



In the Matter of Shorts Down,
Whitchurch, West Devon District,
Devon

DECISION

These disputes relate to the registrations at Entry Nos. 39, 40, 41, 51, 81, 82, 83 in the Rights Section of Register Unit No. CL 56 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections No. 181, No. 952 and No. 953 (relating to Entry Nos. 40, 82 and 83, and 39 and 51) made by Whitchurch Commoners Association and noted in the Register on 13 October 1970 and 3 February 1972 and by the registrations at Entry No. 41 and 81 being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Plymouth on 22 June 1982. At the hearing Whitchurch Commoners Association were represented by Mr D M Crocker solicitor of Bellingham & Crocker, Solicitors of Plymouth, they being instructed by Captain E T G Madgwick as chairman of the Association.

The land ("the Unit Land") in this Register Unit is a tract of about 42 acres situated near to and southeast of Middlemoor and Holwell. In the Rights Section there are 79 registrations other than those above mentioned and all of them and also the Land Section registration and the Ownership Section registration (Mrs Margaret Alice Kathleen Madgwick as owner of all the Unit Land) being undisputed have become final.

The registrations at Entry Nos. 39, 40, and 51 are all of a right to graze; exceptionally No. 40 includes estovers. They were made on the application (39) of Mrs Winifred Meadows (right attached to Whymington Farm, Sampford Spiney), (40) of Mrs Dorothy Elizabeth Furze (right attached to part Dunridge, Horrabridge), and (51) of Mr John Francis Luscombe (right attached to part Brook Farm, Sampford Spiney). The grounds of these relevant Objections Nos. 181 and 953 are in effect that for "to graze" should be substituted "to stray". I have a letter (yellow form) dated 17.10.70. to Clerk of the Council, County Hall, by which Mr C J Mace of Dunridge referring to Objection No. 181 agreed to the registration at Entry No. 40 being amended.

Mr Crocker referred to a discussion as to the propriety of a registration including the word "Stray" at a hearing in which he had been engaged on the previous day (21 June) relating to Register Unit Nos. CL 3 and CL 193, Blackdown and West Blackdown about which I have given a decision of even date under reference Nos. 209/D/310-312 and to a discussion at another hearing earlier on the same day in which reference to registrations similar to those at Entry Nos. 39, 40 and 51 above mentioned had been considered and which he asked me to treat similarly that is to say that I should treat the grounds of objection as having been amended as claiming the rights registered did not exist and that I should then in the absence of any evidence in support of the registrations give such decision about them as is hereinafter contained. The same day discussions related to Register Units Nos. CL 85 and CL 86 being Whitchurch Common and Whitchurch Down about which I have given decisions of even date



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under reference Nos. 209/D/313 and 209/D/314-316. For the reasons given and such decisions of even date I refuse to confirm the registration relating to the Unit Land at Rights Section Entry Nos. 39, 40 and 51; but I give to the persons on whose applications such registrations were made and to their successors in title liberty to apply within 3 months to a Commons Commissioner that this decision as regards all or any of such registrations be set aside and my said due 1982 hearing be reopened for the purpose of establishing that any one or more of such registrations should be confirmed with or without modification; the said 3 months will commence on the day when copies of this decision are sent to persons entitled thereto under the Commons Commissioners Regulations 1971; any such application should in the first instance be in writing (it may be by letter) and sent to the Clerk of the Commons Commissioners in London.

The Rights Section registrations at Entry Nos. 82 and 83 were made on the application of Mr Ivor Phillips. He did not attend the hearing on 22 June 1982 but later informed the office of the Commons Commissioners that he had attended the following day expecting that I would be in Plymouth. According to my recollection I was on the Monday under the impression that the hearing relating to 6 register units then listed for hearing would certainly not finish before Tuesday, would therefore continue on Wednesday being under that impression they have said that any person who was concerned with these register units could if they attended on the Wednesday assume he would be heard before the hearing finished. In these circumstances I adjourned the further consideration that these registrations to a time and day fixed by a Commons Commissioner. Of such adjourned hearing notice will be given to and only to (1) Mr Ivor Phillips at his last known address; (2) to Bellingham & Crocker of Plymouth as solicitors for Whitchurch Commoners Association; (3) to Devon County Council for their information as registration authority; and (4) to such other persons if any as may write to the Clerk of the Commons Commissioners saying that they wish to have notice of such adjourned hearing.

The registrations at Entry Nos. 41 and 81 were both made on the application of Mr George Thomas James Medland and both are of a right attached to Shillaparks, Merrivale of Turbary, to take stones, to cut bracken and rushes and to graze cattle/or ponies, sheep in words which are almost identical. The 2 registrations cannot sensibly exist together. In the absence of any evidence in accordance with the suggestion made by Mr Crocker I refuse to confirm registrations at Rights Section Entry No. 81 and confirm the registration at Rights Section No. 41 without any modification.

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 July — 1982

a. a. Barker Fuller

Commons Commissioner