



## COMMONS REGISTRATION ACT 1965

Reference Nos. 36/D/1-4  
(inclusive)

In the Matter of Elstead Common and  
Ockley Common, Elstead, Peper Harow  
and Thursley, Waverley D., Surrey

DECISION

These disputes relate to Entries No. 1 in the Land Section and No. 1 in the Rights Section of the Register Unit No. CL.32 in the Register of Common Land maintained by the Surrey County Council, both made by Mrs. Severley May Mellstrom, and are occasioned by Objection No. 66 made by the Ministry of Defence and noted in the Register on 2nd April 1970; Objection No. 314 made by the Surrey Naturalist Trust and noted in the Register on 8th October 1970 and Objection No. 174 made by the Ministry of Defence and noted in the Register on 4th September 1970.

I held a hearing for the purpose of inquiring into these disputes at Guildford on 26th March 1975. The hearing was attended by Mr. Mellstrom on behalf of his wife Mrs. B.M. Mellstrom, Mr. A.R. Hart solicitor on behalf of Waverley District Council. Mr. Sher counsel, instructed by the Treasury Solicitor on behalf of the Ministry of Defence and Mr. Brettle, solicitor, on behalf of Col. Whitbread and the Surrey Naturalist Trust.

Mr. Sher provided me with the map annexed to this decision and it was not disputed that the Ministry of Defence was the owner of the land coloured blue, pink, purple and yellow on the said map and that Col. Whitbread was the owner of the part of the Register Unit CL.32 (coloured green) not coloured on the said map.

By a letter dated 5th March 1973 Mrs. Mellstrom abandoned all her claims as to Elstead Common (the land coloured blue) and all her claims to estovers and turbary.

The ownership of the part of Ockley Common (the land coloured pink, purple and yellow) being undisputed the burden of establishing that that land was common land and subject to rights of common, lay upon Mr. Mellstrom.

Mr. & Mrs. Mellstrom farm at Red House Farm, which lies to the north of Elstead Common (the blue land). Red House Farm was owned by the Rushbrook family until 1927 when it was sold subject to the tenancy of a Mr. Wilson. From 1930 to 1939 a Mrs. Roberts and her sons were the owner occupiers of Red House Farm who used it for the purposes of a poultry farm. From 1939 to 1951 Red House Farm was owned and occupied by a Mr. Sayers who kept cattle for a few months but later confined his activity to carrot growing as a lack of fencing made it difficult to keep his cattle in.

From 1952 to 1963 a Mr. Drayson owned and occupied Red House Farm. He kept horses and cattle for a short period and erected the necessary fencing. In 1963 Mr. & Mrs. Mellstrom acquired Red House Farm.

Mr. J.F. Pearce gave evidence on behalf of Mrs. Mellstrom. He was born at Red House Farm in 1903 and his father and grandfather had been tenants from the Rushbrook family for 30 years until the tenancy was surrendered in 1908. In 1913 as a boy aged ten, he worked part time for Mr. Legg who was then the tenant of Red House Farm, and from



1916 to 1920 he worked full time for Mr. Legg, minding his cattle. The cattle were turned out on Elstead Common and he tried to keep them on Elstead Common and prevent them from straying onto Ockley Common because Mr. Legg did not know if he had any rights on Ockley Common. At this time both Red House Farm and Elstead Common were in the ownership of the Rushbrook family and Ockley Common was in the ownership of Lord Middleton.

This evidence far from establishing any rights of common appurtenant to Red House Farm over Ockley Common indicates that the Rushbrook family permitted the tenants of Red House Farm to graze on Elstead Common which was Rushbrook land but that those tenants were to use their best endeavours to prevent their cattle straying on to Lord Middletons Ockley Common.

The only other evidence was a license granted by Mr. Baker to the War Department in 1956 to use Ockley Common for training purposes subject to the rights of the commoners of the Common and such rights of access as the members of the public had thereto.

Even if there were any rights of common in 1956 only Mrs. Mellstrom has registered any such right and I cannot accept the submission made by Mr. Hart that this license estops the Ministry of Defence from objecting to the registration of the land as common land in 1967.

None of the land owned by the Ministry of Defence was part of a manor at the date of registration. Col. Whitbread is content that the registration in the Land Section of the Register Unit shall be confirmed as regards the land owned by him.

For these reasons I confirm the Entry No. 1 in the Land Section of the Register Unit modified so as to exclude the land coloured blue, pink, purple and yellow on the map annexed to this decision and I refuse to confirm the Entry No. 1 in the Rights Section of the Register.

Mr. Sher applied for costs on behalf of the Ministry of Defence and he produced a substantial bundle of correspondence between the Ministry and Messrs. Tuck & Mann and later between the Ministry and the Commons Open Spaces & Footpaths Preservation Society who took over the representation of Mrs. Mellstrom from Messrs. Tuck and Mann. This correspondence covered a period from November 1970 to August 1974 and reveals that the Ministry was using its best endeavours to avoid the trouble and expense involved in a hearing.

