



COMMONS REGISTRATION ACT 1965

Reference No.278/D/1217

Register Unit No CL2

In the matter of a tract of land comprising about 206.75 acres known as and situate at Hardings Down, Pitton Cross, Pilton Green, Burry Green, and Coety Green, in the parishes of Llangennith and Rhossili, and manorial waste at Muzzard and Newbush, Llanmadoc, Knelston and Llandewi in the parishes of Llangennith, Cheriton, Llanmadoc, Knelston and Llanddewi “Hardings Down”)

And in the matter of land forming part of South Hardings Down Farm, Llangennith, Swansea, (“South Hardings Down Farm”)

DECISION

1. This reference relates to an application notice dated 10th September 1999 by Mr and Mrs Philip Nicholas who seek leave to apply to the Chief Commons Commissioner to bring a “new” objection. Mr and Mrs Nicholas are the owners in fee simple of South Hardings Down Farm. The basis of this “late” objection is that the land edged red (“the Red Land”) on the plan annexed to the Notice in fact lies within the ownership of Mr and Mrs Nicholas. It is asserted that the Red Land has been wrongly registered as common land in the appropriate Register Unit maintained by The City and County of Swansea as the Registration Authority.
2. I held a hearing for the purpose of inquiring into the question of ownership of the Red Land on 25th September 2002 in Swansea. At the hearing Mr and Mrs Nicholas attended and produced documentary evidence of their title to South

Hardings Down Farm. Also letters were produced from other interested parties including the Gower Commoners Association and Llangennith Manors Limited supporting the objection. Mr Brian Humphreys represented the Registration Authority.

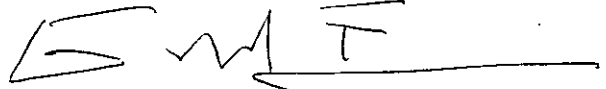
3. Hardings Down was provisionally registered as common land on 2nd January 1967 in Register Unit CL2. This followed an application dated 30th December 1966 made by the Gower Commoners Association through their Secretary Mr J Ellis. The Farm was also registered as having the benefit of rights of common over Hardings Down (Entry No 38).
4. As it has transpired, at the date of provisional registration Hardings Down had not been correctly plotted out by the Registration Authority to indicate the extent of the South Hardings Down Farm where it abutted the common land. Part of South Hardings Down Farm was wrongly incorporated into the common land. Thus there did not appear to be any conflict as to the boundaries of the Farm. The maps were the old 1914-1918 Third Edition of the Ordnance Survey and the size of the scale of the plan submitted with the original application undoubtedly created the mistake in plotting.
5. At that stage, therefore, no conflict was noted by the Registration Authority in the Register of Common Land between the dominant land in the Rights Section of the Register and part of the land provisionally registered as common land in the Land Section. Had it been so noted it would undoubtedly have been referred to a Commons Commissioner.
6. Apparently, it has since been stated that the Secretary of the Gower Commoners Association had raised the issue with Mr Roth (the Chief Commons Commissioner) at the original Inquiry. This took place between 2nd and 5th March 1993 in Swansea. However, there is no mention of this in Mr Roth's Decision issued on 13th May 1994.
7. I should also add that on 26th July 2001 upon motion by way of appeal by case stated to Mr Kevin Garnett QC, sitting as a Deputy High Court Judge, the

appeal against the Decision of the Chief Commons Commissioner was allowed and the Decision set aside and new orders made. Although the determination of that appeal has had no bearing on this late objection, it has meant that the application made by Mr and Mrs Nicholas could not be heard and determined until the appeal process had concluded.

