



COMMONS REGISTRATION ACT 1965

Reference No. 236/D/699-700

In the Matter of the piece of land called Itchingwood Common,
Limpsfield

DECISION

These references relate to the registration at Entry No.1 in the Land Section of Register Unit No. CL.418 in the Register of Common Land maintained by Surrey County Council and are occasioned by the conflicting registration at Entry No.7 in the Rights Section of the same register unit.

Itchingwood Common was registered as common land in 1968 upon the application of Limpsfield Parish Council. That registration became final on 18th September 1981 after a hearing before a Commons Commissioner Mr Leslie Morris Smith at Oxted on 6th May 1981.

Originally there were 14 Entries in the Rights Section of the Register relating to grazing estovers and other rights. By the Direction dated 30th November 1981 issued by Mr Commissioner Morris Smith after the hearing before him these entries were reduced to two, Rights Entries 6 and 7, and both of these were modified.

Rights Entry 7 as so modified was as follows:-

The right of estovers limited to the taking of 1 cord per annum over the whole of the land comprised in this register unit known as Itchingwood Common. This right was registered in the name of Veronica Effie Glen MacEwen of Doghurst Limpsfield Surrey as Owner, and the land to which the right was attached was described in column 5 of the Register simply as Doghurst.

The present owner of Doghurst is Mr Geoffrey Ernest Thurston Granter. Part of the grounds of Doghurst are included in the Land Section of the Register, and Mr Granter contends that as a result a conflict arises between the Land Section and the Rights Section of the Register, as Doghurst cannot have rights over part of itself.

I held a hearing to inquire into the matter at Oxted on 17th May 1995. The hearing was attended by M/s K Belsham and M/s Helen Gilbert of Surrey County Council the Registration Authority Miss G Smith of Tandridge District Council Mrs J Carter and Mrs J Morris of Limpsfield Parish Council Mr F Hinks of Counsel instructed by Mr J Davies of Winward Fearon & Co Solicitors of Bow Street, London representing Mr Granter and Mr Granter in person.

Mr Hinks accepted that the conflict which arises between the Land Section and the Rights Section could be resolved in one of two ways. Either (1) Mr Granter as successor to Miss MacEwen had no rights of common over that part of Doghurst included in the Common; or (2) the material part of Doghurst should be excluded from the Land Section of the Register.

Having regard to the fact that rights of estovers are frequently attached to dwellinghouses rather than to the land that goes with them the first alternative is the most obvious one. Column 5 of the Register refers simply to Doghurst and does not include any description of land either by reference to a plan or to Ordnance Survey Numbers.



Mr Granter's case is that the conflict between the Land Section and the Rights Section arises because a mistake was made at the time of the hearing before Mr Commissioner Morris Smith in 1981.

In October 1970 Miss MacEwen put in an Objection to the registration of the land shown edged red on the plan attached thereto on the ground that it did not form part of Itchingwood Common or any other Common and was not subject to rights of common. The land shown edged red on that plan corresponds with the land in respect of which the present conflict arises. This Objection was numbered 452.

In his Decision of 15th June 1981 Mr Commissioner Morris Smith in the opening paragraph mentions Miss MacEwen's Objection No. 452, but nowhere does he mention it again or otherwise deal with it. He goes on to confirm the Land Section without reference to this Objection.

Amongst the evidence adduced before me were the following:-

(1) Affidavit dated 10th May 1995 of Angela Williams Solicitor a member of Limpsfield Parish Council since 1979, who represented the Parish Council at the hearing before Mr Commissioner Morris Smith.

(2) Copy letter dated May 1981 (exhibited to that Affidavit) from the Parish Council to Mr Granter informing him that the Council had withdrawn its registration over part of the garden of Doghurst.

(3) Notes made by Mrs J Carter (also exhibited to the Affidavit) of Miss Williams at the hearing asking the Commissioner to deal with the piece of land at Doghurst which had been put in in error.

(4) Extract from 1869 O.S. Map showing Doghurst Farm (an enlarged extract from the huge roll brought to the hearing by the Parish Council).

(5) Conveyance dated 15th October 1948 in favour of Miss MacEwen including the area now at issue.

(6) Copy Transfer dated 9th January 1974 in favour of Mr Granter and his Wife of the land comprised in the 1948 Conveyance.

Mr Hinks submitted that the title deeds show that Doghurst or Doghurst Farm included the disputed land, and that there was nothing in the deeds to indicate that it was subject to rights of common. It was conveyed together with commonable rights. He said that the Register does not serve its statutory purpose. The effect of the mistake was to create a conflict between the Land Section and the Rights Section. The Commissioner had failed to record the position resulting from the acceptance by the Parish Council of Objection 452. He asked for the mistake to be rectified by excluding from the Register the land comprised in that Objection.

The representatives of the Parish Council supported the application to put right the mistake which had been made.

No-one present at the hearing opposed Mr Granter's application. It was supported by all concerned.



I shall accordingly resolve the conflict which is before me by directing Surrey County Council as Registration Authority to modify Entry No.1 in the Land Section of the Register by the exclusion of the land comprised in Objection No. 452.

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

25th

day of

May

1995

Mati Roth

Chief Commons Commissioner