



COMMONS REGISTRATION ACT 1965

Reference No. 236/D/76

In the Matter of land at the
junction of Queen Street and
High View, Gomshall, Shere,
Guildford Borough, Surrey

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. CL 366 in the Register of Common Land maintained by the Surrey County Council and is occasioned by Objection No. 673 made by the said Council and noted in the Register on 1 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 7 November 1978. At the hearing (1) Mr A G A Pierce, on whose application the registration was made, and his wife Mrs A D L Pierce were represented by Mr D L Hodges, Solicitor of Hart, Scales & Hodges, Solicitors of Dorking; and (2) Surrey County Council were represented by Miss P J Fishwick, articled clerk to the Deputy County Clerk.

The land ("the Unit Land") in this Register Unit is a triangular piece at the junction of Queen Street (running approximately north-south) and High View (a road running eastwards from the Unit Land). In the middle of this road junction is a smaller triangular area ("the Small Area") which is not part of the Unit Land and which is bounded on all three sides by roads (on the west by Queen Street, on the north and southeast by the parts of High View forking for the more convenient turning of vehicles). The boundaries of the Unit Land are: on the west (about 25 yards long) the made up carriageway of Queen Street; on the south (about 40 yards long or a little under) the made up carriageway of High View (being in part the north prong of the fork); and on the northeast (about 50 yards long) the wall of the garden grounds held with Gomshall Lodge (owned and occupied by Mr and Mrs Pierce); this wall is for the most part also a retaining wall because the garden grounds are generally above the level of the adjoining part of the Unit Land. Along and within the northeast boundary of the Unit Land is a strip ("the Lower Strip") which is a track not made up for use by motor vehicles but which is hard enough to be usable by and convenient for pedestrians. The rest of the Unit Land ("the High Level Part") slopes steeply up from the Lower Strip to above the level of the adjoining part of the High View made up carriageway, and has on it the vegetation described below, except where near such carriageway there is a public seat, a bus stop sign and a post supporting a GPO letter box. The Small Area has on it a guide post and some traffic signs.

The grounds of objection are:- "That the land was not common land at the date of registration".



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Mr Pierce in the course of his evidence produced: (1) a conveyance dated 25 March 1920 by which lands including that next mentioned were conveyed to Mr F E S Munt; (2) a conveyance dated 30 July 1948 by which Mr Munt conveyed to Mr Pierce (the witness) by reference to a plan attached land having a frontage of about 70 yards on Queen Street and a frontage of about 175 yards on High View and the Lower Strip, and including the dwelling house Gomshall Lodge; and (3) a Land Certificate for Title No. SY 51017 which showed Mr Pierce as having been registered as owner on 31 May 1949 and he and Mrs Pierce as having been so registered on 12 October 1960. Neither the land Certificate Plan nor the 1948 conveyance plan included any part of the Unit Land.

Mr Pierce said (in effect):- He used the Lower Strip for his motor car going to and from the gate leading to the front door of the House, but not for driving onto his land (his garage was elsewhere at the northwest corner of his land); for this purpose he backed his car up from Queen Street and drove out forwards; it is possible to drive a motor car along the whole length of the Lower Strip but the east access to High View is inconvenient (the strip is rough there, you have to cross a made up kerb and turn across High View), so he did not usually do this. When he first purchased his land (1948) all the fences were down and people could walk there as if it was a public place; they walked through the garden on their way to work; at that time the Unit Land looked similar to what the garden then looked like; snowberries, yew etc (there is now on the Unit Land much scrub). Up to 1948 he enclosed land conveyed to him; consequently he had on the Unit Land planted flowering chruhs, ragusa roses, potentilla, spirea and a hornbeam. There were two oak trees on the Unit Land; the hornbeam was to take the place of the one which blew down about 21 or 22 years ago; the man from the County Council asked him (the witness) if he could cut it up and take it away (the witness did not object and this was done). In 1948 the Lower Strip appeared to be an old way, rather weedy; he had during his 30 years never stopped anybody using it as a footpath but it is not and never was a roadway.

Miss S Corke who is assistant archivist in the County Record Office produced the Diocesan copy of the Shere Tithe Apportionment Award 1844 and the relevant part of the map.

Mr D L D Steer, who has been employed by the County Council for the last 27 years and who is now the Rights of Way Engineer in the County Engineers' Department, produced Ordnance Survey Maps, 1/2500 editions of 1870, 1896, 1916, 1934 and 1971. He described the Unit Land in some detail and said (in effect):- The boundary wall (the northeast boundary of the Unit Land) was in his opinion of some age, say within 100 or 120 years. The track on the Lower Strip is a type of macadam where the stones are set vertically in places and is approximately 8 ft wide. He would describe the vegetation on the Unit Land as scrub, although he accepted that Mr Pierce had planted it as he stated. Queen Street and High View are unclassified County roads.

The 1896, 1916 and 1934 maps are in all relevant respects the same. There are some differences between the 1844, 1896 and 1973 maps, although the general pattern is the same. The 1844 map shows a circular area (with a symbolic tree) in more or less the same position as the Unit Land and which is in the Award Schedule described (with about 471 acres of other land) as "Waste", and as an area of 5 perches. Gomshall Lodge and the lands held therewith are shown on the maps much



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as now. On all the maps a strip more or less the same as the Lower Strip appears as part of the highway joining High View and Queen Street; the 1870 and 1896 maps show that High View became forked as now before 1896; but there is nothing to show whether the Lower Strip was ever used for vehicles.

In a letter dated 17 October 1978 to Mr Pierce, on behalf of the County Council it was said: "The County Council are objecting only to the registration of the strip of land coloured red on the attached plan (being the Lower Strip), which we consider to be part of the public highway and which cannot therefore by definition be common land ...".

