



COMMONS REGISTRATION ACT 1965

Ref Nos. 262/D/684
to 694 inclusive

In the Matter of (1) Mawbray Banks, and
(2) Mawbray Greens, Newton Greens and
Tarn Greens, in Holme St Cuthbert and
Allonby, Allerdale District, Cumbria

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section, at Entry Nos. 1 to 4 inclusive in the Rights Section and at Entry Nos. 1 and 2 in the Ownership Section of Register Unit No. CL 460 in the Register of Common Land and at Entry No. 1 in the Land Section of Register Unit No. VG 116 in the Register of Town or Village Greens maintained by the Cumbria (formerly Cumberland) County Council, and are occasioned by Objection No. 218 made by Cumberland County Council and noted in the Register On 4 August 1972 and by some of the said registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Keswick on 28 April 1981. At the hearing (1) Mr William Hutchison Greenup on whose application the registration at CL 460 Rights Section Entry No. 1 was made, was represented by Mr H Fitzgerald solicitor with Hetherington Ritson & Co, Solicitors of Wigton; (2) Mr John Bradshaw Collister and Mrs Janet Mary Collister on whose application the registration at CL 460 Rights Section Entry No. 3 was made, were represented by Mr A R Nobbs, solicitor of Oglethorpe & Hough, Solicitors of Keswick; (3) Mr John Jefferson Steel, Mr Thomas Gordon Steel and Mrs Alice Mary Pattinson on whose application the registration at CL 460 Rights Section Entry No. 4 was made, were represented by Mr T Leach solicitor with Burnetts, Solicitors of Carlisle; (4) Mr Anthony Edward Byron Standish and Mr Robert Knight Lockhead on whose application jointly with Mr George Munro Kerr (since deceased) the registration at CL 460 Ownership Section Entry No. 1 was made, and Mr Derek de Courcy Trasenster who has been appointed a trustee in the place of Mr G M Kerr, were all represented by Mr P W Pickles solicitor of Hough, Halton & Soal, Solicitors of Carlisle; and (5) Cumbria County Council as registration Authority and as successor of Cumberland County Council who made the said Objection and on whose application the registration at CL 460 Ownership Section Entry No. 2 was made, were represented by Mr J Brown solicitor and assistant clerk with the Council. Additionally Mrs Mary Hurst of Windyridge, Skinburnes Road, Silloth who in a letter dated 13 March 1981 claimed ownership of part of the CL 460 land, was represented by Mrs Pat MacDougal solicitor with Beatty & Co, Solicitors of Wigton.

The CL 460 land is a strip about $3\frac{1}{2}$ miles long and in places about 300 yards wide, but elsewhere much narrower, bounded on the west by the sea (HWMNT) and on the east for the most part by the coastal road B5300 from Allonby to Silloth; I understood that apart from the strip of ~~the~~ foreshore it is for the most part sand dunes with some grass. The VG116 land comprises a number of pieces, the largest being a strip a little under 2 miles long and being the central part of the CL 460 land (except the foreshore) and the other pieces being comparatively very small about $\frac{1}{4}$ of a mile inland at Old Mawbray, about $\frac{1}{2}$ a mile inland at Newton and further inland at Tarn Greens.



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My copy of the CL 460 Rights Section registrations contains 5 Entries. Mr Brown said that Entry No. 5 (identical with No. 2) is a clerical error which the County Council as registration authority either has or will correct, so I am not concerned with it. The 4 other registrations are all of various rights of grazing. The CL 460 Ownership Section registration at Entry No. 1 (the Standish Trustees) ^{and the} relates to the whole of the land in this Register Unit, Registration at No. 2 (the County Council) relates to about 250 yards long from south to north situate at Beckfoot. The grounds of the Objection (relating to Entry No. 1 in the CL 460 Land and Ownership Sections are: "The land was not Common at the date of registration. The persons named as owners were not owners at the date of registration".

