



## COMMONS REGISTRATION ACT 1965

Reference Nos 209/D/167  
209/D/168In the Matter of Marshes or  
Saltings of about 20 acres, Fremington,  
North Devon District, DevonSECOND DECISION

This further decision relates to the decision dated 19 July 1979 which I made following a hearing on 10 May 1979 at Barnstaple held by me for the purpose of inquiring into the disputes relating to the land in Register Unit No. CL 267 in such decision mentioned. This further decision I now give on letters dated 11 January, 24 January, 5 February, 10 April and 5, 20 and 24 June 1980 and sent to the Clerk of the Commons Commissioner by Toller, Oerton & Balsdon, Solicitors of Barnstaple, on behalf of Shapland and Petter Limited (S&P Ltd).

In these letters S&P Ltd are in effect saying or requesting:- (1) The 1979 advertisements of the May 1979 hearing were misleading in that the CL 267 land is described as being in Fremington when in fact the larger part of it is in Tavistock; accordingly the hearing was a nullity, and I should arrange for a fresh hearing "after giving explicit and accurate local notice". (2) The advertisements of the provisional registration in the Weston Morning News of 16 October 1970 is incorrect and such registration was not advertised at all in the North Devon Journal Herald, and accordingly an enlargement of the time for making Objection is requested. (3) The registration cannot proceed by reason of the ambiguity in the 1970 advertisements of it, and the law as set out in the High Court judgement in *Smith v East Sussex 76 LGR (1977) 332*.

As to (3):- The High Court while rejecting the plaintiffs' contention that the registration was altogether void, declared that the provisional registration had not become final, taking the view that the plaintiffs by reason of the defects in the advertisements were excused the consequences of having made no Objection, with the result that section 7 of the 1965 Act had not operated. Apart from section 8 (not now relevant), my jurisdiction as a Commons Commissioner is limited to determining disputes occasioned by an Objection, see sections 5 and 6. In *Smith v East Sussex*, there had never been any Objection, so clearly in the circumstances there considered a Commons Commissioner would have had no jurisdiction. In my view, notwithstanding the Objection ~~made~~ to the CL 267 registration made by Barnstaple Borough Council I have no jurisdiction to consider a claim based on circumstances similar to those considered in *Smith v East Sussex*; section 6 contemplates that a Commissioner shall in some way finalise (not leave as provisional) any registration referred to him either by avoiding it or conforming it with or without a modification; further the grounds of the Objection cannot be read as contemplating that any such circumstances exist or would be relied on. None of the persons apparently concerned with my June 1979 decision will be prejudiced by my leaving the said circumstances to be dealt with if not agreed by the High Court, because the High Court can as incidental to its decision make appropriate declarations about the validity or invalidity of my June 1979 decision; if those concerned are



- 2 -

agreed as to the effect of such circumstances on the registrations and my decision, I will consider any application they may all make to me as to what if anything I should do about it.

As to (2):- A Commons Commissioner under the 1965 Act and the Regulations made under it has no jurisdiction to extend the time for making an objection. As to the suggestion made by Mr Justice Templeman (as he then was) that Regulation should be made enabling such time to be extended, I suggest that those concerned inquire of the Department of the Environment, (CRD 2C), Tollgate House, Houlton Street, Bristol.

As to (1):- As a general rule a Commons Commissioner cannot reopen a hearing and set aside his final decision once given, because he has done all that the Act requires of him and his jurisdiction over the matter has ended; the remedy of any person aggrieved by his decision is to appeal to the High Court under section 18 of the 1965 Act or if an irregularity is relied on, to apply to the High Court to quash the proceedings in exercise of its general jurisdiction over subordinate tribunals. Exceptionally a Commons Commissioner may under regulation 21 of the Commons Commissioners Regulations 1971 reopen a hearing and set aside his decision on the application of a person who was absent from the hearing and "entitled to be heard" at it; S&P Ltd were not so entitled, see regulation 19. Exceptionally too I think a Commons Commissioner may set aside and reopen a hearing if he is satisfied that the circumstances are such that the High Court would do this and all persons who could benefit by the decision, for the purpose of avoiding the costs of a High Court action (either agree or appear to be indifferent. It may be that there are other exceptions, but nothing written on behalf of S&P Ltd which I have seen indicate that they here exist. In my view I cannot properly consider whether I should reopen the hearing unless and until notice has been given on behalf of S&P Ltd to all persons who might benefit from my July 1979 decision (the County Council, the District Council, the Town Council and Mr R T Tucker) that they are applying to me to do this and informing them that I will before granting such application consider any representations they may wish to make for or against it. In the first instance the application and any contra representations should be made by letter to the Clerk of the Commons Commissioner. There having been no such notice or opportunity given to the persons who might benefit from my July 1979 decision, as matters now stand, for this reason I refuse to set aside my decision or reopen the May 1979 hearing.

Nothing herein should be taken as encouraging S&P Ltd to make any such application to me rather than for the same purpose commencing proceedings in the High Court. At present it seems to me that there are many good reasons for S&P Ltd complaints as set out in their said letters to be determined by the High Court rather than by me, (among others):- (a) By regulation 14 of the 1971 Regulation I am made responsible for seeing that particulars of the hearing are published in one or more local newspapers; although in this case (in accordance with the usual practice) I did not personally make the arrangements and relied on others to do this for me, I doubt whether I have any jurisdiction to determine the propriety of what was done on my behalf to comply with Regulation 14; even if I have such jurisdiction, in the absence of the agreement of all concerned, I think it would be ~~most not~~ expedient that I should make the attempt, it being more appropriate that the existence



- 3 -

of any irregularity on my part <sup>should</sup> be ~~be~~ determined by the High Court. (b) At present I find it difficult to see how any useful purpose could be served by my reopening the hearing on the application of a person who would not at the adjourned hearing be entitled to be heard. (c) If S&P Ltd have as they allege a good case under *Smith v East Sussex* ~~it~~ <sup>which</sup> can only be determined by the High Court, it would be in the interests of all concerned that any question there may be under Regulation 14 should be determined by the High Court at the same time.

As to my giving notice to the County Council of the result of my July 1979 decision as required by section 6(2) of the 1965 Act:- To enable S&P Ltd to consider their position and take such proceedings in the High Court as they may be advised <sup>until after</sup> appropriate, I will postpone the giving of such notice to ~~within~~ 42 days of this decision being sent to them and the other persons concerned or until 31 October next (whichever be the later).

I give S&P Ltd and the said persons who might benefit from my July 1979 decision liberty to apply to me as to the said section 6(2) notice, as to the possible extension of the time (42 days or 31 October) above fixed and generally. Any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners and notice of it given to all other ~~said~~ persons.

I am not certain whether this decision is a decision within the meaning of the regulations next hereinafter mentioned; but in case it is, I record that 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 8<sup>th</sup> — day of July — 1980.

*C. A. Baden Fuller*

Commons Commissioner