

COMMONS REGISTRATION ACT 1965

Reference No. 236/U/90

In the Matter of Backside Common (part),  
Worplesdon, Guildford Borough, Surrey

DECISION

This reference relates to the question of the ownership of part ("the Referred Part") of the land which itself is part of that known as Backside Common, Worplesdon, Guildford Borough, which is the land comprised in the Land Section of Register Unit No. CL74 in the Register of Common Land maintained by the Surrey County Council and of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner. The land ("the Unit Land") in this Register Unit is all south of the Railway, and is approximately triangular. The Referred Part is a comparatively very small area at the north-east corner. All except the Referred Part is registered at HM Land Registry under the Land Registration Acts 1925 to 1966 as part of Title no. SY164738.

Following upon the public notice of this reference Mr H Sharp of Passengers Farm, as owner of the adjoining field (OS No. 959) made a number of observations (letter of 28 April 1978) about the ownership of the Unit Land and the adjoining land; and the said Council claimed (letter of 4 May 1978) ownership of the land in question. No other person claimed to be the freehold owner of the land or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 6 November 1978. At the hearing (1) Surrey County Council were represented by Miss P J Fishwick articled clerk with their Deputy County Clerk; and (2) Mr Sharp (Rights Section Entry No. 8 was made on his application) attended in person.

Miss Fishwick produced: (1) a copy of HM Land Registry Filed Plan for Title no. SY164738; (2) an agreement dated 8 January 1968 by which the Rt Hon WAB 6th Earl of Onslow agreed to sell to Surrey County Council various waste lands as therein specified by reference to an annexed plan; and (3) a copy of the conveyance dated 16 May 1968 by which the Earl with the concurrence of his trustees conveyed lands (apparently pursuant to the said agreement) also by reference to an annexed plan.

The Referred Part is not included in the area coloured on any of the plans produced; nevertheless Miss Fishwick contended that the Referred Part, because it appeared (she had visited it 4 days before the hearing) to be waste land indistinguishable from the rest of the Unit Land, the 1968 agreement and conveyance should be construed as including it and you referred me particularly to the general words in paragraph 23(b) of the agreement and to plan annexed being therein stated to be for identification purposes only; so the persons who made these documents must have contemplated that the plan might in a matter of detail such as I am now considering be mistaken.

Mr Sharp who has owned and lived in Passengers Farm for the last 15 years said (in effect):- The Town map of 1839 (prepared prior to the construction of the Railway) shows the Unit Land and the rest of Backside Common (north of what is now Railway) as all one common. The natural east boundary of this Common would be the stream shown on the modern OS maps, that is a straight line crossing the railway so that the Referred Part would be included in the Common. The Referred Part is a damp area at the base of the Railway embankment; it is difficult to be sure of the boundary line on it, because 1976 earth was pushed around with a bulldozer. He thought the maps produced by Miss Fishwick might be mistaken she contended and was agreeable to County Council being registered as owner of the Referred Part.

Because Mr Sharp is the owner of the land adjoining the Referred Part (OS 959 is the same as OS 6543 on a more recent map) I consider that I ought to give effect to the boundary as agreed between County Council and Mr Sharp and be satisfied (as I am) that the County Council is under the 1968 agreement and conveyance the owner of the Referred Part, and accordingly I shall direct Surrey County Council registration authority to register themselves as the owner of the land under section 8(2) of the Act of 1965.

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 28<sup>th</sup> day of November 1978.  
a. a. Borden Fisher

Commons Commissioner