



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/344

In the Matter of Aislaby Moor and Gally Hill, Aislaby

DECISION

This reference relates to the question of the ownership of land known as Aislaby Moor and Gally Hill, Aislaby being the land comprised in the Land Section of Register Unit No. CL.51 in the Register of Common Land maintained by the North Yorkshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

CLAIMANTS

Following upon the public notice of this reference claims or contingent claims to be the freehold owners of parts of the land in question were received from the following:-

- (1) Seaton Gray, Bell & Bagshawe, Solicitors of Whitby on behalf of the personal representatives of Joseph Richard Hunter
- (2) J A Milner & Son, Solicitors of Leeds on behalf of Mr David Carrack and Mrs Dorothy Carrack of Hill View High Cragwell
- (3) George Cass Rylands & Co, Solicitors of Whitby on behalf of Mr J H Hogarth of Inglegarth High Cragwell
- (4) Mr R M Haram of Moor End, Aislaby
- (5) Mr John Smith of Richardson and Smith, Estate Agents of Whitby on behalf of the Crooks Estate
- (6) Greaves Atter & Beaumont, Solicitors of Wakefield on behalf of Kelmarsh Properties Limited - ("Kelmarsh")
- (7) Aislaby Parish Council.

HEARING AND SITE VISIT

I held a hearing for the purpose of inquiring into the ownership of the land at Scarborough on 4th July 1989, and I made an inspection of the land on the following day.

ATTENDANCE AT HEARING

The hearing was attended by Mr F Hall (Chairman of Aislaby Freeholders and Vice-Chairman of Aislaby Parish Council) Mrs N Castle of Greaves Atter & Beaumont, Solicitors of Wakefield and Mr John Smith of Richardson & Smith, Surveyors of Whitby (representing Kelmarsh), Mr D Nixon of Nixons, Solicitors of Redcar (representing Mr and Mrs R M Haram), Mr R M Haram in person, Mrs Mary Hogarth (on behalf of Mr J H Hogarth) and Mr Nellis (Rights Entry No. 26).

ATTENDANCE AT SITE VISIT

On the site visit, in addition to most of the persons who attended the hearing, I also saw various other persons including Mr and Mrs Gerald Robinson, Miss Burnett, Mrs N Lindsay and Mr D J Richardson.



### RIGHTS ENTRIES

The land was registered as common land in consequence of a rights application. There are 30 entries in the Rights Section which have become final. Of these 29 are in respect of turbary, estovers and the collection of stone, and the remaining one is a right of pannage for 6 pigs.

### FINAL REGISTRATION

These registrations and the registration in the Land Section of the Register became final after a hearing before a Commons Commissioner on 21st October 1986. In his Decision dated 4th February 1987 Mr Commissioner Baden Fuller confirmed the registration at Entry No. 1 in the Land Section with the modification that there be excluded from it Mr Haram's house, Moor End, about two acres of the land enjoyed with it and the drive leading to it. He identified the land so excluded with thick black lines on the plan which he annexed to his Decision. To avoid the necessity for cross-references I annex to this Decision a copy of that plan marked "A".

### REGISTER MAP

Considerable difficulty has been occasioned by the fact that the Register Map showing the extent of this Register Unit is on such a small scale. It was not possible from the certified copy of the Register Map before me to ascertain with certainty the extent to which the property of some of the claimants fell within or outside the Register Unit. My task was not made easier by the absence from the hearing of any representative of the Registration Authority to produce the original Register Map and the applications for registration from which it was drawn up and otherwise to assist with the problems of identification which arose. The Registration Authority did however, at the request of the Commons Commissioners, shortly before the hearing provide me with a large scale Ordnance Survey Map (1:2500) showing, as accurately as they were able, the area of the Register Unit bounded by thick green lines. As will appear later in this Decision the accuracy of this Map (which I shall refer to as the Large Scale Map) is crucial when it comes to determining whether several dwellinghouses do or do not fall within the Register Unit.

### ELIMINATION OF SOME AREAS CLAIMED

Prior to the hearing with the assistance of the Registration Authority I was satisfied that:-

- (i) The property known as Hill View, claimed by Mr & Mrs Carrack, was outside the Register Unit; and their Solicitors, J H Milner & Son, were informed accordingly.
- (ii) The field on Gally Hill claimed by the personal representatives of Joseph Richard Hunter was outside the Register Unit; and their Solicitors Seaton Gray, Bell & Bagshawe were notified accordingly
- (iii) Of the Garths numbered 7, 8, 10, 14, 15, 16 and 17 claimed by the Parish Council, only Nos 10 and 16 are inside the Register Unit.



### ADDITIONAL GARTH CLAIMED

At the hearing Mr Hall representing the Parish Council claimed ownership Garth No. 11 in addition to the other Garths previously claimed.

### IDENTIFICATION OF GARTHS

I annex to this Decision marked "B" a plan showing Garths No. 10, 11 and 16 (Garth 11 having been identified by Mr Hall on my Site Visit).

### EVIDENCE AT HEARING

Oral evidence was given at the hearing by Mrs Hogarth, Mr Haram and Mr Hall.

### DWELLINGHOUSES WITHIN REGISTER UNIT

From the evidence given at the hearing it transpired that not only did Mr Hogarth's dwellinghouse "Inglegarth" appear to be within the Register Unit but there were three other householders whose houses also appeared to be within it, but who were not present or represented. These were Mr & Mrs Gerald Robinson of "Moorcot", Mrs Lindsay of "Keepers Cottage" and Miss Burnett of "Cragwell Cottage". I visited each of these persons during my Site Visit.

