



In the Matter of land known as Little
Rowleth, Low Row Pasture and Feetham
Pasture, Melbecks

DECISION

These disputes relate to entries Nos. 3,4 and 5 in the land section of Register Unit No. CL.42 in the Register of Common Land maintained by the North Yorkshire County Council and to entries Nos. 1-66, 68-79 and 81-85 in the rights section of that register unit caused by the following objections:

	<u>Objection</u>	<u>Made by</u>	<u>Noted in Register</u>
268/D/477) 268/D/490)	034	K W Barningham	22. 10. 69
268/D/478) 268/D/491)	039	D Coates	26. 11. 69
268/D/479) 268/D/492)	055	Miss M E Percival	24. 2. 70
268/D/480) 268/D/493)	054	Mrs E A Metcalfe	24. 2. 70
268/D/481) 268/D/494)	060	Miss D Vernon	25. 2. 70
268/D/482) 268/D/495)	057	D A Womersley	25. 2. 70
268/D/483) 268/D/496)	0302	T H & M J Davidson	25. 11. 70
268/D/484) 268/D/497)	0358	M L Ries	25. 11. 70
268/D/485) 268/D/498)	0303	J L Canham	25. 11. 70
268/D/486) 268/D/499)	0301	T E Baldwin	25. 11. 70
268/D/487) 268/D/500)	0349	Miss S L Whitworth	30. 11. 70

268/D/488) and by the alleged conflicting registrations between
268/D/489) Entry No. 4 in the land section and Entries Nos 20,70,
71 and 72 in the rights section of that register unit.



I held a hearing for the purpose of inquiring into the dispute at Richmond on 26 June 1985 and a further hearing at Richmond on 8 July 1986.

At these hearings Mr W K Barningham and Mr M Metcalfe were represented by Mr I Scott, solicitor of Messrs. Malcolm E Scott and Son, Leyburn, Mr and Mrs Anyan were represented by Miss S Fox, solicitor of Messrs. Hudson, Hart and Burrows, Richmond, Lt. Col. D M Humphries was represented by Mr D Kilvington, solicitor, of Messrs. Snowball, Worthy and Low of Sunderland, Mr W Brown was represented by Mr S T Garget of Messrs. Hunton and Garget of Richmond Mr T E Baldwin was represented by Mr A Meeham, solicitor of Messrs. Hudson, Hart and Burrows of Richmond, Farmland Investments Ltd, Hill Farm Investments Ltd and North Lincs Farmers Ltd were represented by Mr F G Beadon FRICS of Messrs. Strutt and Parker, Barnard Castle, Mr R Alderson (secretary) represented the Feetham Pasture Committee and Mr W Brown appeared in person.



The Land Section

There are five entries in the land section. No objections were made to the registrations at Entries nos 1 and 2 and these registrations have accordingly become final. There are however a total of 11 objections to Entries nos 3, 4, and 5 all relating to small pieces of land alleged not to form part of the common. In some cases it appeared that other areas should have been excluded. In such cases I have dealt with those areas, notwithstanding the absence of a formal objection, on the principles laid down in In re: West Anstey Common (1985) Ch 329.

The references below to "Mr Alderson" refer to Mr Raymond Alderson secretary of the Feetham Pasture Committee who, having familiarised himself with all the areas referred to in the objections, was able to give valuable assistance in nearly every case.

268/D/477

This dispute relates to the registration at Entry No. 5 in the Land Section and is occasioned by objection No. 034 made by W.K. Barningham and entered in the Register on 22 October 1969.

The objection is to the inclusion in the registration of a small area of land which Mrs Elizabeth Ann Barningham of Moor View, Low Row stated in evidence to be the front garden of Moor View and to have been enclosed by a wall to her knowledge since 1931. No one contradicted this evidence and I shall accordingly direct the Registration Authority to omit from registration the land coloured red on the plan attached to objection No. 034.

