COMMONS REGISTRATION ACT 1965 Reference Nos. 232/D/114.
232/D/115
232/D/116.

In the Matter of Woolston Moor, Bicknoller, West Somerset & Somerset.

DECISION.

These disputes relate to the registration (D/114) at Entry No.1 in the Land Section and (D/116) at Entry Nos.1,2,3, 4 and 5 in the Rights Section of Register Unit No. CL.93 in the register of Common Land maintained by the Somerset County Council, and (D/115) at Entry No.1 in the Land Section of Register Unit No. VG.40 in the Register of Town or Village Greens maintained by the said Council, and are occasioned by the said Entries being in conflict.

The registrations in both the Land Sections were pursuant to applications made on behalf of Bicknoller Parish Council. The five entries in the Rights Sections are of rights attached to various farms to graze sheep and other animals (variously specified), the rights being in four cases in continuation of similar rights over other land (the Quantock Moor, comprised in Register Unit No. CL.10) and including (three cases) estovers and (one case) turbary.

I held a hearing for the purpose of inquiring into the disputes at Taunton on 4 June 1975. At the hearing Mr. Cyril Herbert Galvidge (the applicant for Entry No.1), Mrs. Jeannie Eastwood Richards (the applicant for Entry No.3), and Mr. Denis Paul Hill and Mrs. Margaret Hill of Francis Farm, Sampford Brett claiming as beneficiaries under the will of Mr. Arthur Edward Jones (the applicant for Entry No.4; he died 10 April 1974), were represented by Mr. A.M. Donne of Counsel instructed by Risdon & Co., Solicitors of Minehead, and Bicknoller Parish Council were represented by Mr. N.D. Rutt their vice-chairman and Mr. J.T. Barber their clerk.

The land ("the Unit Land") comprised in these Register Units, is in 6 pieces containing all together about 12 acres. Of these, the largest ("the Disputed Part") containing about 7½ acres, is grass land bounded on the northeast by and open to the A 38 road, on the east and southeast by and open to a side road leading across the railway (West Somerset: disused) to Woolston, on the southwest by the railway cutting (fenced off) and on the west and northwest by a hedge and stream. The three next largest pieces (being most of all the remainder of the Unit Land) are scrub, in some places impenetrable.

It was agreed that the Entries in the Rights Section were all properly made and that all except the Disputed Part of the Unit Land was rightly registered as common land and not as a town or village green. So the only question for my determination is whether the Disputed Part should have been registered as common land or should have been registered as a town or village green.

Mr. Barber who has lived in Bicknoller for the past 61 years (he was born in 1907), and has been clerk of the Parish Council for the past 26 years, in the course of his evidence produced; (1) a scheme dated 7 May 1901 and made by Williton Rural District Council for the regulation of the Commons known as Woolston Moor and Quantock Moor (on 10 May 1901approved by the Board of Agriculture under the Commons Act 1899);(2) Byelaws dated 30 July 1901 made in pursuance of the Scheme; (3) a press cutting from the West Somerset Free Press entitled "100 years ago May 15 1875"

and including "We are desired to state that a horse fair will be held at Woolston Moor Bicknoller on September 14"; and (4) a consent dated 12 July 1963 by the Ministry of Housing and Local Government to the Parish Council borrowing £61 and £74 for the purchase of land at Woolston Moor and securing the land for use as a public open space.

Mr. Barber in the written statement of his evidence said (in effect):- The Unit Land was formerly in the ownership of the Dean and Chapter of the Cathedral Church of Wells as Lord of the Manor of Bicknoller; in 1951 the Church Commissioners conveyed the soil and ownership to Williton Rural District Council, and they by a conveyance dated 8 October 1965 conveyed it to the Parish Council. The rights of common have not been much exercised during the past 25 years, but for many years previously they used to be exercised almost daily with cows and geese. A number of persons including himself living in or around Bicknoller have taken part in cricket or football matches on the Disputed Part before the 1939-45 war. There are records showing that the Disputed Part was at one time frequently used for games of cricket.