### OTHER AREAS NOT CLAIMED AT THE HEARING

Two parcels of land at the western end of the Register Unit were unclaimed at the hearing. These were the field at the extreme north-west corner (which falls outside the land claimed by Kelmarsh as hereinafter appears) and the reservoir and surrounding area of about a quarter of an acre (also not included in the title of Kelmarsh). At the hearing Mr Hall said that he believed the field belonged to the Richardson family and that he would make inquiries of them overnight. As a result I met Mr Richardson when I inspected the land on the following day. As to the reservoir this is marked on one of the plans to the Kelmarsh title deeds "Whitby Rural District Council Water Works". Mr Hall said that he thought it was (at the date of the hearing) vested in Yorkshire Water Authority. There is a further Reservoir shown on the large scale map to the north-west of Moor End. I shall deal with this when considering Mr Haram's title.

### MANORIAL HISTORY

In his Decision of 4th February 1987 Mr Commissioner Baden Fuller summarised the oral evidence given before him by Mr Haram to the effect that from what he had seen in the County Archives and had there been told Mr F H Pyman became entitled in 1911 to the Manor of Aislaby including the wastes and so had obtained about 200 acres of moorland with no property to move into, and so consequently the house Moor End was built and part of the wastes (marked with the words "edged red" on plan A annexed hereto) to be held with it was enclosed.



### MR HARAM'S CLAIM

Mr Haram claims to be the freehold owner of all the land shown within the black edging on a plan which he submitted to the Commons Commissioners prior to the hearing. A copy of this plan is annexed to this Decision marked "C". The plan includes within the black edging the land which was removed from the registration following the Decision of 4th February 1987. On this inquiry I am concerned only with the part of the land shown on such plan which remains in the Register Unit. It is however uncertain from a perusal of that plan whether or not the land claimed by Mr Haram includes the area marked "Reservoir (covered)" fronting onto Moor Lane. This is the reservoir north-west of Moor End which I have referred to two paragraphs above. It is also to be noted that Mr Haram's claim includes the land described as Garth No. 10 of which ownership is also claimed by the Parish Council.

### DEEDS PROVIDED AT 1986 HEARING

In his Decision of 4th February 1987 Mr Commissioner Baden Fuller listed in the Schedule thereto the documents produced to him by Mr Haram at the 1986 hearing. These were:-

1. 15th December 1915      Conveyance by F H Pyman to F C Pyman
2. Schedule of Deeds
3. Statutory Declaration by P W Redway
4. 15th May 1923          Conveyance by F C Pyman to J K Foster
5. 3rd November 1958      Conveyance by E S Crook to P W and J K Redway
6. 30th December 1976    Conveyance by P W and J K Redway to N and P Dalby
7. 4th June 1986          Conveyance by P Dalby to R M and V Haram
8. Letter dated 13th February 1986.

Perusing the files of the 1986 hearing I found photocopies of items 1, 2, 3, 5 and 8, but no copies of the Conveyances of 1923, 1976 or 1986.

### Mr. HARAM'S TITLE

Prior to the hearing before me Nixons (on behalf of Mr & Mrs Haram) submitted that as their clients had produced their deeds at the 1986 hearing it was unnecessary for them to go through the same procedure again. This was misconceived, as the question which Mr Baden Fuller had to determine was not whether Mr and Mrs Haram had a good title to the land claimed by them, but whether any part of that land should be excluded from the registration. In any event the documents listed above do not make a complete title to the land now claimed by the Harams.

At the hearing before me Mr Haram produced the original of the Conveyance dated 4th June 1986. By this Patricia Dalby conveyed to Mr & Mrs Haram all the land at Aislaby shown edged red on the plan to a Conveyance dated 16th December 1982 made between (1) Evelyn Sylvia Crook and (2) Patricia Dalby with the exception of the land coloured round with red on the plan annexed to the Conveyance of 4th June 1986. It may be noticed that the 1982 Conveyance was not among the documents listed as having been produced to Mr Commissioner Baden Fuller. A copy of it is however before me, and the land shown edged red on the plan annexed to it coincides with that claimed by Mr Haram and shown on plan C annexed hereto. This clarifies two matters mentioned above. It is clear from



the plan to the 1982 Conveyance that the Haram's title does not include the land marked "Reservoir (covered)" fronting onto Moor Lane. It is also clear from that plan that the Haram's title does include the land described as Garth No. 10 (shown on plan B annexed hereto) in respect of which there is a conflicting claim by the Parish Council.

These Conveyances however give rise to a further difficulty. The Conveyance of 4th June 1986 expressly excludes the piece of land shown edged red on the plan thereto. This is a narrow strip around the building which lies between Cragwell Cottage and Moor End Cottage (otherwise Keepers Cottage or Watts Cottage). The photocopy plan annexed to the copy of the Conveyance of 4th June 1986 before me is so bad as scarcely to be meaningful. Nevertheless I annex a copy of that plan to this Decision marked "D". As to the 1982 Conveyance, this bears an indorsement that by a Conveyance dated 29th January 1986 between (1) Patricia Dalby and (2) Joseph Hedda Hogarth certain property was conveyed to Mr Hogarth. This property is not identified in any way, but I assume that it coincides with (or includes) that excepted from the Conveyance of 4th June 1986 (and shown on plan D). Although the Hogarths produced various documents to me (as appears later) the Conveyance of 29th January 1986 was not among them.

The Conveyance of 1982 is not a sufficient root of title to the part of the unit land claimed by Mr and Mrs Haram. The Vendor under that Conveyance was Evelyn Sylvia Crook, and none of the earlier documents listed above as having been produced to Mr Commissioner Baden Fuller show title in Mrs Crook. The missing link is however to be found among the documents of which certified copies were submitted to the Commons Commissioners prior to the hearing before me by Greaves Atter and Beaumont acting for Kelmars. These included a Conveyance dated 4th September 1953 between (1) Dame Mary P W Tritton (2) Sir Geoffrey E Tritton, Dame Joan M Grasett and Sir John S Forbes and (3) Evelyn Sylvia Crook. This Conveyance comprised the land coloured blue on the plan thereto (being Moor End), the Manor or Lordship of Aislaby, the cottage and the parcels of land and garths formerly in the occupation of Thomas Watts shown coloured green on the plan thereto and the moorlands and common lands of Aislaby coloured pink on that plan. There are a series of memoranda indorsed thereon of Conveyances off of parts of the land, which I shall refer to when I come to deal with the title of Kelmars to the moorlands.

