



In the Matter of Banstead Heath,
Tadworth, Reigate and Banstead
Borough, Surrey

DECISION

These eleven disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1 to 6 inclusive in the Rights Section of Register Unit No CL. 109 in the Register of Common Land maintained by the Surrey County Council and are occasioned by the Objections numbered, made and noted as specified in the Schedule hereto.

I held a hearing for the purpose of inquiring into the disputes at Guildford on 19 October 1977. At the hearing: (1) Reigate and Banstead Borough Council (as successors of Banstead Urban District Council; the Land Section Entry was made on their application) were represented by Mr P D C Brown a solicitor of the Council; (2) British Railways Property Board were represented by Mr H Sanders surveyor with the Southern Region Estate Surveyor and Manager; (3) Mr Kenneth Eustace (Rights Section Entry No 6 was made on his application) attended in person; (4) Surrey County Council were represented by Mr P W Pilgrim articled clerk with the Deputy County Clerk; (5) Mr Dendy Bryan Easton (Rights Section Entry Nos 3 and 4 were made on his application, and he is one of the executors of Mrs Dora Eaton on whose application Rights Section Entry No 2 was made) attended for part of the time in person and for part of the time was represented by Mr R Johnson legal executive with Church Adams Tatham & Co, Solicitors of Reigate; and (6) Mr H R Crouch c/o Crouch Chapman & Co of 9 Devereux Court, Strand, London WC2 (he is the other executor of Mrs D Eaton) was represented by Mr Eaton and Mr Johnson as above.

The land ("the Unit Land") comprised in this Register Unit, known as Banstead Heath, is about 3 miles long from north to south. Its greatest width is about 1 mile from east to west. Most of it is south of Tadworth. The northern part is (except for some comparatively small strips) west of the Sutton-Reigate road (A217); near the north end the Sutton-Dorking road (B2030) branches off to the southwest, dividing the Unit Land into two unequal parts, the smaller of which northwest of this road (comprising several pieces separated by other roads) extends to a point near Withybed Corner.

At the beginning of the hearing Mr Pilgrim said that Objection Nos 322 and 423 were withdrawn, and Mr Brown suggested that I confirm the Land Section registration without any modification (all except Charrington & Co Limited having agreed), that I refuse to confirm the Rights Section registrations at Entry Nos 1, 5 and 6 (Mr Barrett, Corporation of London, and Mr Eustace), and that I confirm the Rights Section registrations at Entry Nos 2, 3 and 4 (Mrs Eaton deceased, Mr Eaton and Mr Eaton) without any modification. To this suggestion Mr Saunders, Mr Eustace and Mr Eaton all agreed subject however in the case of Mr Eaton to his claim (agreed by Mr Pilgrim and Mr Brown) that column 5 of Entry No 4 should (there having been a mistake) be corrected by substituting the words "Meare Close, The Hoppety" for the words "Land on the south side of Chapel Road" and to his



claim, (not so agreed) that Surrey County Council should pay his costs (and? also the costs of Mrs Eaton and her executors). So at the hearing the only questions apparently requiring my decision were: (i) Mr Eaton's claim for costs, and (ii) the validity of Objection No 286 made by Charrington & Co Limited.

The rights registered by Mrs Eaton and Mr Eaton at Entry Nos 2, 3 and 4 are: (i) to cut herbage and remove on one wheel, (ii) to remove litter and moss on one wheel, (iii) to take wood from fallen trees and underwood, (iv) to take peat and turf and remove on one wheel, (v) a right to take gravel, sand and loam provided that it be removed on one wheel, and (vi) to cut foliage, evergreen and conifer provided it is tied with one withey and removed on one wheel.

Mr Eaton in the course of his oral evidence in support of his costs claim, said (in effect):- Following representations made by him in November 1970 Banstead Urban District Council withdrew their Objections (these were numbered 234, ~~235~~ 235 and 236 and related to Entry Nos 2, 3 and 4; there is a note dated 26 May 1971 in the Land Section that they had been withdrawn, so in these proceedings I am not concerned with them at all). Later he learnt of Objection Nos 322 and 425 made by the County Council. He called at the County Council Offices, Common Registration Department (Hut No 2 Elmhurst) and asked why the County Council had made their Objections, when the Banstead Urban District Council having seen his deeds had withdrawn, and was then told that the Council could not have him cutting turves from the side of the road; to this he said: "Surely some arrangement can be made; I have no need to cut any turf from the side of the road." On 6 October 1977 he again called at the same Department, and asked the same question and received the same answer, save that the County Council official, who he saw, mentioned loam and wished him luck at the hearing (to be held ~~two~~ days later). He produced (at the hearing before me) a conveyance dated 23 March 1852 and two deeds of enfranchisement dated 20 June 1899 and 13 June 1921; he agreed that he had received the plan attached to Objection No 322.

