



COMMONS REGISTRATION ACT 1965

Reference Nos. 220/D/34
220/D/35

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

DECISION

These disputes relate to the registrations at Entry No. 1 in the Land Section and at Entry No. 1 in the Rights Section of Register Unit No. CL.141 in the Register of Common Land maintained by the Lancashire County Council and are occasioned by Objections Nos. 440 and 445 made by The Calder Water Board and noted in the Register on 31 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Preston on 10 May 1978. At the hearing Northwest Water Authority as successors of The Calder Water Authority were represented by Mr G A Hartley their solicitor. I was informed that Mr Fred Birtwistle who was one of the applicants for the Right Section registration, was in London and could not therefore attend the hearing; so with the agreement of Mr Hartley, I adjourned the proceedings.

I held the adjourned hearing at Preston on 12 December 1979. At this hearing Northwest Water Authority were represented by Mr Hartley as before, and Mr Richard Clifford Corless who was the only other applicant for the Rights Section registration, attended in person. Present also was Mr Colin Pickup of Lower Childers Green Farm, Hapton, who claimed as successor in title of Mr Birtwistle.

The land ("the Unit Land") in this Register Unit is irregularly shaped being approximately a triangle with sides of (as I scale the Register map) about 250, 150 and 150 yards. The Rights Section registration is of a right held in gross to graze 60 sheep or 20 head of cattle. The Land Section registration was made in consequence of the application for the Rights Section registration. The grounds of the Objections are in effect, that the Unit Land to the extent of the part coloured red on a plan (about half the Unit Land, being the west part) was not common land and the right does not exist over such part.

Mr Hartley said that the Water Authority as successor of the Water Board wished to withdraw both objections. However he suggested that the registered right should be split into two and expressed to be attached one part to Lower Childers Green Farm and the other part to Higher Childers Green Farm, this being (so he understood from Mr Pickup and Mr Corless) the original intention of Mr Birtwistle and Mr Corless and what would be now agreeable to both of them.

Mr Pickup said that he had within the last few months bought Lower Childers Green Farm from Mr Birtwistle who acquired it under a conveyance dated about 1942 (he never owned Higher Childers Green Farm as might be inferred from the Register). Mr Corless said that Lower Childers Green Farm is only about 5 feet lower than Higher Childers Green Farm (so there might be confusion), the former being about 7.88 acres and the latter about 9.5 acres; he had acquired Higher Childers Green Farm under a conveyance dated about 1950. They were agreeable to the right being split as suggested by Mr Hartley.



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Since the hearing I have received from Gilchrist Warburton & Co, Solicitors of Blackburn under cover of their letter of 7 March 1980, (1) a copy of a conveyance dated 19 March 1942 by which Mr Peter Dixon conveyed to Mr Fred and Mrs Margaret Birtwistle the farmhouse part of Childers Green Farm, Hapton and several closes of land occupied therewith containing about 7 acres 1 rood 22 perches (7.3888 acres) for the purposes of identification delineated on a map drawn on a conveyance dated 16 June 1922 and made between F Greenwood and C and L A Morley and thereon surrounded by a red verge line; (2) a copy certified by Gilchrist Warburton & Co of the said 1922 map; (3) a copy of a conveyance dated 6 September 1951 by which Mr Joseph Henry Robinson and Mrs Mary Alice Robinson conveyed to Mr Richard Clifford Corless and Mrs Kathleen Corless the farmhouse part of Childers Green Farm with the several closes of land occupied therewith containing about 6 acres 31 perches for the purposes of identification delineated on the map drawn on a conveyance dated 27 April 1923 and made between The Padiham and District Permanent Benefit Building Society, F Greenwood and G S Gudgeon; and (4) a copy certified by Gilchrist Warburton & Co of the said 1923 map. An uncoloured copy of the said 1922 map mentioned in the 1942 conveyance of Lower Childers Green Farm is included in this decision at page 3, the red verge line appearing on such copy as a thick black line. An uncoloured copy of the said 1923 map mentioned in the 1951 conveyance of Higher Childers Green Farm is included in this decision at page 4, the red verge line appearing on the said copy as a thick black line, such thick black line to be taken as enclosing all the land on such copy shaded black and situated south of the close thereon marked "227 pt: CHILDERS GREEN".