On this evidence I am satisfied that Mr & Mrs Haram are the owners of those parts of the register unit claimed by them and included in the land shown edged black on plan C but excluding:-

- (a) the area marked Reservoir (covered) on that plan.
- (b) the piece of land shown on plan D.
- (c) the land marked with the work "blue" on plan A (as to which see below)
- (d) Garth 10 shown on plan B (which is also claimed by the Parish Council).

#### Mr HOGARTH'S TITLE

Mrs Hogarth produced at the hearing before me the original of a Conveyance dated 31st December 1943 between (1) the personal representatives of F H Pyman and (2) G A Corney of 14.975 acres of land at Aislaby (of which George Cass Rylands and Co had supplied me with a copy prior to the hearing). The only part of this land which appears to me to be within the Register Unit was the southern part of the parcel of land therein described as O S No. 161(d). Mr Hogarth acquired all



the land comprised in the 1943 Conveyance by a Conveyance dated 1st November 1963 made by Frederick Readman (of which I was also supplied with a copy prior to the hearing). It appears from memoranda indorsed on that Conveyance that between 1964 and 1969 Mr Hogarth sold various parcels of land. The southern part of O S No. 161(d) including the dwellinghouse thereon known as Cragwell Cottage was (as I understand it) conveyed by Mr Hogarth to Miss Mary Burnett by a Conveyance dated 3rd July 1964. I will deal with Miss Burnett's title later. So far as Mr Hogarth is concerned however by this Conveyance he disposed of the only part of the land which he had acquired by the Conveyance of 1st November 1963 and which fell within the Register Unit.

#### INGLEGARTH

The Conveyances dated 31st December 1943 and 1st November 1963 did not appear to me to include Mr & Mrs Hogarth's residence known as Inglegarth. Mrs Hogarth was astonished to learn during the hearing that the building which she identified as Inglegarth on the Large Scale Map appeared from that Map to be within the area which is finally registered as common land. It was at this stage of the hearing that she and other witnesses gave evidence that several other dwellinghouses also appeared from the Large Scale Map to be within the Register Unit.

#### MISS MARY BURNETT: CRAGWELL COTTAGE

Miss Burnett did not attend the hearing, but I visited her at Cragwell Cottage on the following day. If the Large Scale Map is accurate, there is no doubt that Cragwell Cottage is within the area finally registered as common land. This came as a surprise to Miss Burnett, but she was not unduly concerned. She told me that although she has lifetime security of tenure, the freehold title to the property is vested in Allied Dunbar Providential PLC. I understood her to say that she would inform this Company that the Commons Commissioners were holding an inquiry into the ownership of the land, but no claim has been received by the Commons Commissioners from Allied Dunbar since the date of the hearing.

As mentioned above, it appears from a memorandum indorsed on the Conveyance dated 1st November 1963 which forms part of Mr Hogarth's title the southern half of O S No. 161(d) with the dwellinghouse known as Cragwell Cottage was conveyed to Miss Burnett by a Conveyance dated 3rd July 1964. I have not seen this Conveyance, so that to complete the title to Cragwell Cottage I should require the production of this Conveyance and the subsequent deed by which she transferred legal ownership to Allied Dunbar or its nominee.

#### MRS NORMA LINDSAY: KEEPERS COTTAGE

Mrs Lindsay did not attend the hearing, but I visited her at Keepers Cottage the following day. This property has at different times been called either Watts Cottage or Moor End Cottage, and appears on various plans by one of those names. Once again, assuming that the Large Scale Map is accurate, there is no doubt that this property is within the area finally registered as common land. This came as a surprise to Mrs Lindsay.



Forewarned of my visit, Mrs Lindsay produced for my inspection the originals of two Conveyances, one in her favour dated 16th January 1970 and the other dated 23rd September 1977. It is apparent that the first of these is misdated, as it refers in the body of the deed to Keepers Cottage being delineated on the plan to a Conveyance dated 29th June 1973. Mrs Lindsay told me that she acquired the property, not in 1970, but in 1979.

Mrs Lindsay also produced to me (and loaned to me for the purposes of this Decision) an Epitome of Title to Keepers Cottage dated 1978 containing photocopies of the following deeds:-

- 4th September 1953 Conveyance (1) Dame M P W Tritton  
 (2) Sir G E Tritton and Dame J M Grasett  
 (3) E S Crooks
- 29th June 1973 Conveyance (1) E S Crooks  
 (2) W T Fletcher, E Fletcher and S M Sutters
- 9th August 1974 Deed of Gift (1) S M Sutters  
 (2) W T Fletcher and E Fletcher
- 23rd September 1977 Conveyance (1) E S Crooks  
 (2) W T Fletcher and E Fletcher

On this evidence I am satisfied that Mrs Lindsay is the owner of the land which I have edged with red and marked Keepers Cottage on plan E annexed hereto.

MR & MRS G ROBINSON: MOORCOT

Mr & Mrs Robinson did not attend the hearing, but I visited them at Moorcot (otherwise called High Cragwell) on the following day. They were concerned to hear that the question arose whether their house was situate on land which has been finally registered as common land. Mr Robinson told me that the house was built in 1969, and they bought it in 1970. This is a very marginal case. From my own inspection of the site I deduced that whilst the garage and porch of the building marked High Cragwell on the Large Scale Map lie outside the thick green line on the Map the house itself lies under the thick green line, and is therefore within the Register Unit. This deduction depends entirely on the accuracy of the Large Scale Map in delineating the Register Unit.

Mr Robinson said that he would ask his Solicitor, Mr James A Smith, to deal with the matter. In due course correspondence ensued between Mr Smith and the Clerk to the Commons Commissioners.