Mr Pilgrim said that Objection Nos 322 and 423 had both been made at the suggestion of the County Council's Highway Department and that the County Council had never had any intention of objecting to the registrations except to the extent that they might affect the highway position as indicated on the plan attached to Objection No 322.

The land ("the Objection Land") coloured green on the plan attached to Objection No 286 made by Charrington & Co Limited, is a small part of the Unit Land at or near Withybed Corner, being a piece north and east of the Bell Public House. It is situate not far from the football field and/or sports ground apparently occupied with British Transport Police Training School. Against this Objection Mr Brown produced: (1) a conveyance dated 20 March 1959 by which Mr G Russell and Hon C R Russell conveyed to Banstead Urban District Council, the Manor of Tadworth with 70 acres of land, (2) a Land Certificate showing that the said Council had an absolute title to the land comprised in Title No SY 223531, and (3) the Metropolitan Commons (Banstead) Supplemental Act 1893 (56 & 57 Vict c. cvii); and Mr M Thompson who is now and has been since 1957 (apart from a short break) the Warden of the Banstead Commons Conservators gave oral evidence in the course of which he produced a copy of the plan dated 13 December 1892 referred to in the Scheme scheduled to the 1893 Act.

Mr Brown observed that the Unit Land is the subject of one of the leading cases relating to the law of Common Land, being *Robertson v Hartopp* (Court of Appeal), 1889 43 Ch.D. 484.



Mr Thompson described the Objection Land. It is at the end of a track across the Unit Land which starts near Mere Pond and provides vehicular access to a number of dwelling houses which front on this part of the Unit Land, including the Bell Public House. The surface of the Objection Land makes it a convenient place on which to park cars and it is used by but not exclusively by customers of the Public House.

On the day after the hearing I walked over the Objection Land and inspected from my motor car much of the remainder of the Unit Land.

As regards Objection Nos 53, 277 and 322 made by British Railways, Mr Nevard, and Surrey County Council to the Land Section Entry, I have letters written before the hearing by or on behalf of the Objectors by which they say in effect that they wished to withdraw and/or statements made at the hearing (Mr Saunders and Mr Pilgrim) to the like effect. Accordingly my decision is that these Objections fail, at least as regards the parts of the Unit Land to which such Objections were expressed or intended to relate.

As regards Objection No 286 made by Charrington & Co Limited to the Land Section Entry:- The plan attached to the 1959 conveyance showing the extent of the 70 acres thereby conveyed, includes the Objection Land as also does the plan attached to the Land Certificate showing the land the ownership of which was thereby certified. In the absence of any contrary evidence, I conclude that Charrington & Co Limited have no estate or interest in the Objection Land. By the 1959 conveyance the land thereby conveyed is conveyed with the Manor of Tadworth and is therein described as "waste"; it does not I think cease to be waste land merely because it is used by the customers of the Bell Public House and others for car parking. The Objection Land appears to be as much a part of the Unit Land as the land which adjoins it on the north and east: all waste land likely to have been such by reason of some manorial history. In the absence of contrary evidence, I conclude that the Objection Land like the other land conveyed by the 1959 conveyance was and is waste land of a manor, and accordingly within paragraph (b) of the definition of "common land" in section 22(1) of the 1965 Act. My decision therefore is that this Objection fails.

I should record that I have not overlooked a letter dated 13 October 1977 written to the Commons Commissioners by solicitors acting for Charrington & Co Limited in which they say that for reasons there set out "we take it you will not require our attendance". I disregard this letter because in my view it is no part of the duty of the Commons Commissioners to advise persons whether they should attend a hearing. By regulation 17 of the Commons Commissioners Regulations 1971, a Commissioner shall sit in public except as therein mentioned; accordingly except as provided by regulation 31 it is not possible by correspondence to dispose of a dispute occasioned by an Objection. For the reasons set out in the preceding paragraph, the writer of the letter was I think mistaken in thinking that the Objection "lapses", if by this he meant "succeeds"; however it may help him, if I record that during my inspection of the Objection Land, it did occur to me that some of the northwestern part of the land coloured green on the plan attached to the Objection may not be part of the Unit Land; the expression "Objection Land" is herein used as meaning so much of the land so coloured as is included in the Unit Land as described in the Land Section of this Register Unit.