268/D/478

This dispute relates to the registration at Entry No. 5 in the Land Section and is occasioned by objection No. 039 made by D.Coates and noted in the register on 26 November 1969. It relates to an access road. No one appeared to support the objection and I was informed by Mr Alderson that the land is unfenced, open to grazing animals and part of Feetham Pasture. I accordingly dismiss the objection.

268/D/479

This dispute relates to the registration at Entry No. 3 in the Land Section and is occasioned by objection No. 055 made by Miss M.E. Percival and noted in the Register on 24 January 1970.



The objection is to a small area of land said to be garden land. Mr Alderson told me that the land coloured red on the plan attached to the objection was enclosed land and did not form part of the common.

I shall accordingly direct the Registration Authority to omit this land from registration.

268/D/480

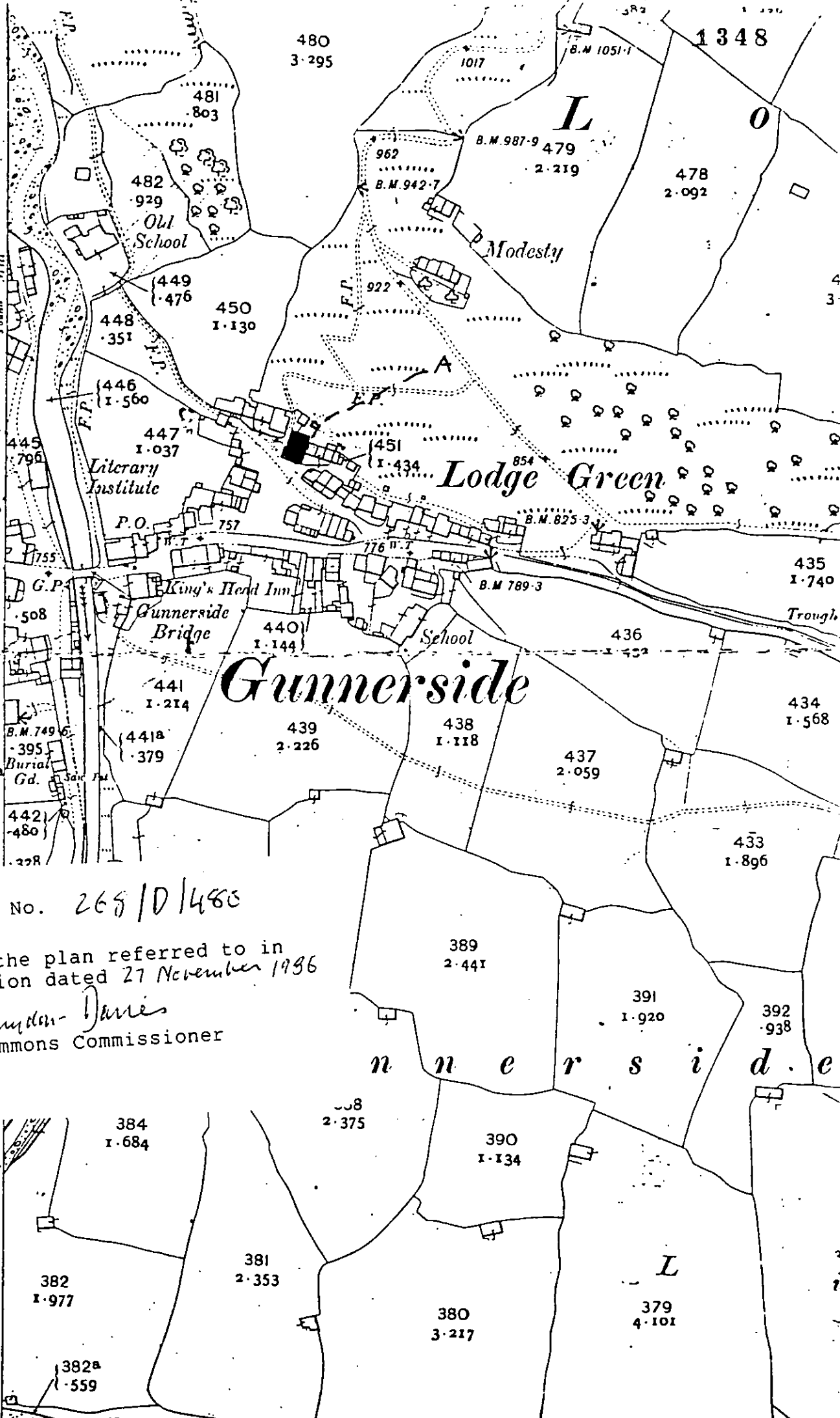
This dispute relates to the registration at Entry No. 3 in the Land section and is occasioned by objection No. 054 made by Mrs E.A. Metcalfe and noted in the Register on 24 February 1970.

