



## COMMONS REGISTRATION ACT 1965

Reference Nos 262/D/32  
to 37 incl.In the Matter of Bardsea Green, Urswick,  
South Lakeland District, CumbriaDECISION

These 6 disputes relate to the registration at Entry No 1 in the Land Sections of Register Unit Nos CL65 and CL112 in the Register of Common Land and No VG24 in the Register of Town or Village Greens maintained formerly by the Lancashire County Council and now by the Cumbria County Council, and are occasioned by Objection No 24 to the VG24 registration made by Mr George William Simpson and noted in the Register of 4 December 1970, by Objection No 278 to the CL112 registration made by Mr Llewellyn Patch and Mrs Alice Patch and noted in the Register on 24 March 1972, and by the CL registrations being in conflict with the VG registration.

I held a hearing for the purpose of inquiring into the disputes at Kendal on 27 April 1978. At the hearing: (1) Urswick Parish Council (the CL112 and the VG24 registrations were made on their application) were represented by Mr R F Hart-Jackson, solicitor of R F Hart-Jackson & Sons, Solicitors, of Ulverston, (2) Crown Estates Commissioners (the CL65 registration was made on their application) were represented by Miss J Phillips of their Legal Advisers Department; (3) Mr G W Simpson (Objector and in the VG24 Ownership Section registered as owner of part of the VG24 land) was represented by Mr N F Hallam, solicitor of W C Kendal & Fisher, Solicitors, of Ulverston; (4) Mr L and Mrs A Patch (Objectors) were represented by Mr M S Graham, solicitor, or Livingston & Co, Solicitors of Ulverston; (5) Mrs M I Woodburn (said to be the owner of Ridgeway, a house built on the CL65 Land) was also represented by Mr Hallam; and (6) Misses (two) Stainton (said to own a house built on another part, south of the road, of the CL65 Land) was also represented by Mr Graham.

Bardsea Green is divided into two pieces by a road ("the Road") which is for the most part made up for motor traffic, but continues for a short part as a track. The CL65 Land is in part (about  $2\frac{1}{2}$  acres) north of the road and in part (about  $\frac{1}{4}$  of an acre) south of the Road. The CL112 Land is about 7 acres south of the Road and surrounds the part of the CL65 Land which is also south of the Road. The VG24 Land comprises the CL112 Land and the part of the CL65 Land south of the Road.

The grounds of Objection No 22 (Simpson) to the VG24 registration are:- "The land is not a village green; the Objector being the fee simple owner thereof". The grounds of Objection No 278 (Patch) to the CL112 Lane are: "The Objectors own fee simple in possession, Bardsea Green ... as shown edged red on the Plan annexed hereto. This has been erroneously included under CL112 as Common Land"; the plan annexed shows an area ("The Patch Area") being OS Nos 61 and 62 together containing 1.446 acres.

The course of the proceedings was as follows:-

Miss Phillips produced two plans "JP1" and "JP2", uncoloured copies of which formed pages 3 and 4 of this decision. She said (in effect):- The Crown Commissioners



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intended to register waste land of the Manor of Muchland which was in their ownership. The north of the Road part of the CL65 Land comprises houses and garden lands, Brackendale claimed by Mr Simpson, and Ridgeway claimed by Mrs Woodburn; of this part the Crown does not claim ownership and is therefore agreeable to it coming off the Register, because "privately owned". As regards the south of the Road part; this is claimed (east) by the Misses Stainton and (west) by Miss Wiseman (not represented at the hearing); the Crown agrees therefore to this part too coming off the Register. It having been the intention to register waste land of the Manor still in Crown ownership, the area coloured green on the plan JP2, being such land, should remain registered; such area ("the Green Area") is the small area which appears to be black on the plan being page 4 of this decision, which is due east of the letters "Low Ba" and includes the letters "rn" of "Low Barn" printed thereon, and which is part of the CL112 Land.

Mr Hart-Jackson said that the Parish Council withdraws the VG24 registration, and suggested that I refuse to confirm it.

