



COMMONS REGISTRATION ACT 1965

Reference No 236/U/62

In the Matter of land at Park Lane,
Merrow, Guildford Borough, Surrey

DECISION

This reference relates to the question of the ownership of land being two strips each about 150 yards long on opposite sides of the carriage way of Park Lane, fronting on Park Lane Farm and Park Farm Cottage, Merrow, Guildford Borough being the land comprised in the Land Section of Register Unit No CL. 499 in the Register of Common Land maintained by the Surrey County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Earl of Onslow and Ritzvale Limited claimed 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 13 January 1977. At the hearing Rt Hon Michael William Dillon 7th Earl of Onslow was represented by Miss S Cameron of counsel instructed by Travers Smith, Braithwaite & Co, Solicitors of London EC1 and Ritzvale Limited, Charles Church Limited and Martin Grant and Company Limited were also represented by Miss Cameron instructed by Merriman White & Co Solicitors of London EC4.

Evidence was given by Lord Onslow (affidavit sworn 13 January 1977) by Miss S Corke (orally) who is the Assistant Archivist at Guildford Muniment Room of the Surrey Record Office and who produced the document specified in the First Schedule hereto, and by Mr J G Weeks, (orally) who is a managing clerk with Merriman White & Co and who produced the documents specified in the Second Schedule hereto. On 17 February 1977 I inspected the land.

The land ("the Unit Land") comprised in this Register Unit is on the Register defined by reference to the register map which is on a scale of 6" = 1 mile, it having thereon a length of about 1" and a width which is everywhere small and in places no more than a line. The hearing proceeded by reference to an OS map on a scale of 25" = 1 mile showing the edges of the carriage way of Park Lane by dotted lines and the nearby hedges or fences by unbroken lines, and on the basis that the Unit Land comprised the two strips between the dotted and unbroken lines. On this basis (on my inspection this basis seemed to me reasonable and proper), the west strip of the Unit Land is bounded on the west by OS Nos 88 and 89 being Park Lane Farm House and land held therewith, formerly a mushroom farm, by OS No 89 being Park Farm Cottage (formerly Park Lane Farm Cottage) and by OS no 88 (north part), and the east strip is bounded on the east by OS No 581 and for a short distance by OS No 669 (north part), both being farm lands.



The persons ("the Claimants") represented by Miss Cameron at the hearing claimed that they were then or would shortly be registered at HM Land Registry with an absolute title to all the said OS Nos except No 89 and that the relevant title numbers were or would be SY 194827, SY 194841, SY 216785 and SY 454015. Notwithstanding that at the hearing the land certificates for Title Nos SY 194841 and SY 454015 were not produced at all and that the land certificate for Title No SY 216785 was out of date, I give this decision on the basis that certificates for these Title Nos can and will be produced at the office of the Commons Commissioners if I require it for the purpose of perfecting my decision, and at the hearing I gave the Claimants liberty to leave them there for this purpose.

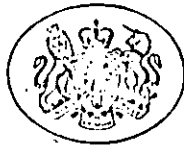
The registration was made on an application dated 31 December 1969 by Captain B K R Park of Park Farm Cottage. There are no Entries in the Rights Section or in the Ownership Section. The HM Land Registry Certificate of Search dated 5 July 1974 and given on the application of the County Council as registration authority certifies that the land is not registered, so notwithstanding any lack of clarity of the Register map, I proceed on the basis (as was agreed by Miss Cameron at the hearing) that no part of the land comprised in the said Title Nos is also part of the Unit Land.

The argument of Miss Cameron as I understood it was this:- The carriage way is a public highway. It runs between two fences (hedges) and according to a well established presumption relating to highways so positioned this highway must be presumed to extend over the two strips on either side right up to the fences. In accordance with another well established presumption the owner of the land adjoining a highway is presumed to be the owner of the soil of the highway up to the middle line of the made up part. In considering the applicability of these presumptions to the Unit Land the circumstance that it has been registered as commonland under the 1965 Act is irrelevant.

Park Lane is a side road leading north from the Guildford-Leatherhead Road; the metalled part ends at the entrance gate of Park Lane Farm; the lane continues northwards towards Merrow Common but such continuation is not metalled (when I saw it, it was a rather muddy track). As to the carriage way being highway, I have the 1977 County Engineer's letter about it being maintained, the present appearance of the Unit Land, and its appearance in 1841 as it could be inferred from the Tithe map. I conclude that the metalled part is a public highway and that the basis of the argument is established. A very small part of the Unit Land fronts on the part of the path which is not metalled; I shall not consider this part separately, because it would I think be reasonable to reach the same ownership conclusion about it as I do as regards the rest.

Miss Cameron offered at the hearing to elaborate her argument. But I considered that this was unnecessary because she had in October 1976 in re Cliffe Marshes (CL. 77 Kent) reference 19/U/39 an almost identical facts put forward the same argument and elaborated it before me in some detail, and what she then said was fresh in my mind, as I was then in the course of preparing my decision. She indicated that she did not wish to add anything to what she then said.

