which are ditches and then hedges or fencing or both. The verges are narrow being between 1 ft and 3 ft for most of the length of road, though they are wider on the south east side being upwards to 8 ft, where they adjoin Hawkenbury Farm. The continuity of the verge is broken by the forecourt fronting the Hare and Hounds Public House, and in both places the ditch has been culverted. The footpath was constructed by the local Housing Authority and has been adopted as part of the public highway. During Mr Curtis's time at the Divisional Office, the grass verges, the forecourt and the pathway have been maintained by the Highway Authority as part of the highway maintenance programme for this stretch of road. Maintenance has included grass cutting, patching the edge of the metalled surface, including the forecourt, and these repairs may involve some extension of the metalled surface into the verges. In connection with water, electricity and telephone services, equipment has been laid under the grass verges, the laying and re-pair of the equipment is done with the consent of the Highway Authority. The verges are used by the public for pedestrian purposes.

Evidence was also given by Mr P W Giles, who worked for a road contractor in the Hawkenbury area from 1924 to 1937, and in the course of that work carried hardcore to put in the sides after road widening. The widening was from 12' wide to 20' wide. In 1937 he began working for Hollingborne R.D.C. and this included the cutting of verges and laying of tarmac, some of which was on this stretch of road. He was a tractor driver for Kent County Council from 1949 to 1973 and in this stretch twice a year, on instructions from the County Surveyor, cut back the



verges to the hedgerow and dykes on both sides.

In my view this evidence is consistent with the application to the present case of the presumptions as to the extent of the highway discussed in *Offin v Rochford R.D.C.* 1906 1 Ch. 342 and *A G v Beynon* 1970 Ch. 1, but this could give rise to difficulties in ascertaining and measuring the sections of the strips of land which are or are not verges. Since the hearing, I am informed that agreement has been reached between the County Council and Mr Nightingale to the effect that a six foot wide strip of land on either side of Hawkenbury Road (excluding a section in front of Hawkenbury Farm) is to be de-registered and that the rest of the land together with the excluded section will remain on the Register as common land. I am prepared to give effect to this agreement by refusing to confirm the registration as regards the six foot wide strip and confirming the registration as regards the remainder and the excluded section, and this I do. I understand that a detailed plan is being prepared showing the precise areas involved and if this can be forwarded to me in due course, I can give the appropriate directions by reference to the plan.

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

31 July

1979

*L. J. Morris Smith*

Commons Commissioner