



In the Matter of Walton Heath including  
Little Heath, Reigate and Banstead Borough,  
Surrey

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DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and at Entry Nos 1, 2 and 3 in the Rights Section of Register Unit No CL. 355 in the Register of Common Land maintained by the Surrey County Council and are occasioned by Objection No 239 made by Banstead Urban District Council and noted in the Register on 15 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Guildford on 19 October 1977. At the hearing (1) Reigate and Banstead Borough Council, as successors of Banstead Urban District Council, were represented by Mr P D C Brown, solicitor with the Council, (2) Beecham Group Limited, as successors of Vitamins Ltd on whose application Rights Section Entry No 1 was made, were represented by Mr M A Ellis solicitor of Simmons & Simmons, Solicitors of 14 Dominion Street, London EC4, (3) Mr K Eustace, on whose application Rights Section Entry No 3 was made, attended in person, (4) Walton Heath Golf Club Limited were represented by Sir Patrick Macrory and Wing Commander W E McCrea, and (5) Surrey County Council as registration authority were represented by Mr P W Pilgrim articled clerk with the Deputy Clerk of the Council.

The land ("the Unit Land") comprised in this Register Unit consists of two connected areas, each approximately triangular: the larger ("Walton Heath") has sides about  $1\frac{2}{3}$  rds,  $1\frac{1}{2}$  rd and 1 mile long, and this area includes an adjoining and comparatively small piece on or near which stands Walton Heath Golf Club House; and the smaller ("Little Heath") has sides each about  $\frac{1}{2}$  rd of a mile long. The Unit Land is crossed near its northwest side by the Sutton to Dorking road (B2030).

The rights registered are or include a right to graze (1) 100 cattle and 25 sheep, (2) 60 cattle, and (3) 100 cattle and 25 sheep, attached to (1) Walton Oaks, Dorking Road (2) Street Farm and (3) The Hermitage; Nos 1 and 3 include estovers and turbary, and No 3 includes a right to take gravel, sand and loam. The grounds stated in the Objection are:- "The part of Walton Heath shown coloured green on the attached plan was the subject of an inclosure consent under section 22 of the Commons Act 1899 by the Minister of Agriculture & Fisheries dated 24 September 1929. The consent to was subject to the land shown coloured red on the plan being included in Walton Heath. Constructed within the land inclosed is a sewerage pumping station. The part so coloured green ("the Objection Land") is situate at the extreme north end of the Unit Land on the northwest side of the B2030 road, and is (as I estimate from the Objection plan) about 30 yards square. Rights Section Entry Nos 1 and 2 were altered on 31 August and 28 June 1971 so as to except the Objection Land from the land (the remainder of the Unit Land) over which the rights are exercisable.



All present either agreed or did not object to my confirming the Land Section registration with the modification that the Objection Land be removed from the Register.

By reason of subsection (7) of section 5 of the 1965 Act, as a consequence of the Objection to the Land Section registration, all the Rights Section Entries are also in question in these proceedings. But having regard to the grounds of objection, but for what is recorded below, I would have assumed that there was no good reason why I should not as regards the rest of the Unit Land produce the same results as would have followed under section 7 of the Act if no Objection had been made, that is I would without hesitation confirm the Rights Section Entries without any modification, other than that necessarily consequential on the removal of the Objection Land from the Register.

However Sir Patrick Macrory contended against this, saying (in effect):- Walton Heath Golf Club Limited are the freeholders of the Common, and do not admit the existence of the rights registered; one of the claimants of these rights has withdrawn. The Club view with alarm the prospect of 260 cattle and 50 sheep on their golf course. If these rights are based on prescriptive use, the Club says that they have never been used within living memory and have therefore been lost. He wanted to put this case on behalf of the Club, and would support it with statements by persons whose memory went back that far.

On my drawing attention to regulation 19 (persons entitled to be heard) of the Commons Commissioners Regulations 1971, Sir Patrick Macrory contended that I should in the exercise of my discretion hear the Club and (as I understood him) require the persons who claimed the rights which have been registered to prove that they exist.

Against this contention, Mr Ellis said (in effect):- The registration was made as long ago as 1968 (that is for Entry No 1; the other Rights Section Entries were made in 1969 and 1970). The Objection now under consideration is dated 9 September 1970, and has been disposed of by agreement. Walton Heath Golf Club Limited have never made any objection; the objection period expired on 31 July 1972 and they are now out of time.