The objection relates to a small piece of land approximately 11' x 12' which is hard to identify by the plan attached to the objection (which is not related to the surrounding land). Mr Maurice Metcalfe of Spring End Farm Lower Row, however, giving evidence identified the land, which he said was the site of his mother's coal house, by reference to a copy of the O.S. map which is attached to this decision, marked 268/D/480 and signed by him. The area in question is very small and is indicated by a dotted line running to the letter "A". It is not the area coloured red which relates to something else.

I shall accordingly direct the Registration Authority to omit this small area from registration.

58/D/480

M. Metcalf



Reference No. 265/D/480

This is the plan referred to in my decision dated 27 November 1986

Peter Landon-James
Chief Commons Commissioner



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268/D/481

This dispute relates to the registration at Entry No. 4 in the Land section and is occasioned by objection No. 060 made by Miss D Vernon and noted in the Register on 25 February 1970.

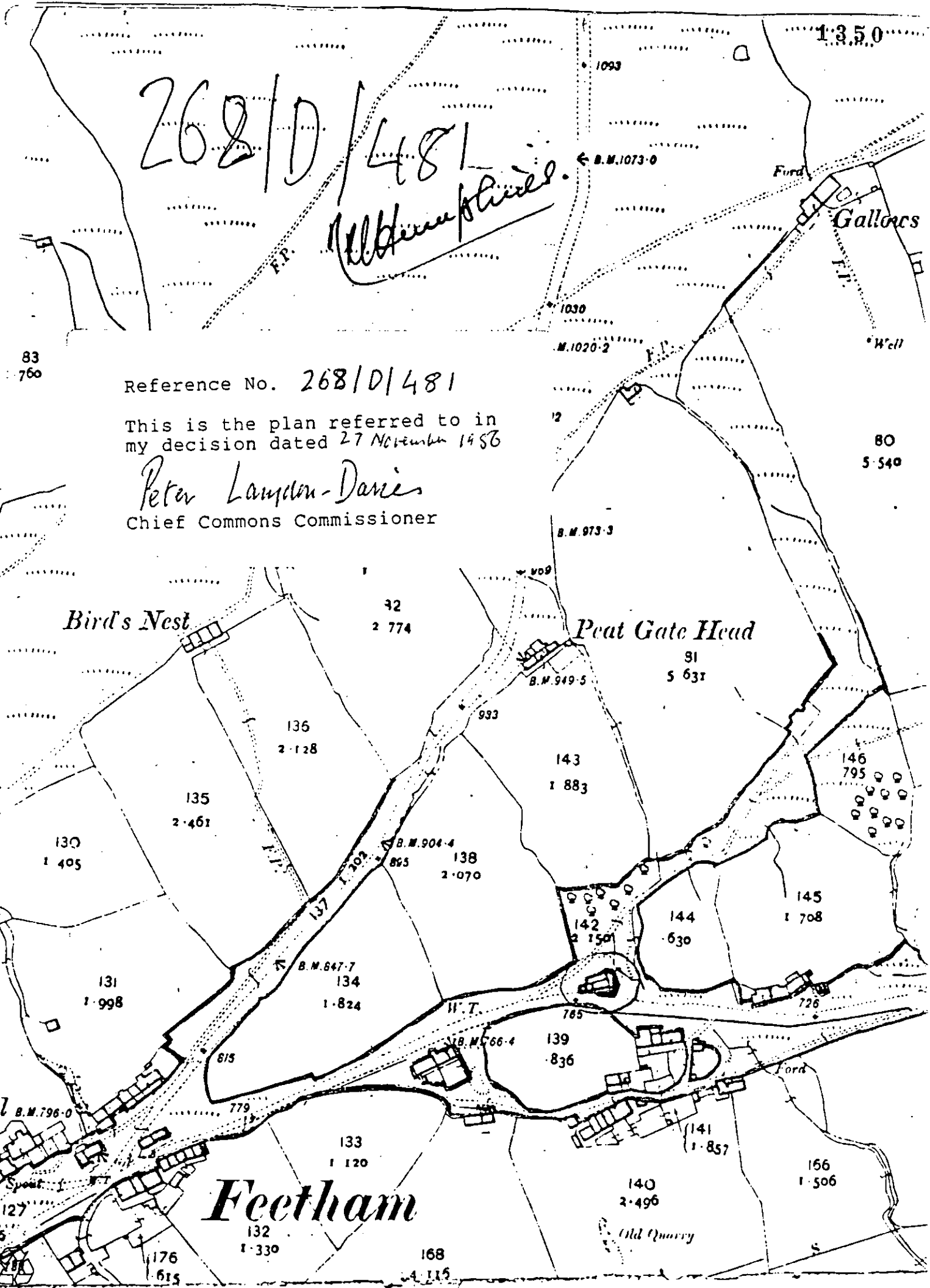
The plan attached to the objection is inadequate but Lt. Colonel Donald Munro Humphries of Peep of Day, Low Row, Richmond, civil servant the successor in title to the objector produced a copy of the O.S. map marked by me 268/D/481 and signed by him which shows an area coloured red which he stated was part of his garden which had been enclosed by a wall for many years did not form part of the common. No one contradicted this evidence which I accept and I shall accordingly direct the Registration Authority to omit this area from registration.

