



COMMONS REGISTRATION ACT 1965

Reference No.32/D/2

In the Matter of Churchill Batch,  
Churchill, Somerset (No.1)

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No.V.G.35 in the Register of Town or Village Greens maintained by the Somerset County Council and is occasioned by the conflicting registration at Entry No.1 in the Land Section of Register Unit No.C.L.3 in the Register of Common Land maintained by the Council.

I held a hearing for the purpose of inquiring into the dispute at Taunton on 1st November 1972. The hearing was attended by Mr. Robert Smith, solicitor, for the Churchill Parish Council, which made the registration as a town or village green, and by Mr. F.T. Hutchins, solicitor, for N.W. Warren, the successor in title of the late Mr. H.G. Wookey, who made the registration as common land.

The land is too rocky and scrubby to be suitable for any organized sport, but Mr. Smith said that he was contending that the land in question had been correctly registered as a town or village green because the villagers had a right to go at large upon it and enjoy the view and the fresh air. This, said Mr. Smith, is a right of expatiating.

The law relating to this right of expatiating is conveniently summarized in 28 Halsbury's Laws of England (3rd edn), 234 as follows:-

"There can be no common law right in the public or customary right in the inhabitants of a particular place to stray over an open space or to remain on that space for such purposes as they may think proper, that is to say, no jus spatiendi vel manendi, as distinct from the "proper customary use of village or town greens".

When that passage was written there was no statutory definition of "town or village green". Of village greens it is stated in Halsbury, at p.238:-

"The essential characteristic is that the inhabitants of the particular locality have an immemorial customary right to use it for exercise and recreation, including the playing of lawful games".

The definition of "town or village green" in section 22(1) of the Commons Registration Act 1965 has introduced a dichotomy which did not previously exist between "exercise or recreation" on the one hand and "lawful sports and pastimes on the other". "Exercise or recreation" is only a material matter in determining whether land is a town or village green if the land has been allotted for that purpose by or under an Act of Parliament. Indulging in lawful sports or pastimes, on the other hand, is only material in pursuance of a customary right or has been done as of right for not less than 20 years.



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In my view, the use which has been made of this land falls within the category of "exercise or recreation" and not within that of "lawful sports or pastimes". The land has never been allotted for exercise or recreation, so I am driven to the conclusion that it does not fall within the statutory definition of "town or village green". It seems to me to be irrelevant to pursue the question whether the evidence relating to the use made of the land would suffice to bring it within the category of a village green at common law.

For these reasons I refuse to confirm the registration as a town or village green.

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 **13<sup>th</sup>** day of November 1972

Chief Commons Commissioner