



COMMONS REGISTRATION ACT 1965

Reference Nos: 212/D/35-36
212/D/92-93

In the Matter of Curtismill Green,
Wattons Green and Manorial Waste,
in Navestock and Stapleford Abbotts
Parishes, Epping Forest and
Brentwood Districts, Essex

DECISION

These 4 disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry Nos. 1, 2, 3, 4, 5, 6 and 7 in the Rights Section of Register Unit No. CL 12 in the Register of Common Land maintained by the Essex County Council and are occasioned by Objection No. 114 made by Mr William Frank Sammons and Mr John Henry Sammons and noted in the Register on 30 October 1970 and by registrations at Entry Nos 2 and 3 in the Rights Section being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Chelmsford on 21 February 1979. At the hearing (1) Messrs W F and J H Sammons the Objectors, were represented by Mr A M Lightowler solicitor of Wortley Byers & Co, Solicitors of Brentwood; (2) Miss E H Butcher (an application by her and Mrs K E Holmes is noted in the Land Section) attended in person on her own behalf and as representing Mrs Holmes; (3) Mr Eric Herbert Enkel (he jointly with Messrs N E Enkel, T R Enkel, L J Enkel and R J Enkel were the applicants for the registration at Rights Section Entry No 4) attended in person on his own behalf and as representing his co-applicants; (4) Mr R L Williams (the applicant for the Registration at Rights Section Entry No. 1) attended in person. The following said they wished to take part in the proceedings: (5) Miss Dorothy Harcourt of Honeysuckle Cottage, Navestock, (6) Mr Cecil Wilson of The Port House, Navestock Side and (7) Mrs Hazel Lock of Newhall Farm, Navestock Side. Present also was (8) Mr S J Gardner Senior Administrative Officer (Countryside) of the Chief Executive and Clerks Department of Essex County Council. I have a petition signed by about 130 persons enclosed with a letter of 18 February from Mr W E Baylis of The Kennels, Horsemanside.

The land ("the Unit Land") in the Register Unit is an irregularly shaped tract which for the purposes of this decision I divide into three parts. One part ("the North Area") known either wholly or for the most part as Curtismill Green is about one mile long from north to south and in places as much as 600 yds wide, and is wholly situated north of the line K-L on the Register Map. Another part ("the Middle Area") is a strip about 700 yds long, has a variable width between about 30 and 100 yds and extends southwards to Murdering Lane; and I include in it the roadside verges on both sides of Murdering Lane for about 200 yds in both directions from the south end of the said 700 yd strip. And the remaining part ("the Disputed Area"), south-east of Murdering Lane and extending to Horsemanside Road, is a strip for the first two-thirds about 60 yds wide being much overgrown and when I walked over it very wet, and for the remaining one-third mostly open grassland known as Wattons Green, gradually widening to about 200 yds where it meets and is open to Horsemanside Road; the Disputed Area includes the roadside verges of Horsemanside Road to a distance of about 600 yds eastwards from the south end of Wattons Green; all of the Disputed Area is south of the line A-B on the Register Map.

The Land Section registration was made on the application of Epping and Ongar Rural District Council. The registrations at Rights Section Entry Nos 1, 2, 3, 5, 6, and 7



are of rights over the North Area. The registration at Rights Section Entry No. 4 (Messrs Enkel) is of a right attached to Fairview (described in the application as partly arable farm and partly agricultural engineering) of a right to graze 4 cows and one horse over the part of the Unit Land south of Murdering Lane being, if the verges of such Lane are (as I think) of no importance in this case, the same as the Disputed Area. The grounds of Objection are:- "We claim ownership of the land coloured green on the plan annexed hereto. We have lived at Dycotts Farm since September 1939 or thereabouts. At that time our late father was renting the farm and adjoining land and this he continued to do until the time of his purchase of the freehold in 1953. The land was not Common Land at the date of registration and we have never regarded the land itself as Common Land, since the time of our late father's purchase of the freehold, and any rights of common being exercised there (sic) to the best of our knowledge and information and belief. The whole of the area shown coloured green on the plan annexed has been used by us and our late father W H Sammons in connection with our farm". The land coloured green on the said ~~next~~ plan is the Disputed Area. Dycotts Farm is the land containing about 79.091 acres coloured pink on the below-mentioned 1953 conveyance plan being nearly all north of and adjoining to the Disputed Area; the farmhouse is a short distance from the south-east end of the Disputed Area, and access to it and to nearly all the rest of the farm is by a track which leads off Horsemanside Road at the south corner of the Disputed Area; a comparatively small part of the farm is south of and adjoining to the Disputed Area and north of Horsemanside Road. Among other Entries in the Ownership Section, Mr William Henry Sammons (as a result of an application made in 1967) is registered as the owner of all the Disputed Area except the roadside verges of Horsemanside Road at the north-east end and except a comparatively small piece of no importance in this case.