Mr Smith has submitted to the Commons Commissioners copies of the following documents:-

- Conveyance dated 29th July 1970 between (1) W B Taylor and (2) Gerald Robinson and Greta Robinson.
- Conveyance dated 10th July 1967 between (1) J H Hogarth (2) Barclays Bank Limited and (3) W B Taylor.
- Abstract of Title dated 1964.



The 1970 Conveyance to the Robinsons was of the piece of land delineated on the plan to the 1967 Conveyance together with the dwellinghouse known as Moorcot erected on part thereof. The plan on the 1967 Conveyance shows the northern part of O S No. 161(d) which I have mentioned when dealing with Mr Hogarth's title. The title shown on the 1964 Abstract is Mr Hogarth's title.

On this evidence I am satisfied that Mr & Mrs Robinson are the owners of what was formerly the northern part of O S No. 161(d) with the dwellinghouse Moorcot or High Cragwell erected on part of it. Mr Smith however queries whether the property marked on the Large Scale Map as High Cragwell correctly represents the building as it stands on the land.

### JURISDICTION

The function of a Commons Commissioner in conducting an inquiry under section 8 of the 1965 Act into the ownership of land which has been finally registered as common land is to determine the ownership of every part of the land falling within the Register Unit. Once land has been finally registered I doubt whether I have jurisdiction to determine any question whether a particular parcel of land is or is not within the Register Unit. It seems to me that this is a matter which the claimant must raise with the Registration Authority. In several instances in the present case the accuracy of the Large Scale Map prepared by the Registration Authority is of vital importance. As regards Mr & Mrs Robinson's property it may be that a survey will be necessary to ascertain whether or to what extent it does lie within the Register Unit.

### AMENDING THE LAND SECTION OF THE REGISTER

Mr James Smith on behalf of Mr & Mrs Robinson has raised the question with the Clerk to the Commons Commissioners whether it is open to him to apply to the Registration Authority to amend the Register to exclude the land in his clients' ownership. An application to remove a dwellinghouse from the Register may be made under the Common Land (Rectification of Registers) Act 1989, but only where the requirements of that Act have been satisfied at all times since 5th August 1945. A dwellinghouse (such as Moorcot) built since that date does not qualify but one or more of the other house owners referred to above may wish to consider making such an application.

### KELMARSH TITLE

The claimant to by far the greatest part of the Register Unit is Kelmarsh. Prior to the hearing Kelmarsh's Solicitors Greaves Atter & Beaumont submitted to the Commons Commissioners certified copies of a Conveyance dated 1st August 1985 between (1) M A Crook and M D Crook and (2) Kelmarsh and the preceding Conveyance dated 4th September 1953 between (1) Dame Mary P W Tritton (2) Sir G E Tritton, Dame Joan M Grasett and Sir John S Forbes and (3) E S Crook (which last I have already mentioned when dealing with Mr Haram's title). They also produced a copy of the Conveyance of 16th September 1982 between (1) E S Crook and (2) Patricia Dalby which forms part of Mr Haram's title. At the hearing Mr Castle produced the originals of the Conveyances of 1985 and 1982 and an office copy of the Probate of the Will of Evelyn Sylvia Crook dated 23rd March 1984 in favour of M A and M D Crook the Executors named therein.





The 1953 Conveyance comprised the land coloured blue on the plan thereto (Moor End) the land coloured green on that plan (Watts Cottage and two fields on Gally Hill which are outside the Register Unit) and all the moorlands and common lands coloured pink on that plan. This deed bears indorsed memoranda of three Conveyances off, as follows:-

- (1) The Conveyance of 29th June 1973 in respect of Watts Cottage.
- (2) The Conveyance of 3rd November 1958 in respect of Moor End.
- (3) The Conveyance of 23rd September 1977 in respect of the small piece of land in front of Watts Cottage.

By the 1985 Conveyance there was conveyed to Kelmarsh all the moor coloured and edged pink on the plan thereto and the two grass fields coloured green thereon (which are the two fields on Gally Hill outside the Register Unit). As I read the plans, the land coloured pink on the Conveyance to Kelmarsh included all the land coloured pink on the 1953 Conveyance with the exception of the small parcel of land in front of Watts Cottage which was conveyed away by the Conveyance of 23rd September 1977.

The land coloured pink on both these Conveyances includes the parcel described as Garthll which is also claimed by the Parish Council. I will deal with this dispute below. Subject thereto, I am satisfied that Kelmarsh is the owner of all those parts of the Register Unit as are edged and coloured pink on the plan to the Conveyance of 1985.

#### PARCELS NOT INCLUDED IN 1953 CONVEYANCE

In addition to the parcels mentioned above under the heading "other areas not claimed at the hearing" (i.e. the field at the extreme north-west corner of the Register Unit and the two Reservoirs) comparison of the plan on the 1953 Conveyance with the Large Scale Map shows two other areas within the Register Unit but not included in the 1953 Conveyance. These are (1) the two fields towards the south-west of the Register Unit lying to the north of Cragwell House shown on the Large Scale Map; and (2) the area immediately to the north of Moor End identified with the word "blue on Plan A annexed hereto.

#### LAND ON PLAN A MARKED BLUE

The only evidence before me concerning this land is contained in a Statutory Declaration sworn on 10th February 1982 by P W Redway which is included in the bundle of documents which was before Mr Commissioner Baden Fuller. In paragraph 3 thereof Mr Redway states that in or about April 1967 he began to use this area of land for the purpose of rearing pheasants for a period of approximately three years. In the absence of any other evidence I am unable to accept Mr Haram's claim to ownership of this parcel.

#### FIELD AT NORTH WEST CORNER OF REGISTER UNIT: MR RICHARDSON'S CLAIM

The field at the north west corner of the Register Unit marked on the Large Scale Map as O S No. 1469 1.2 acres is clearly outside the Kelmarsh title. Forewarned by Mr Hall, Mr Richardson met me on my site visit on the day following the hearing. Subsequently his Solicitors Buchanan & White sent to the Commons Commissioners an Epitome of Title in respect of Moorcroft Farm, which they claim includes this parcel in the land thereby shown to be vested in David James Richardson.



