



In the Matter of Shrub Hall Heath, Tolleshunt
D'Arcy, Maldon

DECISION

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 69 in the Register of Common Land maintained by the Essex County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (1) Mr A Birkin and Mr R A Birkin (2) Mr P Eaton claimed to be the owners of the land in question ("the Unit land") and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Chelmsford on 19 July 1983.

At the hearing Mr R A Birkin and Mr Eaton each appeared in person. Mrs M J A King, an applicant for registration of the land as common land, also appeared in person.

This hearing is a re-opening of the hearing of the inquiry held on 1 December 1982. Mrs King was not present at the December hearing and on her application I have set aside the Decision dated 31 January 1983 and re-opened the hearing. She is not claiming ownership but opposes the claim made by the Birkins and Mr Eaton.

The Unit land is a narrow piece of heath land, the NE boundary of which adjoins two fields forming part of Heath Farm, and the SW boundary adjoins two fields one forming part of Heath Farm and the other part of Oak Farm.

Mr R A Birkin giving evidence told me that his father Mr A Birkin, who is now 86, owned Heath Farm from 1931 onwards until in 1973 he himself became the owner. Along the SW boundary is a hedge and there is access to the heath from their fields on the NE side over a roadway that runs along the NW boundary of the Unit land. During the war they went on the heath to keep down the rabbits. There is a ditch running across the heath which drains their fields, and there is a pipe under the road which, he thought, was laid by the County Council for drainage purposes. About once a year he and his father went on the heath to clear rubbish left by the general public who came in cars along the road; ^{and every other year to} ~~the~~ ^{clear the ditch} hedge was cut by a contractor who cuts all their farm hedges: it is done by a machine, operating from their field, which cuts both their side and the heath side. The heath had grown thick and dense and was not used by the public. In cross-examination he agreed that some 15 years ago a Mr Luther Howard came on the heath and started to clear it of rubbish and growth: he was stopped by the District Council. It was about two years ago that he himself last cleared rubbish - that was when this dispute arose.

Mr Eaton said that he owned Oak Farm - he came there in 1973, though his father had farmed the land for some ten years before that, and he worked there for his father. The land adjoining the heath is arable and the rubbish could breed rats.



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The rubbish could also be dangerous for children playing there, whilst broken glass under a hot sun might produce fire, a risk which might involve a higher insurance premium for him. He and Mr Birkin co-operate in clearing rubbish and go round at least once each winter with a tractor and trailer to make the clearance. He shares the cost of the hedge cutting with Mr Birkin, and they both do the work of keeping the drainage ditch clear.

In cross-examination Mr Eaton agreed that other people come on the heath and cut down small saplings, but it is not by way of management of the heath or to take firewood. Some of the rubbish has been there a fair time - they haven't cleared it recently because of the dispute. There is access to the heath from his field through a gate. The heath is more and more overgrown and there is heath growth which could catch fire.

Mrs King gave evidence and two other witnesses were called on her behalf. She said that she applied to register the heath as common land because small villages value their bits of common land and she did not want it to get into private hands. Although there are no common rights registered the villagers do have the right to go on the heath.

Mr Basil Harris said that he lived at Brick House Farm (which is not far from the heath) after 1939 and that he had been on the heath to cut wood, at least 4 or 5 times each year for 50 years. In cross-examination he said that for 30 years he had been living at Little Totnam (about 2½ miles from the heath): last winter he took wood several times.

Mrs Annie Brown said that she had been on the heath several times collecting wood - she came with a pony and cart and took the wood away for her fires: she came regularly - as often as weekly when the weather is cold.

Conclusions

I accept the evidence given by Mr Birkin and Mr Eaton. However their activities in relation to the Unit land are of a limited kind, limited as regards both their frequency and the area of the heath to which they extend. The heath is largely dense and overgrown: the greater part of it is not occupied or managed by them and apparently is not made use of by anyone. There is access to the heath from the roadway for others, nor have Mr Birkin or Mr Eaton sought to prevent such access. Their own activities - the clearing of the drainage ditch, the hedge cutting and the clearance of rubbish - are, in my view, attributable to an understandable wish to protect their interests as farmers of the adjoining fields and, so far as I know, are not complained of by anyone: on the evidence as a whole they are not, attributable to a claim to, or intention to acquire, ownership of the Unit land and, consequently, they do not constitute acts of ownership adequate to establish the ownership they claim.

In the result, I am not satisfied that they or any other person are the owners of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.



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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 13 September 1983

L. J. Morris Smith

Commons Commissioners