



COMMONS REGISTRATION ACT 1965

In the Matter of Childers Green,  
Hapton, Burnley Borough, Lancashire

DECISION

This reference relates to the question of the ownership of land known as Childers Green, Hapton, Burnley Borough being the land comprised in the Land Section of Register Unit No. CL141 in the Register of Common Land maintained by the Lancashire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

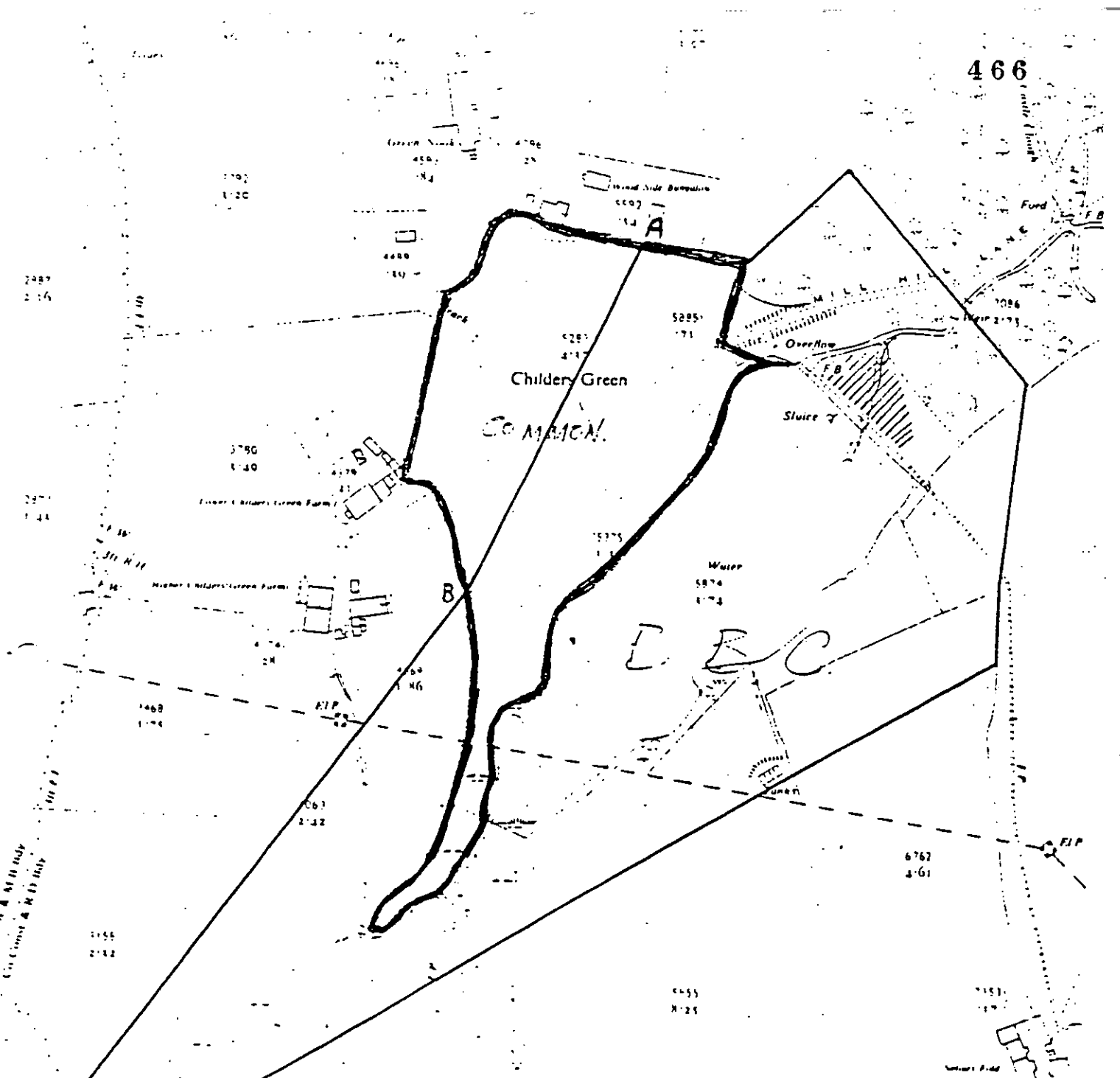
Following upon the public notice of this reference Burnley Borough Council claimed (letter from their Chief Executive Officer dated 4 April 1986) they owned part (a little more than half on the east) of the land. No other person claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Burnley on 8 April 1986. At the hearing (1) Burnley Borough Council were represented by Mr D McCauley solicitor with their Chief Executive's Department; (2) North West Water Authority were represented by Mr L S Ingham solicitor of Ingham & Bridge, Solicitors of Burnley as agents for Mr W H Crackle the Secretary and Solicitor of the Authority; (3) Mr Richard Clifford Corless of Higher Childers Green Farm who with Mr Fred Birtwistle applied for the registration at Rights Section Entry No. 1 attended in person; and (4) Mr Colin Pickup of Lower Childers Green Farm as successor of the said Mr Birtwistle also attended in person.

