



COMMONS REGISTRATION ACT 1965

Reference Nos 219/D/12
219/D/13
219/D/14
219/D/15

In the Matters of (1) land of about 10 acres adjacent to Cliffe Creek, (2) land of about 10 acres known as West Cliffe Common, (3) other land of about 3 acres adjacent to Cliffe Creek, and (4) land of about 27 acres known as Cliffe Creek, all in Cliffe, Medway Borough, Kent

DECISION

These four disputes relate (D/12) to the registration at Entry No 1 in the Land Section of Register Unit No VG. 132 in the Register of Town or Village Greens maintained by Kent County Council, (D/13) the registration at Entry No 1 in the Land Section of Register Unit No CL. 120 in the Register of Common Land maintained by the said Council, (D/14) the registration at Entry No 1 in the Land Section of Register Unit No CL. 111 in the said Register of Common Land, and (D/15) the registration at Entry No 1 in the Land Section of Register Unit No CL. 110 in the said Register of Common Land, and are occasioned respectively by (D/12) Objection No 95, (D/13) Objection No 94, (D/14) Objection No 93 and (D/15) Objection No 84 all made by Associated Portland Cement Manufacturers Limited and noted in the Register on (95, 94 and 93) 15 March 1971 and (84) 8 December 1970.

I held a hearing for the purpose of enquiring into these disputes at Sittingbourne on 18 May 1976 and at London on 26 October 1976. At these hearings Cliffe Parish Council on whose application all the said registrations were made, were represented by Mr R Phillips of counsel instructed by Kingsley Smith & Co Solicitors of Gillingham, and The Associated Portland Cement Manufacturers Limited (the said Objectors: "A.P.C.M.") were represented (in May) by Miss S Cameron of counsel and (in October) by Mr J Garbutt their Solicitor. At the May hearing, Miss Cameron also represented Port of London Authority ("P.L.A.") said to be the owners of part of the land comprised in these Register Units (A.P.C.M. are registered as owners of the VG. 132 land, the CL. 111 land and parts of the CL. 110 land), and Mr R F Hutchings of Handsworth, The Crescent, Cliffe (he wrote a letter dated 30.4.76. to the Commons Commissioners about these lands) attended in person. At the May hearing, I adjourned the proceedings, because I was told that a compromise was under discussion and because having regard to other cases having priority over these I would not while at Sittingbourne have had sufficient time. Before the October hearing, Mr Hutchings in a letter dated 1.9.76. said he would not be able to attend; at this hearing, P.L.A. were represented by Mr M R Flegg their solicitor and Mr Roy Francis Harrison of 8 Millcroft Road, Cliffe (he wrote a letter dated 20.10.76. to the Commons Commissioners) attended in person.

At the October hearing Mr Phillips and Mr Garbutt said that the Parish Council and A.P.C.M. had agreed to request me to confirm the VG. 132 registration and to refuse to confirm the CL. 110, the CL. 111 and the CL. 120 registrations, and



that these requests in writing, and agreed by Medway Borough Council and Kent County Council had been posted to the Commons Commissioners (requests dated 22 October 1976 were received by me after the hearing.)

At the request of Mr Harrison I read his letter of 20.10.76. He said (in effect):- He supported what Mr Hutchings had said in his letter of 30.4.76. He attended the hearing as a possible witness. Although he is a member of the Parish Council, he did not agree with the compromise put forward on their behalf by Mr Phillips. He was proposing to write to Mr J Ovenden, Member of Parliament for Gravesend, as he understood that the recent High Court decision in C.E.G.B. v Clwydd showed the people in the Village had no case. They know that these lands are common; it is a sad thing about the 1965 Act that nothing can be done for them.

Under the Commons Commissioners Regulations 1971, the County Council, the Borough Council, the Parish Council and A.P.C.M. are all entitled to be heard but neither Mr Hutchings nor Mr Harrison have any entitlement at the hearing of these disputes, see regulation 19. At a hearing such as this, "the Commissioner may, if he thinks fit, take evidence from any person who gives his name and address and volunteers to give evidence", see regulation 23. Where all the persons entitled to be heard at the hearing of a dispute have agreed upon the terms of the decision to be given by the Commissioner,...(he) may if he thinks fit, give a decision in accordance with those terms without a hearing," see regulation 31.

There is nothing in the 1965 Act or in the said Regulations expressly providing that a Commissioner shall give a decision in accordance with the agreement of all persons entitled to be heard, so I have I think a discretion. In civil proceedings in the High Court, the parties entitled to be heard as a general rule may terminate them with or without an agreed order; regulation 31 contemplates that a Commons Commissioner may act similarly. The lands with which I am dealing are extensive; an enquiry into the matters mentioned in the letters of Mr Hutchings and Mr Harrison would take a considerable time and involve those concerned in much expense. Although generally it is in the public interest that any provisional registration of land either as common land or as a town or village green should if possible be confirmed, the public interest is I think prima facie sufficiently protected by the Parish Council, the Borough Council and the County Council. In these circumstances, I consider that I should not either refuse to give effect to the agreement reached by the Parish Council and A.P.C.M. or give Mr Harrison an opportunity of elaborating the statements in his letter and in the letter of Mr Hutchings, without some good reason.

I have considered the statements in these letters, balancing them, as best I can, against the statement made by Mr Phillips that the Parish Council reached their agreement with A.P.C.M. after taking advice and after careful consideration of the evidence available. In my opinion I have no good reason for not giving effect to such agreement.

For the above reasons I confirm the VG. 132 registrations without any modification and I refuse to confirm the CL. 110, the CL. 111 and the CL. 120 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 29th — day of October ————— 1976

a. a. Baden Fuller

Commons Commissioner