The Epitome contains photocopies of three Conveyances:-

5th April 1941 (1) H W Pearson and (2) F S Speedy.

13th November 1965 (1) F S Speedy and N Speedy (2) J Richardson.

16th December 1969 (1) J Richardson (2) D J Richardson.

Although the 1969 Conveyance is old enough to constitute a root of title, one has to go back to the 1941 Conveyance to find a full description of the property comprised in the later deeds. The 1941 Conveyance comprises 98.074 acres of land known as Moorcroft Farm adjoining Aislaby Moor described in the Schedule thereto by Ordnance Numbers and acreages taken from the 1928 and 1913 Editions of the Ordnance Maps, and for identification only surrounded by a red verge line on the plan annexed thereto. Looking at that plan the relevant parcel is marked 2246 and .420, and turning to the Schedule one finds that the 98.074 acre total includes "2246 Moor .420." The Ordnance Numbers have of course changed since the 1928 Edition, and it seems clear that the old O S 2246 corresponds at least in part with the present O S 1469. The acreages however do not correspond. Mr Richardson's deeds include only .420 of an acre, whilst the corner parcel of the Register Unit is 1.22 acres. I have checked through the other parcels comprising the 98.074 acres in the Schedule to the 1944 Conveyance, but find no other parcel to explain the discrepancy. On the other hand by scaling up the plan to the 1941 Conveyance (the plan sent to me appears to be a reduced size copy) the boundary of the land shown on the plan to the 1941 Conveyance and that on the Large Scale Map does appear to correspond.

Mr Richardson's claim is at present undisputed. If he wishes to pursue a claim to be registered as owner of the whole of the 1.22 acres of O S 1469 shown on the Large scale Map he should do so by giving oral evidence of actual occupation of the entire area since the Conveyance to him of 1969. At the further hearing necessary for this purpose, he should also produce his original deeds.

#### GARTHS 10, 11 AND 16

Mr Hall at the hearing explained that Garths were parish allotments. Although he claimed these three Garths on behalf of the Parish Council, he did not produce any documentary evidence of title to me at the hearing. He said that he would instruct the Council's Solicitor, Mr Howard Greaves of Whitby, to write to the Commons Commissioners and forward the deeds to them as soon as practicable.

On my site visit I inspected the area pointed out by Mr Hall as being Garth 11. It is not now enclosed, although there were traces of a wall which may once have partially enclosed it. It was densely overgrown to above shoulder height. Mr Hall said that tenants of the Parish Council shot over it. Mr Haram said that he and his predecessor had paid a fine of £1 per annum to the Parish Council for the use of this land.

Ownership of Garth 10 is disputed between Mr Haram and the Parish Council and of Garth 11 between Kelmarsch and the Parish Council. Correspondence has ensued since the hearing between the Commons Commissioners and Mr Howard Greaves' firm, Buchanan and White, but by the 30th January 1990 (more than six months after the date of the hearing) still no documentary evidence of title to any of the Garths has been received.



### FURTHER HEARING

I had no reason to suppose prior to the hearing before me that an inquiry into the ownership of this Register Unit would give rise to so many claims and such complex questions of title. Indeed it was not until after I had visited the site that I appreciated the full extent of the problems of identification which arise. I have endeavoured since the hearing to resolve various issues by correspondence, but this has not proved entirely satisfactory. I have therefore come to the conclusion that the proper course is for me to hold a further hearing at which all outstanding matters can be considered.

### OUTSTANDING MATTERS

Without endeavouring to limit the matters which may be raised by any claimant at the further hearing, the following are among the matters on which I should like or would be prepared to hear further submissions and to receive further oral and documentary evidence:

- (1) Mr Hogarth's title to (a) the dwellinghouse, Inglegarth and (b) the piece of land shown on plan D.
- (2) Mr Haram's claim to the area marked "blue" on plan A.
- (3) Mr Richardson's claim to the field O S 1469 (1.22 acres)
- (4) A claim by Allied Dunbar Providential PLC to ownership of Cragwell Cottage
- (5) The claim by the Parish Council to Garth 16
- (6) The conflicting claims of the Parish Council and Mr Haram to Garth 10
- (7) The conflicting claims of the Parish Council and Kelmarsh to Garth 11
- (8) A claim by Yorkshire Water Authority (or any other body) to either or both of the Reservoirs
- (9) Any claims to the two parcels of land to the north of Cragwell House shown on the Large Scale Map.

### REGISTRATION AUTHORITY: ATTENDANCE AT HEARING

It will be of great assistance if the Registration Authority can be represented at the further hearing to produce the original register map and the original of the Rights application No. 144 in consequence of which the registration was made, and to deal or assist in dealing with the questions which have arisen as to whether various pieces of land do or do not fall within the Register Unit. As regards the four dwellinghouses which appear to me to be within or partly within the Register Unit the accuracy of the Large Scale Map is crucial, and it is desirable that the details of the relevant areas of this should be confirmed in advance of the further hearing. In this respect Mr James Smith on behalf of Mr & Mrs Robinson may wish to make submission to the Registration Authority concerning the question whether Moorcot lies within or outside the Register Unit.

### OTHER INCIDENTAL MATTERS

1. For the purposes of my Direction to the Registration Authority pursuant to section 8 of the 1965 Act I shall require a better copy of the plan on the Conveyance of 4th June 1986 to substitute for Plan D (Mr Haram's title)
2. For the same purpose it would be convenient if Mr Hogarth or his Solicitors could submit a revised version of Plan C showing only the land remaining in the Register Unit which is claimed by Mr Hogarth, and excluding the areas which were removed from the Register Unit following the hearing before Mr Commissioner Baden Fuller.



POSTPONEMENT OF DIRECTIONS UNDER SECTION 8

Owing to the complexity of this matter it is not my intention to issue any Directions to the Registration Authority until after the further hearing has taken place, to enable me to hear further submissions from any person entitled to be heard.