Mr Hallam produced a conveyance dated 23 June 1964 by which the Crown Estate Commissioners conveyed to Mr Simpson "land containing 1.942 acres situate at the Green Bardsea ... delineated on the plan annexed and thereon coloured pink being part of an enclosure numbered 114 on the Ordnance Survey Maps ...". An uncoloured copy of this plan with the pink area marked by a thick black line, is page 5 of this decision.

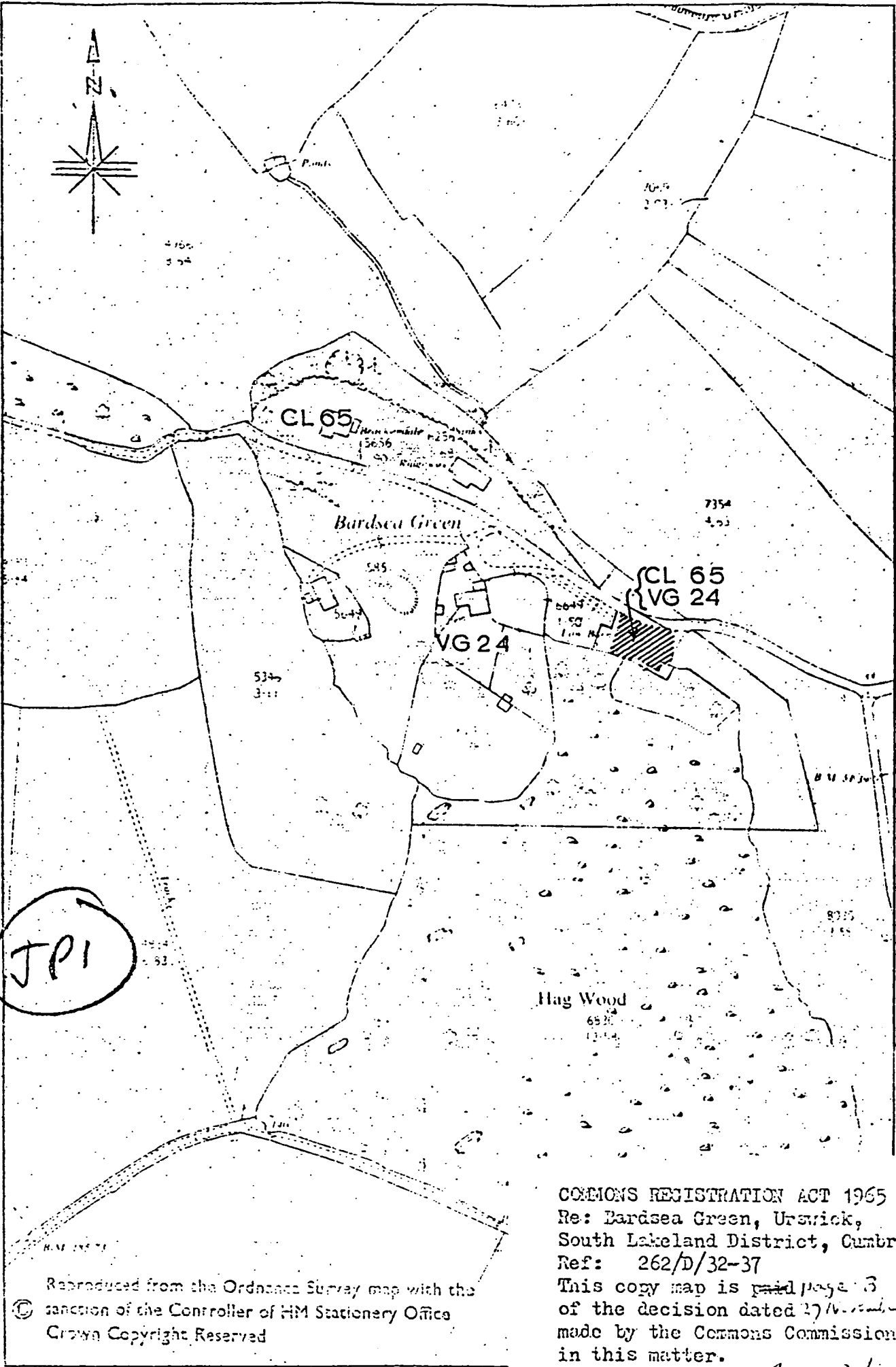
Mr Hart-Jackson said that as regards CL116 Land the Parish Council were agreeable that I confirmed the registration so modified that the only land remaining registered would be the Green Area and the area ("the Open Space Area") which he identified as being that coloured pink and brown (the brown is a track crossing the pink) as shown on the 1964 conveyance plan (page 6 of this decision). He explained that the part he suggested should be removed was "ordinary private land".

