



In the Matter of Part of Stanhope Common
Stanhope in the County of Durham

DECISION

This dispute relates to the registration at Entry Nos 1,2 and 3 in the Rights Section of Register Unit No.CL.109 in the Register of Common Land maintained by the Durham County Council and is occasioned by Objections Nos 70,71 and 72 all made by E A F Fenwick and noted in the Register on 15 September 1972.

I held a hearing for the purpose of inquiring into the dispute at Durham on 11 November 1980. The hearing was attended by Mr C S A Rich of Counsel instructed by Messrs. Hodgson & Angus Solicitors of Stanhope appearing for the applicants and Mr J S Stephenson of Messrs. Ingledew Mark Pybus of Newcastle-upon-Tyne Solicitors appearing for the Objector.

The three applications relate to separate grazing rights alleged to be attached to their different holdings in Stanhope (i) Hillcrest, Crawleyside (ii) Ambling Gate Farm, Rookhope and (iii) Stewart Shield Meadows. In each case the original registration had been modified to exclude an alternative claim to graze horses and cattle in lieu of sheep.

The Register Unit (36 acres) was originally part of Stanhope Common (CL.22) which has an area of over 7,500 acres. The severance occurred in about 1932 when a fence was built by the then owners of Walingham Park Manor Common which adjoins Stanhope Common on the east side. This fence is nearly two miles long. For its whole length (except for about 110 yds) the fence runs from Collier Law Mound almost due south to Bradley Currick from which point it continues in a S W for the last 110 yards. It was common ground that the object of building the fence was to prevent flocks on Stanhope Common straying on to Walingham Park Moor.

When the objector purchased Walingham Park Moor and this Register Unit from the Church Commissioners in 1952 he entered into an arrangement to maintain the fence throughout its whole length.

I should also refer to three other material facts. First the Applicants had at the date of the hearing undisputed rights of grazing over CL.22 and Secondly that they or some of them owned *Intake* Farm which adjoins the Southern boundary of Register Unit No.CL.109. Thirdly there was a gate in the short section of the fence giving access into CL.22.

Mr Arthur Collingwood who is 68 said that he had lived at Stewart Shields Meadows all his life. He owned all three farms in respect of which the applications were made and these farms and *Intake* Farm are now run by him or his two sons. His Grandfather, tenant of Stewart Shields Meadows, the owner being John Hillland, and for as long as he could remember his family had kept sheep on CL.109. He left school at 16 and had worked on that farm ever since. The sheep had always gone from CL.109 to CL.22. After the fence was put up in 1932 this still continued. There was a gate in the fence which was never locked. The gate was usually kept shut but it was never locked and sheep had always moved freely between CL.109 and CL.22. His Grandfather had resented the erection of the fence but had taken no action. The short section of the fence had not been stock proof for the past 30 years. Stewart Shields Farm is surrounded by CL.22 The Sheep Farm *ll* Farm graze on Bollihope Common. They are a different breed from the flocks on the other three farms which are Swaledales. For as long as he could remember there had been 1,0750 sheep at Stewart Shields Meadows which grazed on CL.22 and CL.109.



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He purchased Ambling Gate Farm in 1966 but since then the sheep from that farm had not gone on to CL.109 but only on to CL.22. He had bought Hill Crest Farm in 1939 and the sheep from that farm had always grazed on both CL.22 and CL.109.

In cross-examination he ^{said} mentioned that the purpose of the short section of the fence would be to separate CL.109 from CL.22. He was not aware of rights between the Commoners of Walsingham Park Moor and the Commoners of Stanhope Common before the fence was put up. His sons had occupied ^{Worske} Farm since 1964 Stewart Shields Meadows was four miles distance from ^{Worske} Farm and quite separate from it. His Solicitors had received a letter from the Objector's Solicitors forbidding him putting sheep on CL.109 but he never stopped putting his sheep there.

Mr Frank Collingwood aged 41 a son of the previous witness also gave evidence. Apart from a period of six years when he lived at ^{Worske} Farm he lived at Stewart Sheilds Farm. He had been involved with Stewart Sheild Farm all his life and had worked full time on the farm since he was 16.