DATE OF FURTHER HEARING

Notices of the date of the further hearing will not be issued until after the expiration of the period of six weeks from the date on which notice of this Decision is sent out.

APPEAL

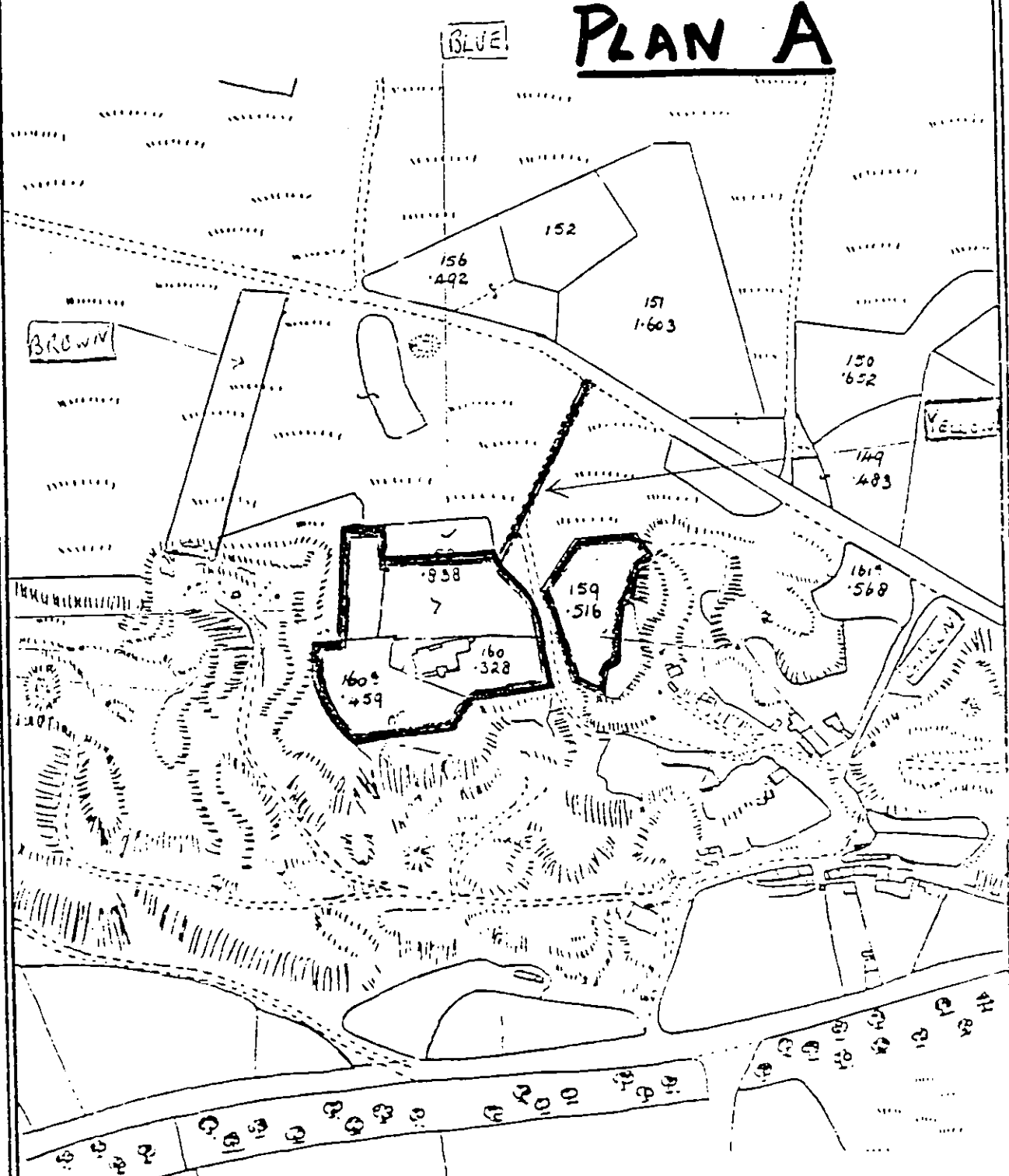
I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 30<sup>th</sup> day of January 1990

M. L. Rote

COMMONS COMMISSIONER

# PLAN A



COMMONS REGISTRATION ACT 1965  
 Re: Aislaby Moor & Gally  
 Hill, Scarborough Borough,  
 North Yorkshire  
 Register Unit No. CL51

