



COMMONS REGISTRATION ACT 1965

Reference Nos. 201/D/19
 201/D/20
 201/D/21
 201/D/22
 201/D/23
 201/D/24
 201/D/25
 201/D/26

In the Matter of Whipsnade Heath, (adjoining
 Studham-Dunstable Road and Guckwood Lane),
 Whipsnade, South Bedfordshire District, Bedfordshire.

DECISION

These disputes relate to the registrations at Entry Nos.1 and 2 in the Rights Section and Nos.1 and 2 in the Ownership Section of Register Unit No.CL.4 in the Register of Common Land maintained by the Bedfordshire County Council and are occasioned by these registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Bedford on 16 October 1975. At the hearing (1) Bedfordshire County Council were represented by Mr.S.P. Peatfield, Assistant County Solicitor of the County Secretary's Department, (2) Mr. Charles William Bates on whose application the said Entry Nos.1 were made was represented by Mr. R.A. Cooke, solicitor of Cooke & Sons, Solicitors of Luton, (3) Mr Heath John Stanbridge, being one of the persons on whose application the said Entry Nos.2 were made, and also one of the executors of Mr Vernon Stanley Stanbridge (he died on 28 March 1975) being the other applicant for the said Entry Nos.2, was represented by Mr. P.S. Gill, articled clerk with Borneo Martell & Partners, Solicitors of Bedford, (4) Mr. Robert Norman Gutteridge who is the other executor of Mr.V.S. Stanbridge was also represented by Mr. Gill and, (5) South Bedfordshire District Council was represented by Mr. G.S. Blakey, legal assistant in their Solicitor's Department.

The land ("the Unit Land") comprised in this Register Unit contains about 34 acres, and is all in the parish of Whipsnade. Along and just within the west boundary is the Dunstable-Studham road, and along and a little within the southeast boundary is the Whipsnade-Markyate road, both old highways; it is crossed by a recently (in the 1930s) constructed road from Whipsnade to Luton. On the Unit Land there are some areas of grass, the larger of which are near the place ("the Cross Roads") where all the said roads cross; there are some other grass areas, most of them small, near or easily accessible from the said roads. The remainder of the Unit Land (all the grass areas taken together are a very small part of the whole) is much overgrown with scrub of many years growth (with some trees), for the most part impenetrable even on foot, except where there is a footpath ("the Northeast Path") from the Cross Roads to the northeast. The land ("the CL.51 Land") adjoining on the east (being part of the land comprised in Register Unit CL.51, and all in the parish of Totternhoe) is (except where it is crossed by the Northeast Path and the Whipsnade-Luton road) also much overgrown with scrub (and trees) and like most of the Unit Land impenetrable. The Unit Land and the CL.51 Land are together known as Whipsnade Heath.



Entry No.1 in the Rights Section is of a right attached to Hill Farm, Whipnade "of sole pasture, of sole estovers and of sole turbary and all rights comprised in the Lordship of the Manor...". Entry No.2 in the Rights Section is of a right attached to Shortgrove Manor Farm "of sole pasture, of sole estovers and of sole turbary ... to graze 20 cattle or 133 sheep or 5 horses...". The Entries in the Ownership Section are of the ownership (No.1) of Mr C.W. Bates, and (No.2) of Messrs H.J. and V.S. Stanbridge.

In the course of the hearing, the documents listed in the Schedule hereto were produced, and oral evidence was given by Mr H.J. Stanbridge who was 68 years ago born at Shortgrove Manor Farm and has lived there ever since and by Mr E.W. Bates who is 62 years of age, is the son of Mr C.W. Bates and has been a farmer in Whipnade all his life.

As to Ownership:-

The 1915 Particulars show that the lands conveyed by the two 1916 conveyances, were comprised in a settlement dated 30 June 1846 and made in pursuance of a direction in the will of John Pedley who died in 1838. The 1844 Award includes the Unit Land (or most of it) in the "Waste Land, Roads etc." under the description "Whipnade Heath: Pasture: 31-21-35" and shows it as non-tithable: the columns in the Schedule headed "Landowners" and "Occupiers" are left blank. Accordingly I have an indication that the Unit Land was not in 1844 reputed to be in the same ownership as the Pedley Estate; but this indication is not very strong, because the Valuer even if he had discovered the Unit Land was owned by the same person as the rest of the Pedley Estate, might because the Unit Land was non-tithable, and not therefore his concern, have not bothered to specify the ownership or occupation.

