



In the Matter of Brimpton Common, Brimpton, Berkshire (No 1)

DECISION

This dispute relates to the registration at Entry No 1 in the Land section of Register Unit No CL 95 in the Register of Common Land maintained by the Berkshire County Council and is occasioned by Objection No 187 made by the Brimpton Parish Council and noted in the Register on 28 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Newbury on 31 January 1978. The hearing was attended by Mr P E Taylor, the applicant for the registration, Mr A H Armstrong, whose application was noted under section 4(4) of the Commons Registration Act 1965, and Mr E Farrance, the Clerk of the Brimpton Parish Council, which not only objected to the registration, but also applied for a registration in respect of part of the land comprised in the Register Unit. Mr Farrance said that his Council had changed its mind since making its application and wished to pursue the Objection.

Mr Taylor first took the point that the Objection was invalid, because it had been made out of time.

Mr Taylor's application was supported by a statutory declaration made on 25 May 1968. It must have been despatched shortly after the declaration was made, for it is date-stamped as having been received by the former Berkshire County Council on 27 May 1968. On receiving the application it became the duty of the Council under reg. 9(1) of the Commons Registration (General) Regulations 1966 (S.I. 1966, No. 1471) to allot a distinguishing number to it, and to mark the application form with that number. This was done on the same day. The Council having accepted the application, it then became its duty under reg. 9(6) to make a registration in respect of it. This was not done until 23 September 1968.

The making of objections was regulated by reg. 4 of the Commons Registration (Objections and Maps) Regulations 1968 (S.I. 1968, No. 989, as amended by S.I. 1969, No. 1843 and S.I. 1970, No 384). Where a registration was made before 1 July 1968 any objection to it had to be made between 1 October 1968 and 30 September 1970, and where a registration was made after 30 June 1968 any objection to it had to be made between 1 May 1970 and 31 July 1972.

Objection No 187 was dated 26 July 1972 and received by the County Council two days later. Mr Taylor contended that any valid objection to the registration should have been made before 1 October 1970, because the registration was made before 1 July 1968, namely on 25 May 1968, the day on which he applied for the registration. Mr Taylor argued that since section 4(1) of the Commons Registration Act 1965 required a registration authority, in this case the former Berkshire County Council, to register any land as common land on application duly made to it, that meant that the registration was to be made contemporaneously with the application and not after it. However, section 19(1)(b) of the Act empowered the Minister to make regulations for regulating the procedure of registration authorities in dealing with applications for registration. This clearly envisages a distinction between an application and the registration to be made on the application, since an application has to be dealt with before it is registered. The power so conferred



on the Minister was exercised by the making of the 1966 Regulations, reg. 9 of which clearly distinguishes between the making of an application by the applicant and the acceptance of the application, and the making of the registration by the registration authority. The second and third of these actions are the subject of the Regulations, but there is no requirement that they should take place on the same day as the receipt of the application. It is the last of the three actions which is referred to in reg. 4(3) of the 1968 Regulations. That took place on 23 September 1968, as authorised by the 1966 Regulations, and it follows that the relevant objection period was the second one, which ended on 31 July 1972. Objection No 187 was therefore, in my view, made in time.

It is accordingly necessary for me to consider whether Mr Taylor has proved that the land comprised in the Register Unit is "common land" as defined in section 22(1) of the Act of 1965. He based his case on the right of common registered at Entry No 1 in the Rights section of the Register Unit. This is a right of turbary alleged to be held by Mr Taylor in gross. It is stated in the Objection that it was made on the recommendation of the Charity Commission. Mr Farrance informed me that the Objection was made at the request of the Clerk of the former County Council. He said that the Parish Council had no strong feeling about the matter one way or the other. Nevertheless, Mr Farrance said that he was instructed to pursue the Objection, so the onus of proving his case remained on Mr Taylor.

The land comprised in the Register Unit consists of two areas described on the map referred to in the Inclosure Award made on 21 December 1815 under the Woolhampton Inclosure Act of 1811 (51 Geo. III, c.c.) as "1st Allotment for Fuel" and "2nd Allotment for Fuel". By the Award these areas were allotted unto and for the Lord of the Manor of Brimpton, the Vicar of Brimpton and the Churchwardens and Overseers of the Poor of the Parish of Brimpton for the time being as Trustees of the Poor of the Parish. By section 25 of the Act the Trustees were empowered to lease or demise these allotments for a term of years not exceeding 21 years, and it was provided that the rents and profits should be laid out in purchasing fuel to be distributed among the poor inhabitants of the parish who should be legally settled and resident therein. The section then provided that the part or parts of the allotment which should not be leased or demised should be used and enjoyed solely and exclusively by such poor inhabitants of the parish either as a common of pasture or turbary or should be held, used, and appropriated by the Trustees for the purpose of sowing furze, planting wood, and of cutting fuel, which fuel should be distributed to the poor inhabitants in such shares and proportions and in such manner and at such time or times as the Trustees should appoint and prescribe.

It is stated in the Return and Digest of Endowed Charities made in 1907 that these allotments were not used for the prescribed purpose, and had never even been inclosed, and were still used by some of the villagers as common for their ponies.

Although it appears from section 25 of the Act of 1811 that the land comprised in the Register Unit was part of the common and waste lands in Brimpton, the effect of the Act and the Award was to extinguish any rights of common which may have previously existed and to render the land subject to the provisions of the Act. Under section 25 of the Act there were three courses of action open to the Trustees. They could let the land and apply the rents and profits to the purchase of fuel for the poor inhabitants of the parish; they could allow it to



be used by the poor inhabitants either as a common of pasture or turbarry; or they could sow furze and plant wood and cut fuel for distribution to the poor inhabitants. It appears from the 1907 Return and Digest that the Trustees chose the second of these courses and allowed the poor inhabitants to use the land as a common of pasture.

In a letter to the Chairman of the Parish Council, dated 27 June 1973, Mr Taylor said that in the event of the land not being used for the purpose of providing fuel or the money to buy fuel, the Act of 1811 provided for it to revert to its original status of common land for the purposes of grazing and turf cutting. This is not what the Act provided. In the event of the Trustees not otherwise dealing with the land the poor inhabitants were given a new right which was legally entirely distinct from any right of common which may previously have existed. This new right is not a right of common, for it exists only during such time as the Trustees are not using the land in either of the other ways allowed by the Act. Under the Act it still remains open to the Trustees to elect to follow either of the other two possible courses of action. Any grazing on the land by the poor inhabitants has not been as of right, but by the leave and licence of the Trustees, which they are at liberty to terminate at any time. The land is therefore not brought within the definition of "common land" in section 22(1) of the Act of 1965 by being subject to a right of common.

For these reasons I refuse to confirm the registration.

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

3rd

DAY OF

March

1978

CHIEF COMMONS COMMISSIONER