It does not follow of course that having decided that all Objections to the Land Section Entry have failed, I must necessarily confirm the registration; under section 6 of the 1965 Act I have a discretion. But the Act provides (in effect) that if a registration in the Land Section is never a subject to any Objection, it shall become final without any more evidence to support it than is provided by the statutory declaration made in support of the registration; see section 7 and form CR7 to the Commons Registration (General) regulations 1966; I consider therefore that as a general rule, when it is conceded or has been decided that none of the Objections should have been made, I can and should produce the same result without calling upon the applicant to prove his case. In this case the judgment in *Robertson v Hartopp supra*, the 1893 Act and the present appearance of the Unit Land all indicate that the Unit Land is or is at least likely to be, within paragraph (b) of the definition. There are no contrary indications. Accordingly quite apart from the possible applicability of paragraph (a) of the definition, I conclude that the Land Section registration (as amended as stated in Entry Nos 3 and 5) was properly made.

As regards Objection Nos 233 and 238 made by Banstead Urban District Council the Rights Section Entry No 1 (Mr Barrett) and No 6 (Mr Eustace):- Mr D W and Mrs B Hammond as successors in title of Mr Barrett have signed a request to the Commons Commissioners to delete Entry No 1. Mr Eustace in a letter written before the hearing and personally at the hearing made a similar request. Nobody at the hearing contending otherwise, my decision is therefore that these Objections succeed.

As regards Objection No 423 made by Surrey County Council to Rights Section Entry Nos 1, 2, 3, 4, 5 and 6:- Although Mr Pilgrim said that the Objection was only intended to apply to the piece of land and verges shown on the plan attached to Objection No 322, it is expressed generally and I must deal with it as expressed. Mr Pilgrim's withdrawal of the Objection cannot validate Entry Nos 1 and 6 against which as above stated I have decided that Objection Nos 233 and 288 succeed; accordingly notwithstanding such withdrawal, Objection No 423 also succeeds as against Entry Nos 1 and 6, and I conclude that such Entries were not properly made.

As regards Entry Nos 2, 3 and 4 (Mrs and Mr Eaton), notwithstanding that no evidence was given in support of them (Mr Eaton and Mr Johnson indicated that they were prepared to give some evidence), upon considerations similar to those set out as regards the Land Section Entry, and because no one at the hearing suggested to the contrary, I conclude that the Entries were (subject as to the correction of the above mentioned mistake) rightly made; indeed having regard to the somewhat trivial nature of the rights claimed and the detailed decision in *Robertson v Hartopp supra*, it would I think be somewhat oppressive for me to require these rights to be strictly proved either as a result of Objection No 423 which was never intended to interfere with the rights except in quite a trivial way and which has now been withdrawn altogether, or as a result of the rights being treated as objected to under section 5 of the 1965 Act as a consequence of Objection Nos 53, 277, 286 and 322.

But in relation to Rights Section Entry No 5 (Corporation of London) the proceedings at the hearing in relation to Objection No 423 now seem to me to produce an uncertainty which was not appreciated by me at the hearing; for according to my notes and recollection of what happened, all present contemplated that I should refuse to confirm the registration at this Entry No, notwithstanding that Objection No 423, being the only Objection which particularly put it in issue, was withdrawn. I have a letter dated 28 September 1977 from the Comptroller and City Solicitor



saying that the Corporation on 23 May 1977 disposed of its interest in Street Farm to C Bell (Tadworth) Ltd and also a document signed on behalf of these transferees which appears to indicate that they would not have objected to my upholding Objection No 286 made by Charrington & Co Limited; but I have nothing from them indicating that they are agreeable to Entry No 5 being withdrawn altogether. In these circumstances I give no decision as regards Objection No 423 so far as it relates to the registration at Entry No 5; so that in the absence of an agreed decision in accordance with regulation 31 of the 1971 Regulations, there must be a further hearing to resolve the uncertainty.