268/D/481
Albany Street

Reference No. 268/D/481

This is the plan referred to in
my decision dated 27 November 1956

Peter Landon-Davis
Chief Commons Commissioner



83
760

80
5 540

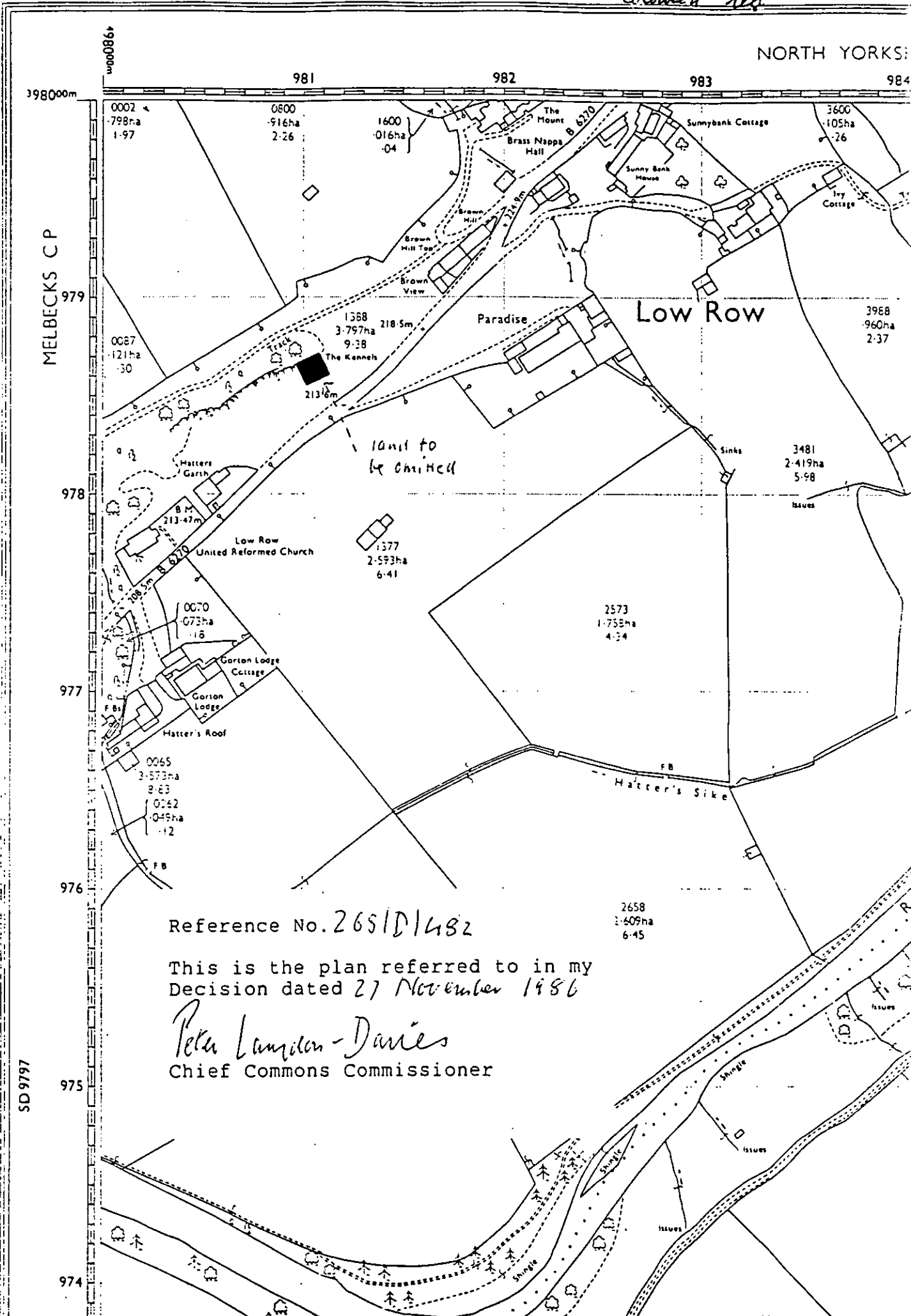


268/D/482

This dispute relates to the registration at Entry no. 4 in the Land Section and is occasioned by objection No. 057 made by Dorothy Anne Womersley.

This objection relates to a bungalow and garden which was formerly kennels. Mr Alderson agrees that it is not common land. The plan attached to the objection is inadequate since it does not show the location of the land but a better plan has been prepared. The land to which the objection relates is coloured red on this plan which has been approved and signed by Mr Alderson. That plan is attached to this decision and marked "268/D/482". I shall accordingly direct the Registration Authority to omit that land from registration.

2651D/482



Reference No. 2651D/482

This is the plan referred to in my Decision dated 27 November 1986

Peter Landon-Davies
 Chief Commons Commissioner

SD 9797



Recycled paper



268/D/483

This dispute relates to the registration at Entry No. 4 in the Land Section and is occasioned by objection No. 0302 made by Thomas Hope Davidson and Mary Jane Davidson and entered in the register on 25 November 1970.

The objection relates to two pieces of land coloured red on the plan attached to the objection and marked respectively "garage" and "outbuildings". Mr. Garget who appeared for the objector pointed out that the piece marked "outbuildings" did not, in fact, lie within the area provisionally registered as common land. That marked "garage", however, does and Mr Alderson told me he knew it and it did not form part of the common.

I shall accordingly direct the Registration Authority to omit this land from registration.

