COMMONS REGISTRATION ACT 1965 Reference Nos. 84/D/1,2 & 3

In the Matter of The Common, Buttermab, Kirklees D.

DECISION

These disputes relate to the registration at Entry No.1 in the Land Section of the Register of Common Land maintained by the former Huddersfield County Borough Council and are occasioned by Objection No.1 made by Crosland Hill Quarry Co Ltd., Objection No.2 made by G F B Grant and J H Goodhart (Trustees of the Whitley Beaumont Estate) and Objection No.3 by Johnsons Wellfield Quarries Ltd.

I held a hearing for the purpose of inquiring into these three disputes at Huddersfield on 15 and 16 October 1974. The hearing was attended by Mr Bunting on behalf of Mr Sidney Quinn, the applicant for registration and by Mr Harrod, counsel for all the objectors.

I heard all the disputes together. Since I can give only one decision in respect of the registration, I have made an order under regulation 12 (2) of the Commons Commissioners Regulations 1971 dated 12 July 1972, that all the matters be consolidated.

The land the subject of these disputes consists of approximately 18.2 acres of which 14 acres were conveyed to the Johnsons Quarry Co., by two conveyances dated 17 November 1955 and 17 June 1959 of which 2.7 acres were conveyed to the Crosland Company by a conveyance dated 17 September 1958 and 1.5 acres still vested in the Beaumont Trustees but which are the subject of a contract for sale dated the 22 January 1964. Mr R G Crowther Chartered Surveyor produced a record of a Court Baron held by the Lord of the Manor in 1810 and a valuation and map dated 1822 which establish that the land the subject of these disputes was part of a larger area of 200 acres of moorland part of the Beaumont Estates. Mr Quinn produced a Parliamentary Return of wastelands subject to rights of common dated 1874 showing that 161 acres of the Manor of South Crosland were wasteland subject to rights of common and a Tithe Commutation agreement dated 18 November 1847 which established that the relevant land was wasteland at that date. Mr Quinn gave evidence in support of his application for registration and called six other witnesses in support of his application. The witness with the longest memory was Mrs Anne Sykes who was born in 1880 and who has lived in South Crosland all her life, and the evidence of those witnesses covered the period from say - 1890 down to the present day, a period of 84 years. It is not necessary to refer to this evidence in detail for the reason that no single witness gave any evidence that any person had exercised or purported to exercise any right of common over any part of the 200 acres which were once moorland. The evidence was to the effect that the public had access to the moor without either asking for or being granted permission. In the early part of this century there was a rifle range on the Moor used by the local volunteers, the local harriers hunted over the moor and a game keeper employed by the hunt endeavoured to maintain hares on the moor. In or about 1940 Mr Beaumont constructed a private air strip on the moor and a few years later sold a large part of the moor for the purposes of an airfield. Mr Sheard gave evidence that the construction of the airfield gave rise to litigation as to rights of way which was heard on 17 July 1944. It is significant that no objection to the construction of the airfield was raised by any person claiming rights of common and it is therefore not surprising that none of the witnesses gave any evidence that any rights of common had been either exercised or claimed.

At the conclusion of the evidence Mr Bunting was with some reluctance compelled to admit that if Mr Quinn's application for registration was to succeed he would have to establish that the land was at the date of registration "waste land of a manor not subject to rights of common". As regards the land conveyed to the Crosland and Johnson Companies it is clear beyond doubt that even if prior to the dates of the respective conveyances the land conveyed was waste land of the Manor of South Crosland the effect of these conveyances was to sever the land from the manor, see the decisions of the Chief Commons Commissioner in the cases of re. Church Green, Verwood, Dorset Ref No. 10/D/13; The Old Ford Holcombe, Newington, Oxfordshire Ref No. 29/D/4.

Mr Bunting faced with this difficulty endeavoured to meet it with a submission that assuming the land was manorial waste when the Law of Property Act 1925 came into force and dealing with the land thereafter which interfered with the publics right of access conferred on the public by section 193 of the Law of Property Act 1925 would be illegal and could not therefore have any legal effect so as to alter the status of the land as manorial waste. I am unable to accept this submission. Section 193 did no more than confer upon members of the public rights of access over land which was manorial waste at the commencement of the Act, it did not restrict any dealing with the land or preserve its status as manorial waste. While it may be that when the Crosland and Johnsons companies acquired their lands they acquired these lands subject to the public's rights of access but in my view those rights of access, if any, did not preclude the severance of the lands from the Manor so as to preclude their being waste of the Manor and so also to preclude their being Common Land within the definition contained in Section 22 (6) of the Commons Registration Act 1965. I find support for this view in the decision of the Chief Commissioner in the case of The Drives, Puncknowle, Dorset Ref No. 10/D/7 in which the Chief Commissioner refused to confirm a registration notwithstanding the failure on the part of Mr King who fenced the land to obtain consent for his action under Section 194 of the Law of Property Act 1925.

The situation as regards the 1.5 acres still vested in the Beaumont Trustees is different and raises the question whether the contract for sale dated 22 January 1964, before the Commons Registration Act 1965 came into force, effected a severance. Mr Harrod submitted that the effect of the contract was to constitute the Beaumont Trustees as trustees for their purchaser and such was undoubtedly the case. Mr Harrod then went on to submit that by disposing of their beneficial ownership of the land the Beaumont Trustees had severed the land from the Manor. Mr Harrod did not refer me to any authority in support of his last submission but nevertheless it is in my view well founded. By entering into the contract for sale the Beaumont Trustees ceased to hold the land as waste of the Manor and held it as trustees for their purchaser thereby altering the status of the land and effecting a severance.

In my opinion therefore the whole of the land the subject of these disputes was, even if at some point of time waste land of the Manor of South Crosland, severed from the Manor before the Commons Registration Act 1965 came into force and I must accordingly refuse to confirm the registration. In view of the conclusion which I have reached it is not necessary to do more than refer to the other points raised in the course of the argument.

Mr Harrod did not concede that the land was waste of the Manor. Many documents were only produced at the eleventh hour and had it been necessary for the purpose of my decision I should have required a more detailed investigation of the history of the land before deciding this point in favour of Mr Harrod.

Mr Harrod further submitted that the existence of recognised footpaths and the circumstance that there was an application, which was successful to substitute a new footpath over the Beaumont Trustees land in the place of an existing footpath was inconsistent with the land being manorial waste and with the public having unrestricted rights of access. In view of the evidence that the public did in fact have unrestricted access to the land I am unable to accede to this submission. Finally the two companies have quarried on the land for many years and planning consent has been granted for building on the Beaumont Trustees land and it therefore seems probable that any endeavour to enforce any public rights of access conferred by Section 193 of the Law of Property Act 1925 will not meet with any success.

Mr Harrod made an application for costs. I am satisfied that in making his application Mr Quinn had some local support and that his application was made bona fide. Mr Quinn only had very limited legal advice and can in my view be forgiven for not distinguishing between "rights of common" and the use of open land by the public. For these reasons I make no order as to costs.

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 7th day of November 1974

C A Le Fle

Commons Commissioner