Mr. Barber amplified his written statement saying (in effect):- Bicknoller has never had a cricket team to his knowledge and he had never seen organised cricket played on the Disputed Part. However he knew that informal cricket (one wicket) had been played there by men and boys. An organised game (friendly not a league game) of football was played there in 1924. In the 1920's such games were played about twice a year on a Sunday morning; the players came mostly from Bicknoller, Sampford Brett and Stogumber; he could not remember football after the early 1930's, possibly none after 1930.

After the hearing, I inspected the Unit Land, walking over some of it, and I motored through Bicknoller, Sampford Brett, and Stogumber.

Under the 1965 Act, land which is within the definition in section 22 of "town or village green" cannot be within the definition of common land. The former definition is; "Land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years".

In the particular circumstances of this case, it may not matter much whether the Disputed Part is within this definition, because, if it is not, the Parish Council may as owners permit any one they like to use it for playing games and for recreation under paragraph 5 of the 1901 Scheme and regulate such use under paragraph 12 of the 1901 Byelaws. Nevertheless persons entitled to rights of common may (as Mr. Donne said) be adversely affected if it is registered as a town or village green rather than as common land; they are I think entitled on these references to contend (as Mr. Donne did) that the registration of it as a town or village green should be avoided.

The Disputed Part has not merely because it has been made subject to a scheme under the 1899 Act "been allotted by or under any Act" within the meaning of the above quoted definition. The word "allotted" is commonly use in inclosure awards and many awards contain allotments for recreational purposes. In my opinion this part of the definition applies to the allotments so made. To come within the remainder of the definition any sports and pastimes relied on must have

been indulged in by the inhabitants of a locality. Although for land to be within the definition it is not necessary that all the participants in the sports and pastimes should be inhabitants of the locality associated with the land, it is necessary that the sports and pastimes should somehow be associated with a locality which can be specified and the inhabitants of which can as such be said to indulge in sports and pastime on it.

The nearest inhabitated area is "Woolston"; I think that the Disputed Part could sensibly be described as Woolston Village Green; Woolston is too small and the Disputed Part is too large. Of the three nearest and largest residential areas, namely Bicknoller, Sampford Brett and Stogumber (all some distance apart from each other and some distance from the Disputed Part) there is no reason to choose any one of them as being the relevant locality.
On behalf of the Parish Council it was suggested that the relevant locality is the area formed by all the three parishes; the children from all three have always gone to the same school.

If I am to find that a customary right exists, I must do so on the basis that such right has existed from time immemorial. From what I saw of the Disputed Part and of its situation in relation to these 3 residential areas, I am not persuaded that the recreational use described by Mr. Barber indicate such an exercise by the inhabitants of all these areas or by the inhabitants by any one of them.

I think this use can be ascribed to the 1901 Scheme and Byelaws rather than to a customary right. The Scheme and Byelaws are some evidence that the Disputed Part was when they were made land within the 1899 Act, but this evidence does not help me to resolve the present question, because under that Act a scheme may be made in respect of either common land or a town or village green; see section 15. Further any decision of mine will not as far as I know affect the operation of the Scheme and Byelaws and in particular not affect the privilege of the inhabitants of the district and nieghbourhood under paragraph 5 of the Scheme playing games and of enjoying other species of recreation thereon subject to any byelaws made under the Scheme.

Balancing the conflicting considerations, as best I can, I conclude that those who have indulged in sports and pastimes on the Disputed Part as described by Mr. Barber did not do this as "inhabitants of any locality" and accordingly the Disputed Part is not within the above quoted definition.

For the above reasons I refuse to confirm registration at Entry No.1 in the Land Section Register Unit No. VG.30 and I confirm the registration at Entry No.1 in the Land Section and at Entries Nos 1,3,4, and 5 in the Rights Section, Register Unit No. CL.93 without any modification.

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 June 1975

A. A. Baden Fuller

Commons Commissioner.