COMMONS REGISTRATION ACT 1965 Reference Nos. 209/D/135-136

In the Matter of Beesands Green,
Stokenham, Devon

DECISION

These disputes relate to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 18 in the Register of Town or Village Greens maintained by the Devon County Council and are occasioned by Objection No. 303 made by Beesands Estates Ltd and Objection No. 621 made by Mr S J Honeywill and Mr J S Honeywill and both noted in the Register on 25 March 1971.

I held a hearing for the purpose of inquiring into the dispute at Dartmouth on 20 May. The hearing was attended by Mr J Brown, Solicitor, on behalf of the County Council, and by Mr S Tuckey, of Counsel, on behalf of the Objectors.

The land comprised in the Register Unit consists of an open area of grass-land, bounded on the east by the beach, in the village of Beesands in the Parish of Stokenham. It is described as "Beesands Green" in the tithe apportionment award. While it is not unknown for pieces of land to retain their name after their status has changed, the fact that this land was named "Beesands Green" in the tithe apportionment award is prima facie evidence that at some time the inhabitants of the locality had a right to indulge in lawful sports and pastimes on it. There is no record of an Act of Parliament creating such a right, so any such right must have been a customary one.

The other evidence for the existence of such a right is not strong. It was apparently believed at the end of the last century that the land was subject to some right, for on 4 May 1899 the Clerk of the Stokenham Parish Council was instructed to inform the Rural District Council that hurdles had been placed at each end of Beesands Green and that the Parish Council considered this "an interference with the public right". It appears that a belief persisted, for it is stated in the Parish Council minutes of 15 December 1948 that "although the private ownership of the land is undoubted the public have from time immemorial had freedom of access to the land for passage and recreation". It is, of course, impossible for the public to have a right of access to this land for recreation, but it is easy to understand how laymen might describe the inhabitants of a locality as "the public". This is supported to some extent by the evidence of some of the inhabitants, which was confined to the acts of local residents.

From 1952 onwards parts of the land have been used as the sites of moveable dwellings. This was considered by some to be an infringement of rights of way, common rights, and customary rights. In 1960 the Clerk to the Rural District Council looked into the matter, and in a letter dated 14 July 1960 he stated that the council did not think that the evidence went anywhere near establishing a village green. However, the matter was not allowed to rest there. In October 1960 statements were taken from a number of elderly inhabitants of Beesands regarding the use which had been made of this land during living memory. Several of the people who made statements have since died and their statements were put in under the Civil Evidence Act 1971, and evidence was given by one of the

survivors and also by some younger inhabitants of Beesands.

So far as material to these proceedings, the statements and the oral evidence show that there has been some use of the land for sports and pastimes by the inhabitants of Beesands during the present century. The inhabitants held celebrations on the land on the occasion of the 1935 Jubilee, Armistice Day, V.E.Day, and the 1937 Coronation.

Football has been played on the land, but the football club paid rent to the owner of the land, and after 1945 the club moved to another pitch. There was also some evidence of unorganised playing of cricket and football by children living in Beesands. There was some conflicting evidence about Gunpowder Plot Bonfires, some witnesses saying that they were on the grass-land comprised in the Register Unit and others saying that they were on the adjoining beach. On the balance of probabilities, I find that these bonfires were on the beach. Finally, there used to be what some of the witnesses described as a "fair" held on the land on Whit Tuesday in each year, with stalls, a shooting gallery, and coconut shys, all without permission from anyone. Although described as a "fair", there is no evidence that these activities were a fair in the legal sense of the word, and it would appear that the witnesses were using the word "fair" in its modern colloquial sense.

While it is not unknown for a piece of land to retain its name after its status has changed, the fact that this land was named Beesands Green in 1841 is prima facie evidence that at sometime the inhabitants of the locality had a right to indulge in lawful sports and pastimes on it. Although the other evidence for the existence of such a right is not strong, it is at least consistent with the land having been a village green, though if it stood by itself, it would have been barely sufficient to prove it. However, it seems to me that I am justified in relying on the facts that the land has been known as Beesands Green for the whole of the period covered by the evidence and that there has been resistance to interference with the use of the land for sports and pastimes.

The persistence of the description of land as "X Green" is of much greater value in determining its present status than the continued use of the name "X Common". While the name "X Common" indicates that the land so named was at some time subject to rights of common, it would be unsafe to regard it as indicating the present subsistence of such rights. Rights of common can be extinguished by surrender or abandonment of which there is no public record, so that land can only be safely found to be subject to rights of common if there is positive evidence of the existence of such rights. The position with town or village greens is differenct, for the persons entitled to customary rights to use them can only be deprived of their rights by Act of Parliament: see New Windsor Corporation v Mellor, [1975] 3 W.L.R. 25, at P. 33.

My attention not having been directed to any statute terminating the rights of the inhabitants of the locality to indulge in lawful sports and pastimes on this land, I find on the evidence that the inhabitants of the Village of Beesands have a customary right to indulge in lawful sports and pastimes on it.

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 19th day of June 1980

C D Lamb