268/D/484

This dispute relates to the registration at Entry No. 4 in the Land Section and is occasioned by objection No. 0358 made by Margaret L Ries and entered in the register on 25 November 1970.

This objection relates to a garage built against the wall of Hatters Garth a house by the roadside at Low Row and part of the garden lying to the front and side of the garage.

I viewed the land on 8 July 1986 and heard the witnesses in the house. There was a conflict of evidence. All parties agreed that this small piece of land (about 50' by 60') had at one time formed part of the common. There were, however, differing accounts of how and when it came to be enclosed. The question was whether the rights of common over it had been abandoned or not.

Mr James Robin Brown of Windy Ridge Low Row, a retired farmer gave evidence that he was 79 years old and had lived at Low Row all his life. He said the land had been fenced in within the last 20 years. He had given up farming 40 years ago and had not grazed any stock since. He said that the secretary of the Low Row Commoners Association should have stopped it.

Mrs Olive Mary Anyan of Hatters Roof, Low Row, gave evidence that she was 56 and had also lived at Low Row all her life. Her father had been secretary to the Low Row pasture for 30 years or more. She remembered Mrs Rigby fencing the land in a few years before her father died which was nearly 30 years ago. There was a lot of disagreement at the time but Mrs Rigby was allowed to do it and as far as she knew no one had interfered since.



Gordon Matthew Binks the present owner of Hatters Garth gave evidence that he was 53, that he had known Low Row all his life, that his father had been born there but he did not remember Hatters Garth before October 1984.

Mrs Marion Gillian Lumley of 46 Fern Avenue Jesmond, Newcastle-upon-Tyne gave evidence that she was born in 1931 and knew the house well from 1939 to 1942 or 1943 when Mrs Rigby lived there. When she saw it again in 1950 she noticed that the garden had been extended to the east and north but was not sure if it then went as far as it does now.

Where they differ I prefer the evidence of Mrs Anyan and Mrs Lumley to that of Mr Brown and conclude that this land was fenced in some time before about 1950, that there was disagreement at the time but that the commoners did nothing to interfere then or since and have thereby evinced an intention of abandoning whatever rights of common they had over this land. Since it is small and steep and abuts on the main road this is not perhaps, surprising.

I shall accordingly direct the Registration Authority to omit from registration the land which is hatched on the plan attached to objection number 0358.

268/D/485

This dispute relates to the registration at Entry No. 4 in the Land Section and is occasioned by objection No. 0303 made by John L. Canham and entered in the register on 25 November 1986.

The actual objection refers only to a small area of land just to the south of the eastern end of the Punch Bowl Hotel described on the objection plan as "site of demolished building." I was informed at the hearing on 26 June 1985 by Mr Garget who appeared for the objector that it was not intended to proceed with this objection since that land did not in fact lie within the unit land as provisionally registered.

It appeared however that there was a discrepancy between the front of the Punch Bowl Hotel itself as shown on the register map which is based on the 1913 O.S. map and the front as it was at the time of registration and is today.

In order to ascertain the exact dimensions I attended at the Punch Bowl Hotel on 8 July 1986 having invited anyone present at the hearing who was interested in this objection to accompany me.

The dimensions of the hotel were measured in my presence and agreed by all present and in particular by Mr and Mrs Barningham (the objectors in dispute no. 268/D/477 above) who, as being near neighbours, naturally took a keen interest in the case.



Those measurements were noted on the plan attached to this decision and marked 268/D/485.

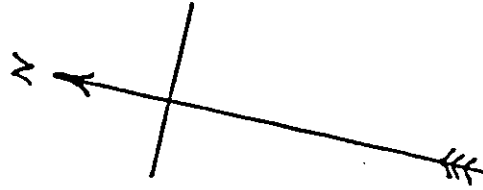
There is no doubt that since 1913 the terrace in front of the hotel has been extended onto what was common land though it is hard to tell from the 1913 map exactly what lay in front of the hotel.