Mr Graham said he was satisfied, because as a result of what Mr Hart-Jackson had said the Patch Area would cease to be registered.

Mr Hallam then said that on the basis that the Parish Council were removing private land from the Register, the Open Space Area owned by Mr Simpson should be removed too. So as regards these represented at the hearing, the only question was as to the status of the Open Space Area.

Mr Simpson has made no objection to its registration as commons land, and has under the Commons Commission Regulations 1971, no right to be heard on the only disputes relating to the CL112 registration (made on the application of the Parish Council) occasioned by Objection No 278 (Patch) and the conflicting VG24 registration (also made on the application of the Parish Council); nevertheless in accordance with regulation 23 (5), I thought fit to hear his evidence.

Mr Simpson, after producing the said conveyance, said (in effect):- He had lived all his life (66 years) in Bardsea. The Open Space Area had just been rough. He had pastured a few cows on it, but it was quite a few years since he had done this. An owner of adjoining land had had cows on it. This was about 40 years ago. Another man (Mr Canon) who lived where Mr Patch lives now, had an odd cow, but



JPI

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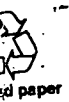
COMMONS REGISTRATION ACT 1965  
 Re: Bardsea Green, Urswick,  
 South Lakeland District, Cumbria.  
 Ref: 262/D/32-37  
 This copy map is ~~part~~ page 3  
 of the decision dated 27 November 1978  
 made by the Commons Commissioner  
 in this matter.

