



COMMONS REGISTRATION ACT 1965

Reference No. 260/D/21-24

In the Matter of Old Down near Pensford,  
Stanton Drew, Somerset

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DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section of Register Unit No. CL 117 in the Register of Common Land maintained by the Somerset County Council and at Entry No. 1 in the Land Section of Register Unit No. VG 84 in the Register of Town or Village Greens maintained by that Council and are occasioned by (1) the conflict between the two registrations, (2) Objections made by Mr A W D de Moleyns numbered O/30 noted in the Register of Common Land on 24 March 1970 and O/82 noted in the Register of Town or Village Greens on 12 June 1970.

I held a hearing for the purpose of inquiring into the dispute at Bristol on 16 April 1980. The hearing was attended by Miss J Cope, of the firm of Watson, Cocks and Counsell, Solicitors, on behalf of Stanton Drew Parish Council and by Mr R Birkett of the firm of Bevan Hancock and Company, Solicitors on behalf of Mr Breach, who claims to be successor to the Objector.

The registration as Common Land was made on the application of Mr P J Fay, who did not appear. There are no rights of common registered and Objection No. O/30 is on the grounds that the land is not and never has been common land. In these circumstances and in the absence of any evidence to support the registration as common land, I refuse to confirm it.

The registration as village green was made on the application of Stanton Drew Parish Council. The Objection is on the ground that the Objector is the owner of the land and has been since the date of registration and that the land was not village green at the date of registration. Ownership has not been registered.

The land in question ("the Unit land") is in the Parish of Stanton Drew, though it is nearer to Pensford which is about half a mile away, whereas Upper Stanton Drew is some  $1\frac{1}{2}$  miles and Lower Stanton Drew 2 miles or more distant. From evidence given it appears that the Unit land is rough undulating ground largely covered by bracken and thorn which has in the past been kept down by a local farmer. Miss Cope stated, and this was not challenged, that it is fenced on the north and west sides, while the larger third side on the south east is open to a lane.

Evidence on behalf of the Parish Council was given by five witnesses. Mr Henry Wyatt who was for 33 years a District Councillor and has known the land for many years said that he had played cricket there with the younger generation in the period 1946 to the late 1950's: the cricket was of a casual nature, not organised or on a laid out pitch - there was an open strip of ground next to the bracken, about 22 yards long and about 15 or 16 feet wide. He did not know whether besides those he played with others played cricket. For two or three years



about 1960 there was a cycling track used by young people, and in the 1950's and 1960's there was some use of the land by scouts and girl guides. He had seen people picnicking there - some from the village and some from Bristol, and children go on and knock a ball about.

Mrs Gladys Duckett who has lived in the parish for nearly 86 years had seen people picnicking there and dogs taken for exercise, and when she was "girl, children played about on it on their way home from school. Mr George H Emery who has lived in the parish since 1913 gave evidence to the same effect and Mrs Mavis E Penny who has lived there for 40 years used the land in her childhood and in the last five years with her own children for picnicking and playing such games as hide and seek in the bracken: she said that no organised sport could be played there.

Mr Donald Walker who has lived in the parish for 26 years said that he and his wife would go with their children to the Unit land to picnic and play with a ball or hide and seek: they understood that the land was available for picnicking and games.

Miss Cope also handed in letters from local inhabitants of long standing to which in the absence of the writers I cannot attach much weight and which in fact added little, if anything, to the evidence given by the witnesses.

Mr Birkett called two witnesses: Ms Phyllis J. Gollidge who lived at Pensford from 1926 to 1941 and her father was tenant of farm property which included the Unit land, and was about ten minutes walk away. She had not seen any of the activities described by the witnesses called by Miss Cope: her father used the Unit land for grazing purposes in the summer. Mr Maurice Sherborne of Guy's Farm, Pensford had been tenant of his farm since 1941: he used the Unit land for grazing and had cleared the bracken and thorn which covered about two acres. In all the years he had been there he had not seen more than a dozen people there, apart from users of a footpath on the land.

Miss Cope submitted that the evidence established that the Unit land qualified as a village green within the meaning of the third leg of the definition in Section 22(1) of the Commons Registration Act 1965, land on which the inhabitants of any locality have indulged in lawful sports and pastimes as of right for not less than twenty years (that is the 20 years immediately prior to the passing of the Act in August 1965 - see *New Windsor Corporation v Mellor* 1975 Ch. 380).

Such of the activities described by the witnesses as were in the nature of sports and pastimes, were of a casual and spasmodic nature on a very small area of the Unit land: I find that they were carried on as of right for the twenty year period, but I do not think they were sufficient in their character or extent that they can properly be regarded as amounting to the indulgence in lawful sports and pastimes on the Unit land by the inhabitants of a locality. Accordingly I refuse to confirm the registration as 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 25 June 1980

L. J. Mannes  
Commons Commissioner