The land ("the Unit Land") in this Register Unit is crossed from northeast to southwest by Mill Hill Lane; this Lane after crossing Castle Clough (here the stream flows northwards through attractive wooded land) runs steeply up to the east side of the Unit Land. There is a car park on the Unit Land on the south side of the Lane, having an agreeable view over what was Mill Hill Reservoir. In the immediate neighbourhood there are only a few dwellinghouses (apparently farms) but within a short distance there are a number of residential areas. The Unit Land when I saw it seemed attractive to look at and walk over and a valuable amenity for those living in any of these residential areas.

Mr McCauley in the course of his oral evidence produced the documents specified in Part I of the Schedule hereto and said (in effect):- His Council claim the part of the Unit Land east of the thick black line shown on the plan BBC/1. The consideration for the 1974 Conveyance (BBC/2) was nominal because the Castle Clough Reservoir (to the north of the Unit Land) was derelict and the embankment of the Mill Hill Reservoir (adjoining the east side of the Unit Land) was dangerous; under the conveyance the Council took other land as well as the part included in the Unit Land. The Mill Hill Reservoir is now drained.

Page 2 of this decision ("the Decision Plan") is an uncoloured copy of the Plan BBC/1 with the addition by me of the letters A and B ~~marking~~ marking the relevant part of the thin black line, and a thickening in black of the green edging showing the boundary of the Unit Land.



COMMONS REGISTRATION ACT 1965  
 Re Childers Green, Hapton, Burnley  
 Borough, Lancashire  
 Register Unit No:- CL141  
 Ref:- 220/U/27

4321 y

This is the Decision Plan referred  
 to in and being page 2 of the  
 decision dated 3 July 1986  
 and made by the Commons Commissioner  
 in this Matter.

*a c Baden Fuller*

Commons Commissioner

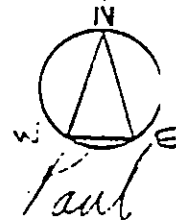
A.J. Walker BA, ARICS, MRTPI.  
 Planning and Estates Officer.  
 Elizabeth Street, Burnley, BB11 2ER.

Scale 1:2500 0 | 50 | 100 metres

12.5.83.

*Rec'd*

Drwn. by  
 Ref no





Oral evidence was also given by Mr Ingham in the course of which he produced the documents specified in Part II of the Schedule hereto, and said (in effect):-  
The original of the 1925 Conveyance (copy, NWWA/1) would not be located; he remembered producing the original on 23 July 1973 in proceedings in Burnley County Court (His Honour Judge A M Prest) and it was accepted by the Court as evidence enough of the NWWA's ownership of two fields (not included in the Unit Land) comprised in it; he believed the copy he produced to be a true copy except that it has no plan attached; he found the copy in an old file; it includes a recital:-

"... under and by virtue of the Public Health Act 1875 the Council are authorised to provide their district or any contributory place therein ... with a supply of water proper and sufficient for public and private purposes ..."

The First Schedule to the conveyance included:-

No. on plan annexed to these presents	Parish	Description	State	Area Acres
Pt. 265	Hapton	Castle Clough	Woodland	10.885
...	...	...	...	...
" 224	-do-	Childers Green	Common	1.898
" 223	-do-	-do-	-do-	.333
" 236	-do-	-do-	-do-	.073
" 236	-do-	-do-	Roadway	.180

(as to this item only such rights as the Vendor has in it are conveyed)

...