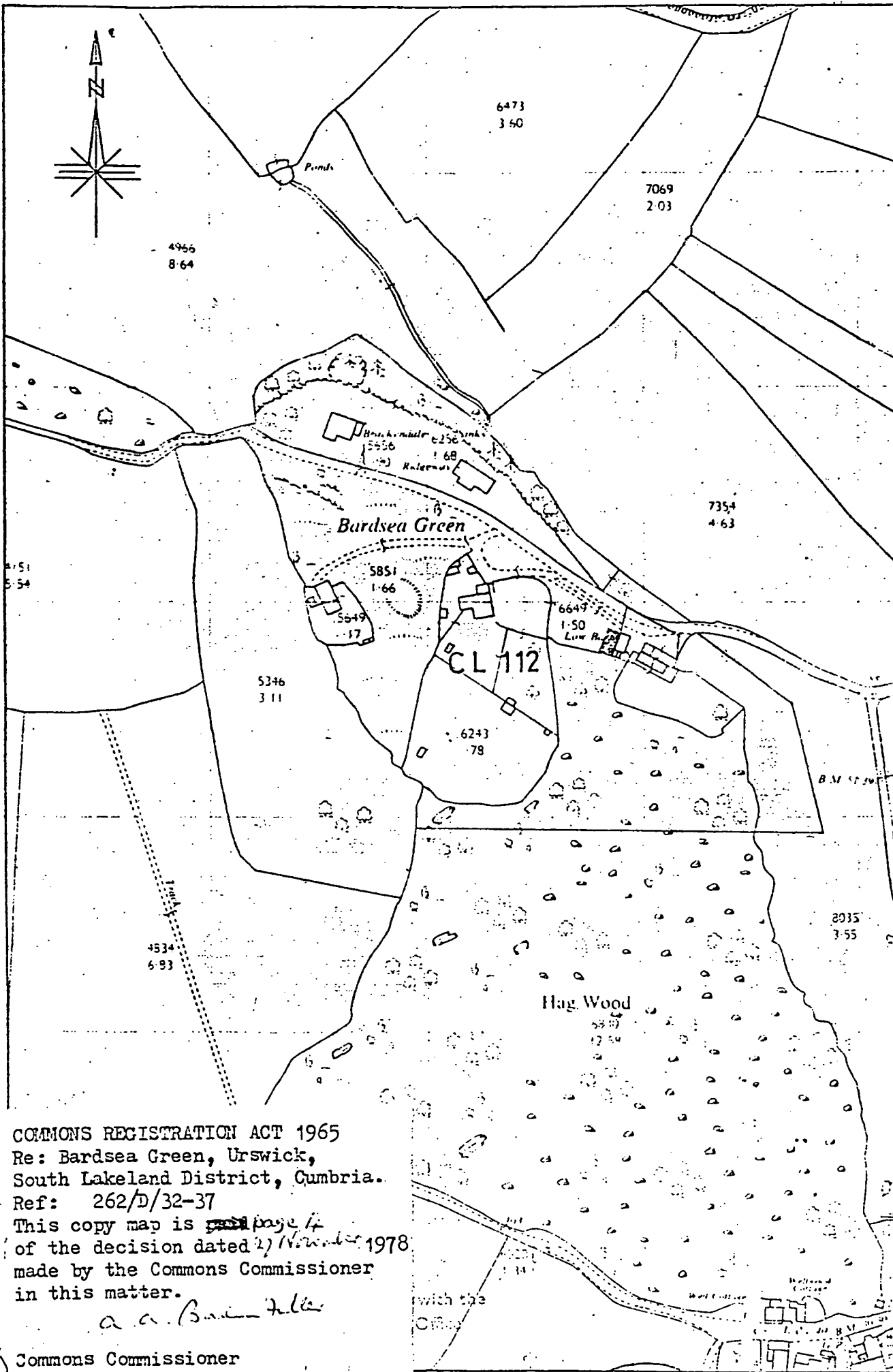
*a. a. B. J. J.*

Commons Commissioner

Scale: 1/2500

1959





COMMONS REGISTRATION ACT 1965  
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 South Lakeland District, Cumbria.  
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 of the decision dated 17 November 1978  
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 in this matter.

*a. a. B. ...*

Commons Commissioner  
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Scale: 1/2500

(TP2)