After discussion during an adjournment, and after oral evidence had been given by Mr Robert Pattinson of East End Farm, Beckfoot, all represented at the hearing were (except as to costs) agreed that I should give the decision hereinafter recorded, which agreement was made by reference to two maps at the hearing marked "CC/1" and "CC/2". Page 3 of this decision ("the Decision Map") is a combination of two uncoloured extracts from the said two maps with thick black lines drawn and letters written by myself so as to indicate the relevant parts. On the Decision Map the line ABC should be considered to be the line of the said B5300 road, the point A being by the "33" printed on the OS map and the other lines except HG, KL, and QRS should be considered as drawn over tracks, roads or culverts marked on the OS map; the lines HG, KL, and QRS are compromise lines arbitrarily agreed.

Because of the said agreement made by those represented at the hearing, I am concerned only to consider the possible interests or claims of the persons not so represented. In the CL 460 Land Section there have been noted applications by Mr G E Nelson (part), Mrs S L Byers (part) and Holme St Cuthbert Parish Council; and the VG 116 Land Section registration/made on the application of Holme St Cuthbert Parish Council. I have a letter dated 7 April 1981 written by Beatty & Co, Solicitors of Wigton saying (in effect) that their client Mr G E Nelson is no longer interested and would withdraw if requested by any party. In the absence of any ~~formal~~ oral evidence that any of the lands with which I am concerned are within the definition in the 1965 Act of a town or village Green, and upon the information given to me at the hearing about the appearance of these lands I consider I can properly accept the compromise division between common land on the one hand and town or village green on the other hand agreed at the hearing on the basis that such division is reasonably likely to be as favourable to the public as any decision I might be able to give if the Parish Council had attended and given detailed oral evidence. In the absence of Mrs Byers I consider I can properly disregard her application. The grazing rights registered in the CL 460 Right Section on the application of Messrs Creighton are similar to those registered on the application of Messrs Steel, Steel and Pattinson, and in the absence of any representation of or evidence by Messrs Creighton I consider that I ought to treat them similarly save that because Beckfoot Farm is south of East End Farm their grazing rights should extend over ~~land~~ ^{land} ~~to~~ the south of that over which the rights at Entry No. 4 extends.

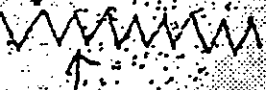
Upon the above considerations, my decision is as follows:- I confirm the registration at Entry No. 1 in the VG 116 Land Section with the modification that there be removed from the Register all (except that next hereinafter particularly mentioned) the land which was originally (that is before the 1981 hearing) comprised in the Land Section of Register Unit No. CL 460, but excepting