In the general map on the inside of the cover of the 1915 Particulars, the Unit Land is not included in (although completely surrounded by) the lands (over 2050 acres) then offered for sale and therein treated as being comprised in the Pedley Estate since 1838. The Unit Land is not included in any acreage computation contained therein. Special conditions of sale No.6 (iv) exonerates the vendors from showing the boundaries and extent of any manor or any other information relating thereto except such as may appear from the manorial books and documents in the vendor's possession: if these manorial documents had indicated that the Unit Land was or might belong to either the Manor of Whipnade or to the Manor of Shortgrove, those then advising Mr Dunn and Mr H.W.S. Stanbridge would have made a record or note and included it among the documents of title relating to the Manor. No such record was produced and accordingly I have another indication (also not strong) that in 1916 the Unit Land was not reputed to belong to either Manor.

The 1931 Notice to Treat is addressed to Mr Bates, the owners or reputed owners of Whipnade Heath being therein stated to be Mr G.A. Dunn, Mr G. Holt (Stint owner) and Mr H.W. Stanbridge. The 1931 conveyance by Mr Dunn to the County Council is of roadside pieces including a triangular piece west of the Unit Land extending nearly up to Hunter's Lodge (then Ann's Cafe): it does not include the Unit Land. It was agreed that about the same time Mr H.W. Stanbridge conveyed land east of the CL.51 land to the County Council (in proceedings later on the same day relating to the land so conveyed this conveyance was produced to me). The absence of any conveyance of the strip of land which on the Register map is included in the Unit Land and on which the new road was after 1931 constructed, is an indication that neither Mr Dunn nor Mr H.W. Stanbridge then considered themselves to be owners or at least then able to satisfy the County Council that they were the owners.



The 1908 Scheme is evidence that the Unit Land was in 1908 within the definition in Section 15 of the Commons Act 1899, i.e. was subject to be inclosed under the Inclosure Act 1845, and I therefore conclude that in 1908 the Unit Land was land subject to rights of common such as are set out in Section 11 of the 1845 Act and then fell within one or more of the following descriptions: (i) wasteland of the Manor of Whipsnade subject to rights of common, (ii) wasteland of the Manor of Shortgrove subject to rights of common, (iii) wasteland subject to rights of common attached to Hill Farm, and (iv) land subject to rights of common attached to Shortgrove Manor Farm; I disregard mention of Mr Holt of the 1931 Notice to Treat, because he may have been included merely because he was a stinholder in respect of the CL.51 Land.

Although the documents of title produced show that Mr Dunn and Mr Bates were successively owners of the Manor of Whipsnade, and that Mr S.W. Stanbridge and his sons Messrs. Stanbridge were successively owners of the Manor of Shortgrove, none of the documents produced to me contain any indication for and no clear or conclusive evidence against the Unit Land being part, or being reputed to be part of either Manor. Both Mr Cooke and Mr Gill asked me to infer a connection with the Manor owned by their respective clients from the oral evidence.

It was pointed out that if either Mr Bates or Messrs Stanbridge had not applied for any registrations under the 1965 Act and the other or others had only applied for registration in the Ownership Section, such registration would under the Act have become final without any hearing before a Commons Commissioner and it was suggested, that all I need do was to say whether I preferred the oral evidence of Mr Bates to that of Mr Stanbridge or conversely. I cannot I think dispose of this case so shortly, first because under the Commons Commissioners Regulations 1971, paragraph 7, conflicting registrations are to be treated each as an objection and the objection so deemed to be made is not I think to be disposed of merely by showing that the registration on which it was based should not have been made, and secondly because I decline to express any such preference. Although the evidence of Mr Bates and Mr Stanbridge conflicts in parts (so I have to express a preference as to these parts), (although (as stated below) I am not persuaded by some of the things they said, there was a substantial area of agreement between them which I cannot altogether disregard.