Mr Eustace was also against the contention and he produced (as showing that the Club knew of common rights): (1) a letter dated 8 July 1972 to him from Wing Commander McCrea and (2) a copy of an agreement dated 29 May 1913 and made between Walton Heath Golf Club Company Limited and Mr Arthur Bray of The Hermitage. The letter apparently acknowledged receipt of a copy of the agreement. The agreement recited that under an indenture dated 13 December 1911 the Company were authorised to lay out and maintain for 80 years golf courses, that they had laid out such courses comprising 36 holes and that Mr Bray had requested them to desist in further extending these courses in the proximity of his residence; the agreement (paragraph 7) appeared to be on the basis that Mr Bray and other Commoners could keep cattle and sheep on Walton Heath.

After some discussion, Sir Patrick Macrory accepted my suggestion that he should call evidence in support of his said procedural contention. His witness was Wing Commander McCrea who is now and has been since April 1972 secretary of Walton Heath Golf Club Limited and as such a senior executive of the Club; he said (in effect):- He had previously to becoming secretary, been for 20 years a member of the Club. He was a past member of the Committee of the Walton on the Hill



Residents' Association and as such much concerned with the Walton on the Hill area and particularly with Walton Heath. Walton Heath Golf Club Limited are the freeholders of Walton Heath and are responsible for administering it; as such they should (so the witness contended) be heard. Since he became secretary he had been subjected to claims and rumours about various rights held by Commoners and residents of Walton on the Hill; on behalf of the Club, he had consistently said that if such rights could be proved by documents they would be admitted. The 1930 agreement produced by Mr Eustace is not relevant, although he (the witness) did not dispute that the owner of the Hermitage may have kept cattle in 1913. He (the witness) first knew that there had been an application for the registration of common rights (meaning on the Unit Land) in 1972 shortly after he became secretary; the engineer of Southeast Construction Company who were building the M25 motorway, brought the registration to his notice in connection with the position of the Club land being used for this purpose; the solicitors acting for the Club at the time (not those who now act) were unable to throw any light on the matter. One of the rights claimed by Mr Eustace at the time was to the Gallops on Walton Heath; the witness took this up with him; the Club did not dispute the right of the Commoners, because they had been entitled for many hundreds of years; provided that they are properly based upon prescription or documents or uninterrupted user, the Club would gladly admit them. The Club were perturbed as to the possibility of 260 cattle and 50 sheep being turned loose on the course; because the Common is unfenced and because indeed fences are prohibited by the order of the Minister of Agriculture and Fisheries, any cattle and sheep would be liable to stray onto the public roads (these now carry an increased volume of traffic) and run the risk of being killed and causing serious accidents; he (the witness) knew of many accidents caused by horses who have thrown their riders and bolted in front of motor cars; the danger would be exaggerated by cattle and sheep. Summing up, if the claimants can produce a document which entitles them to the right claimed, the Club would freely admit such right; and if they have no document but can satisfy the Commissioner that they have exercised such rights for at least 30 years, then the Club would then freely admit such right. Since he (the witness) had played golf over Walton Heath which is more than 20 years, he had never seen any cattle or sheep on the Common except when Alperton (Slaughter House) caught fire this year in July; nor has he seen any person take gravel, sand or loam from the Common. Even if the claimants are able to produce documentary evidence, their rights have lapsed because they have not been used uninterruptedly for the last 30 years.

In answer to questions by me, Wing Commander McCrea said that the Club purchased the land before he became secretary, such purchase being completed on 4 October 1971, but he had not seen the papers, they being with the solicitors. The Club existed as a proprietary club from 1904; he understood that the land was then owned or later came into the ownership of persons who also owned or were in some way connected with the News of the World or in the newspaper business. The witness produced a statement signed on 17 October 1977 by Mr F J W Dulake who had been employed since 1954 by the Club as Head Greenkeeper and a statement by Mr H M Braid who had lived at Walton on the Hill since his father Mr J Braid was appointed as the first professional of Walton Heath Golf Club in 1905.



At the hearing I said that for reasons I would give later I refused to give any effect to the said procedural contention made by the Club. On the day after the hearing I looked at the Unit Land from the B2006 road it having been agreed at the hearing that my inspection should extend no further.

I accept the contention on behalf of the Club to the extent that the mere circumstance that an objection is expressed to be limited to part of the land registered does not absolutely preclude a Commons Commissioner in the proceedings resulting from the consequential dispute, from modifying the registration in a way which might affect the rest of the land. A Commons Commissioner has a discretion under section 6(1) of the 1965 Act, and under regulations 18, 23(5) and 26(1) of the 1971 Regulations, and may indeed have an implied discretion under the Regulations to deal with extraordinary situations occasioned by death, illness, accident, force majeure and so forth. The exercise of these discretions may sometimes benefit persons who have failed within due time to make any Objection relating to the matter with which they are particularly concerned, and I can think of many cases in which such persons have by actual decisions of mine so benefited.

