



COMMONS REGISTRATION ACT 1965

Reference No. 36/U/9

In the Matter of Send Heath, Send,  
Guildford Borough, Surrey

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DECISION

This reference relates to the question of the ownership of land known as Send Heath, Send, Guildford Borough, being the land comprised in the Land Section of Register Unit No. CL. 59 in the Register of Common Land maintained by the Surrey County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference in a letter dated 7 September 1973 Send Parish Council said that they had been in touch with Surrey County Council in order to lease the property from them, as it was understood Surrey County Council had purchased the area together with several other similar parcels in Surrey being part of manorial waste, and in a letter 16 February 1976, Surrey County Council said that they are the owners. No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 24 and 25 February 1976. At the hearing Surrey County Council were represented by Mr R C Navarro, articled clerk with their Chief Executive.

Mr Navarro put the case for the County Council's ownership of the land ("the Unit Land") comprised in this Register Unit under three headings:-

- (1) As claiming under the Rt Hon W A B 6th Earl of Onslow, he produced:
  - (a) a copy statutory declaration made on 1 May and 5 April 1964 by Mr E L V Waddilove for 35 years one of a firm of solicitors who had acted for the Earl of Onslow's Surrey Estates, and by Mr G Moore for 44 years one of a firm who had acted as Agents to the Estates, to which were exhibited plans of some of the waste lands of the Manors of Worplesdon, Chobham, Bisley, Send and Ripley; on one of these plans the Unit Land is coloured pink; and
  - (b) a copy conveyance dated 17 May 1968 by which the Earl of Onslow with concurrence of his trustees conveyed to the County Council numerous pieces of land particularly described (2927.5 acres in all), being all the commons and waste lands of the said Manors as shown on four plans; and (c) a copy of one of these plans which showed the Unit Land coloured pink hatched red.Mr Navarro pointed out that a piece of land known as Send Marsh and situate about  $\frac{1}{2}$  of a mile east of the Unit Land was included in a tenancy agreement dated 4 November 1955 and in a lease dated 24 February 1959 made by the Earl of Onslow to the Parish Council, was also delineated on the plan attached



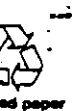
to the 1968 conveyance, and was included in the lands of which the County Council were registered at HM Land Registry with an absolute title under Title No. SY 164738.

- (2) As claiming to be in possession:- Mr Navarro produced a lease dated 13 December 1973 by which the County Council had been demised the Unit Land and Send Marsh to Send Parish Council for 99 years.
- (3) As claiming under the Send Inclosure Award dated 9 May 1816 (see Send and Ripley Inclosure Act 1803, 43 Geo.3.c.39):- Mr Navarro produced the Award by which there was allotted to the Surveyors of the Highways within the Parish of Send and Ripley as gravel and sand pits three pieces of land, one of which was marked No. 961 on the plan and contains 3 acres. Mr Navarro identified the piece so allotted with the Unit Land, producing an Ordnance Survey map dated 1934 for comparison with the Award plan.

The evidence under each of the said three headings has some weaknesses. As to (1), the 1968 conveyance makes a distinction between the land coloured pink and hatched red and the rest of the land conveyed in that as regards the hatched land only the "estate right and title and interest of the Vendor" is conveyed, suggesting that the Vendor's title to it was doubtful; further although the title of the other land comprised in the 1968 conveyance was registered at HM Land Registry, the title to the Unit Land was not so registered. As to (2), the 1973 lease is recent. As to (3), the 1803 Act authorised an allotment of 3 acres for the inhabitants of the Parish to dig and take sand to or for their own use and benefit only and not for sale, so it is not clear that the use of the Unit Land has always been such that it would under the various Acts of Parliament relating to highways have ended up in the ownership of the County Council as highway authority rather than the ownership of some other local authority.

However, in my opinion these weaknesses such as they are, cancel each other out. By the Award, the herbage was allotted to the Earl of Onslow or other the owners or occupiers of the land to the southeast; and it may be that those responsible for the 1968 conveyance realised that the Unit Land was in some way different from the other lands thought by Mr Waddilove and Mr Moore to be manorial waste, but did not think fit to investigate the possibility of the land having been allotted by the 1816 Award. The 1973 lease is some evidence that the County Council is locally reputed to be the owner. However the title of the Surveyors under the 1816 Award may have subsequently devolved, their ownership must have passed to some local authority. In the absence of any claim by the Borough Council or the Parish Council, I can I think properly conclude that the Unit Land is now, as it has apparently been in recent years assumed to be, vested in the County Council.

For these reasons I am satisfied that the County Council are the owners of the land, and I shall accordingly direct the Surrey County Council, as registration authority, to register Surrey County Council as the owners of the land under section 8(2) of the Act of 1965.





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 18<sup>th</sup> day of March —

1976

*a. a. Baden Fuller*

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Commons Commissioner