FOOT 100

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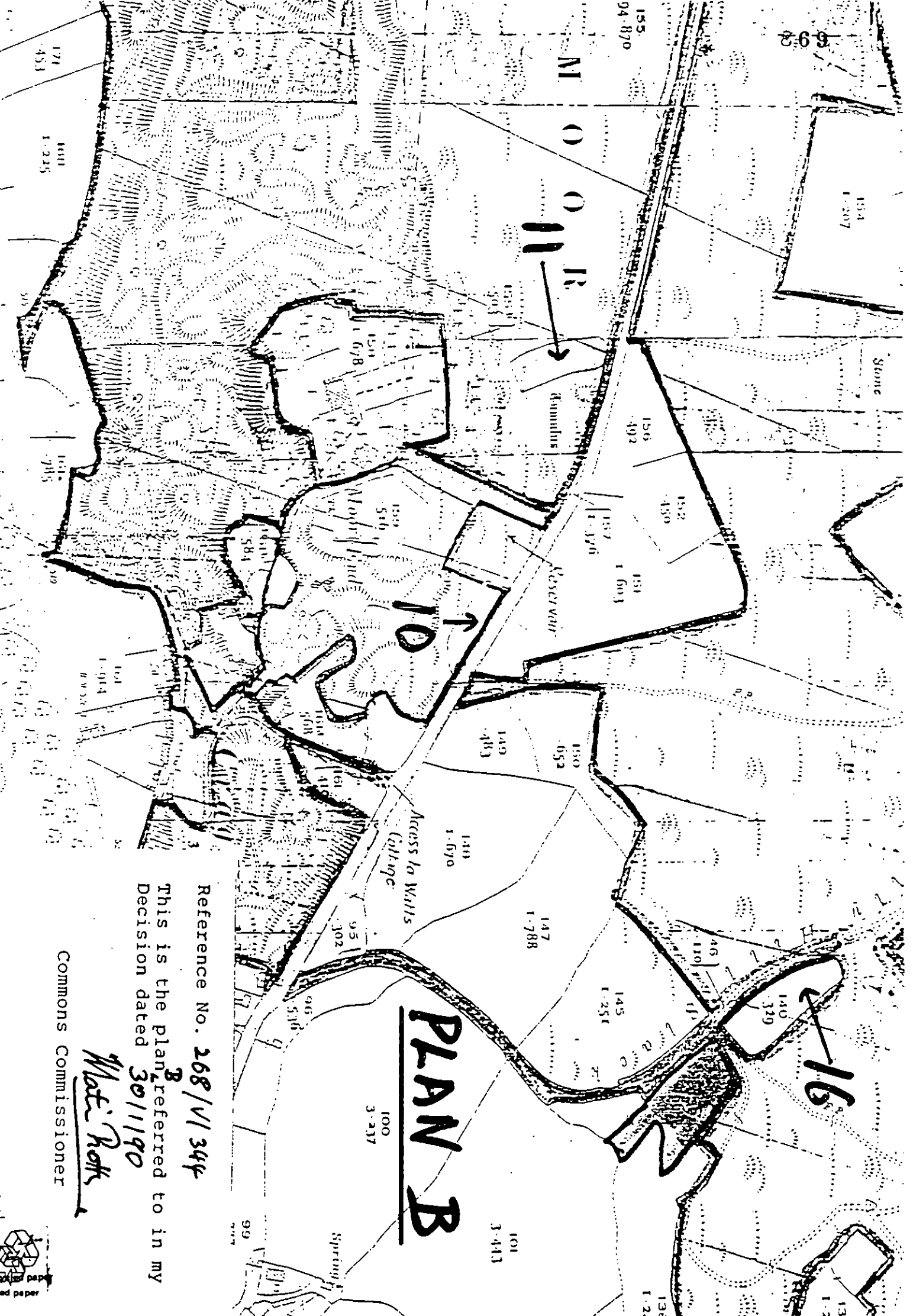
Reference No. 268/U/344

This is the plan <sup>A</sup> referred to in my  
Decision dated 30/1/90

*Mate Rott*

Commons Commissioner





M O O R

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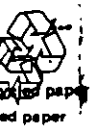
16

PLAN B

Reference No. 268/V1 344  
 This is the plan referred to in my  
 Decision dated 30/11/90

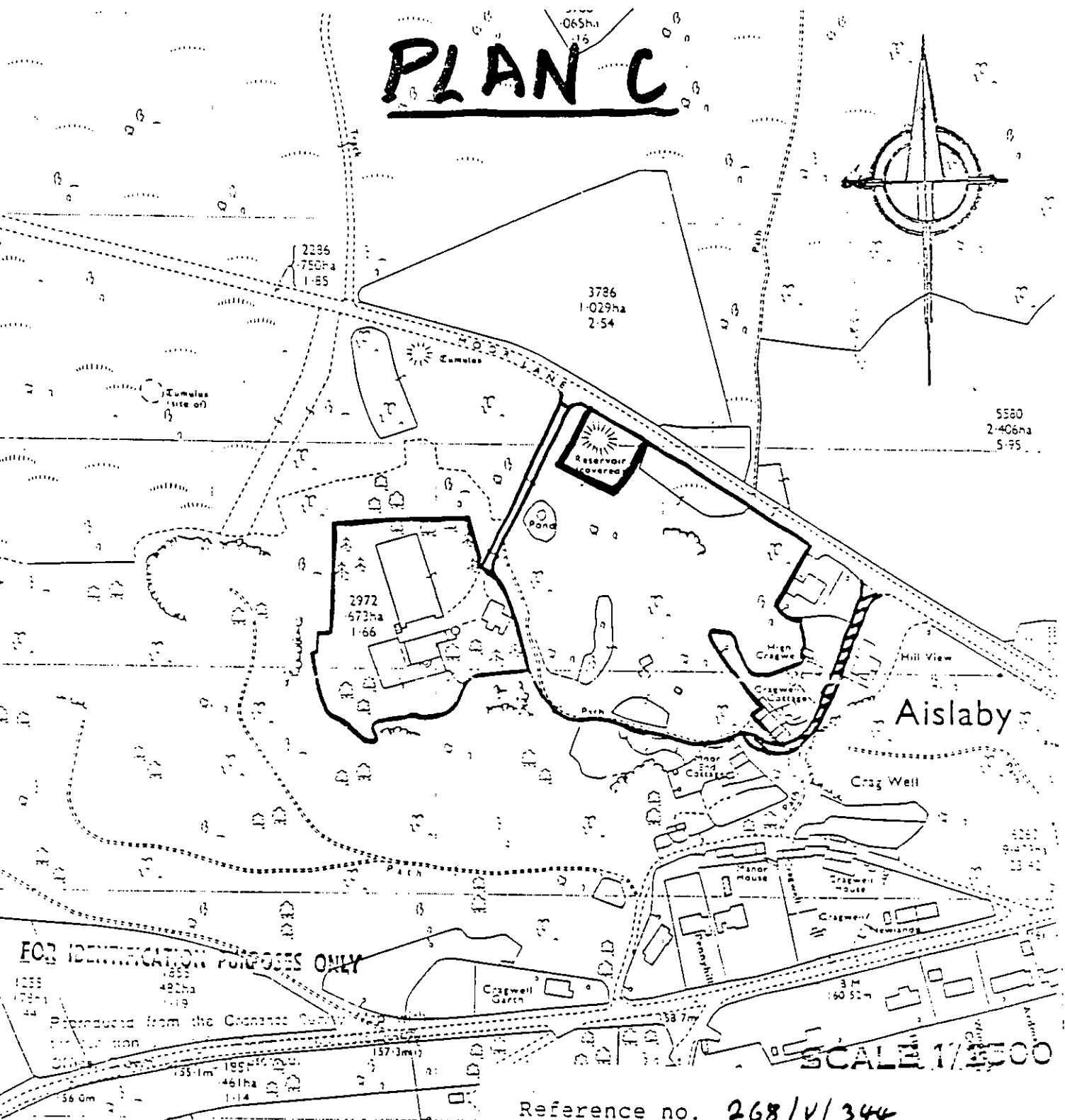
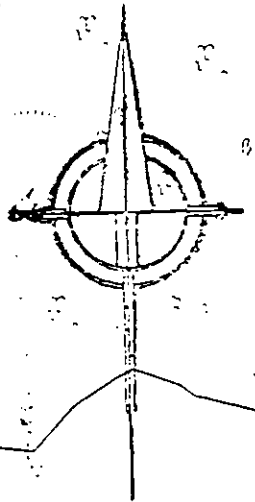
*Wati Potts*