However in my opinion the discretions above mentioned must be exercised in accordance with the law, that is to say I cannot do anything which would be contrary to the Act itself, and against the background of the Act I must exercise all such discretions as near as may be in the same way as comparable discretions would be exercised by the High Court in comparable proceedings.

As I understood Sir Patrick Macrory, he was not really expecting that either Beecham Group Limited or Mr Eustace would be ready at this hearing to prove their case, so an adjournment would be necessary. As I know from other cases, proving a right of common may take a long time and be an expensive matter, particularly if the land is (as the Unit Land appears to be) a large area which is likely from time immemorial to have been subject to rights of common of some kind and accordingly to have been mentioned in historic documents which it may be time consuming to discover. The following considerations are against my exercising any such discretion:- (a) As a general rule a person not party to legal proceedings cannot interfere with their conduct. (b) But for this "part" Objection, the Rights Section Entries would have become final, and the Club would have been out of time. (c) The Act confers no jurisdiction on a Commons Commissioner to extend the Objection period for the benefit of a person inadvertently out of time. (d) The Club at the hearing produced none of their documents, although it is likely that some of them would throw some light on how rights of common over the Unit Land might be proved. (e) I cannot imagine how any inquiry into this "part" Objection could, even if every conceivable point within the grounds therein stated had been taken, have imposed on Beecham Group Limited and Mr Eustace the burden which the Club now seeks to impose on them. (f) The dangers which might arise on the B2030 road by the actual exercise of the rights are similar to dangers which might and do arise by the exercise of rights on many other commons, but these dangers provide no good reason for not registering the rights if they exist. And (g) apart from these dangers there was no suggestion that the rights claimed were necessarily illegal or could not exist, or that their continued registration could in any way be against the public interest.



Upon the above considerations, I conclude that the procedural contention made on behalf of the Club by Sir Patrick Macrory is outside anything contemplated by the 1965 Act and also outside anything which the High Court would do in comparable proceedings, and accordingly that I would be acting unlawfully if I were to give effect to it.

Apart from Sir Patrick Macrory's statement that one of the claimants had "withdrawn", nothing was said by anyone at the hearing to suggest that Entry No 2 made on the application of the Controller and City Solicitor, Corporation of London should by me be dealt with any differently from Entry Nos 1 and 3 made on the application of Vitamins Limited and Mr Eustace.

However I record that I have a letter dated 28 September 1977 and sent to the Clerk of the Commons Commissioners by solicitors acting for C Bell (Tadworth) Limited saying that they had purchased Street Farm from the City of London, that they do not wish to "pursue the claim for registration of the right to graze cattle on the Walton Common" and asking that their letter be accepted as the withdrawal of the original application made by the City of London; and I also have a letter from the Controller and City Solicitor saying that the Corporation had disposed of its interest in Street Farm to C Bell (Tadworth) Limited on 23 May 1977.

By regulation 17 of the 1971 Regulations I am required to sit in public; from this it follows I think that I am not required to consider letters sent to the Clerk which have not been dealt with at all at the hearing. Further, the withdrawal contemplates that in these proceedings the existence of the right mentioned will be in question, and for the reasons set out above I <sup>have</sup> concluded that it is not. Accordingly I shall treat Entry No 2 in the same way as Entry Nos 1 and 3. This should give rise to no practical difficulty if C Bell (Tadworth) Limited can prove their title from the City of London and have determined to release any right attached to Street Farm which has been registered, because they can get the Entry cancelled by following the procedure set out in regulation 29 of the Commons Registration (General) Regulations 1966 as amended by Commons Registration (General)(Amendment) Regulations 1968; see also section 13(c) of the 1965 Act.

For the above reasons, in accordance with the requests of those who attended the hearing and were at it entitled to be heard and without regard to what has been written or said by those who did not attend or who were not so entitled, I confirm the registration in the Land Section with the modification that the part of Walton Heath shown coloured green on the plan attached to the said Objection be removed from the Register and I confirm the registrations at Entry Nos 1, 2 and 3 in the Rights Section without any modification other than that which is necessarily consequential on the said modification of the Land Section Entry.

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 11<sup>th</sup> day of November — 1977

a. a. Baker *Baker*

Commons Commissioner