



COMMONS REGISTRATION ACT 1965

Reference No. 9/D/1

In the Matter of The Court,
Berrynarbor, Devon

DECISION

This dispute relates to the registration at Entry No.1 in the Land Section of Register Unit No. C.L.29 in the Register of Common Land maintained by the Devon County Council and is occasioned by Objection No.585 made by Mr. A.J. Long and noted in the Register on 7th December 1971.

I held a hearing for the purpose of inquiring into the dispute at Barnstaple on 28th March 1972. The hearing was attended by Mr. B.A. Jones, Deputy Clerk of the Barnstaple Rural District Council, on behalf of the Berrynarbor Parish Council, the applicants for the registration.

Mr.Jones called Mr.Thomas Lewis Bartlett, who has lived in a house on the west side of the land in question in this reference since 1917. Mr.Bartlett's evidence indicated that the land forms part of a highway and is therefore excluded from the definition of "common land" in section 22(1) of the Act of 1965. Mr.Jones thereupon stated that the Parish Council had no objection to the application being dismissed on the ground that the land is not common land. Mr.Jones stated that he had informed the solicitors for the objector that he proposed to take that course.

At my suggestion, Mr.Jones undertook to obtain a written consent from the objector's solicitors with a view to my giving a decision by consent under regulation 31 of the Commons Commissioners Regulations 1971. However, when I received the consent from the solicitors who had been instructed by the objector I found that it was signed on behalf of the widow of the objector. In these circumstances, instead of requiring proof of the death of the objector, I have decided not to give a decision by consent, but to determine the matter on the hearing.

I am satisfied that the Parish Council acted properly in deciding to instruct Mr.Jones not to proceed with the application. Whether or not the land forms part of a highway - a matter which I would be unwilling to decide in the affirmative on the evidence before me - there is no evidence upon which I could hold that it is common land, as defined in section 22(1) of the Act.

For these reasons I refuse to confirm the registration.

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 24th day of April 1972


Chief Commons Commissioner