



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/413

In the Matter of extensions (3 pieces)
of Brent Moor, South Brent,
South Hams District, Devon

DECISION

These disputes relate to the registrations at Entry Nos 1, 2, 8, 11, 12, 14 to 32 inclusive, 37, 38, 39, and 43 to 46 inclusive in the Rights Section of Register Unit No. CL187 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections Nos 800 and 1,147 made by the County Council and noted in the Register on 26 January 1971 and 11 September 1972 and by Objection No. 1,085 made by Mr W J Edmunds and noted in the Register on 11 September 1972.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 17 July and 27 November 1984. At the hearing (1) Mr Wilfred John Edmunds who made the said Objection and applied for the now final Rights Section registrations at Entry Nos. 6 and 10 attended in person; (2) Lady Sylvia Rosalind Pleadwell Sayer who with Vice Admiral Sir Guy Bouchier Sayer applied for the Rights Section registration at Entry No. 1, attended in person on her own behalf and as representing him; (3) Admiral Sir James F Eberle as successor of Mr David Miller Scott who applied for the Rights Section registration at Entry No. 2, was also represented by Lady S R P Sayer; (4) Mr George William Bateman who applied for the Rights Section registration at Entry No. 11, attended in person; and (5) Mrs Eleanor Nancy Smallwood who applied for the Rights Section registration at Entry No. 39 was also represented by Lady S R P Sayer. Lady Sayer was not present at the November part of the hearing, having at my CL161 hearing on 20 July given oral evidence by reference to a statement (Sayer/141) and having then asked that such evidence should be treated as applicable to this Register Unit No. CL187.

The land ("the Unit Land") in this Register Unit comprises 3 pieces: (1) an irregularly shaped piece ("the Bridge Piece") which is from east to west about 200 yards long, is crossed by the River Avon near to Shipley Bridge, and on its west side adjoins (the road being in between) Brent Moor (Register Unit No. CL161); (2) another piece ("the Middle Piece") which is a strip about 150 yards long situated about half a mile south of the Bridge Piece and adjoins on its south-west side in part a lane and in part Brent Moor; and (3) another piece ("the South Piece") which is a strip about 300 yards long and about 15 yards or less wide, is a few yards south of the Middle Piece and joins to projecting parts of Brent Moor. Brent Moor of which the Unit Land pieces are extensions is a tract which if the irregularities of its boundaries are disregarded, is approximately triangular with sides all about 3 miles long and comprises the land in Register Unit No. 161. Of the 46 registrations (Nos. 1 to 46) in the Rights Section, 15 (being all except the 31 specified at the beginning of this decision) being undisputed have become final; of the said 31, No. 30 has been replaced by Nos 49, 50, 51 and 52. In the Ownership Section the registrations at Entry Nos 1 and 2 (being undisputed now final), Mr G W B Bateman and Mrs V C Ferguson are registered as owners of the parts of the Bridge Piece east of the River; there are no other registrations in the Ownership Section.



The grounds of County Council Objection No. 800 (applicable to the registration at Entry Nos. 1 and 2) and No. 1147 (applicable to the 29 other disputed registrations), as also the grounds of Edmunds Objection No. 1085 (applicable to the registrations at Entry Nos. 8, 11, 12, 14 to 32 inclusive, 37, 38, 39 and 43 to 46 inclusive) are all to the same effect: the rights do not exist.

About Brent Moor (CL161) I held a hearing on 17, 18 and 20 July and 27 November 1984, and this Unit Land hearing was held shortly after the 17 July and 27 November parts of the CL161 hearing.

At the 17 July part of the Unit Land hearing:-- Lady Sayer produced a letter dated 3 June 1980 from the County Secretary to Vice-Admiral Sir Guy Sayer agreeing "that the prospects of success for those who have claimed Venville rights over all the Commons of Devon seem to be good", and confirming "that the County Council will not be pursuing its objections to your registrations of rights". She said that although there was therefore no Objection to the registrations at Entry Nos. 1, 2 and 39, the County Council having withdrawn, she accepted that I might refuse to confirm the registration at Entry No. 1. I have a yellow form dated 16 April 1971, addressed to the "Clerk of the Council" and signed by Sir G B Sayer agreeing "to my registration at Entry No. 1 (rights) being cancelled".