After the conclusion of the evidence Miss Fishwick contended (in effect) that no part of the Unit Land had been properly registered as common land, because quite apart from the Lower Strip being highway and therefore outside the 1965 Act definition (see section 22), the Unit Land was not "waste land of a manor" as also required by the definition; in the Ownership Section Mr Pierce is registered as the owner of all the Unit Land (this registration being undisputed has become final), so it has appeared that the ownership of the Unit Land had at the time of registration become separated from the ownership of the Manor and it cannot therefore be "of a manor". She referred me to *re Box*, a recent decision of the Court of Appeal (reported in the Times Newspaper of 26 May 1978), and contended that the County Council were not bound by what they had said in their October 1978 letter.

On the day after the hearing I inspected the Unit Land.

I will consider first whether the Lower Strip is highway within the meaning of this word in the said definition. To this question the evidence of Mr Steer was (as I understood him when he was giving it) primarily directed. In my opinion the word "highway" in the definition includes a public footpath or other track notwithstanding that the public may have no right to go over it in vehicles or that it may (as is the case here) be impracticable for motor cars. That the public have a right of way at least on foot over the Lower Strip is I think established: (a) by the maps produced show it to have been (so far as relevant to use by pedestrians) much as now for at least 100 years, (b) by the appearance of the land (obviously persons walking from Queen Street north to High View would use it), and (c) by Mr Pierces' evidence about his never having objected to such use. I conclude therefore that a strip within the northwest boundary of the Unit Land should at least be excluded from the registration as being highway.

As to the width of the excluded strip:- The Lower Strip is wider at the Queen Street end where Mr Pierce has driven his motor car. However I see no reason for treating public right over any part of the Lower Strip as being greater than the 8 ft of macadamised surface as described by Mr Steer. I conclude therefore that a strip of this width measured from the northeast boundary of the Unit Land should be removed from the register.

It was not suggested that on highway grounds any other part of the Unit Land should be so removed.



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As to the contention based on re Box supra:-

There being no evidence that the Unit Lane was ever subject to rights of common mentioned in paragraph (a) of the said definition, the registration of the High Level Part can only have been proper if it was at the date of registration within paragraph (b): "waste land of a manor". In re Box, the Court was considering a registration made on the application of a local authority to which objection had been made by a person who claimed to be the owner of the land and who proved that it had ceased for more than 50 years to be part of the Manor. It would be curious if as a result of the decision a registration was avoided on the application of a local authority purely because the person who made it claimed to be the owner, although logically there is I suppose no reason why the principles established in re Box should not be applied so as to produce this result. But as between the provisions of the 1965 Act dealing with the question: is land common land, and the provisions dealing with the question: who is the owner of land finally registered as common land, it is not I think possible to be wholly logical, because there are in the Act so many inconsistencies between them. For example, if in accordance with re Box and section 10 of the Act all land which has been finally registered as common land within paragraph (b) of the definition is conclusively presumed to be in the ownership of Lord of the Manor, many of the ownership inquiries held under section 8 of the Act would be purposeless; cases in which during such inquiries the ownership has been proved to be that of some person other than the Lord of the Manor have been very numerous.

Section 10 makes a distinction between final Land Section registrations and final Ownership Section registration, in that the former are and the latter are not conclusive. It seems to me that in considering the validity of a disputed Land Section registration, a Commons Commissioner is not obliged and indeed often should not treat the finality of an Ownership Section registration as conclusive of anything. Mr Pierce applied for ownership registration on the basis that he had acquired a possessory title by planting the Unit Land as he described and not because he had any sort of paper title from the Lord of the Manor or anyone else. If I, as in this case I think I should, disregard his Ownership Section registration, I am left with the appearance of the High Level Part as it now is and with its history so far as I deduce it.

The High Level Part is a piece of land now distinct from the surrounding land used for highway purposes. Although the maps show that the boundaries between the land used and not used for highway purposes have from time to time changed by accretion. They also show (if regard be had to what I know of the rural nature of the area) that the High Level Part (from time to time a little more or less) has for many years always been waste land open to the surrounding highway land substantially as it now appears, that is to say the High Level Part now has and has always had all the appearances of waste land of a manor.

In my view I can properly treat these appearances as evidence enough, and conclude as I do that the High Level Part is historically waste land of a Manor; notwithstanding that no manorial documents or local histories were produced, and no other evidence offered connecting the High Level Part with any particular Manor. It seems to me that if a person desiring to support a registration was required in order to establish a prima facie case had to do more than rely on appearances present and past, the consequential trouble and expense would frustrate the purpose of the Act.



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In re Box, the recent manorial history of the land was not in dispute, it having been proved or agreed that there had been a severance more than 50 years before 1965. In this case I have no such evidence. All I have is Mr Pierces' description of his planting on the Unit Land. Bearing in mind the scrub, the seat, the bus stop sign, and the GPO box, all of which have nothing to do with Mr Pierce I am of the opinion that his activities fall short of a taking of possession adverse to the Lord of the Manor, sufficient to extinguish his title under the Limitation Act.

I conclude therefore that there has been no severance in this case of the High Level Part from the Manor such as was considered in re Box supra. Accordingly my decision is that the registration of this part of the Unit Land was rightly made.

I am not I think concerned to determine what may be the effect of the final Ownership Section registration in this case may be. It is likely that nobody but the Lord of the Manor can object to it, and it may be that he will not bother to do so. If any such objection is made, the registration will not under the 1965 Act be conclusive and its effect will have to be determined in other proceedings.

Upon the considerations set out above, I confirm the registration with the modification that there be removed from the register path or track now used as a public footpath, being a strip 8 ft wide measured from the northeast boundary (for the most part a wall) of the registered land.

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 12th — day of February 1979.

A. A. B. J. J.

Commons Commissioner