There had always been a flock of about 1050 on that farm and it grazed on CL.109 and CL.22. The flock at Ambling Gate Farm was 350 which grazed on CL.22 though some might stray on to CL.109. He had never known the gate in the short section of the fence to be locked. This section of the fence had never been stock proof while he had known it. When he last saw it in October the fence was almost now extinct. He collected sheep regularly from CL.109. They would come from Stewart Shields Meadows or HillCrest. Any that came from Ambling Gate would be strays. An attempt had been made to repair the fence in 1965 but it was not sufficient to make the fence stock proof. Both he and others with rights to graze sheep on CL.22 had had sheep returned from CL.109.

In cross-examination he disagreed with the proposition that he would be willing to take his flock on to CL.109 because it would mean taking it through other flocks. He maintained that the same was done by other shepherds.

Mr T R F Fenwick aged 53 of Bishops Oak Walsingham F.R.I.C.S. gave evidence for the Objector.

He referred to the Conveyance of 1952 the purchaser being his grandfather. He had known the Common all his life and had managed his grandfathers estates since 1953. He produced the estate terrier for 1932 dealing with the erection of the fence. The short section of fence had been put in to save the expense of a further 900 yards of fence along the northeastern edge of CL.109. He agreed that the fence was in need of repair at present. £1,000 was spent on repairs in 1965. He had seen the fence in 1979 and it was not in as poor condition as the two previous witnesses had alleged. He agreed there was a gate in the short section but he had never seen it left open. The fence was certainly effective on its longer section. He did not believe that shepherds went through the fence with their flocks after it had been erected.

In cross-examination he said that the fence was put up as the least expensive way of avoiding disputes between two sets of commoners. The objector owned all the grazing rights on Walsingham Park Moor except for those owned by Pickering, Dowson and Watson. He was not aware of any consent being obtained from a Government Department for the erection of the fence in 1932. He did not believe that practical shepherds would drive their sheep through three other flocks for 36 acres of dry heather



Mr Thomas Henry Pickering who had lived at Newnhams Hall Farm since 1952 also gave evidence.

He had put sheep in Walsingham Park Moor since 1941. He helped to erect the fence to avoid rows. He had seen sheep belonging to the Applicant's on CL.109. These sheep came from *Walsingham* Farm. The fence had stopped a lot of trouble. He had never had any words with the Collingwoods about their sheep being on CL.109.

Mr Ian Anthony Watson of West Newlands Farm said in evidence: He began farming in 1942 when he was 42. The farm was owned by his mother; his uncle also owned a farm. The fence kept ~~the~~ Walsingham sheep from Stanhope sheep. The gate in the short section of the fence is usually closed. He had had no disputes with the Collingwoods. The fence ~~did~~ good work by keeping the sheep in.

In cross-examination he agreed that he had returned sheep to the Collingwoods from CL.109.

Mr Stephenson referred to the Conveyance of 1952 and to the purchasers' covenant to maintain the fence. The fence had been up since 1932 and in the conflict of evidence as to its condition he submitted that the Objector's witnesses were the more credible.

Mr Rich said that without Ministry consent the short section of the fence was unlawful because of L.P.A.1925 S. 194. Whatever the condition of the fence, the gate was never locked.

In view of his clients evidence he had to abandon the claim in respect of Ambling Gate Farm.

If there had been no gate in the short section of the fence I would ^{*still have*} preferred the evidence of the applicants as to the condition of the fence to that of the Objectors' witnesses. The purpose of the fence was to make the long boundary between the two commons stock proof. No one suggested that the gate had been locked at any time so the fence was not of itself a barrier to sheep going onto CL.109 from CL.22. The claim in respect of Ambling Gate Farm has been withdrawn and the number of sheep on Stewart Shields Meadows was 1050 and not 1,250 as originally claimed.

For these reasons I confirm the registrations ^{*at Entry Nos 1 and 3*} with the modification ~~at~~ at Entry No 3 that it is limited to 1,050 ewes. I refuse to confirm the registration at Entry No. 2. *(make no words as to cows)*

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 *2nd* day of *December* 1980

Campy Harker
Commons Commissioner