



Commons Registration Act 1965

Reference Nos. 201/D/10
201/D/11
201/D/12
201/D/13
201/D/14

In the Matter of Whipsnade Heath,
pieces in Whipsnade and Totternhoe,
South Bedfordshire District, Bedfordshire.

DECISION

These disputes relate to the registrations at Entry Nos.1 and 2 in the Rights Section and at Entry No.1 in the Ownership Section of Register Unit No. CL.51 in the Register of Common Land maintained by the Bedfordshire County Council and are occasioned (D/10-13) by the said Entry Nos. being in conflict, and (D/14) by Objection No.49 made by Bedfordshire County Council and noted in the Register on 4 February 1971.

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. Heath John Stanbridge, being one of the persons on whose application all the said registrations were made, and one of the executors of Mr Vernon Stanley Stanbridge who died on 28 March 1975 and who was the other applicant, was represented by Mr. P.S. Gill, articled clerk with Borneo Martell & Partners, Solicitors of Bedford, and (3) Mr. Robert Norman Gutteridge the other executor of Mr. V.S. Stanbridge was also represented by Mr. Gill.

Entry No.1 in the Rights Section is of rights held in gross, being 45 stints or rights of pasture over the whole of the register unit under the Totternhoe Inclosure. Award dated 14 January 1891 to graze 45 sheep. Entry No.2 in the Rights Section is of rights attached to Shortgrove Manor Farm, being "sole rights of pasture and estovers and turbarry to graze 10 cattle or 67 sheep or 2 horses...". Entry No.1 in the Ownership Section is of the ownership of Messrs H.J. and V.S. Stanbridge. The grounds stated in the said Objection (it is to Entry No.2) are: "That the applicants are entitled to 45 stint rights to graze sheep...as set out in Entry No.1 in the rights section of this register unit".

The land ("the Unit Land") comprised in this Register Unit is (if the footpaths and roads which cross it be disregarded) in two pieces: the larger ("the Totternhoe Piece") in the parish of Totternhoe, and bounded on the southwest (for about half a mile) by the boundary between the parishes of Totternhoe and Whipsnade, and containing between 15 and 20 acres, and the smaller ("the Whipsnade Triangular Piece") in the parish of Whipsnade, being comparatively small, and situate east of Hunters Lodge (formerly Ann's Cafe) and west of the place ("the Cross Roads") where the Dunstable-Studham road and the Whipsnade-Markyate road (both old highways) cross each other and cross the Whipsnade-Luton road ("the New Road" constructed in the 1930's). Between the Totternhoe Piece and the Whipsnade Triangular Piece is the land ("the CL.4 Land") comprised in Register Unit No. CL.4; the Unit Land and the CL.4 Land are together known as Whipsnade Heath.



Mr. Peatfield produced the Totternhoe Inclosure Award dated 14 January 1891, made under the Regulation and Inclosure (Totternhoe) Provisional Order Confirmation Act 1886 (49 Vict. c. xvi). By the first of the provisional orders confirmed by the 1886 Act, it was provided in effect that the part of Whipsnade Heath in Totternhoe should be regulated and the rights of common of pasture over it adjusted as therein set out. The 1891 Award contained the following declaration:- "And I declare that for the adjustments of rights in respect of the Regulated Pastures I have determined that the same shall respectively be subject to the following Rights of Pasture, that is to say... All that part of Whipsnade Heath in the Parish of Totternhoe numbered 201 on the said map containing seventeen acres and thirty-four perches to forty-five Stints or Rights of Pasturage for Sheep exercisable at all times of the year which said Stints or Rights are adjusted as follows...", and then follows a table providing that Earl Brownlow should have 37 stints and the Trustee of the Pedley Settlement should have 8 stints. Mr. Peatfield, referring to the plan attached to the Award identified the said part numbered 201 with the greater part ("the Original Regulated Pasture") of the Totternhoe Piece.