As a result of my decisions and conclusions set out above, I confirm the registration at Entry No 1 in the Land Section without any modification, I refuse to confirm the registrations at Entry Nos 1 and 6 in the Rights Section, and I confirm the registration at Entry Nos 2, 3 and 4 in the Rights Section with the modification that column 5 of Entry No 4 be corrected by substituting the words "Meare Close, The Koppety" for the words: "Land on the south side of the Chapel Road". These proceedings so far as they relate to the registration at Entry No 5 of the Rights Section, I adjourn to such time and place as may be fixed by a Commissioner; such adjournment does not however preclude an application under the said regulation 31 which application should (unless some good reason can be shown to the contrary) in the circumstances of this case be signed on behalf of C Bell (Tadworth) Limited, Surrey County Council and Reigate and Banstead Borough Council.

As regards the costs claim made by Mr Eaton:- A person who makes an Objection is not at risk as to costs merely because he has made the Objection and subsequently it is either withdrawn or decided by a Commons Commissioner not to have been properly made. In my opinion the Act and the regulations made under it contemplate that the period between the date of the Objection and the date when the consequential dispute is referred to a Commons Commissioner shall be a period of discussion, during which the applicant and the objector shall at least attempt to formulate the points about which they differ with a view to saving the costs of a hearing. If during this discussion period an applicant or an objector takes a hard line, he may be at risk as to costs if the other is justified in assuming that further discussion is useless and that unavoidably he must prepare for a contest before a Commons Commissioner. In this case Mr Eaton only approached the County Council on two occasions, and in my opinion if he had wished to put the County Council at risk as to costs, he should have been far more definite than he was as to his intentions. Further having regard to the other Objections dealt with in the course of these proceedings, it was reasonably necessary for Mr Eaton and the executors of Mrs Eaton to attend or be represented at the hearing, and it could not be just that the County Council should pay the costs of such representation. I am not persuaded that the preparation made by and on behalf of Mr Eaton and the executors went beyond that which would be requisite if the County Council had from the start made it quite clear that they were as regards Entry Nos 2, 3 and 4 only concerned with the roadside verges and possible road widening or indeed had never made any Objection at all. Accordingly I do not think fit to make any order for costs. A letter dated 27 October 1977 from Church Adams Tatham & Co (ie after the hearing, so that the County Council have had no opportunity of commenting on it) in my opinion provides no good ground for my reaching a different conclusion, even if I could properly pay any attention to it.

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.

SCHEDULE
(Objections)

File No and Section mentioned in Reference	No of Objection and date noted in the Register	Name of Objector	Grounds of Objection (or their effect stated shortly)
110 and Section Entry No 1	No 53 17 March 1970	British Railways Southern Region	The part of the Unit Land over the railway tunnel was not Common Land at the date of registration
111 and Section Entry No 1	No 277 28 September 1970	Mr P T C Nevard	Extent of land registered not clear. The ditch along the boundary of "Honeywood", Deans Lane is owned by the Objector. Objection only stands if boundary of registered land is other than the edge of the ditch remote from the hedge.
112 and Section Entry No 1	No 286 29 September 1970	Charrington & Co Limited	Land coloured green on attached plan was not common land on the date when it was registered. Plan shows an L-shaped strip about 25 feet wide by the Bell Public House being about 100 feet long from northwest to southeast and about 50 feet long from northeast to southwest
113 and Section Entry No 1	No 322 9 October 1970	Surrey County Council	"That the land was not Common Land at the date of registration". Two plans with the Objection show (i) a small piece at the extreme north end of the Unit Land and (ii) very narrow road verges by nearly all the roads which cross the Unit Land
114 Rights Section Entry Nos 1 to	No 53 supra	British Railways Southern Region	Land Section Objection treated as an objection to the Rights Section Entries by Section 5(7) of the 1965 Act
115 Rights Section Entry Nos 1-5 (?)	No 277 supra	Mr P T C Nevard	Ditto
116 Rights Section Entry Nos 1 and 6(?)	No 286 supra	Charrington & Co Limited	Ditto



/117 ights Section ntry Nos 1-6	No 322 supra	Surrey County Council	Ditto
/118 ights Section ntry No 1	No 233 15 September 1970	Banstead Urban District Council	"The Council as owners of the land have no evidence of the existence of the rights claimed nor of those rights having been exercised"
/119 ights Section ntry No 6	No 238 15 September 1970	Banstead Urban District Council	Ditto
/120 ights Section ntry Nos 6	No 423 16 October 1970	Surrey County Council	"That at the time of registration there was no right of common"

ated this 8th day of December — 1977

a. a. Baden Fuller

Commons Commissioner