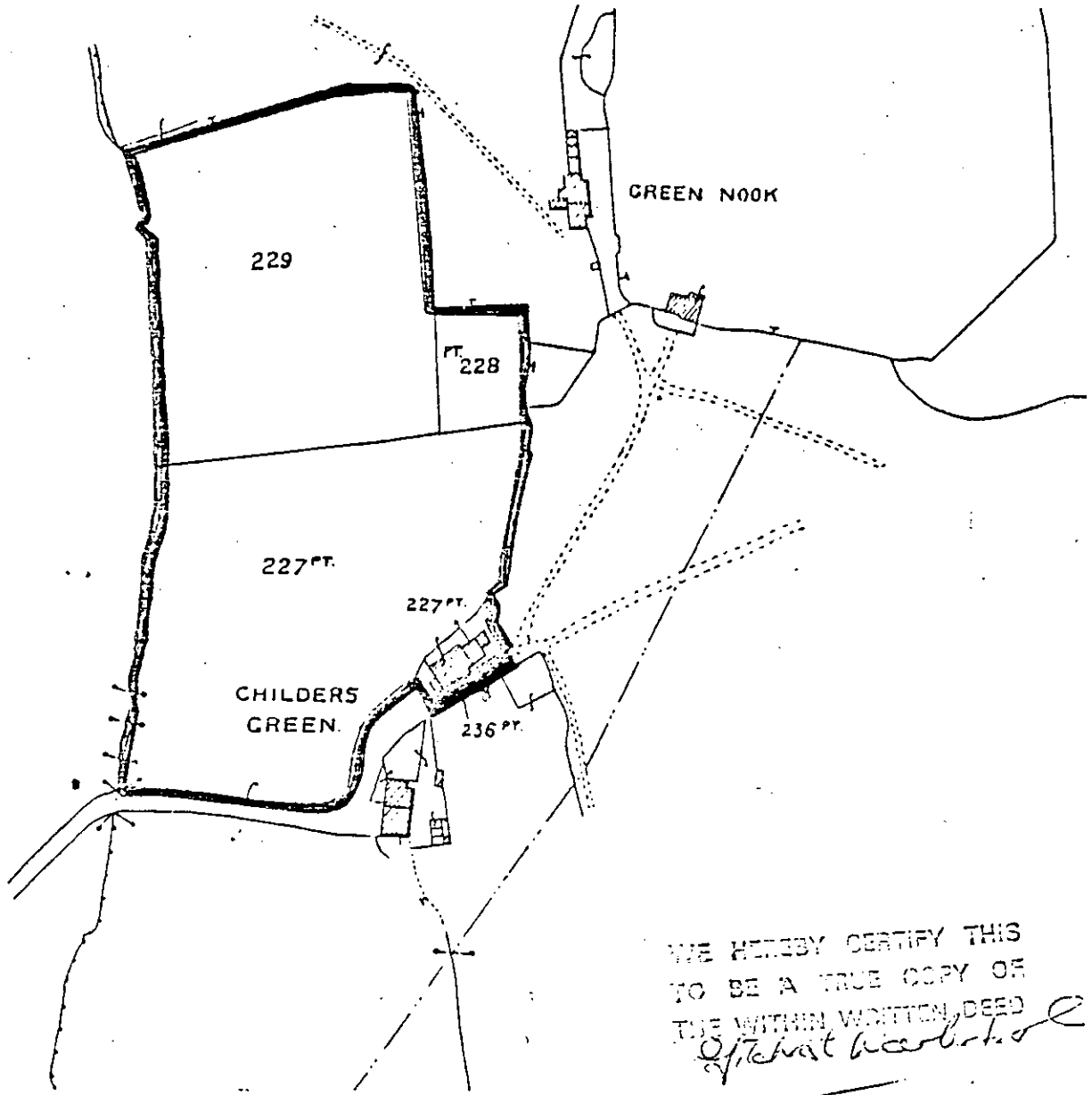
Gilchrist Warburton & Co in their said 1980 letter confirmed that Mr and Mrs C Pickup are the successors in title to Lower Childers Green Farm having purchased the same from Mr Fred Birtwistle in December 1979 and said that Mrs Birtwistle is now deceased and that although the contracts had been exchanged, the conveyance had not been finalised.

I consider I ought to give effect to the agreement made at the hearing between Mr Pickup and Mr Corless, it being apparent that the joint registration actually made cannot have been in accordance with the intention of the applicants; but I shall in this decision prefer the acreages given to the above quoted conveyances to those given at the hearing.

Accordingly I confirm the registration in the Land Section without any modification, and I confirm the registration in the Rights Section with the modification that for all the words in column 4 there be substituted "(1) a right (attached to the land first described in column 5) to graze 30 sheep or 10 head of cattle over the whole of the land comprised in this register unit; and (2) a right (attached to the land secondly described in column 5) to graze 30 sheep or 10 head of cattle over the whole of the land comprised in this register unit", and that for the words "the right held in gross" in column 5 there be substituted descriptions of (1) Lower Childers Green Farm containing about 7 acres 1 rood and 22 perches as delineated on the copy map being page 3 of this decision and (2) Higher Childers Green Farm containing about 6 acres 31 perches as delineated on the copy map being page 4 of this decision, such descriptions to be in such words and by reference to such supplemental or other map if any as Lancashire County Council as registration authority shall consider convenient.

Turn to page 5 →

PLAN REFERRED TO.