CL 460

Limit of
Cuthbert's
rights

CC/2

CC/2



CC/1

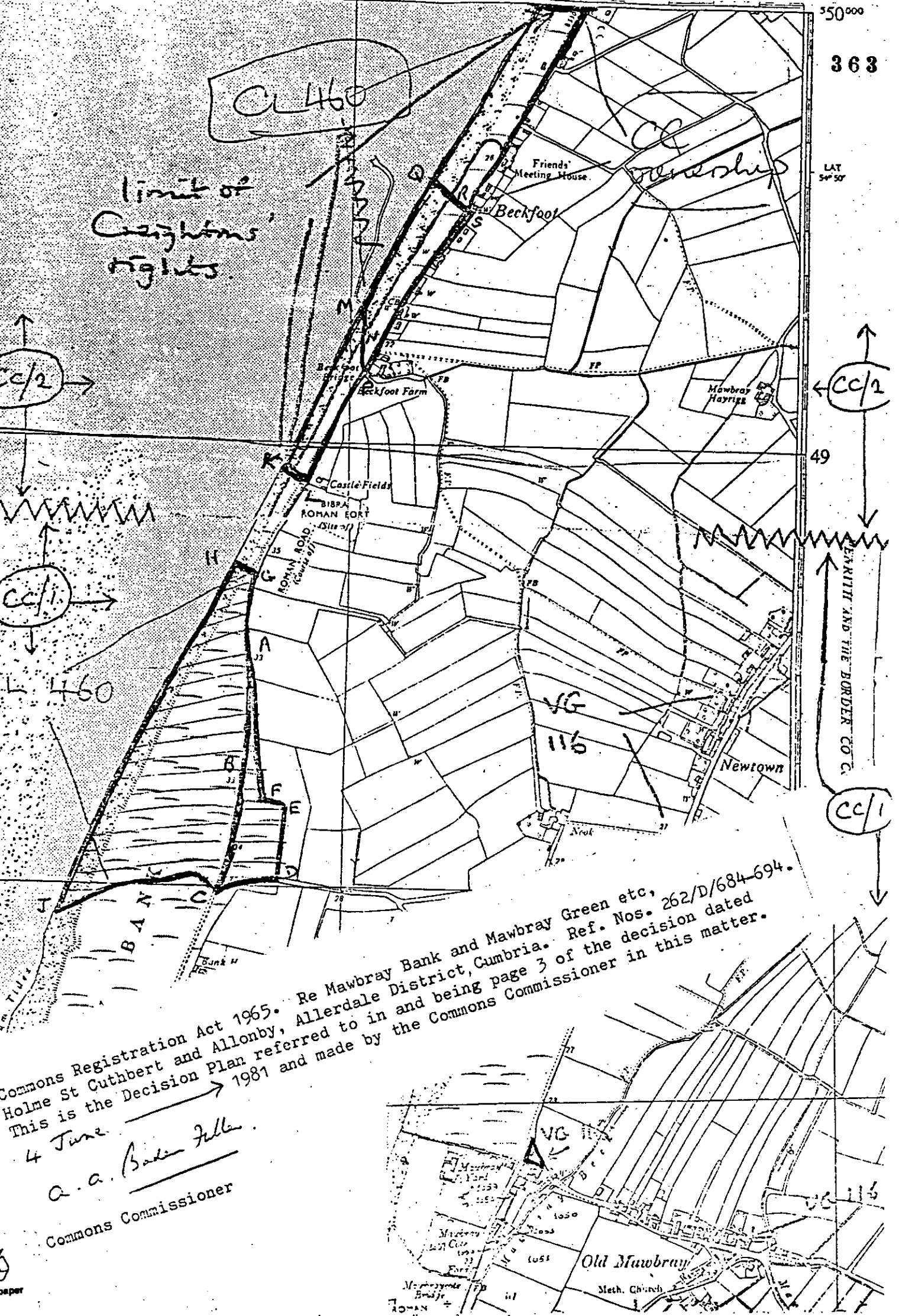
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ENRITT AND THE BORDER CO. C.

CC/1

Commons Registration Act 1965. Re Mawbray Bank and Mawbray Green etc, Allerdale District, Cumbria. Ref. Nos. 262/D/684-694.
This is the Decision Plan referred to in and being page 3 of the decision dated 4 June 1981 and made by the Commons Commissioner in this matter.

