



COMMONS REGISTRATION ACT 1965

Reference No. 236/D/58

In the Matter of Merrow Downs, Guildford
and West Clandon, Guildford Borough, Surrey

DECISION

This dispute relates to the registration at Entry Nos. 1 and 2 in the Rights Section of Register Unit No. CL.3 in the Register of Common Land maintained by the Surrey County Council and is occasioned by Objection No. 30 made by Guildford Borough Council and noted in the Register on 22 July 1969.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 24 February 1976. At the hearing Guildford Borough Council were represented by Mr D Watts solicitor, their clerk.

The land ("the Unit Land") comprised in this Register Unit is an irregularly-shaped piece of land having a length from east to west of about $1\frac{1}{2}$ miles and a width from north to south varying between about 300 yards and $\frac{1}{2}$ a mile. The said Entry No. 1 which was made on the application of Mr I G Swayne is of a right attached to Levylsdene House of a right of pasturage for 1 animal together with a right of estovers. The said Entry No. 2, which was made on the application of Mr R H Percy, is of a right attached to Yew Tree Cottage to graze 1 sheep. The grounds stated in the Objection are: "That any rights of pasturage estovers and grazing which might have existed over the common in the past have been extinguished by lack of use over a long period."..

By a consent dated February 1976 signed by or on behalf of Mr Percy, Guildford Borough Council, Surrey County Council and West Clandon Parish Council, the Commons Commissioner was requested to confirm the withdrawal of the registration by Mr Percy and give his decision without a hearing. However a hearing could not be avoided, because such consent did not dispose of the registration by Mr Swayne and the Objection of the Borough Council to it.

Mr J R McDonald who is now captain of the Guildford Golf Club and has been associated with the Club for the last 16 years in the course of his oral evidence said (in effect):- The Club play on the Unit Land except a part at the west end. He had never seen any animals grazing on the golf course part. He had seen animals tethered on the small west part, and understood they belonged to gypsies and were tethered with the consent of the Borough Council. Enquiries had been made among the senior members of the Club, those associated with the Club for more than 30 years, and none could recall any type of animal grazing on the land. The Club's Professional also had no recollection of such rights of pasturage being exercised and he had lived on the Club's premises for more than 40 years.

Mr Watts produced: (1) a print of (a) the provisional order made on 21 December 1903 by the Board of Agriculture and Fisheries and confirmed by the Commons Regulation (Merrow) Provisional Order Act 1904 cap.cxxvi, (b) the Bye Laws made on



20 April 1906 by the Conservators under the 1904 Act, and (c) the Award dated 18 December 1905 and made in pursuance thereof, (2) a copy certified 15 February 1906 of the said 1906 Award, and (3) a Land Certificate showing that the Borough Council had been registered as owner of all the Unit Land (except a small piece at the east end) on 4 July 1965. By the 1906 Award (among other things) Conservators were established for the management of the Common, and it was declared that the Common was subject to 402 stints or rights of pasture thereafter set out among the owners of the lands specified in the Schedule thereto, and to rights of common of estovers and of taking bracken fern and long grass exercisable only as therein mentioned, and that one sheep should be deemed to be one full stint, one cow or bullock should be deemed equivalent to 5 stints, and one horse to 8 stints. In the Schedule to the Award, the stints were set out among about 105 pieces of land, some being for fractions only, some being for considerable numbers (in some cases double figures) of stints.

Mr Watts said that from enquiries he had made in his office, he believed that the rights of common as set out in the 1906 Award had not been exercised for many years and that Levylsdene House which was a 16th century house, had been converted into flats.

There was no one at the hearing to support the registration by Mr Swayne. The non-registration of any rights of common by anyone other than Mr Swayne and Mr Percy, is some confirmation of Mr Watts' contention that all the rights of common set out by the 1906 Award have long ago been abandoned. I know of no reason why Levylsdene House should be different from the others. In the absence of any contrary evidence, I conclude that all such rights of common have been extinguished.

For these reasons I refuse to confirm the 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 4th day of March —

1976

a. a. Bada Fuller

Commons Commissioner