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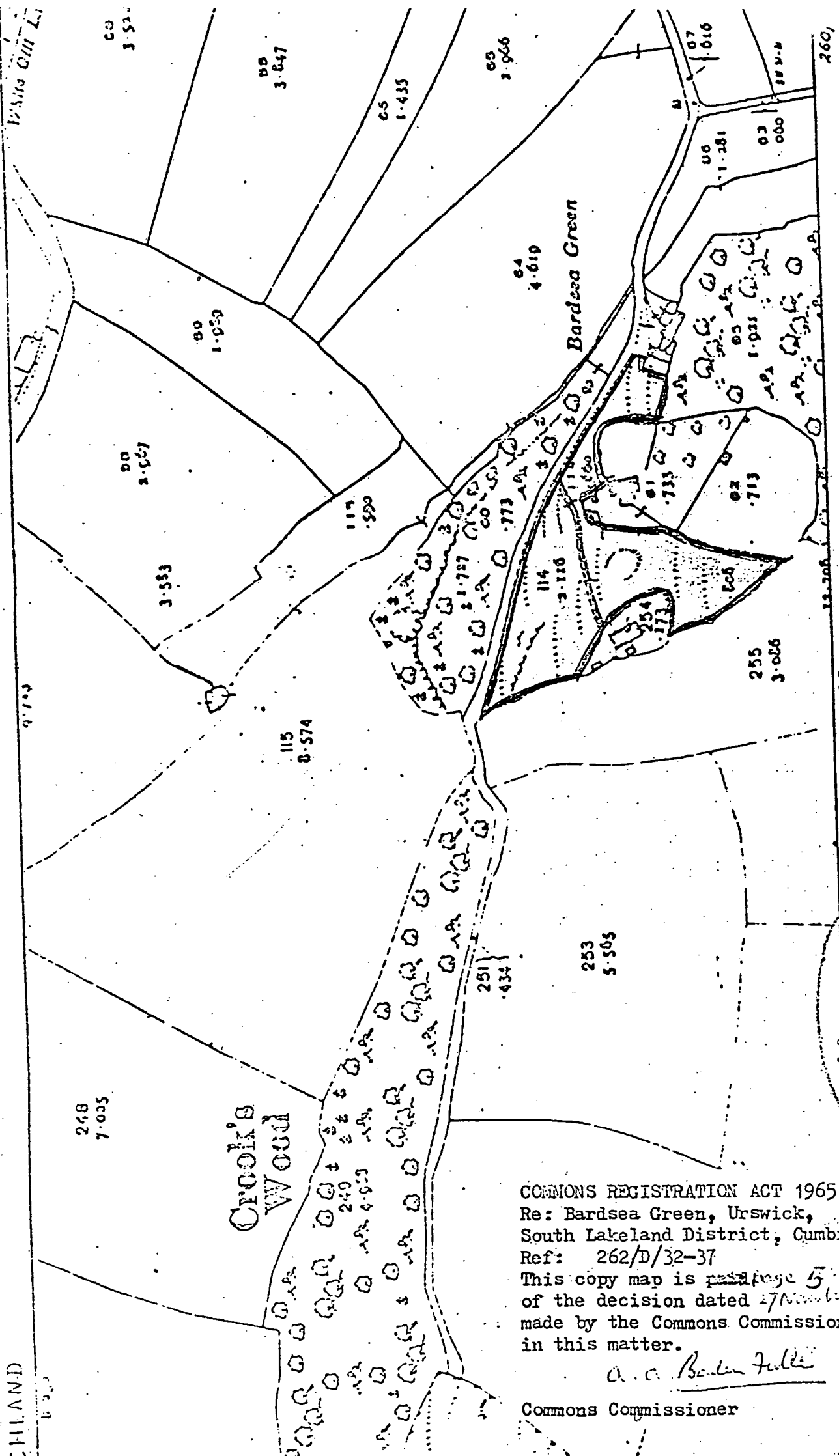
COMMONS REGISTRATION ACT 1965  
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in this matter.

A. A. Bardin Fuller

Commons Commissioner

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this was about 20 years ago. | If you put anything (animal) on to it (the Open Space Area) you have got to watch; it gets onto the roadway. When and after he purchased in 1964 it was all overgrown with brambles, but he had cleared it up this year and was the only person that had any dealing with the land whatsoever.

Miss Phillips produced a large map entitled "MANOR OF MUCHLAND" dated 18 July 1874, the legend of which showed the grey as "Common or Waste"; the grey on this map included the Open Space Area. He also produced PRO copy (1782 Chancery Close Rolls No 16) of a grant of a stipend for a school teacher which, recited that the inhabitants of the Village of Bardsea in the Parish of Urswick had at their own charge erected a convenient school house upon the waste called the Green at Bardsea which was then finished and ready for the reception of a schoolmaster and his scholars.

On the day after the hearing I inspected the Open Space Area.

By regulation 26 of the 1971 Regulations on a dispute occasioned by an objection I must (unless I think it 'just' to do otherwise) limit the proceedings to the grounds of the objection. By analogy, upon a dispute occasioned by a conflict, I must limit the proceedings to the conflict. Nevertheless (by a like analogy) I have (if it is just) jurisdiction to go outside the conflict. The 1965 Act expressly empowers the Commons Commissioner on a dispute referred to him to confirm the registration "with or without modification or refuse to confirm it", see section 6 (1). So I consider whether it is just to do as it was suggested at the hearing.