I have considerable sympathy for Mrs. Mellstrom. Mr. Mellstrom told me that Mr. Campbell was to represent Mrs. Mellstrom at the hearing but was unable to attend owing to another commitment thus leaving Mr. Mellstrom to do the best he could. It is in my view, a matter for regret that Mrs. Mellstrom having no evidence to support her claims was not persuaded by her advisers not to pursue them rather than accept the risk as to costs inherent in proceeding to a hearing.

In these circumstances I have no alternative but to award the Ministry of Defence costs on Scale 4 but Mr. Sher, on instructions agreed not to ask for the exercise of any discretion on the taxation of these costs.

Notwithstanding that Mr. Sher had no case to answer he called as a witness Mr. Tigwe and had available as a witness Dr. R.W. Snaydon, a lecturer in ecology to give evidence as to the value of the grazing on Ockley Common if, which is open to doubt, such



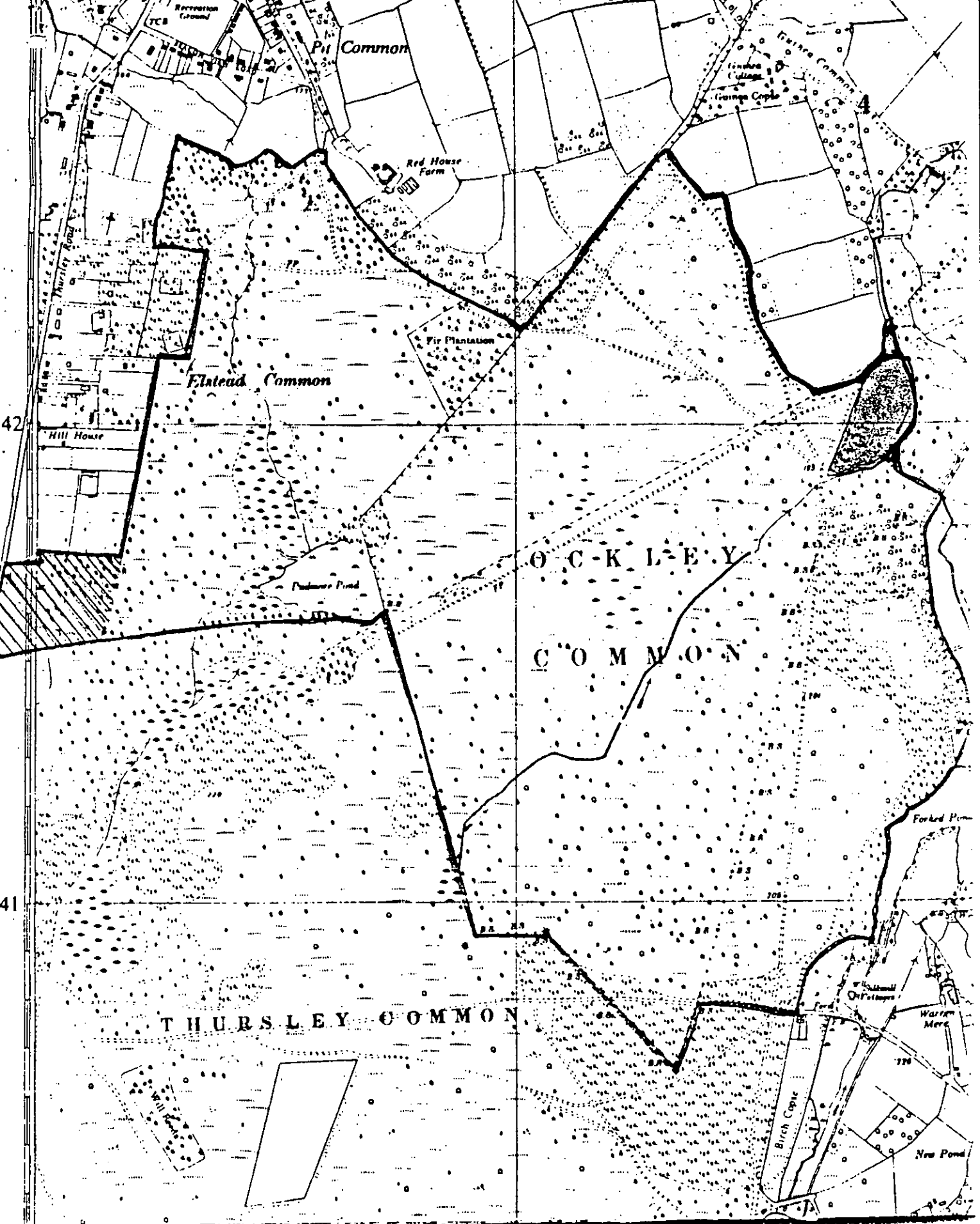
evidence was relevant.

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 21<sup>st</sup> day of April 1975

C. A. Settle

Commons Commissioner



TCS

Pit Common

Guinea Common

Red House Farm

London College  
Garrison Copse

Elatead Common

Pir Plantation

Hill House

Pasture Pond

OCKLEY  
COMMON

Forked Pond

THURSLEY COMMON

Hollands Or Pastures

Warren Mere

Birch Copse

New Pond

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