The Plan enclosed with the 1982 letter (NWWA/2) showed what the Area Estate's Officer thought was the part of Childers Green Common owned by the Authority. The sale plan (NWWA/4) showed the part of the Unit Land now claimed by the Borough Council as part of lot 55 coloured and the part now claimed by the Authority is uncoloured as not part of any lot. The Authority only had notice of the hearing on the day before it was held.

Mr McCauley produced from the documents held by his Council one of the originals of the sale plan (NWWA/4), thereby verifying the extract produced by Mr Ingham.

Mr R C Corless gave oral evidence in the course of which he said (in effect):-  
The land he now owned is part of Lot 12 on the sale plan (NWWA/4); he bought it in 1951. Then Lot 15 which comprises not only Mill Hill Reservoir and the part of the Unit Land and other land nearby, but also Castle Clough Reservoir and land nearby and the Works further to the north, was a dye works for which very pure water was needed.



Mr C Pickup said that he is now the owner of another part of Lot 12 being OS Nos 229, 227 and 190 marked on the sale plan (AWWA/4).

On the day after the hearing, I motored along Mill Hill Lane and parked my car in the car park on the Unit Land and walked over some of it.

The fee simple title of the Council to the part of the Unit Land east of the line AB on the Decision Plan is regularly deduced; the part appears to be in public ownership; I am accordingly satisfied that the Council is the owner of it. As to the claim of the Authority to the part of the Unit Land west of the line AB, I have the above summarised evidence about the form and contents of the June 1925 conveyance (NWWA/1); the acreages above quoted from it are the same as appear on the plan attached to the June 1921 conveyance (BCC/4); notwithstanding that the original was not produced, I accept the evidence of Mr Ingham that its form was in accordance with the copy he produced and that by it said part was expressed to be conveyed. The earlier title (like that of the Council) commenced with the ownership of the Earl of Abingdon and fits in exactly with the title independently produced by the Council; I am therefore satisfied that the Authority are the owners of this part. I shall accordingly pursuant to section 8(2) of the 1985 Act direct Lancashire County Council as registration authority to register (1) Burnley Borough Council and (2) North West Water Authority as the owners of the parts of the Unit Land (1) east of and (2) west of respectively the line AB on the Decision Plan.

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.

SCHEDULE  
(Documents produced)

Part I: on behalf of Burnley Borough Council

BBC/1	--	Map scale 1/2500 showing the Unit Land edged green and the BBC land edged by a thin black line (the latter including a little more than the east half of the former.
BBC/2	22 May 1974	Conveyance by Leader Donoghue Holdings Limited to the Council of the Borough of Burnley in consideration of £1 of two pieces of land delineated on the plan annexed together with Castle Clough Reservoir and Mill Hill Reservoir erected and being thereon.
BBC/3	8 November.1963	Conveyance by Penny Brothers and Winder Limited to P J Donoghue Esq and Leader Donoghue Holdings Limited of the same land as was subsequently conveyed by the 1974 Conveyance (BBC/2).



- 5 -

BBC/4

29 June 1921

Conveyance by the Rt Hon Montague Arthur Earl of Abingdon with the concurrence of Trustees and Mortgagees therein named to The Premier Bleaching Company Limited of pieces of land containing 26a.1r.22p. with the Castle Clough Bleach Works, the Water Lodge, the Reservoirs known as Castle Clough and Mill Hill and the cottages and other buildings erected thereon as delineated on the plan annexed.

Part II: on behalf of the North West Water Authority

NWWA/1

10 June 1925

Copy conveyance by which Rt Hon Montague Earl of Abingdon with the concurrence of Trustees conveyed to the Rural District Council of Burnley 568a.3r.15p. of land as described in the First Schedule thereto.

NWWA/2

9 December 1982

Letter from the Area Estates Officer of the Ribble Division of North West Water to Gilchrist Warburton & Company of Blackburn enclosing a plan showing edged red the area owned by the Authority at Childers Green Common, Mill Hill Lane, Hapton.

NWWA/3

--

Plan enclosed with said letter (AWWA/2).

NWWA/4

--

Extract from "Key Plan No. 2 of G E Gregson & Son on scale 6" = 1 mile, including in lots part of the Unit Land and lands near to it.

Dated this 8<sup>th</sup> —

day of July —

1986

*A. A. Baden Fuller*

Commons Commissioner