



In the Matter of Chapel Common in the parishes of (1) Rogate, (2) Trotton with Chithurst and (3) Milland, all in Chichester District, West Sussex

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1, 2, 3 and 4 in the Rights Section of Register Unit No CL. 27 in the Register of Common Land maintained by the West Sussex County Council and are occasioned by Objection Nos 152, 153, 154, 155 and 156 made by Mr V F Northcott and Mr F C Rea and noted in the Register on 5 October 1970 and by Objection No 455 made by Mr W C S Harrison Surveyor to West Sussex County Council and noted in the Register on 15 March 1971.

I held a hearing for the purpose of inquiring into the disputes at Chichester on 23 March 1977. At the hearing (1) West Sussex County Council were represented by Mr O'Loughlin legal assistant in the County Secretary's Department; (2) Rogate Parish Council were represented by Captain K L Harkness, CBE, DSC, RN who was until recently one of their members; (3) Milland Parish Council (as regards these proceedings they have replaced Trotton-with-Chithurst Parish Council) were represented by Mrs P M D Gollan one of their members; (4) Mr J B Phillips on whose application Rights Section Entry No 1 was made was also represented by Captain Harkness; (5) Mr T S Blower who is now one of the owners of Little Langley Farm (the right registered at Rights Section Entry No 2 is attached to it) attended in person and as representing his brother Dr Robert Hunter Hill of Vancouver, Canada and his sister Mrs Marion Kemp of Tonbridge School, Kent (the 2 other owners) and also as representing his mother Mrs R T Blower on whose application the Entry was made and who is now tenant; and (6) Mr J Loh who is now the owner of Langley Court (the right registered at Rights Section Entry No 3 is attached to it) also attended in person (he is the owner of Langley Court in succession to Miss Nagel on whose application the Entry was made and after her of Mrs P Beresford-Hill.

The land ("the Unit Land") comprised in this Register Unit, as shown on the Register map is in 5 pieces. One of these pieces ("the Main Piece") is bounded for about 1 mile by and is on the north or northwest side of the A3 road) a stretch between Liphook on the north and Rake on the south); the Main Piece north of the road is at most places about half a mile wide. The four other pieces ("the South Pieces") are all very much smaller than the Main Piece, and are on the opposite side (the south side) of the A3 road. The smaller pieces are for the most part covered with trees and scrub. The part of the Main Piece near the A3 road and much of it elsewhere is similar; however part (perhaps one third or more) is grassland fit for grazing. The Land Section Entry was made on 12 April 1967 on the application of Miss I K Nagel; noted on the Register are applications by Rogate Parish Council and Trotton Parish Council. In the Rights Section, rights are registered as follows:-



Entry No	Applicant	Rights	Land to which rights are attached
1	Mr J B Phillips	To graze 30 cattle or 30 sheep	Ripsley Farm
2	Mrs R T Blower	To cut and take wood; to cut and tak turf or peat	Little Langley Farm
3	Miss I K Nagel	To cut and take wood; to cut and take turf or peat; to graze 20 cows or 30 sheep	Langley Court
4	Mr R L Brown	To cut and take wood & to cut and take turf	Wildwood, Wardley Lane

In the Ownership Section Mr V F Northcott and Mr F C Rea were on 15 August 1969 registered as owners of "the whole of the land shown verged in red and lettered A on the register map"; the land so verged and lettered appears to me to be all the Unit Land.

The grounds of Objection No 455 are that part of the area is highway. Mr O'loughlin at the beginning of the hearing said he was authorised to withdraw this Objection. I need therefore say no more about it.

The grounds of Objection Nos 152, 153, 154, 155, 156 (all dated 24 August 1970) are in effect that the South Pieces ~~were not common land at the date of registration and that the Rights claimed do not exist over the South Pieces~~ and a small part ("the Northwest Spur") of the Main Piece at the northwest corner were not common land at the date of registration and that the Rights claimed do not exist over the South Pieces and the Northwest Spur.

In a letter of 20 January 1976 written to the Clerk of the Commons Commissioners, Mr R L Brown on whose application Rights Section Entry No 4 was made, said he had decided to withdraw his registration; accordingly I shall avoid this Entry (nobody at the hearing contended that I should not). As to the rest of these Objections oral evidence was given by Captain Harkness, Mrs R Newman, Mrs Beresford-Hill Mr Loh, Mr A W Draper, Mr Blower and Mrs Gollan. In the course of his evidence Captain Harkness produced the documents specified in the Schedule hereto.

On 1 April 1977 I walked over the Unit Land by the footpath from Milland Church to the motor road where it turns westwards to Little Langley Farm by one of the entrances to Langley Court; and thence by the track near the north boundary of the Unit Land to a point near or a little beyond Bonny's Copse; and thence back by the footpath to the Church. I also motored along the road by the west boundary of the Unit Land as far as the small group of dwelling houses situate around the Northwest Spur.

In a letter dated 25 March 1977 (after the hearing) Blake, Laphorn Rea & Williams, Solicitors of Havant say (in effect and among other things) that Mr V F Northcott and Mr F C Rea sold off part (being all the Main Piece except the Northwest Spur) of the



Unit Land, that Mr Rea has since died, and that the land left is now subject to a trust of which the present owner trustees are their clients, Mr A L Blake and Mr K W G Webb.

In a letter dated 14 February 1975, West Sussex County Council when sending to the Commons Commission these references, said that part of the registered land had been sold to Deloglen Properties Limited who applied for planning permission for an 18-hole golf course with ancillary buildings.