As to so much of the suggestions made by Miss Phillips and Mr Hart-Jackson as relate to lands other than the Open Space Area, I consider it just to give effect to what they propose. On my inspection it was apparent that the lands they wish to be excluded from registrations are now, and probably have been for some time, ordinary private land outside the scope of the 1965 Act and that their registration has (as they said) been the result of a mistake.

But the Open Space Area is different. Except for some very small and insignificant parts, it appears to be now and probably to have been for many years, waste land open to the road and quite unlike anything which might come within the words "ordinary private land"; indeed it appears essentially similar to numerous other pieces of land which have become finally registered under the 1965 Act either as village green or common land. As the law was generally understood at the time of the hearing (April 1978) land which is historically waste land of a manor was properly registered under the 1965 Act, see the High Court Decision re Chewton 1977 1WLR 846; so at that time the evidence of Mr Simpson provided no reason why I should not give effect to the suggestion of Mr Hart-Jackson that the Open Space Area should remain registered as common land. The general understanding of the law has been changed by the recent decision of the Court of Appeal: re Box, see Times Newspaper of 25 May 1978; the Court held that to come within the 1965 Act definition of common land the land must be "of the manor" at the date of registration and therefore could not be within the definition if before that time it had been conveyed separately from the Manor. So if the Crown is (as Miss Phillips seemed to assume) Lord of the Manor of Muchland, the 1964 conveyance is a strong indication that the Open Space Area should not have been registered as common land.

In my opinion it would not be just to the Parish Council if I, for the purpose of concluding that the Open Space Area should not be registered at all under the 1965 Act, had any regard to the evidence of Mr Simpson as summarised above. My reasons are:- (1) He has made no Objection to the CL112 registration and has no entitlement to be heard. (2) He is now out of time for making any such Objection. (3) The evidence is not an extension or enlargement of anything which might be said in support of Objection No 278 (Patch). (4) The only relevant dispute arises out of the deemed objection consequent on the conflict resulting from the VG registration also made by the Parish Council, and prima facie it would be unjust on any such dispute not to support one or other of the registrations. (5) I understood the Parish Council's withdrawal of the VG registration (a benefit to Mr Simpson because it gave effect to his Objection No 24) was on the basis (reasonable at the time) that the CL registration to the extent of the Open Space Area at least would be unaffected; Mr Simpson should not I think keep this benefit and also get another benefit not contemplated when the withdrawal was made.

In the absence of such evidence, I consider I ought as regards the Open Space Area to produce the same result as would have followed under Section 7 of the 1965 Act if this Area had by itself been registered as common land and the Parish Council have never registered it as a town or village green, that is conclude, as I do, that it was properly registered as common land. So it will be in the same position as the numerous other pieces of land which have in the absence of any objection become finally registered under the 1965 Act as common land, notwithstanding that many persons concerned with them may now realise that if they had understood the law to be as it was expounded in re Box, they could have successfully objected. That I may as against a person out of time for making an objection, give effect to a view of the law which was generally accepted during the time relevant to him, notwithstanding that this view is subsequently declared by a higher court to be mistaken, is I think shown by re Waring 1948 Ch 221. And I record that it may be that if the Parish Council had not been agreeable to compromising the dispute occasioned solely by their own conflicting registrations on the basis that the Open Space Area is common land, it may be that they could against the objection of Mr Simpson have established that it is within the section 22 definition of a town or village green; on my inspection this seemed likely, and the 1781 deed indicates that the green was then considered to be something with which the inhabitants of Bardsea were concerned.

For the above reasons I refuse to confirm the CL65 registration, I refuse to confirm the VG24 registration, and I confirm the CL112 registration with the modification that it be limited to the Green Area and the Open Space Area as in this decision defined and that all other land be removed from 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..27/11.....day of.....November.....1978

*a.a. Baden Fuller*

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Commons Commissioner