Mr. Gill produced (partly at this hearing and partly at a previous hearing relating to the CL.4 Land) various documents of title upon which I am satisfied: (a) that under a conveyance dated 23 February 1916 and made by the Estate Trustees of the Legal and General Life Assurance Society (in respect of one half) and C.H.D. Comte de Rotalier (in respect of the other half) the said 8 stints (together with Shortgrove Manor Farm) became vested in Mr Heath William Stanbridge, (b) that under a conveyance dated 25 January 1935 and made by Mr G. Holt the said 37 stints also became vested in Mr H.W. Stanbridge, and (c) that under the will of Mr H.W. Stanbridge (he died 19 May 1943) Messrs H.J. and V.S. Stanbridge became entitled to the stints.

Mr Peatfield contended that by the combined operation of Section 116 of the Inclosure Act 1845 and Part V of the First Schedule to the Law of Property Act 1925, the Original Regulated Pasture on 1 January 1926 became, and still is vested in the Public Trustee upon the statutory trusts mentioned in such Part.

The remainder of the Totternhoe Piece is a triangular piece south of the said new road from Whipsnade to Luton and east of the Original Regulated Pasture. Mr Peatfield produced a conveyance dated 29 October 1931 by which this piece was conveyed by Mr H.W. Stanbridge to the County Council and a copy of a deed dated 30 December 1931 and made by the County Council by which it was declared that this piece should thenceforth be added to the portion of Whipsnade Heath which was situate in the parish of Totternhoe and should be and remain subject to the same rights of common as were formerly enjoyed in respect of the portion of the Heath situate in that parish.

As regards the Whipsnade Triangular Piece, Mr Peatfield produced a conveyance dated 21 December 1931 by which it was conveyed by Mr George Arthur Dunn to the County Council and pointed out that by the said 1931 deed it was declared that this piece should thenceforth be added to and form part of the portion of Whipsnade Heath which was situate in the parish of Whipsnade and be and remain subject to the same rights of common as were formerly enjoyed in respect of the portion of the said Heath situate in that parish. He suggested that it was perhaps unfortunate that the Whipsnade Triangular Piece was when the registration numbers were allocated included in Register Unit CL.51 and not included in Register Unit CL.4, to which having regard to the 1931 declaration it would seem more properly to belong.

No oral evidence was given at the hearing relating to the Unit Land, but both Mr Peatfield and Mr Gill had been present (as also had Mr H.J. Stanbridge) at the previous hearing relating to the CL.4 Land. In my opinion Entry No.2 in the Rights Section is not supported by the evidence adduced (Mr Gill conceded he could not



support it) as regards the Totternhoe Piece over which stints are subsisting either under the 1891 Award or under the 1931 deed of declaration. I conclude therefore that the County Council's Objection to Entry No.2 in the Rights Section as regards the Totternhoe Piece succeeds. In my decision of even date relating to the CL.4 Land, reference 201/D/19-26, I have decided that an Entry made on the application of Messrs H.S. and V.S. Stanbridge very similar to the said Entry No.2, should in respect of the CL.4 Land stand with the modification that it be limited to a right of pasture. In my opinion the 1931 deed of declaration shows that I ought to treat the Entry so far as it extends to the Whipsnade Triangular Piece in the same way. Accordingly, I conclude that the Objection as regards this piece only succeeds to the extent of establishing that the said Entry should be modified so as to be limited to a right of pasture over the Whipsnade Triangular Piece.

This leaves me with the various disputes which are deemed to arise as a result of the conflicting registrations made by Messrs H.J. and V.S. Stanbridge. As regards the Original Regulated Pasture, the contention of Mr Peatfield that the Public Trustee is the owner, is supported by re Cotherstone, a decision of the High Court reported in the Estates Gazette for 1 July 1961; in my opinion (notwithstanding that the Public Trustee has never been asked to act) I must (Mr Gill did not suggest otherwise) give this contention full effect. As regards the triangular piece east of the Original Regulated Pasture, being the remainder of the Totternhoe Piece, I am satisfied that the County Council are the owners under the October 1931 conveyance and should be registered accordingly. As regards the rights over the Totternhoe Piece, on the evidence outlined above, I conclude that Entry No.1 in the Rights Section was as regards this Piece properly made, but was wholly unsupported as regards the Whipsnade Triangular Piece, and should therefore be modified accordingly. As regards the ownership of the Whipsnade Triangular Piece, I conclude that the County Council are the owners under the December 1931 conveyance.