4 June
A. A. Baker J. L. L.
Commons Commissioner





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the comparatively small area (so it will continue to be within VG 116 Land Section) which is situated near Mawbray Yard which is west of Mawbray Beck, which is east of the said B5300 road, and which is delineated on the Decision Plan and thereon marked VG 116 (with an arrow pointing towards it). I refuse to confirm the registrations (if any) which are by regulation 14 of the Commons Registration (General) Regulations 1966 deemed to have been made in the VG 116 Rights Section and in the VG 116 Ownership Section by reason of the Entries in the CL 406 Rights Section and the CL 406 Ownership Section, so that in the result there will when this decision takes effect be no entries (in either) the Rights Section or in the Ownership Section of Register Unit No. VG 116. I confirm the registration (CL 460 Land Section with the modification that there be removed from the Register (1) all the lands south of the line JCD on the Decision Plan and (2) all the land which is both north of the line HG on the Decision Plan and south of the line KL on the Decision Plan. I confirm the registration at CL 560 Rights Section Entry No. 1 with the modification that in column 4 for the words "the whole of the land in this register unit" there be substituted words to be selected by the County Council as registration authority and by reference to such map if any as they think fit, to the effect that the right registered extends only over the land marked CDEFAGHJC on the Decision Plan. I confirm the registration at CL 460 Rights Section Entry No. 2 with the modification that in column 4 for the words "the whole of the land in this register unit" there be substituted the words to be selected by the County Council as registration authority and by reference to such map if any as they think fit to the effect that the right registered extends only over the part of the land in this Register Unit north of the line KL on the Decision Plan. I confirm the registration at CL 460 Rights Section Entry No. 3 with the modification that in column 4 before the words "to take gravel" there be inserted "(for domestic and agricultural purposes connected with the land as described in column 5 only)" and that for the words "on Newton Foreshore forming part of this register unit" there be substituted words to be selected by the County Council as registration authority by reference to such map if any as they think fit to the effect that the right extends only over the part of the land in this Register Unit on the Decision Plan marked CDEFAGHJC. I confirm the registration at CL 460 Rights Section Entry No. 4 with the modification that in column 4 for the words "on part of the land in this register unit" there be substituted words to be selected by the County Council as registration authority by reference to such map if any as they think fit to the effect that the right extends only over the part of the land in this register unit north of the line MNP on the Decision Plan. I confirm the registration at CL 460 Ownership Section Entry No. 1 with the modification that it be divided into two entries (A) and (B) as follows: Entry No. 1 (A) shall be as regards column 3 be as now written and shall as regards column 4 be as now written with the additional words "except the parts mentioned in this column relating to Entry No. 1 (B) and No. 2"; and Entry No. 1 (B) shall be as regards column 3 "William Hutchison Greenup, The Nook Farm, Silloth", and as regards column 4 words to be selected by the County Council as registration authority and by reference to such map if any as they think fit to the effect of which shall be to define the land on the Decision Plan marked ABCDEF. And I confirm the registration at CL 460 Ownership Section Entry No. 2 with the modification for all the words in column 4 there shall be substituted words to be selected by the County Council as registration authority by reference to such map if any as they think fit to the effect that the Entry is applicable only to the part of the land in CL 460 Register Unit which is north of the line QRS on the Decision Plan.

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At the conclusion of the hearing Mr Nobbs on behalf of Mr and Mrs Collister contended that Holme St Cuthbert Parish Council and/or Cumbria County Council should be ordered to pay that costs of Mr and Mrs Collister of these proceedings and such contention was repeated in a letter dated 30 October 1980 from Oglethorpe & Hough to the Clerk of the Commons Commissioners. In my opinion proceedings before a Commons Commissioner (under the 1965 Act, an inquiry) are different from proceedings before a Court (a trial), and costs do not (as is in Court proceedings the general rule) follow the event. I must exercise a discretion having regard to what the persons concerned did at and before the conclusion of the hearing. A person merely by objecting to a registration is not at risk as to costs; the regulations made under the Act provide that a period must elapse before any dispute resulting from an Objection can be referred to a Commons Commissioner; it was contemplated that this period should be used for discussion. Mr Nobbs said that the County Council and/or the Parish Council should have initiated a discussion; in my opinion their failure to do this does not put them at risk as to costs; Mr and Mrs Collister should themselves have initiated the discussion if they wished at any stage to rely on any lack of co-operation by the Councils as a grounds for a costs order against them. All the references in this case are dated 7 February 1980; after then a Commons Commissioner hearing of some kind was unavoidable unless an agreed decision could be made under regulation 31 of the Commons Commissioners Regulations 1971; in the complicated circumstances of this case, I doubt whether it would have been practicable to dispose of these proceedings under this regulation; but however this may be Mr and Mrs Collister made no attempt to negotiate any such agreement as is by the regulation contemplated. For a case of this complication the hearing was short; Mr Brown at the hearing on behalf of the County Council did nothing to prolong it and indeed a great deal towards reaching an agreed decision; the absence of any representation on the Parish Council at the hearing had no practical effect. Additionally it can be said in favour of the Parish Council that their double registration of the land with which Mr and Mrs Collister are concerned, both as common land and as a town or village green, did not by reason of regulation 14 of the said 1966 Regulations put in issue the Rights Section registration made on the application of Mr and Mrs Collister; so in part land's position as regards costs is if anything stronger than that of the County Council. For these reasons I do not think fit to make any order for costs for the benefit of Mr and Mrs Collister.

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 4/6 — day of June — 1981

a. a. Baker Fuller

Commons Commissioner