Mr Stanbridge said that his father always regarded himself as the owner of Whipsnade Heath, and as illustrating his acts of ownership, described how his father had appropriated to his own use some soil or turf which a roadman had cut, and had objected to the Zoo collecting ants' eggs and ant heaps to feed their birds. Having regard to the way in which Mr Stanbridge gave this part of his evidence, I conclude that his father never in any now relevant way claimed ownership of the Unit Land; I do not consider the description Mr Stanbridge gave of these two episodes as sufficiently reliable on which to base a finding of ownership. Although the 1926, 1927, 1928 rate receipts may relate (as Mr Stanbridge suggested) to the Unit Land, they are not I think a reliable indication of ownership, because the assessment was in 1936 (as appears from a letter of that date) so far as it related to Whipsnade Heath, cancelled. Mr Stanbridge answered the questions put to him about the Lordship of the Manor of Shortgrove by referring to the Manor Farm; I am not persuaded by anything he said that his father ever associated the Unit Land with the Manor (the incorporeal hereditament so called).



On the evidence of Mr Bates and Mr Stanbridge, I conclude that there was grazing from Hill Farm and from Shortgrove Manor Farm over the Unit Land (as to there being some grazing from both Farms they did not differ). As regards the extent of such grazing I prefer the evidence of Mr Bates to that of Mr Stanbridge, and I find that the grazing from Hill Farm was over the whole of the Unit Land without any permission, and was not (as suggested by Mr Stanbridge in his oral evidence) merely over the part north of the Northeast Path and with the permission of Mr H.W. Stanbridge. I think it likely that the owner or tenant of both these Farms from time to time shot over the Unit Land or organised shooting parties which shot not only over the Farm but also over the Unit Land. In my view neither such grazing nor such shooting ever amounted to the owners or tenants of either Hill Farm or Shortgrove Manor Farm taking possession of the Unit Land; in my view neither ever effectively excluded the owners or tenants of the other *Farm*.

My general conclusion as to ownership is that the Unit Land was never part of or reputed to be part of either the Manor of Whipsnade or the Manor of Shortgrove, that neither Mr Dunn and Mr Bates as his successor in title nor Mr H.W. Stanbridge and Messrs Stanbridge as his successors in title were ever in possession as owners, and that accordingly (in the absence of any claim on any other basis) neither of the registrations made in the Ownership Sections was properly made.

As to the rights:-

The 1916 conveyance to Mr Dunn includes "Ten Cow Commons" over Whipsnade Green and the 1916 conveyance to Mr H.W. Stanbridge includes 37 Stints over the CL.51 Land; so that those who prepared both these conveyances to some extent had rights of common in mind; ~~so~~ failure to mention any rights over the Unit Land is an indication that no such rights then existed. However against this conclusion, I have the 1910 Scheme which, having regard to my conclusions about ownership, shows (for the reasons above set out) that the Unit Land was then subject to rights of common.

Having regard to the situation of the Unit Land I cannot imagine how anybody other than the owners and occupiers of Hill Farm and Shortgrove Manor Farm could have any such rights; their situation in relation to the Unit rights ^(that) ~~and~~ ^{is such} the temptation to exercise such rights is obvious. The circumstance that the owner of Shortgrove Manor Farm also owned stints over the CL.51 Land and that there is no fence (or well marked boundary) separating it from the Unit Land, is not I think a sufficient reason for ascribing the grazing from Shortgrove Manor Farm over the Unit Land to the irregular wandering of animals from the CL.51 Land; much of Shortgrove Manor Farm (including some of the Farm buildings) is in the parish of Whipsnade and adjoins the Unit Land.

I disregard the mention in the 1931 Notice to Treat of Mr Holt, because the stints thought to have been owned by him, may have been over the CL.51 Land, and I have no evidence that the Unit Land was ever stinted or otherwise regulated.

My conclusion is that in the absence of any substantial or good reason for making any distinction between Hill Farm and Shortgrove Manor Farm in relation to the Unit Land, both have grazing rights over it. Having no reason for preferring one to the other, I conclude that such rights are equal and that accordingly the two registrations in the Rights Section should be identical.