As to the conflict between the registrations at Rights Section Entry Nos 2 and 3 made on the application of Mrs G M Cooke and Mrs D I M Bass:- The County Council in September 1977 when referring to the Commons Commissioners the deemed dispute resulting from his conflict, sent a paper signed by Mrs Bass and Mrs Cooke having an attached plan showing coloured blue and green the land to which the Entry No 2 right was attached and coloured red and green the land to which the Entry No. 3 right was attached (there is a conflict because the green is included in each). The paper (in effect) invites the Commons Commissioners to confirm the No 2 registration with the modification that the green land be deleted and to confirm the No 3 registration without any modification. Apart from the objection, I have no reason for not giving effect to this invitation.

The only objection to the registration at Entry Nos 1, 2, 3, 5, 6 and 7 of the Rights Section is that which must be treated as having been made as a consequence of the objection of Messrs Sammons and by the operation of Section 5(7) of the 1965 Act. However it appears the Objectors have no intention of disputing such of these registrations as relate to the North Area (a considerable distance from Dycotts); but for the Objection (and also the said conflict) these registrations would have become final under Section 7 of the 1965 Act. I consider that I should produce the same result.

Accordingly I confirm the registrations at Rights Section Entry Nos 1, 3, 5, 6 and 7, without any modification and I confirm the registration at Rights Section Entry No 2 with the modification that the supplemental map mentioned in column 5 be altered by deleting from the land coloured blue thereon, the land coloured green on the plan attached to the said paper signed by Mrs Bass and Mrs Cooke.



The greater part of the hearing related to the dispute as to Rights Section Entry No 4 (Enkel). In support of the Objection, oral evidence was given by Mr W F Sammons who was born at Dycotts Farm in 1935 and who produced:- (1) a conveyance dated 1 May 1953 of the farm by the Church Commissioners for England to Mr W H Sammons (the father of the witness, he died in 1970); (2) a deed of gift dated 15 June 1970 by which Mr W H Sammons conveyed all the land comprised in the 1953 conveyance to Mr W F Sammons (the witness) and Mr J H Sammons (his brother and the other Objector); (3) a letter dated 17 April 1972 from the officer commanding 45 (Essex) Signals Squadron (V); and (4) an extract from the OS map (6" - 1 mile). Mr Gardner in the course of his evidence produced extracts made by the County Archivist of the Inclosure Award relating to Navestock 1770 and of the map attached thereto. Oral evidence was also given by Miss D Harcourt who from about 1931 to 1945 used to pass in front of the Enkel's Farm (Fairview) every morning on her way to work, by Mr C Wilson who is 71 years of age and who did a drapers round from 1926 to 1940 that included Wattons Green, by Mrs H Lock who has lived in Navestock for 7 years and before that for 8 years in the neighbouring parish of Bentley, by Miss E H Butcher who moved to Watton Farm in 1963 but knew the area very well from 1938 because she and her sister and her family would ride past Dycott, by Mr T E Enkel who is 67 years of age, was born at Fairview, lives adjacent to it now and has always known it, and by Mr H Holmes about whose grazing Mr Sammons said he only did it with permission.

About 6 weeks after the hearing I inspected the Disputed Area by walking along it from Murdering Lane to Horsemanside Road.

If the registration at Rights Section Entry No 4 was properly made, it necessarily follows that the Objection must fail. As to the propriety the Rights Section Entry, the petition sent to me by Mr Bayliss, is in my opinion irrelevant because it relates only to the expediency of the Unit Land continuing as an open space for residents to enjoy, for exercise and for those coming out there for relaxation.

By the 1770 Award there was allotted "one public highway containing sixty feet wide and upwards beginning ... marked Letter (A) and from thence ... to a certain place called Water or Hales and in the Map or Survey marked (G) from thence leading 200p to a place called Wattons Green and in the map or survey marked (H) from thence leading 160p and upwards to a (?) Birked arch near Murthering Lane in the map or survey marked (I) and from thence leading 160p and upwards to a brook ... and appoint that the said public highway shall at all times hereafter be used as such either on foot or with horses, cattle or carriages by all person or persons whatsoever as the same is herein before directed to be set out and appointed ...". The Award map shows a strip between the points "H" and "I" corresponding with the Disputed Area (except the Horsemanside Road verges east of "H" and except also a small triangular area near Dycott which seems since 1770 to have become part of the farm). The map indicates that the lands adjoining Disputed Area on the south-west and a small part near Murdering Lane on the north was enclosed under the Award and that the remaining adjoining lands were enclosed before the Award was made.

Mr Gardner explained the proceedings had been taken and an inquiry held under the Countryside Act 1968 for the purpose of establishing ~~the~~ the Disputed Area for its whole width was highway as a result of the 1770 Award contrary to an objection made in such proceedings by Messrs Sammons and that the decision of the Ministry Inspector appointed by the Department of the Environment was awaited. I do not know whether on the date I sign this, the Inspector's decision has yet been published; no-one has sent



me a copy. Notwithstanding that a highway cannot be properly registered under the 1965 Act as common land, the grounds of the Objection of Messrs Sammons contains no suggestion that the Disputed Area should not for that reason have been registered; indeed I understood Messrs Sammons wish to establish that the Disputed Area is land in their private ownership free from the rights of any commoners and of any rights in the public. Any decision by me that the Disputed Area is common land cannot preclude the County Council or anyone else claiming that it is wholly or partially highway, see Section 21(2) of the 1965 Act. Upon these considerations I conclude that I should disregard altogether the possibility that the whole or some part of the Disputed Area may be highway and therefore not registrable.

