



Reference Nos 209/D/156
209/D/157
209/D/158

In the Matter of sands, sandhills
and grass areas above high water mark
in Instow, North Devon District, Devon

SECOND DECISION

This second decision is supplemental to my decision dated 24 September 1979 and given in relation to disputes about the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Ownership Section of Register Unit No. CL 246 in the Register of Common Land maintained by Devon County Council after a hearing at Barnstaple on 9 May 1979.

Following my said decision, on the application of Mr W C Baxendale, Mr R G Price and Mr P Baring therein mentioned, I stated a Case dated 7 July 1980 for the decision of the High Court of Justice. On such Case judgment was given on 14 November 1980 by the Rt Hon Sir Robert Megarry, the Vice Chancellor of England, and I have been supplied with a transcript (revised) of the Official Tape Recording*. Stating its effect shortly: first his Lordship records that of the three car parks on the Unit Land, the appellants did not claim that that known as the small car park could be excluded from the Register Unit and that the respondents conceded (rightly so his Lordship thought) that the other two should be excluded; and secondly that I had erred in law in holding that the 1855 grant conveyed the foreshore as it was from time to time instead of holding that it conveyed the foreshore as it then stood as on its true construction his Lordship held that it did.

From the Devon County Council I have received with their letter dated 25 February 1981 a copy of the order (as intended to be drawn up) by which the High Court of Justice ordered that the appeal against that part of my decision whereby I confirmed the provisional registration of the areas of land thereafter mentioned be allowed and did further order that the case be remitted to me to determine upon such evidence as might be tendered by the parties but only in default of agreement between the parties (1) the boundaries of the two car parks situated between the area referred to by me as the South Sandhills Part and the Railway and (2) the position of the line which corresponds with the line of high water mark as drawn on the plan annexed to the conveyance dated 29 May 1855; and having determined the same (1) to further modify the registration at Entry No. 1 in the Land Section by deleting the areas of land comprised within the said car parks and the area of land lying to the west of the line of the said high water mark and (2) to confirm the registration in the Land Section as so modified.

Enclosed with a letter dated 13 May 1981 from Ashford Sparkes & Harward solicitors for the appellants is a plan ("the Agreed Plan") signed by Chartered Surveyors for Devon County Council and trustees of Christie Estates and certifying (in effect) that they had marked by a red and black line the Eastern and Northern boundaries from Lane End, Instow northwards agreed by them as being the line of the boundary on the 1855 conveyance and also certifying that the car parking areas agreed are shown edged in green on this plan. Such letter also contains a request that I correct my said decision as set out in paragraph 9(f) of my said Case Stated. I have also a letter dated 19 May 1981 from Devon County Council confirming the Agreed Plan and confirming

*Now reported, 1981 2 WLR 1055.



that the respondents concurred in the application referred to in paragraph 9(f) of the said Case Stated. In such paragraph of the Case Stated I said that I would on written request made to me correct my decision so as to exclude from the registration any part of OS No. 4734 which may now be included in the Unit Land, being the triangular area therein more particularly described at or near the southwest corner of North Devon Cricket Ground.

Pursuant to the said Judgment and order, to the Agreed Plan and to the said May 1981 letters, I hereby correct my said decision by declaring that all parts thereof inconsistent with the said Judgment be treated as expunged from it and in particular there be expunged from it so much of the penultimate paragraph on page 9 as relates to the confirmation of the registration at Entry No. 1 in the Land Section. And I hereby confirm the registration at Entry No. 1 in the Land Section with the modification that there be removed from the Register: (A) the land delineated on the plan attached to Objection No. 895; (B) all the land in this Register Unit to the north of such land; (C) land in this Register Unit to the east of the fence marked on the extract plan being page 8 of my said decision, by the letters "RTW"; (D) the areas of land (agreed as car parks) edged green on the Agreed Plan; (E) all land to the west of the red and black line marked on the Agreed Plan; and (F) any part of OS No. 4734 which may now be included in this Register Unit.

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 7th — day of July — 1981.

a. a. Baden Fuller

Commons Commissioner