As to this argument, the facts in re Cliffe Marshes and in this case are essentially the same as in those which I considered in re Settle Road (CL. 294 North Yorkshire), see my decision dated 10 August 1976 reference 45/U/306. My decision in Cliffe Marshes is dated 7 February 1977. For the reasons set out in these two decisions, I reject the argument summarised above.



I now consider whether the evidence before me at this hearing shows that the Unit Land is in some way special or different from that which I considered in re Settle Road and in re Cliffe Marshes. The greater part of the western of the two strips which form the Unit Land fronts on OS No 91, and to this the Claimants make no claim. The largest part ("the Pond Part") to which they make a claim is the part of the east strip opposite OS Nos 88 and 89 (Park Lane Farm House).

The 1841 Tithe map shows the Unit Land and the site of the present carriage way as all one piece except it marks a pond along the east boundary opposite where the farm house now stands. Lord Onslow (now aged 38) cannot remember there ever having been such a pond. The level of the lands is however such ~~as it is~~ \longleftrightarrow that there might at one time have been a pond where marked on the map.

In the 1841 Tithe Award under the heading "Public Roads", there is an item "299 Back Lane - Road - l.l.37", and from the Tithe map no 299 can be identified with Park Lane including the strips on either side up to the hedges. Although the map shows the Pond separately, the Award does not. In the Award there is a separate heading for "Commons &c" under which there is an item "246 Merrow Common Pasture 60.l.12."

I accept the Tithe Award as showing the appearance of the Unit Land at that time that is to say as showing a wide strip of land between two fences (or hedges) and as to there then being a pond. It may be that if the question before me was whether the Unit Land should have been registered under the 1965 Act, I should have concluded from this map that it was all part of an ancient highway and which was therefore not registrable; but it has been registered, and I must assume that the two strips which now form the Unit Land might in 1841 have been manorial waste between which there was then a public highway. The valuer who prepared the Award, because on either view the land would not be tithable, would not be concerned to make any such distinction, and accordingly I regard the Award as providing no evidence supporting the Claimants.

Considered by itself the 1977 County Area Engineer letter might be read as meaning that the whole of the Pond Part has been maintained by the County Council from the east edge of the carriage way right up to the hedge on the east side, meaning that the County Council had kept the land tidy and clear for a person to walk over or to enjoy. It is reasonably clear from the photographs produced by Mr Weeks and quite clear when I inspected the Unit Land that the writer of the letter could not have had this meaning. Apart from a grass verge of 2 or 3 feet, the Pond Part has on it some scrub (apparently ~~reasonably~~ new and now reaching up to a height of 20 feet or more) and much bramble. I do not know to what question the writer was replying, but I conclude that if he had thought that it was that to which I am now considering, he would have expressed himself quite differently, and for this reason I consider the letter on this point is unreliable and in no way supports the applicability of the presumptions mentioned by Miss Cameron.

In these proceedings I have no jurisdiction to avoid the registration; and it may well be that if an Objection had been made in time and the applicant had not sought to support his application by evidence, that a Commons Commissioner would have avoided it. However I think I should record that on appearance alone I decline to assume that the Unit Land, being for the most part anciently the site of a pond and the land surrounding it in front of a farm house and the farm cottage could not be properly registrable as common land under the 1965 Act.



For the above reasons I conclude that there is nothing different or special about the Unit Land rendering inapplicable the reasoning ~~and~~ my decisions in re Settle Road and in re Cliffe Marshes and accordingly I am not satisfied that any person is the owner of the Unit Land and it will therefore remain subject to protection under section 9 of the Act of 1969.

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.

FIRST SCHEDULE

(document produced by Mrs Corke)

30 June 1841 Tithe Apportionment Award for the parish of Merrow
(with map)

SECOND SCHEDULE

(documents produced by Mr Weeks)

JW1	15 December 1976	HM Land Registry application for official search and certificate of result SY 454015
JW2	-	Modern OS map (25" = 1 mile) with Tithe map numbers marked thereon
JW3/4/5	-	Photographs of Unit Land
JW6	12 January 1977	Letter written for County Area Engineer (Surrey County Council) to Charles Church Limited
JW7	9 June 1967 (date of ownership registration)	Land Certificate Title No SY 216875 in favour of W A B 6th Earl of Onslow. Noted thereon land edged green SY 454015 removed from Register
JW8	December 1976	Contract for sale by E L V Waddilove, G S Mackenzie, E F Oliver and H R Oliver to Charles Church Limited of land registered under Title No SY 194841
JW9	10 January 1958	Transfer by W A B Earl of Onslow to F R Oliver, E F Oliver and A Arajs of Park Lane Farmhouse Title No SY 194827
JW10	24 January 1958 (date of ownership registration)	Land Registry Certificate title no SY 194827 in favour of F R Oliver, E F Oliver and A Arajs as owners
JW11	29 March 1971	Probate of the will of F R Oliver (he died 29 March 1971) to H R Oliver, E F Oliver, E L V Waddilove and G S Mackenzie
JW12	24 August 1976	Transfer by E F Oliver and A Arajs to Ritzvale Ltd of land in Title No SY 194827

Dated this 24th day of February — 1977

a. a. Baden Fuller
Commons Commissioner