Mr Edmunds said that he did not in his Objection No. 1085 include any reference to Entry Nos. 1 and 2, because the County Council had specified these Entry Nos. in Objection No. 800. Having other business I adjourned the proceedings to come on at the same time as or after the CL161 hearing.

At the 20 July part of the CL161 hearing it was agreed that the evidence and arguments of Lady Sayer at the CL161 hearing should be treated as given at this Unit Land hearing, and so far as relevant to both the CL161 land and the Unit Land are summarised in my CL161 decision of even date at pages 5 and 6, which pages so far as relevant to Entry Nos. 1, 2 and 39 should be treated as repeated herein. As relating particularly to the Unit Land, Lady Sayer (in her statement Sayer/41) said:- "As to CL187, the Brent Moor extensions, my submission is that there is no registered objection to our rights thereon. The sole objector, Mr Edmunds, did not register his objection, simply because at one time he thought it sufficient that the County Council had objected to our rights, causing us then to withdraw our claim on CL187. But the County Council later withdrew its objection in a letter dated 3 June 1980 (of which you have a copy), and this reinstates our claim. So Mr Edmunds' objection has no substance since it was not properly made and individually registered by him at the statutory time. We are advised that objections made out of time or under the cloak of some other registrant are not valid".

At the November part of this Unit Land hearing, first Mr Bateman explained that the part of the Bridge Piece lettered A on the register map of which in the Ownership Section Mrs Ferguson is registered as owner is a triangular area adjoining and east of the River and all below the Bridge, and that the part lettered B on the Register map of which in the Ownership Section he is registered as owner is a long thin strip on the north side of the road below the Bridge together with a small triangular area above the Bridge.

Next Mr Edmunds submitted generally that my decision about all the disputed Unit Land registrations should be the same as that about the corresponding CL161 registrations in accordance with the paper and check list (WJE/71 and 72) which he produced.



As to Entry Nos. 1, 2 and 39 supported by Lady Sayer, my decision^{as} regards her evidence and arguments in support of them and the corresponding CL161 registrations is as set out in my CL161 decision of even date. As to her other evidence and arguments:- Entry No. 39 is within Edmunds' Objection No. 1085, and I have no reason for treating it as having been made out of time. The circumstance that the County Council did not appear at the hearing to support their Objection No. 800, and in 1980 ~~they~~ wrote saying they would not be "pursuing" it, is I think not a withdrawal of their Objection so as to bring into operation section 7 of the Commons Registration Act 1965; so I have no reason for treating it as never having been made. It was I think in the absence of the County Council open to Mr Edmunds to offer evidence and arguments in support of the Objection, see re Sutton 1982 1WLR 647, and re West Anstey 1985 2WLR 677. By my said CL161 decision for the reasons therein set out I have avoided the corresponding CL161 registrations; having regard to the size and situation of the Unit Land relative to the CL161 land, I consider the registrations essentially the same; so for the like reasons I refuse to confirm the registrations at Entry Nos. 1, 2 and 39.

As regards the other disputed registrations, I accept the submission of Mr Edmunds that I should about them give the same decision as I have given about the corresponding CL161 registrations. So I confirm the registrations at Entry Nos. 11 and 46 (Mr G W B Bateman and Mr J Elliott and Mrs E M Hodson, CL161 Nos. 53 and 129) without any modification, I confirm the registration at Entry No. 45 (Wing Commander S J Furneaux, CL161 No. 130) with the modification in column 4 delete "To shoot with a shot-gun only game (not hoofed) and vermin"; and I refuse to confirm the registrations at Entry Nos. 8, 12, 14 ~~to~~ to 32 inclusive, 37, 38, 43, and 44 (CL161 Nos. 48, 54, 69, 72 to 89 inclusive, 104, 105, 114 and 115).

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 15th

day of November 1985.

A. A. Batten Fuller

COMMONS COMMISSIONER