



COMMONS REGISTRATION ACT 1965

Reference Nos 238/D/87-91

In the Matter of Waltham Common  
Brooks, Coldwaltham, Horsham District,  
West Sussex

DECISION.

These disputes relate to the registrations at Entry Nos 1 and 3 in the Land Section, at Entry Nos 1 to 7 inclusive in the Rights Section and at Entry No 2 in the Ownership Section of Register Unit No CL. 120 in the Register of Common Land maintained by the West Sussex County Council and are occasioned by Objection Nos 239 and 240 made by Mr R T Batchelor and noted in the Register on 21 October 1970 and by Objection No 439 made by the County Surveyor and noted in the Register on 17 March 1971.

I held a hearing for the purpose of inquiring into the disputes at Chichester on 13 April 1978. At the hearing Mr D W Marten (Rights Section Entry No 3 was made on his application and he claimed as successor in title of Mrs E M Charman to be entitled to the benefit of Rights Section Entry No 7 made on her application) was represented by Mr K C Bentall solicitor of Eager & Sons, Solicitors of Horsham; and West Sussex County Council were represented by Mr R Lester, local government officer in the County Secretary's Department.

The land ("the Unit Land") comprised in this Register Unit is registered as being in two parts: that described at Entry No 1 ("the No 1 Part"; registration made by the Registration Authority without application) is an area more than half a mile long, bounded on the southwest by the River Arun and situated south of the Village of Coldwaltham; and that described at Entry No 3 ("the No 3 Part"; the registration made on the application of the Church Commissioners for England) is a comparatively very small area adjoining the north side of No 1 Part, being a strip near Greatham Bridge. In the Rights Section, there are 7 Entries, six being rights of pasture or grazing (some described as "llock Leazes") and one (made on the application of Coldwaltham Parish Council) being a right to take fish. In the Ownership Section at Entry No 2, the Church Commissioners for England are the registered owners of all the land comprised in this Register Unit, but there is a note to the effect that the Entry does not relate to the No 3 Part.

The grounds of Objection No 239 (Mr Batchelor; Objection applies only to Land Section Entry No 3) are: "That the land was not common land at date of registration". The grounds of Objection No 241 (Mr Batchelor; Ownership Section Entry No 2) are: "The person named as owner at the date of registration did not own the land". The grounds of Objection No 439 (the County Surveyor to the Land Section Entry) are: "Part area is highway, see attached"; the attached is a statement that the area adjoining the paved carriageway is highway for the widths therein indicated taken from the centre of the carriageway.

Mr Bentall after referring to a conveyance dated 19 February 1970 made by Mrs Charman in favour of Mr Marten, said that Mr Marten did not claim any rights over the No 3 Part.



Before the hearing, Anderson, Longmore & Higham, Solicitors of Petworth in a letter dated 1 March 1978 and sent to the Clerk of the Commons Commissioners on behalf of Mr Batchelor, said (in effect) that he was only concerned to exclude the No 3 Part from the registrations; enclosed was a copy of a letter dated 27 February 1978 from the Church Commissioners in which they said (in effect) that they accepted that the No 3 Part was included in the registration in error and that the Commissioners had conveyed their interest in Waltham Brooks to the Sussex Trust for Nature Conservation Ltd by a deed dated 4 October 1976.

Mr Lester said that the County Council withdrew Objection No 439 (the County Surveyor), relying on the provision in section 21(2) of the 1965 Act.

As regards the registration at Entry No 3 in the Land Section:- Mr Bentall agreed that I should refuse to confirm it. The application of the Church Commissioners for England is dated 20 June 1968 and includes the No 1 Part; the division in the Register of the Unit Land into two parts seems to have been occasioned by the Registration Authority happening to have made their registration a few months before the Church Commissioners made their application. Whether or not the applicants for the other Rights Section Entries intended that the No 3 Part would certainly have been included in the land over which their rights would subsist, is not clear from the information I have; however whatever may have been their intention, none of them attended the hearing, and having regard to the concession made by Mr Marten I conclude that they will suffer no injustice if the No 3 Part be excluded from the registration. In the foregoing circumstances, I refuse to confirm the registration at Entry No 3 in the Land Section.

In view of the withdrawal by Mr Lester, and of there never having been any other Objection to it, I confirm the registration at Entry No 1 in the Land Section.

But for these Objections, all the Entries in the Rights Section would have become final under section 7 of the 1965 Act without any of the applicants ever being required to provide any evidence as to the propriety of the registration other than the statutory declaration made by them in support of their applications on CR Form 9. No one at the hearing having suggested that the registrations were in any way improper, I consider that I should produce the same result, and accordingly I confirm the registrations at Entry Nos 1 to 7 inclusive in the Rights Section without any modifications other than those which are necessarily consequent on my refusal to confirm Entry No 3 in the Land Section.

I am concerned with the propriety of the Entry in the Ownership Section on the date when it was made (6 August 1968); I cannot amend it by deleting in column 1 "the Church Commissioners for England" and substituting "the Sussex Trust for Nature Conservation Ltd"; any change of ownership consequent upon any deed made after the registration must be dealt with in accordance with the provisions of the Act and the regulations made under it without regard to the one time existence of the Objection. If neither Entry No 3 in the Land Section nor Objection No 240 had ever been made the registration at Entry No 2 in the Ownership Section would have related only to the No 1 Part and would have become final under section 7 of the 1965 Act. From the March 1978 letter I infer that Mr Batchelor never intended to dispute the registration insofar as it related to the No 1 Part and I consider therefore that as regards such Part, I should produce the same result. For these reasons I confirm the registration at Entry No 2 in the Ownership Section with such modification only as is consequent upon my refusal to confirm the registration at Entry No 3 in the Land 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.

Dated this 20<sup>th</sup> day of April — 1978

Alan Bastin Fuller

Commons Commissioner