Captain Harkness for the purposes of this hearing prepared a brief which set out in a comprehensive way the information he had obtained about the Unit Land and the rights of common exercised over it, and summarised the documents he produced (see Schedule hereto). He understood that as a consequence of the auction held on 20 April 1966, the Main Piece except the Northwest Spur had passed into the ownership of Deloglen Properties Limited. No objection had been made to this part being registered as common land or as to any rights over this part being registered. Objection Nos 152-156 related only to the rest, so all he need prove was that the boundaries of the Unit Land were correctly drawn so as to include the Northwest Spur and the South Pieces; the documents he produced were directed to showing that historically all the Unit Land had always been one piece of land, at any rate up to the 1966 sale.

Mrs Newman who was born in 1909 and whose husband worked for Mr Bosanquet, (he died about 1940) the former owner of Ripsley House and Ripsley Farm, described how she had seen the Unit Land grazed from Ripsley Farm.

Mrs Beresford-Hill who in 1949 joined the teaching staff of Byculla School, which Miss Nagel as owner and headmistress carried on at Langley Court until she retired (she died in 1972 leaving Mrs Beresford-Hill her property) described how wood and bracken had been cut from the Unit Land for the purposes of Langley Court.

Mr A W Draper who was born in 1915, and who moved to a bungalow near Langley Court when he was 17 years of age, has been there ever since and had since he was 14 years of age worked there, in the course of his evidence described how he had cut bracken and gathered wood off the Unit Land and how it had been used for cattle, geese and ponies from Langley Court and Langley Farm.

Mr Blower who was born in 1938 and lived at Little Langley Farm (which his mother had purchased about 1935) until 1964 when he married and who had made it his home while he was in the army, or at a boarding school or at the University, in the course of his evidence described how the Unit Land had always been open and unfenced land and how firewood for the purposes of Little Langley Farm had been gathered off it. It was not until the 1950's that part of the Unit Land on the west side had been turned into pasture and fenced.

Mrs Gollan described how in about 1955 part of the Unit Land had been enclosed with a post and wire fence.

The Unit Land is shown on the OS map as being partly in the Parish of Milland (formerly Trotton) and partly in the Parish of Rogate. The 1866 particulars (page 23) shows that the Manor of Rogate-Bohunt then offered for sale included all the Unit Land (ie that in both Parishes), all then known as Chapel Common. Such information as I have about the 1923 conveyance, and the 1932 particulars both show Chapel Common as one piece of land as it was in 1866. The 1965 particulars (condition 10) proceed on the same basis. In my opinion the documents produced do show, as Captain Harkness contended, that the Unit Land has historically always been one piece of land, being waste land of the Manor of Rogate-Bohun. Nobody at the



hearing contended that the fences described by Mrs Gollan (much of which I saw when I walked over the Unit Land) was of such a character as to change the nature of the Main Piece in any now relevant way. Accordingly, whether or not the Unit Land is now subject to any rights of common, it was in my opinion properly registered in the Land Section as being all within paragraph (b) of the definition of "common land" in section 22 of the 1965 Act.

As to the Rights Section Entries, I need not I think summarise the evidence given in support of them. Although it was of a general character, none of it was challenged. The appearance of the Unit Land, the situation of Ripsley Farm, Langley Court and Little Langley Farm in relation to it, the frequent mention of rights of common over the Unit Land in the documents produced to me, all make it probable that the rights claimed existed from time immemorial. In the absence of any evidence in support of the Objections, there is I think no reason why I should not give full effect to the evidence put before me. Accordingly my decision is that the objection that "the Rights claimed do not exist over" the "South Pieces" and "the Northwest Spur" wholly fails.

For the above reasons I confirm the registration at Entry No 1 in the Land Section and at Entry Nos 1, 2 and 3 in the Rights Section without any modification, and I refuse to confirm the registration at Entry No 4 in the Rights Section.

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.

#### SCHEDULE

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| 1           | -            | Plan prepared for hearing based on enlarged uncoloured copy of 1965 plan mentioned in 10 below showing the OS Nos as they are on the OS 1947 map, 25 inches = 1 mile, and showing coloured green the Unit Land |
| 3           | 8 March 1977 | Brief (25 pages) prepared by Captain Harkness for the hearing setting out the case of the Parish Council   |
| 4           | -            | Tabular statement as to how various parts of the Unit Land are shown on various maps produced  |
| 5, 6<br>& 7 | 1 June 1866  | Particulars of Hollycombe Estate of 3800 acres offered for sale by public auction on 1 June 1866, including Manor of Rogate-Bohunt with plan of Estate (based on OS map, 25" = 1 mile, 1st edition)            |



- 8            10 December 1976            Letter from Knight Frank & Rutley to Mrs Gollan as to Manor of Rogate-Bohunt having been conveyed to Sir William Cotts by a conveyance dated 15 October 1923, Chapel Common being therein referred to as being OS Nos 33a, 36, 36a and 45, containing 316.006 acres, and as to the sale of Coldharbour Wood Estate having been sold by auction in 1932 by his executors, the purchaser of Lots 10 and 11 being Mr C W J Bridger
- 9            8 June 1932                        Particulars of sale by auction on 8 June 1932 of Coldharbour Wood Estate comprising 2,200 acres with map
- 10          24 March 1965                      Particulars of sale by auction on 24 March 1965 of Great Trippetts Farm with plan attached
- 11          28 September 1852                 Particulars of sale on 28 September 1852 of Fowley Estate of 730 acres including Ripsley Farm
- 12          4 August 1869                      Particulars of sale of Fowley and Chitty Estate, Lot 4 being parts of Ripsley and Yoak Croft Farms. "There are Valuable Common rights over the Waste Lands in the Manor of Rogate-Bohunt belonging to Ripsley Farm which will be sold with this property".
- 13          20 April 1966                      Particulars of sale by auction of Chapel Common (255 acres), that is the Main Piece except the Northwest Spur

Dated this 31<sup>st</sup> day of May —

1977

a. a. Basil Fuller

Commons Commissioner