



COMMONS REGISTRATION ACT 1965

Reference Nos. 212/D/261
212/D/262
212/D/263

In the Matter of (1) two strips of wooded land between Gaynes Park and Searles Park, (2) the roadside strip between Theydon Garnon School and the Lodge Gaynes Park, and (3) the strip of land east of Fiddlers Hamlet, all in Theydon Garnon, Epping Forest District, Essex

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Sections of Register Units (1) No. CL273, (2) No. CL284, and (3) No. 285 in the Register of Common Land maintained by the Essex County Council, and are occasioned by (1) Objection No. 87, (2) Objection No. 82, and (3) Objection No. 83 all made by Chisenhale-Marsh Estates Company and noted in the Register on (1) 8 December 1970, (2) and (3) 27 October 1970.

I held a hearing for the purpose of inquiring into the disputes at Chelmsford on 11 November 1981. At the hearing Chisenhale-Marsh Estates Company (incorporated under the Company's Act) were represented by Mr H E T St John chartered surveyor of Cluttons, Chartered Surveyors of London SW1.

The CL273 land comprises two roadside verges, each about 300 yards long on the opposite sides of a public highway (a minor through road suitable for ordinary motor traffic); each of these verges is unfenced from the road, that on the west side being wide, mostly grass with some attractive trees, but that on the east side being narrower and mostly scrub. The CL284 land comprises a roadside verge of about the same length mostly grass with some attractive trees.

The registration was made on the application of Theydon Garnon Parish Council. Mr St John produced a copy of a letter dated 8 December 1971 from his firm written about these Register Units and the reply dated 25 January 1972 from the clerk of the Parish Council: "At a meeting of the Council ... Mr H A Chisenhale-Marsh told the Council that he would continue to be responsible for maintaining these strips of land in a good state of repair. Should there be any wish to alter the designation of this land it would of course be subject to the consent of the local planning authority in conjunction with the Council. In these circumstances, I have been requested by the Council to inform the Essex County Council of this Council's desire to withdraw the registrations submitted on their behalf."

Evidence in support of the registration was given by Mr R J Carpenter, Footpaths Secretary of the Chelmsford District of the Ramblers Association who happen to be present because he had at a previous hearing on the same day then being representing his Association. As regards the CL274 and the CL284 lands, Mr Carpenter referred me to the Court Rolls of the Court Baron of the Manor of Theydon Garnon which he had produced at the previous hearing, particularly to two licences recorded in it dated 5 March 1915 and 29 July 1925 by which Mr William Swaine Chisenhale-Marsh as Lord of the Manor had granted licences in respect of "the waste of the said Manor".

Mr St John pointed out that upon the plan attached to a vesting Assent dated 12 July 1937 in favour of Mr Hugo Atherton Chisenhale-Marsh these lands are hatched black, the adjoining carriage ways being uncoloured and the adjoining farm lands being coloured pink.



Mr M H Clay who is now and has been since 1952 farm manager for Mr Chisenhale-Marsh, said (in effect):- The CL273 land in the early 1960's was covered with bushes used (irregularly by the public so I understood) for dumping rubbish. In an effort to end this, the Estate (meaning that of which he was the farm manager) decided to clear the land completely save for some of the trees (particularly some fine black Poplars) of which 2 still stand and to reseed it with agricultural grass. This was done in about 1967. The CL284 Land has been looked after by the Estate.

I must consider whether these lands are within the words "waste land of a manor" as used in the definition of "common land" in Section 22 of the 1965 Act. The 1915 and 1925 licences although perhaps relating to roadside verges not very different from the CL273 land and the CL284 land, in fact relate to other lands; I decline to infer these licences to all the roadside verges abutting on lands now owned by Mr H A Chisenhale-Marsh and by him agreed to be sold to the Company (or were in 1925 and 1915 reputed to be waste land of the Manor. The other evidence at the hearing summarised above although perhaps not conclusive against these lands being waste land of the Manor, is not cogent in favour of my so concluding. If the status of these lands is doubtful (I am not sure it is), the withdrawal of Theydon Parish Council of their application as recorded in their 1972 letter is I think reason enough for my refusing to confirm the CL274 and the CL284 registrations.

The CL285 land is (or was) a roadside verge a little under 200 yards long. Over it, or most of it, now runs the recently constructed M11 motorway; the land under or near the bridge which is or might be the same as that in this Register Unit is now ~~completely~~ completely different from anything which it was when the registration was made and from anything which could sensibly be considered to be common land within the said section 22 definition; ~~with~~ I conclude that no useful purpose either public or private would be served by leaving it registered. The said Parish Council 1972 letter is applicable to this land as it is to the CL274 and the CL284 lands. My ^{decision} ~~decision~~ about it is therefore the same.

For the above reasons I refuse to confirm these CL273, CL284, and CL285 registrations.

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 31st — day of March — 1982

a. a. Bader Fuller

Commons Commissioner