Apart from the 1965 Act, there is no reason why highway with all its verges should not be common land subject to grazing rights such as had been claimed by Messrs Enkel. As to the existence of such rights, the 1770 Award is relevant as showing that the Disputed Area was before 1770 part of a larger uninclosed area then regarded as fit for inclosure, and was not by the Award inclosed; in short the Disputed Area (apart from the absence before 1770 of some of the present fencing) was then much as it is now in every way suitable for grazing in common.

On the plan attached to the 1953 Conveyance the Disputed Area is coloured green different from the land therein called Dycotts Farm coloured pink, and is thereby expressed to be conveyed by the description "AND TOGETHER also (so far as the Commissioners can grant the same) with all such rights as the Commissioners may possess in or over the property coloured green on the said plan". So the Disputed Area was expressly conveyed differently from Dycott Farm, indicating that those concerned though it was in some way different from the Farm. The only difference which I can think of is that it was subject to rights of other persons, as would be likely from the name "Wattons Green" on the conveyance plan.

Much of Mr Sammons oral evidence seemed to be directed to establishing ownership, and he mentioned the number of things done on the Disputed Area by his father, who took over the tenancy of the Farm in 1939. But the things mentioned were, like the 1953 conveyance, all consistent with the Disputed Area being tenanted and owned in a different manner from the Farm. As to the last sentence of the grounds of Objection:- the things done were "in connection with the farm" in the sense that they were done because he was tenant of the Farm up to 1953, and then became owner of the Farm and the Disputed Area; they were not done in connection with the Farm in the sense that he and the objectors after him were farming the Disputed Area as they farmed the Farm; indeed by reason of the Disputed Area being uninclosed, this was never possible.

Upon the above considerations I reject as irrelevant, the first two and the last sentence of the grounds of Objection.

Mr Lightowler referred me to the Prescription Act 1832. In my opinion Messrs Enkel in support of their claim need not rely on such Act, because I infer from the present appearance of the Disputed Area and from the 1770 Award, that there is no reason why the right claimed should not have existed from time immemorial; they can therefore prescribe at common law, without fulfilling the conditions of the 1832 Act.

Mr Sammons said that the Enkels did have a cow grazing on the Disputed Area during the war, when it was allowed to run free, but he rejected the suggestion that they had cattle there up to 1952, saying that at the time his father was grazing. His attitude was that his father only became concerned about rights after 1953 when he became the owner.



Miss Harcourt said (in effect):- She well remembered cattle of the Enkels being grazed on the Disputed Area. They were milk~~ed~~, she knew they belonged to the Enkels because she was friendly with them. She was speaking of the period of about 20 years, back to about 1932 or 1933.

Mr Wilson said (in effect), the Disputed Area was open common land from when he first knew it in 1926; He often saw cattle and horses grazing there, tethered he thought. Mr Enkel said (in effect), ~~as~~ before 1952 they had always had cattle from Fairview grazing on the Disputed Area. His attitude was, they, like the rest of the community, were free to do what they liked.

Much of the oral evidence against the objection was directed to showing that the Disputed Area had been used generally by persons other than the Sammons and the Enkels, and there was some conflict between Mr Sammons and Mr Holmes as to whether the grazing done by Mr Holmes was by permission. There is no registration under the 1965 Act in respect of this grazing, ~~and~~ I need not try to resolve this particular conflict. As regards the other conflicts between the evidence of Mr Sammons (that ~~and~~) given against the Objection, I conclude that grazing on Fairview (there was) from up to 1952; ~~and~~ I accept the evidence of Miss Harcourt that there was grazing ~~on~~ from Fairview from 1932 to 1952 (much of which period was not covered at all by the oral evidence of Mr Sammons).

Having regard to the history of the Disputed Area within living memory and as shown by the 1770 Award and having regard also to its present appearance, it would I think be extraordinary if it had not been used by the community as described by the witnesses, ~~but~~ in particular had not been grazed ~~by~~ Fairview as stated. My finding is that a right of grazing from Fairview over the Disputed Area has existed from time immemorial.

I reject the suggestion that such right was by its disuse after 1952 abandoned, ~~See Thidy v Norman 1971 2QB 528.~~

Although the north-west part of the Disputed Area is now unsuitable for grazing, no one at the hearing suggested that I should treat differently from the comparatively open south-east area on the maps called Wattons Green. In the absence of anything in the grounds of Objection relating to the numbers registered, and having regard to the area of Fairview, I see no ground for altering the number of animals mentioned in the registration.

Upon the considerations above set out I confirm registration/Rights Section Entry No.4. without any modification. It necessarily follows that the Land Section Register was as regards the Disputed Area ~~rightly~~ ~~correctly~~ and that the Objection fails; accordingly I confirm the registration at Entry No. 1 in the Land Section without any modification.

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 ...2nd.....day of August.....1979.

a. a. Baden *Jules*

Commons Commissioner