WE HEREBY CERTIFY THIS
 TO BE A TRUE COPY OF
 THE WITHIN WRITTEN DEED
of that heretofore

COMMONS REGISTRATION ACT 1965

Re: Childers Green, Hapton, Burnley Borough
 Lancashire

Ref: Nos 220/D/34-35

This is page 3 of the decision dated 21 April
 1930 and made by the Commons Commissioners in
 this Matter being an uncoloured copy of the
 1922 map mentioned in the 1942 conveyance of
 Lower Childers Green Farm, the red verge line
 appearing on such copy as a thick black line

FEET TO 1 INCH.

a. a. Buxton Fuller

Commons Commissioner

Re: Childers Green, Hapton, Burnley Borough
Lancashire

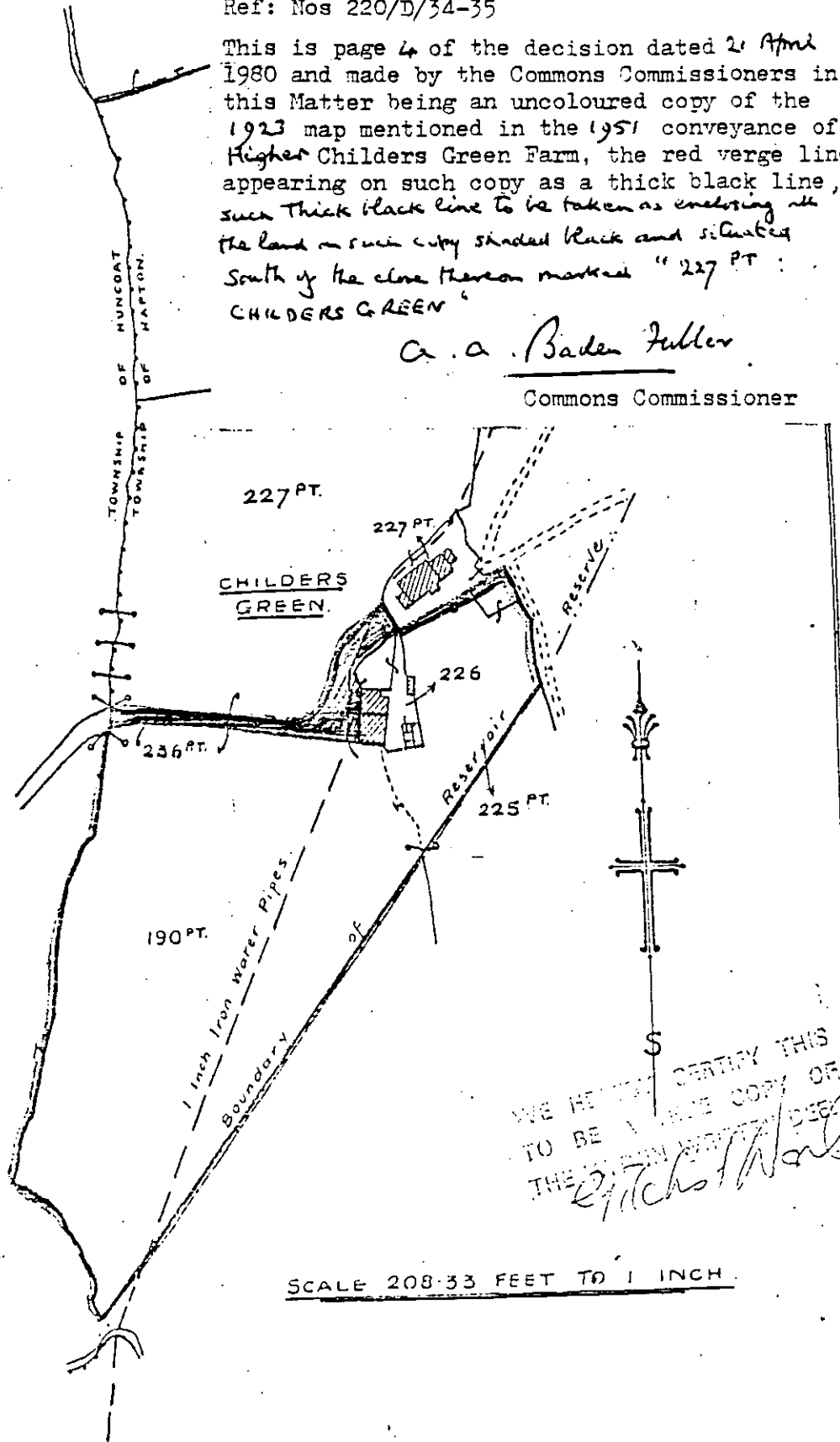
Ref: Nos 220/D/34-35

This is page 4 of the decision dated 21 April 1980 and made by the Commons Commissioners in this Matter being an uncoloured copy of the 1923 map mentioned in the 1951 conveyance of Higher Childers Green Farm, the red verge line appearing on such copy as a thick black line, such thick black line to be taken as enclosing all the land on such copy shaded black and situated South of the close thereon marked "227 PT : CHILDERS GREEN"

C. A. Baden Fuller

Commons Commissioner

PLAN REFERRED TO.



WE HEREBY CERTIFY THIS
TO BE A TRUE COPY OF
THE ORIGINAL DEED
Editha W...

SCALE 208.33 FEET TO 1 INCH.



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I am required by regulation 30(1) of the Commons Commissioners Regulations 1977 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 21st -

day of April —

1980.

a. a. Baden Fuller

Commons Commissioner