



In the Matter of piece of land in Holmwood
and Capel Parishes, Mole Valley D

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section and all the subsisting Entries in the Rights Section of Register Unit No. CL 86 in the Register of Common Land maintained by the Surrey County Council and are occasioned by Objection No. 12 made by Helen Kathleen Keswick and noted in the Register on 5 November 1968, Objection Nos. 147 and 342 made by Surrey County Council and noted in the Register on 1 September 1970, Objection No. 418 made by Surrey County Council and noted in the Register on 19 October 1970, Objection No. 706 made by the National Trust and noted in the Register on 1 August 1972 and Objection No. 283 made by the National Trust and noted in the Register on 7 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 18 October 1979. The hearing was attended by Mr Myers for the Surrey County Council Mr D L Hodges of Messrs Hart Scales and Hodges on behalf of Mrs Keswick and Mr D J Carter on behalf of the National Trust. It was agreed that I should confirm the Entry in the Land Section modified by the exclusion of the land identified on the plan annexed to Objection No. 12 and it was accepted that highway land was not Common Land. Such highway land being now clearly defined.

The Objections to the Rights Entries consequential on the objections to the Entries in the Land Section were not pursued. The National Trusts Objections to Entries 7, 15, 23, 27 and 33 in the Rights Section were compromised as between the National Trust and the applicants so that I should confirm these Entries modified as follows:-

- Entry No. 7 The rights to be limited to the right to graze 10 fowls and a right of estovers
- Entry No. 15 The rights to be limited to the right to graze 6 goats, 6 ducks and 36 fowls
- Entry No. 23 The rights to be limited to the right to graze 12 ducks and 12 geese and a right of estovers
- Entry No. 27 The rights to be limited to a right to graze 4 geese and 12 poultry
- Entry No. 33 The rights to be limited to the right to graze 2 horses and 5 cattle and a right of estovers.

I have always been of the opinion that geese are the only commonable birds and that fowls, ducks and poultry cannot by their presence on Common Land give rise to Common Rights. I was pressed by Mr Carter notwithstanding the view which I take, to confirm the modified Entries in accordance with the compromises which he had negotiated with the applicants, on the ground that by so doing harmony would be promoted in the area. I agreed to accede to Mr Carters request but I do so "de bene esse" and on the clear understanding that I am not by this decision deciding that there can in law be a right of common to graze ducks, chickens or fowls.



I confirm all the Entries in the Rights Section, Entries 7, 15, 23, 27 and 33 modified as aforesaid.

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 9th day of November 1979

C. A. Little

Commons Commissioner