



COMMONS REGISTRATION ACT 1965

Reference Nos 236/E/21-23

In the Matter of Effingham Common
(East Court) Hook and Banks Commons
Effingham, Surrey (No.2)

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. CL.24 in the Register of Common Land maintained by the Surrey County Council and are occasioned by Objection No. 54 made by Effingham Manor Estates Ltd and noted in the Register on 25th March 1970, Objection No. 59 made by Mr C.C. Calburn and noted in the Register on 25th March 1970, and Objection No. 193 made by the former Surrey County Council and noted in the Register on 10th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 2nd, 3rd, 4th, 5th, and 8th December 1975 and at Watergate House, London, W.C.2 on 9th and 10th December 1975. The hearing was attended by Miss Sheila Cameron, of Counsel, on behalf of the Guildford Borough Council, the Effingham Parish Council, Mr R. Davies, the successor in title of Col. C.W. Hughes, an applicant for a registration in the Rights Section of the Register Unit, and Mr R.J. Parton, Mr A.G. Estler, and Mr J.D. Alan-Jones, applicants for registration in the Rights Section; Mr Michael Eastham, Q.C. and Mr M.J. Gompertz, of Counsel, on behalf of Effingham Manor Estates Ltd and Mr Calburn; Mr C.J.D. Robinson, Solicitor, on behalf of the County Council; and Mr G.V. Hinde, an applicant for a registration in the Rights Section.

The land comprised in the Register Unit is geographically divided into two parts. The northern portion of the western part consists of Effingham Common (East Court), which is crossed by a road running from Effingham Junction Station in a south-westerly direction. Objection No. 193 relates to strips on either side of this road. The road has been widened so as to take in these strips under the authority of a consent dated 26th August 1963 under section 22 of the Commons Act 1899. Miss Cameron informed me that her clients did not wish to contest this Objection. Mr Hinde was not entirely happy about this, because no land had been given in exchange, but Mr Robinson submitted, and I accept his submission, that it is now too late to argue that exchange land should have been given.

Mr Eastham accepted that there were certain rights of common exercisable over Effingham Common (East Court). The land to the south of Effingham Common (East Court) consists of Hook Common, and Mr Eastham accepted that he could not contest the registration of the northern most part of Hook Common, having an area of 5 acres because it was not shown on the plans attached to either of his clients' objections. The omission may well have been unintentional, but having regard to the requirements as to plans laid down by regulation 5 (4) (a) of the Commons Registration (Objections and Maps) Regulations 1968, neither objection related to this land. For the reasons given in my decision in In the Matter of Effingham Common (East Court), Hook and Banks Commons, Effingham (No.1) (1976), Ref. Nos. 236/D/24-45, I have come to the conclusion that the remaining part of Hook Common is subject to rights of common attached to 1 acre of land belonging



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to Mr. Estler. Perhaps I should add that even if Mr Mastham had not been faced with the technical difficulty with regard to the 5 acres at the north end of Hook Common I should have held this area to be subject to the same rights of common as the remainder of Hook Common.

The eastern part of the land comprised in the Register Unit is described in the Register as Banks Common. It consists of three Ordnance Survey parcels - No. 11 having an area of 33.637 acres., No. 13 having an area of 7.226 acres., and No.14 having an area of 0.259 acres, Nos 13 and 14 are together described on the Ordnance Survey Map as Bank's Farm. The registration of O.S. No.11 was applied for by the National Trust on 25th January 1968, but O.S.Nos. 11,13 and 14 were registered together in consequence of an application for the registration of rights made by Col.C.W.Hughes on 5th June 1967. An application for the registration of O.S.Nos. 11,13 and 14 was also made by the former Guildford Rural District Council on 10th June 1968. It was agreed at the hearing by the National Trust that O.S.No.11 was subject to certain rights of common, but there was no evidence that O.S.Nos 13 and 14 were subject to any rights of common.O.S. No.11 was parcel of the Manor of Effingham La Leigh until it was given to the National Trust by the late Mr.Calburn, who was the Lord of the Manor. Mr. Calburn acquired the lordship of the manor with O.S.No.11 under an indenture made 21st January 1922 between (1) Lucia Harriet Emmaeline Tristram (2) Margaret Parratt (3) William Harry Messenger and Lewis Herbert Winckworth (4) Robert Reitmeyer Calburn. The plan annexed to this indenture shows clearly that O.S.Nos. 13 and 14 were not included in the conveyance to Mr.Calburn, so that if O.S.Nos 13 and 14 were ever waste of the manor of Effingham La Leigh they had ceased to be so by 1922.

Since the hearing persons claiming to be the owners of O.S.Nos. 13 and 14 have communicated with the Clerk of the Commons Commissioners. I cannot, of course, have any regard to these communications or to any other material which was not before me at the hearing. However, it appears to me that O.S.Nos. 13 and 14 could not by any stretch of the imagination be brought within either limb of the definition of "Common Land" in Section 22(1) of the Commons Registration Act 1965. Since nobody present or represented at the hearing had any interest in this land, it seems to me that the proper course will be to exclude it from the Register Unit.

For these reasons I confirm the registration with the following modification: namely the exclusion of Banks Farm (O.S. Nos. 13 and 14) *and the land to which objection No.193.*

I am required by regulation 30 (2) 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 13th day of March 1976

[Signature]
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Chief Commons Commissioner