

In the Matter of Okehampton Common, Okehampton Hamlets

DECISION

This dispute relates to the registration at Entry No. 67 in the Rights Section of Register Unit No. CL.155 in the Register of Common Land maintained by the Devon County Council and is occasioned by the conflicting registration at Entry No. 1 in the Land Section of the Register.

I held a hearing for the purpose of inquiring into the dispute at Exeter on 29th March 1994. The hearing was attended by Mr Herbert Hugh Whitley Mr and Mrs Bowden and Miss Roberts.

Mr Whitley is registered at Entry No. 67 in the Rights Section of the Register in respect of the right to graze 500 breeding ewes and their followers over the whole of the land in this Register Unit and CL.135 and 164. The land specified in column 5 of the Register as being the land to which this right is attached is Moorgate Farm, Okehampton including O.S. Nos. 1254, 1255 and 1258 (although on the copy of the Register now before me 1258 has been amended in ink to 1253). Parts of 1254 and 1255 and nearly the whole of 1253 are shown on the Register Map as forming part of the common. A conflict thus arises between Rights Entry No. 67 and the Land Section of the Register. I have to decide whether to remove the conflicting land from the Register or to modify Rights Entry No. 67.

At a previous hearing before me on 23rd January 1990 (Reference No. 209/U/124) Mr P Bailey of Burd Pearce, Solicitors of Okehampton produced to me the original of a Conveyance dated 28th September 1935 between (1) R W Seldon and H C Brown and (2) William Whitley in respect of Moorgate Farm containing some 53½ acres including O.S. Nos. 1253 1.035 acres 1254 6.866 acres and Part 1255 10.505 acres and shown on the plan annexed thereto coloured pink. O.S. No. 1258 is not included, but inspection of the plan shows that the 1.035 acres which is O.S. 1253 could easily have been misread or miscopied as 1258. Mr Bailey also produced to me an office copy Probate granted on 16th October 1957 to Lloyds Bank Limited as Executors of the Will of William Whitley, and a Conveyance dated 25th March 1959 between (1) Lloyds Bank Limited and (2) Mr Whitley in respect of property including the 53½ acres of Moorgate Farm.

At the present hearing Mr Whitley and Mr Bowden gave evidence, and Mr Whitley again produced the 1935 Conveyance. Mr Bowden said that the Register map had followed the contour lines rather than the field boundaries. Both he and Mr Whitley agreed that the physical boundaries had been the same ever since 1959. The fields in question were enclosed by stone walls - very old stone walls. Nobody other than Mr Whitley had ever attempted to exercise any grazing or other rights on these small pieces of land.

This evidence was not contested, and Mr Whitley's claim was not opposed by anyone present at the hearing.

I shall accordingly:-

- (1) Confirm Entry No. 1 in the Land Section of the Register with the further modification that the parts of O.S. Nos. 1255 1253 and 1254 lying to the south of the line AB on the plan annexed to this Decision be excluded therefrom
- (2) Confirm Entry No. 67 in the Rights Section of the Register with the modification that in column 5 O.S. No. 1258 be corrected to read 1253.



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

11th

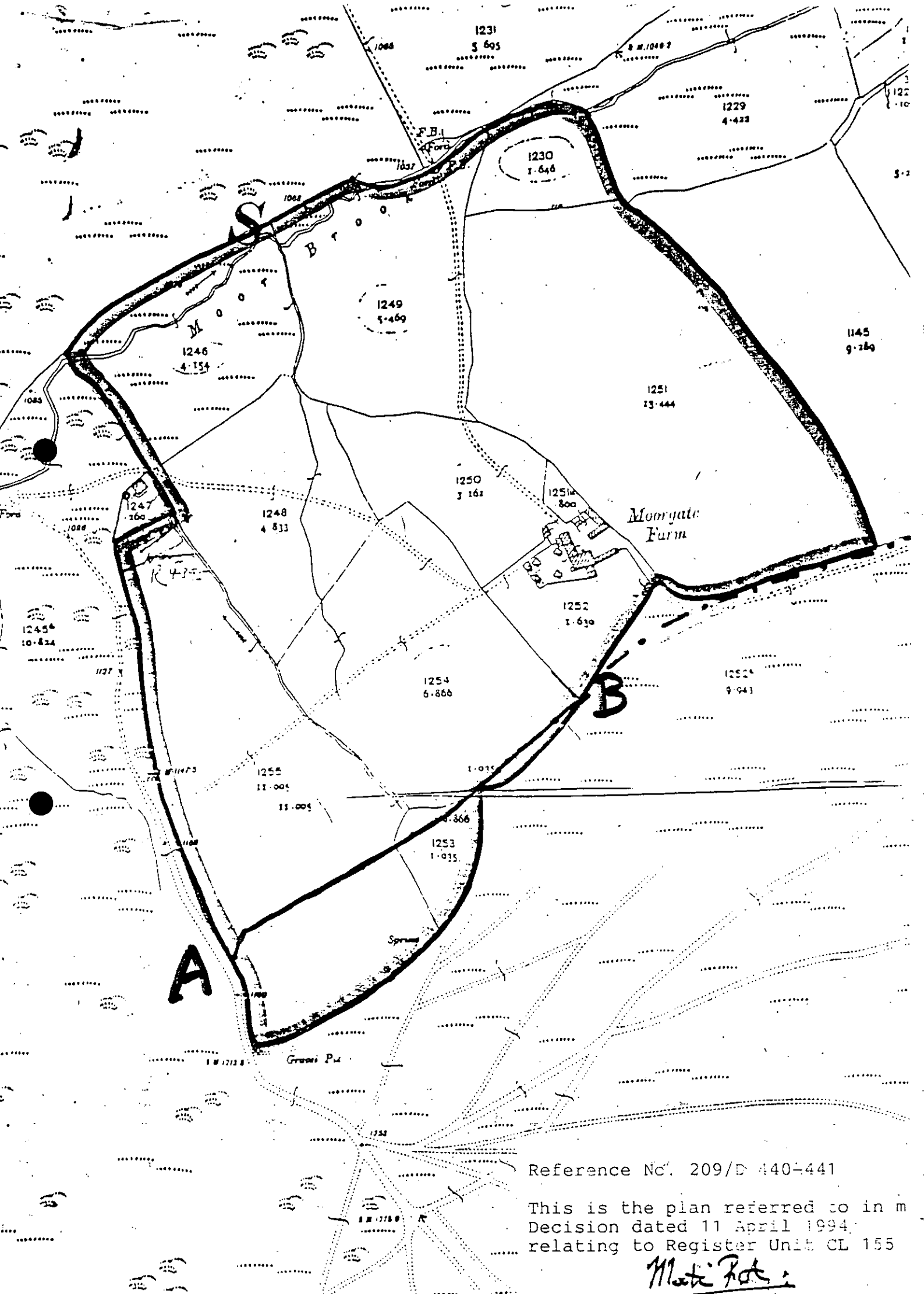
day of

April

1994

Marti Rott

Chief Commons Commissioner



Reference No. 209/D 440-441

This is the plan referred to in m
 Decision dated 11 April 1994,
 relating to Register Unit CL 155

Mark Pote