I can I think properly give effect to my conclusion as to ownership by modifying Entry No.1 in exercise of the power of modification given to me by section 6 of the 1965 Act, notwithstanding that the resulting Entry will apparently be altogether different from what it is now. A change in the registration which merely substitutes for the registered owner a person (such as the Public Trustee in this case) who has been proved to hold in trust for the registered owner, or a person (such as the County Council in this case) who has been proved to derive title under a predecessor in title of the registered owner (Mr Dunn and Mr H.W. Stanbridge both trace their title from the Estate Trustees of the Legal and General Assurance Society and Comte de Rotalier as owners of the Pedley Estate) can I think properly be regarded as a modification. As pointed out by Mr Peatfield, if I refuse to confirm the ownership registration there would have to be an inquiry under section 3 of the Act, and although the result would be the same as an immediate modification of the register, all concerned would be put to much trouble and expense.

Accordingly for the reasons above set out, I confirm Entry No.1 in the Rights Section with the modification that for the words "over the whole of the Register Unit" be substituted the words "over the part of the Register Unit ~~which~~ in the parish of Totternhoe". I confirm Entry No.2 in the Rights Section with the modification that for the words in column 2 "Sole rights of pasture and estovers and turbary" there be substituted the words "Right of pasture over the part of the Register Unit in the parish of Whipsnade", I confirm registration at Entry No.1 in the Ownership Section with the modification that there be substituted for the names and addresses in column 3 "The Public Trustee and Bedfordshire County Council and there be substituted for the



words now in column 4 the following:- "The Public Trustee in respect of the part of the Register Unit which is in the parish of Totternhoe and which is not delineated by reference to this entry in the supplemental map bearing the number of this registration and the Bedfordshire County Council in respect of the remainder of the Register Unit and I direct that said supplemental map shall delineate so much of the land comprised in this Register Unit as is expressed to be conveyed by the conveyance dated 29 October 1931 and made between Mr Heath Williams Stanbridge and the Bedfordshire County Council.

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 *21st* day of *November* — 1975

a. a. Baden Fuller

Commons Commissioners



COMMONS REGISTRATION ACT 1965

Reference Nos. 201/D/15 to 18
inclusive

In the Matter of Thorncote Green, Northhill
Mid Bedfordshire D.,

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG.12 in the Register of Town or Village Greens maintained by the Bedfordshire County Council and are occasioned by the conflicting registration at Entry No. 1 in the Land Section of Register Unit No. CL.58 in the Register of Common Land maintained by the Council and at Entry Nos. 1, 2 and 3 in the Rights Section of Register Unit No. VG.12 and at Entry No. 1 in the Rights Section of Register Unit No. CL.58.

I held a hearing for the purpose of inquiring into the disputes at Bedford on 26 November 1974. The hearing was attended by Mr R. Dickinson for the Bedfordshire County Council, Mr R.J. Kitchener Clerk to the Northhill Parish Council, Mr S.J. Lindsay of The Old Farmhouse, Thorncote Green as the successor in title of Mr A.R.J. Le Ray-Cook who registered rights in the Rights Section of Register Unit No. CL.58 and Mr L.K. Franklin who registered rights under Register Unit No. VG.12. The purpose of these four references was to obtain a decision as to whether the registration of the land in question as a Village Green or the registration of the land in question as Common Land was to prevail. Mr Kitchener on behalf of the Parish Council was unable to give any evidence that the land in question was a Village Green as defined by Section 22 of the Commons Registration Act 1965. His evidence was to the effect that the land was left as waste of a manor under an Enclosure Award which enclosed all the adjoining land and that the public had unrestricted access to the land. I accordingly refuse to confirm the registration as a Village Green and confirm the registration as Common Land.

As regards the Rights registrations, those entered under Register Unit No. VG.12 are deemed also to be entered under Register Unit No. CL.58 and I accordingly direct that they be entered under Register Unit No. CL.58.

I did at the hearing indicate that I had misgivings as to the titles of the applicants who had registered grazing rights and that those applicants should have a further opportunity to establish their respective titles. On further consideration I have come to the conclusion that in the absence of any objections to the registered rights and since the references were only occasioned by the conflicting registrations in the Land Sections of the Registers the result of my decision that the land in question is common land and not a village green is that the rights being undisputed have become final.

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

13th

day of December

1974

C A Le H G
Commons Commissioner