By Section 15 of the Act registration of a right to graze animals must state the number of animals. Entry No.1 now states no such number. Mr Bates said that he remembered grazing sheep there belonging to his farm sometimes 200 sometimes 500, and that they sometimes had 40 or 60 cattle. The number mentioned in Entry No.2 is 20 cattle or 133 sheep or 5 horses, and Mr Stanbridge in his evidence mentioned a flock of 115 ewes with lambs (perhaps numbering as many as 120) and that they sometimes had 30 cattle and up to about 8 horses.

The numbers entered in the Register may not now be of much consequence because owing to motor traffic and the expense tending animals, it is impracticable to graze any animal on the Unit Land and there has been no grazing there for some considerable time. On this part of the case, in the absence of any detailed discussion at the hearing, I must do the best I can; my decision is that the numbers in both Entries should be 100 sheep (with followers) or 20 cattle or 5 horses.

There was no evidence to support the rights of estovers or turbary registered. Such evidence as there was was against any such right, because in the 1844 Award the Unit Land is described as meadow land and both Mr Bates and Mr Stanbridge described how the Unit Land as they first remembered it was for the most part grass. The casual references in their evidence to taking sticks and turf or soil, do not enable me to treat the 1908 Scheme as indicating a right of common extending beyond pasture.

For the reasons set out above, I confirm the registrations at Entry No.1 and Entry No.2 in the Rights Section with the modification that for all the words now appearing in Column 4 against each Entry, there shall be substituted the words: "Right of pasture over the whole of the register unit to graze 100 sheep (with followers) or 20 cattle or 5 horses exercisable at all times of the year"; and I refuse to confirm the registrations at Entry Nos.1 and 2 in the Ownership 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

(Documents produced)

Part I. By South Bedfordshire District Council

- 1 Copy Scheme (with plan) made on 5 December 1910 by Luton Rural District Council for Whipsnade Heath under the Commons Act 1899.
- 2 Copy Byelaws made on 11 July 1927 by the Luton Rural District Council under the said 1910 Scheme (and also under a scheme made in 1923 for Whipsnade Green) in respect of Whipsnade Heath (and Whipsnade Green).



Part II. By Bedfordshire County Council

- 3 Conveyance dated 21 December 1931 by Mr G.A. Dunn (gratuitously) to the County Council of roadside pieces of land in Whipsnade.
- 4 Tithe Apportionment Award (with map) dated 20 May 1844 for the Parish of Whipsnade.

Part III. On behalf of Mr Bates

- 5 Original conveyance dated 15 February 1944 by Mr C.A. Dunn (executor of Mr G.A. Dunn who died 14 August 1939) to Mr C.W. Bates of the Manor of Whipsnade and lands (Hill Farm comprising about 179 acres).
- 6 Particulars (Second Portion) of Sale by auction on 1 November 1915 of 41 lots of land containing altogether 2,050 acres (relevant detailed map missing).
- 7 Abstract dated 1944 of the title of Mr G.A. Dunn including a conveyance dated 14 March 1916 by the Legal & General Life Assurance Society Estates Trustees (as to one half) and C.H.D. Comte de Rotalier (as to the other half) to Mr G.A. Dunn of lands comprising Lots 2, 11, 12, 13 and 17 described in the said Particulars (being the same or a little more than the lands conveyed by the 1944 conveyance).
- 8 Notice to Treat dated 18 February 1931 by the County Council under the Whipsnade Road Reconstruction Scheme.

Part IV. On behalf of Mr Stanbridge and Mr Gutteridge

- 9 Another copy of the said 1915 Particulars (relevant detailed map also missing).
- 10 Original conveyance dated 23 February 1916 by the same Estate Trustees and the said Comte de Rotalier to Mr H.W. Stanbridge of Shortgrove Manor Farm (186 acres) and the Manor of Shortgrove.
- 11 Rating demand note as receipt dated 23 June 1926.
- 12 Ditto dated 27 June 1927.
- 13 Ditto dated 7 February 1928.
- 14 Letter dated 28 July 1936 recording deletion of Whipsnade Heath Rate Assessment.
- 15 Copy probate grant to the estate of Mr H.S. Stanbridge (dated 19 May 1943).
- 16 Original assent dated 11 January 1944 by his executor in favour of Messrs H.J. and V.S. Stanbridge.

Dated this 21st day of November — 1975

a. a. Baden Fuller

Commons Commissioner