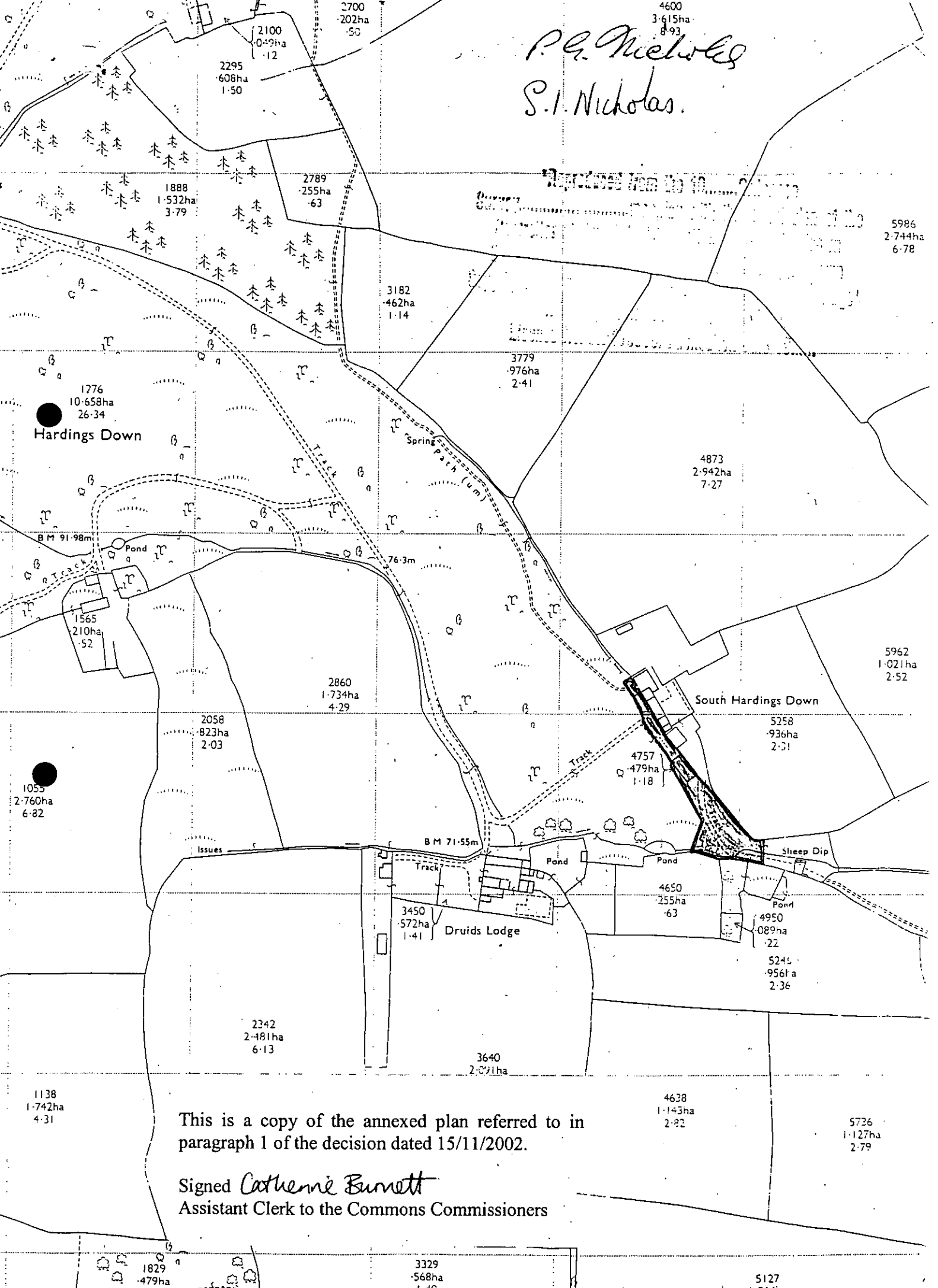
8. The evidence of the ownership of South Hardings Down Farm produced by Mr and Mrs Nicholas clearly demonstrates that the Red Land forms part of the Farm land. I particularly refer to the plan annexed to the Conveyance dated 11th October 1950.
9. No other claim was made or evidence produced at the Inquiry to cast doubt on the title. Indeed all the evidence made available points to a mistake having been made at the time of the provisional registration.
10. I am accordingly satisfied that Mr and Mrs Nicholas are the owners of the Red Land on the plan as attached to this Decision and that the Red Land should not have been included in the Land Section of the Register of Common Land of Register Unit CL2.
11. I should also state that although, in principle, this application is outside the time prescribed statutory time limits under SI 989/1968 for making such objection, a procedure has developed with the express support of previous Commons Commissioners enabling "late" objections to be made in certain circumstances. The basis of the enhanced jurisdiction is to enable accurate Registers to be maintained by the Registration Authorities. The jurisdiction can only be invoked where the registration of the land in question in the Land Section of the Register remains provisional only and an application notice has been served. I consider that the procedure is legitimate in these circumstances and concur with it.
12. I shall accordingly direct The City and County of Swansea as Registration Authority to delete the inclusion of the Red Land in the Land Section of the Register of Common Land of Register Unit CL2.

13. 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 the notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 15th day of November 2002


Chief Commons Commissioner

P. G. Nichols
S. I. Nicholas.



This is a copy of the annexed plan referred to in paragraph 1 of the decision dated 15/11/2002.

Signed *Catherine Burnett*
Assistant Clerk to the Commons Commissioners