



COMMONS REGISTRATION ACT 1965

Reference No 32/U/64

In the Matter of Brook Green, Ilton,
Yeovil District, Somerset

DECISION

This reference relates to the question of the ownership of land known as Brook Green, Ilton, Yeovil District being the land comprised in the Land Section of Register Unit No CL. 178 in the Register of Common Land maintained by the Somerset County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Taunton on 30 November and 2 December 1977. At the hearing Ilton Parish Council were represented by Mr E J Smith their clerk.

The land ("the Unit Land") comprised in this Register Unit is a little less than a mile northeast of the Village of Ilton. It is crossed by one of the roads ("the Road") from Ilton to Abbots Isle (a road suitable for motor traffic: unclassified); the part northeast of the Road contains 1.164 acres and the part southwest of the Road contains 3.501 acres. The Unit Land is crossed by a brook ("the Brook") which flows from south to north, and also by a track or footpath which runs from a ford at the south end of the Unit Land (at the other end of the ford is Rod Lane leading to the Village) to the Road. The Unit Land is all open to the Road, being generally rough grassland, a little above the level of the Road, with some brambles and other vegetation, particularly near the Brook.

Mr Smith who has lived in the Parish since 1940 (he is now aged 58 years) and has been a member of the Parish Council since 1956, their chairman from 1962 to 1967, and their clerk ever since, in the course of his evidence, produced: (1) a copy of an agreement dated 30 August 1909 between Chard Rural District Council and the Parish Council by which the Parish Council agreed to pay the expenses incurred by the District Council of making a scheme under the Commons Act 1899 for the regulation and management of Brook Green; (2) a print of the Scheme made on 18 October 1909 by the District Council under such Act, being for "The pieces of lands with the ponds paths and roads thereon, commonly known as Brook Green Common..."; (3) the Parish Council Minute Book from 1894 to 1954 which records (1909) a discussion leading up to the Scheme and to the Bylaws made under it, (1911) that the District Council be asked to take steps to prosecute the gypsies upon Brook Green, (1913) that a precept for £3-17-10 be made upon the Overseers for the drainage of Brook Green, and (1953 and 1954) that the attention of the Divisional Surveyor at Chard be drawn to the condition of the roadway at the ford by Brook Green and (at the annual Parish meeting) that the complaint about Brook Green was being dealt with; (4) a wayleave agreement dated 9 October 1956



by which the Parish Council (therein referred to as "the Owner") consented to Southwestern Electricity Board erecting three poles ~~and a stuy~~ — in consideration of a yearly sum of 4/-; and (5) the financial statement of the Parish Council for the year ending 31 March 1977 showing that they had spent £951.65 on parks and open spaces.

Mr Smith said (in effect):- The Unit Land was not now much used for grazing because it is unfenced; a blind eye is turned to gypsies who graze, because they control the grass. The Parish Council arrange for the grass to be cut if it gets too long, and it is part of the work which they have for many years done to the open spaces in the Parish (see the 1977 financial statement); they also had the footbridge over the Brook repaired. They had from time to time in the past requested the District Council to carry out their obligations under the Scheme to remove gypsies (?paragraph 4 "not permit any trespass..."). No person other than the Parish Council had done anything in or about the management of the Unit Land.

The evidence summarised above shows I think that the Parish Council are now and have for many years been in possession. I have not overlooked that the District Council have from time to time done things in relation to the Unit Land; but these things appear to have always been done at the request of the Parish Council, and the 1909 agreement is consistent with the Parish Council being then considered to be the owners; further I infer from the District Council having made no claim in these proceedings, that any possession of the Parish Council would not by them be disturbed. It is practically certain that no other person could successfully claim against the Parish Council. Possession in such circumstances is equivalent to ownership.

For these reasons I am satisfied that the Parish Council are the owners of the land, and I shall accordingly direct the Somerset County Council, as registration authority, to register Ilton Parish Council as the owners of the land under section 8(2) of the Act of 1965.

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 21st day of December — 1977

a. a. Barker-Jones

Commons Commissioner