Commons Commissioner



DRAWING NO. 1

# PLAN C



FOR IDENTIFICATION PURPOSES ONLY

SCALE 1/3000

Reference no. 268/V/344

This is the plan referred to in my Decision dated 30/1/90

*Mati Roth*  
Commons Commissioner



# PLAN D

El rwp 19

1275

surface water drain

hill view

high cragwell

cragwell cottage

crag well

moor and cottage

Reference no. 2681V/344

This is the plan referred to in my Decision dated 30/1/90

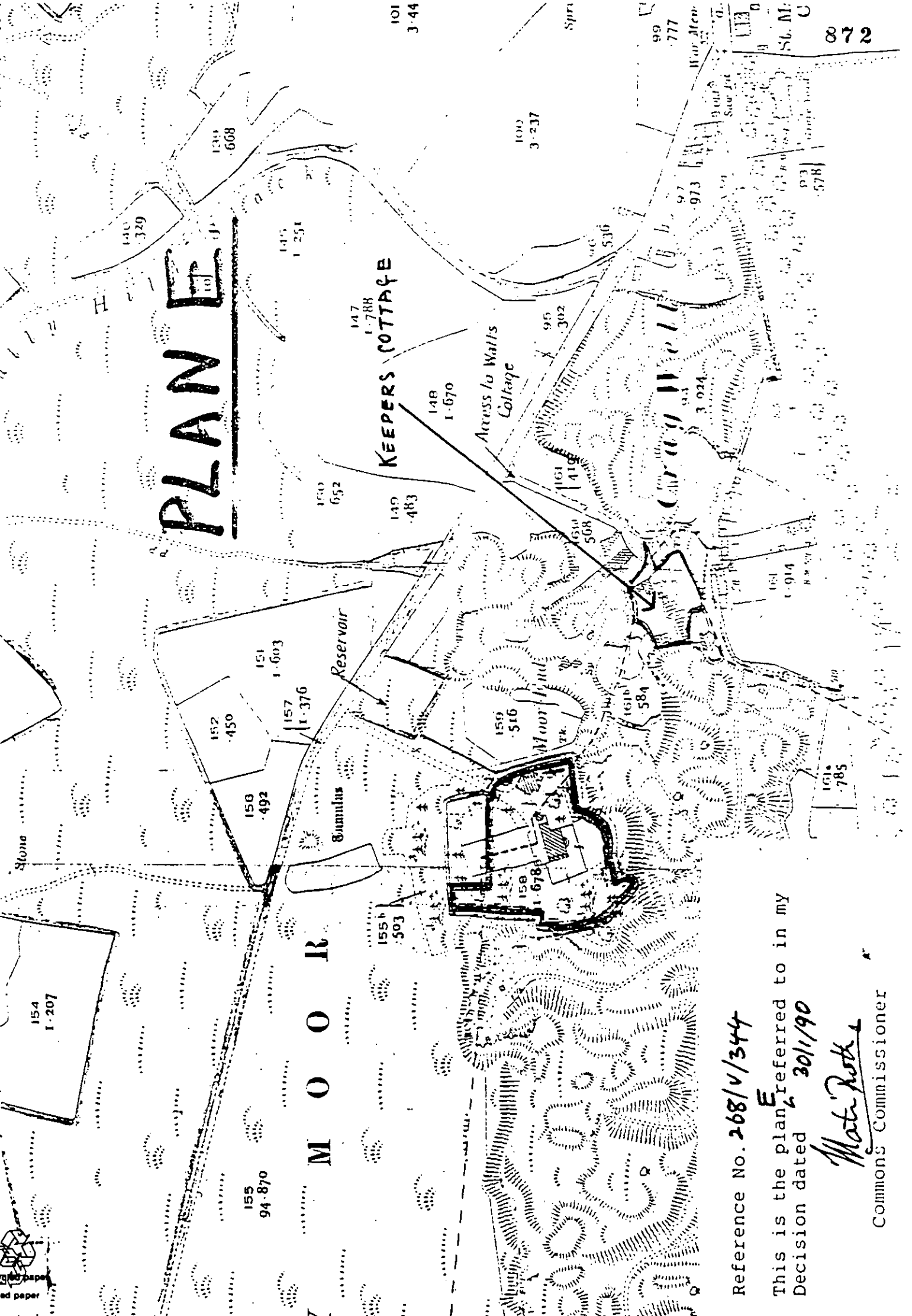
*Mati Roth*

Commons Commissioner

block plan scale 1:625







# PLANE

## MOORLAND

KEEPERS COTTAGE

Access to Walls Cottage

Craywell

Reservoir

Bumulus

Moorland

Reference No. 268/V/344

This is the plan referred to in my Decision dated 30/1/90

*Marta Roth*

Commons Commissioner