



COMMONS REGISTRATION ACT 1965

Reference No. 209/D/319

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

SECOND DECISION

This decision is supplemental to my decision dated 11 July 1983 about the disputed Rights Section registrations of Register Unit No. CL56 in the Register of Common Land maintained by Devon County Council. By the said decision I adjourned the consideration of the Rights Section registrations at Entry Nos 82 and 83 made on the application of Mr Ivor Phillips, about which there was a dispute occasioned by Objection No. 952 made by the Whitchurch Commoners Association.

I held a hearing for the purpose of inquiring into the said dispute at Plymouth on 18 January 1984. At the hearing: (1) Mr Ivor Phillips attended in person; and (2) Whitchurch Commoners Association were represented by Mr D M Crocker of Bellingham & Crocker, Solicitors of Plympton.

This CL56 hearing followed after a hearing relating to registrations of rights on Whitchurch Down (Register Unit No. CL86) also made on the application of Mr Phillips, being in all respects (except as to the servient tenement) the same as the said CL56 registration; it was agreed that I should treat all the evidence and arguments given or made at the CL86 hearing as having been given and made at the CL56 hearing; this decision should therefore be read as if my second decision of even date relating to the said CL86 registrations was repeated herein; on some points about which Mr Phillips questioned Captain Madgwick I have treated his answers as relevant to both Register Units; the differences were as next mentioned.

Mr Phillips shortly restated the evidence and arguments relating to "Man of Devon", to "Venville", to rights in gross, and to the decision favourable to him (by agreement or concession) made by the Chief Commons Commissioner in re Hentor Warren (CL190) and myself in re Forest of Dartmoor (CL164), which he had given at the said CL86 hearing and at the CL112 Penn Moor and Stall Moor hearing mentioned in my said decision of even date. Additionally Mr Phillips emphasised that the owner of the Unit Land (at Entry No. 1 Mrs Margaret Alice Kathleen Madgwick is so registered) had made no objection to his registration, and said that although his cattle had been on the Unit Land they had never been turned onto it; they had gone up the road which carries the motor traffic to the Unit Land.

Captain Madgwick said (in effect):- His wife is the owner of the Unit Land. She did not object (formally) because he and she decided to let the Commoners Association handle the whole matter (she now supported their objections); before the Association's Objections were made a subcommittee of the Association examined the claim on the five Whitchurch Commons (Whitchurch Down, West Down, Shorts Down, Whitchurch Common and Plaster Down); although he was on it, he was then new; the subcommittee examined the evidence carefully. The Commoners Association was formed either just before or just after 1900; they had an almost complete (some



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gaps) set of records (2 volumes). From Holwell (his own farm), there is a bridle way to the north northwest corner of the Unit Land.

Captain Madgwick was questioned by Mr Phillips about his evidence above summarised.

On the day after the hearing, I motored from Middlemoor across part of Whitchurch Down, and then along the road by Caseytown to the Unit Land, over which I walked to its southwest corner.

Although by looking only at the Register map, it might be supposed that the Unit Land could easily be grazed from Ash Farm merely by moving cattle in a direct line, the present appearance is against this, there being no obvious track and the possibly convenient gateway having apparently been locked for many years. I reject the possibility of there being a direct way because the only way ^{mentioned by} Mr Phillips → as taken by his cattle was indirect, nearly 2 miles, possibly more. Mr Phillips did not (in my opinion rightly) seek to support his registrations from the use made by him of the Unit Land from his land at Grenofen and I find that what he did was not as of right as this expression is relevantly used.

As regards his other evidence and arguments, there is no relevant difference in his favour between the Unit Land and Whitchurch Down (Cl86); his case as regards the Unit Land is if anything weaker. My decision as regards the Unit Land is therefore the same as that given in my second decision of even date about the CL86 land. Accordingly I REFUSE to CONFIRM the registrations at Entry Nos 82 and 83.

Of even date with this my second decision is the notice of the finality or the avoidance (as the case may be) of all the disputed registrations mentioned in my said 1983 decision (except Nos 82 and 83 herein dealt with) which I am by section 6 of the Commons Registration Act 1965 required to send to the Devon County Council as registration authority and a copy of which I am by regulation 32 of the Commons Commissioners Regulations 1971 required to send to the persons therein specified. To save expense, the said notice (excepting as aforesaid) and this my second decision will be sent out together. If no appeal is brought against this my second decision or when any such appeal has been disposed of, copies of the section 6 notice relating to the registrations at Entry Nos 82 and 83 will be sent to (1) Devon County Council as registration authority, (2) Mr Ivor Phillips; and (3) Whitchurch Commoners Association or their representatives so far as known in the office of the Commons Commissioners; and (4) such persons as may write to the London office of the Commons Commissioners asking for a copy of the said notice to be sent to them.

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 8th ——— day of March ——— 1984

A. A. Baden Fuller

Commons Commissioner