

COMMONS REGISTRATION ACT 1965

Reference Nos. 205/D/8 205/D/9

In the Matter of Lindow Moss, Wilmslow, Macclesfield District, Cheshire

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 92 in the Register of Common Land maintained by the Cheshire County Council and are occasioned by Objection No. 63 made by Mr Dermot Humphrey de Trafford and noted in the Register on 18 December 1970 and by Objection No. 69 made by Wilmslow Urban District Council and noted in the Register on 31 August 1971.

I held a hearing for the purpose of inquiring into the disputes at Stockport on 29 October 1979. At the hearing Macclesfield Borough Council as successors of Wilmslow Urban District Council (as yet there is no Wilmslow Town or Parish Council) were represented by Mr R L Cole one of the solicitors with the Council.

The land ("the Unit Land") according to the Register is an irregularly shaped piece of land containing about 18.238 hectares (45 acres) and situate a short distance west of Nilmslow. The grounds of Objection No. 63 are that the land bordered red on the attached plan (being the part of the Unit Land east of a north-south line and about 1/6th of the whole) was not common land at the date of registration. The grounds of Objection No. 69 are that the land hatched red on the enclosed plan was not common land at the date of registration; the rest of the Unit Land to the west of the said north-south line is so hatched.

The registration was made on the application of Mr D F Kerr of Oversley House. I have a letter from him dated 28 September 1979 in which he says that so much time has now elapsed since he applied for the registration that he has now lost interest and wishes to withdraw his registration.

Mr Cole produced (1) a conveyance dated 8 July 1937 by which Sir Humphrey Edmund de Trafford with the concurrence of his Trustees conveyed to Wilmslow Urban District Council the land having a frontage to Newgate Lane containing about 36.439 acres and edged red on the plan, and the Council covenanted (in effect) to use the land so conveyed for the purposes of a tip for household and other refuse and when it is filled up to level of the adjoining land to cover the refuse with soil or peat so that when the Council shall cease to use it as a tip, it should not be used for any purpose other than as allotments or gardens or as a public open space; and (2) a statement of the title of Sir Humphrey Edmund de Trafford commencing with the will (proved in 1886) of Sir Humphrey de Trafford and including the de Trafford Estate Act 1904 and a vesting deed of 7 May 1926. The plan on the 1937 conveyance comprises all the Objection No. 69 land ("the Vest Part") and additionally some pieces of land fronting on Newgate, to the southwest near Boundary Louge and to the northnorthwest. Mr Cole understood that the Unit Land was bog land, and that up to about 1966 (but not afterwards) peat had been dug there by licence of the Urban District Council.



Er ? A Kinder who is now and has been since 1974 senior assistant Parks Cemeteries and Crematoria Superintendent of the Borough Council and who worked for Wilmslow Urban District Council from 1964, in the course of his evidence said (in effect):— the Unit Land is marsh land with peat to a depth of at least 30 feet. For as long as he had known it up to 1974 it was used by Wilmslow Urban District Council exclusively as a domestic refuse tip. After 1974 the function of operating the tip was transferred to the County Council, although the ownership remained with the Borough Council; a small part is a Civic amenity tip established under the Civic Amenities Act 1967. He understood that the original intention of the Urban District Council was when the tipping was completed, to use the land as a recreation ground; but the tipping is not yet completed.

As regards the West Part, on the documents produced by Wr Cole and quite apart from Mr Kerr's withdrawal, I conclude that it was never in or after 1969 within the definition of "common land" in the 1965 Act, and my decision is therefore that Objection No. 69 succeeds.

As regards the Objection No. 63 land ("the East Part"), I have a letter dated 19 October 1973 from Strutt & Parker, Land & Estate Agents of Lewes, Sussex, that they do not claim ownership on behalf of their client Mr D H de Trafford. Mr Kinder said that the East Part is rough pasture of poor quality apparently mainly used for grazing ponies. In the absence of any evidence in support of the registration of the East Part, and having regard to Mr Kerr's withdrawal, I consider I ought to reach the same conclusion about it as I have as regards the Mest Part.

For the above 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 161c -

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1979.

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Commons Commissioner