

In the Matter of Norton Heath, High Ongar and
Norton Mandeville, Essex (No. 1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL 74 in the Register of Common Land maintained by the Essex County Council and is occasioned by Objection No. 19 made by Mr and Mrs S A Matthews and noted in the Register on 24 November 1969.

I held a hearing for the purpose of inquiring into the dispute at Chelmsford on 9 March 1982. The hearing was attended by Miss D Morton, solicitor, on behalf of the Epping Forest District Council, the successor authority of the former Epping and Ongar Rural District Council, the applicant for the registration, and by Mr R Wakefield, of counsel, on behalf of the Objectors.

The land comprised in the Register Unit is the subject of a scheme made by the former Ongar Rural District Council under the Commons Act 1899 and approved by Order of the Board of Agriculture and Fisheries on 7 January 1909. There is excluded from the scheme and the Register Unit an area of land on which stand a house and a smithy. The Objection relates only to an area of land immediately to the east of the smithy (hereafter referred to as "the Objection land").

Evidence was given by Mrs K C Monk now aged 63, who has known the area all her life. Until about 1950 there was a pond in the northern part of the Objection land and most of the rest of that land was a thicket.

From about 1950 to 1966 the house and smithy belonged to Mr A E Oxford. At some time during his period of ownership Mr Oxford filled up the pond, and he began to use the Objection land for the purposes of his business as a demolition contractor. Mr Oxford laid concrete on about half the Objection land, and he made a fence of old doors.

On 10 March 1966 Mr Oxford conveyed to the Objectors property described as "dwellinghouse with detached smithy and outhouses yards and gardens" identified by reference to the plan annexed to a conveyance made 31 August 1945 between (1) Emily Smith (2) Leonard Frederick James Buxton. This plan shows only the land excluded from the 1909 scheme and the Register Unit. The Objectors conveyed their property by the same description to their son, Mr J A Matthews, on 22 June 1979. Mr J A Matthews has since erected on the Objection land a workshop, for which he obtained planning permission. Mr S A Matthews and Mr J A Matthews both said that they "bought what they saw" and did not examine the plan on the 1945 conveyance.

I am, of course, not concerned with the question of whether Mr J A Matthews has acquired a good title to the Objection land. The only matter in dispute is whether the Objection land falls within the definition of "common land"



in section 22(1) of the Commons Registration Act 1965 by being either land subject to rights of common or waste land of a manor not subject to rights of common.

Going back to the 1909 scheme, all that can be gleaned from it is that the land made subject to it must have been a "common" as defined in section 15 of the Act of 1899. This definition included any land subject to be inclosed under the Inclosure Acts 1845 to 1882 and any town or village green. The land subject to be inclosed under the Acts of 1845 to 1882 was described in section 11 of the Act of 1845 as all lands subject to any rights of common whatsoever. It therefore follows that it cannot be said that the Objection land must have been subject to rights of common in 1909, since it could have been made the subject of the scheme by being part of a town or village green.

There was no evidence before me that the Objection land is subject to rights of common. Indeed, the evidence indicates that it is not. There are in the Rights section of the Register Unit three provisional registrations of rights of common. No evidence regarding any such rights was adduced before me, but the fact that the fencing of the Objection land for many years has not been the subject of complaint by any person claiming to be entitled to rights of common over it indicates that there were no such rights over that land. Furthermore, there is no evidence that the Objection land is waste land of any manor.

There was no objection to the registration of the remainder of the land comprised in the Register Unit, and the applicants for the registrations in the Rights section of the Register Unit have thus been led to believe that there is no question about the existence of their rights over the whole of the land comprised in the Register Unit other than the Objection land. There is some, even though minimal, evidence in support of each application in the statutory declaration in support of it. There being no evidence before me to cast doubt on the existence of rights of common over the land not the subject of the Objection I confirm the registration with the following modification, namely, the exclusion of the land the subject of the Objection.

Mr Wakefield asked that I should make and order that the costs should follow the event. I am unable to say that there has been anything in this case to justify a departure from the general practice of not awarding costs in cases relating to applications for land registrations made bona fide in the public interest

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

18th

day of

March

1982

Chief Commons Commissioner