Everyone agrees that the last extension which was a narrow terrace fronted by a retaining wall took place about 1966.

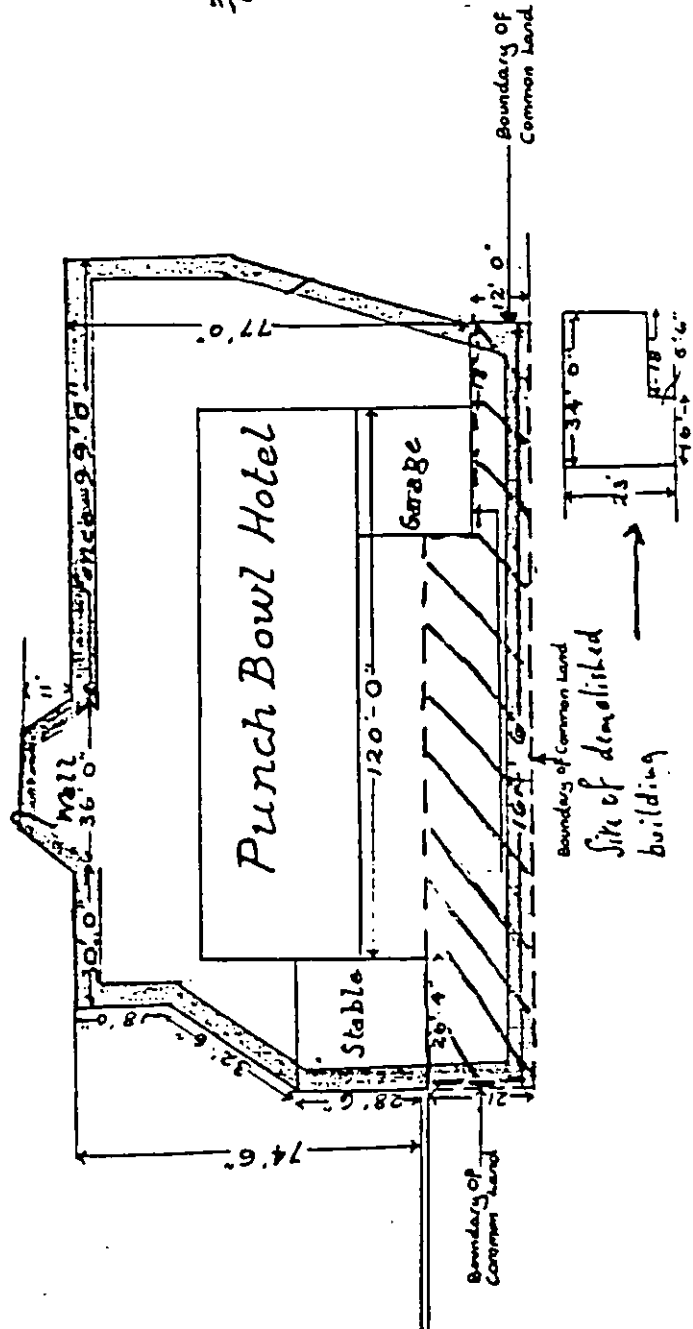
Mr Alderson told me that he had informed his members and that none of them had raised any objection to this extension. Certainly none appeared before me to object.

On these agreed facts I draw the conclusion that any rights of common over this very narrow piece of land have been abandoned and that the true boundary of the common at the time of registration was as shown on the plan.

I shall therefore direct the Registration Authority to modify the boundary of the common at this point so as to conform to the line shown on the plan attached hereto.



Plan
within referred to.



Reference No. 268 10/485

This is the plan referred to in my Decision dated 27 November

Peter Landon-Davies
Chief Commons Commissioner





268/D/486

This dispute relates to the registration at Entry No. 4 in the Land section and is occasioned by objection No. 0301 made by T E Baldwin and entered in the register on 25 November 1970.

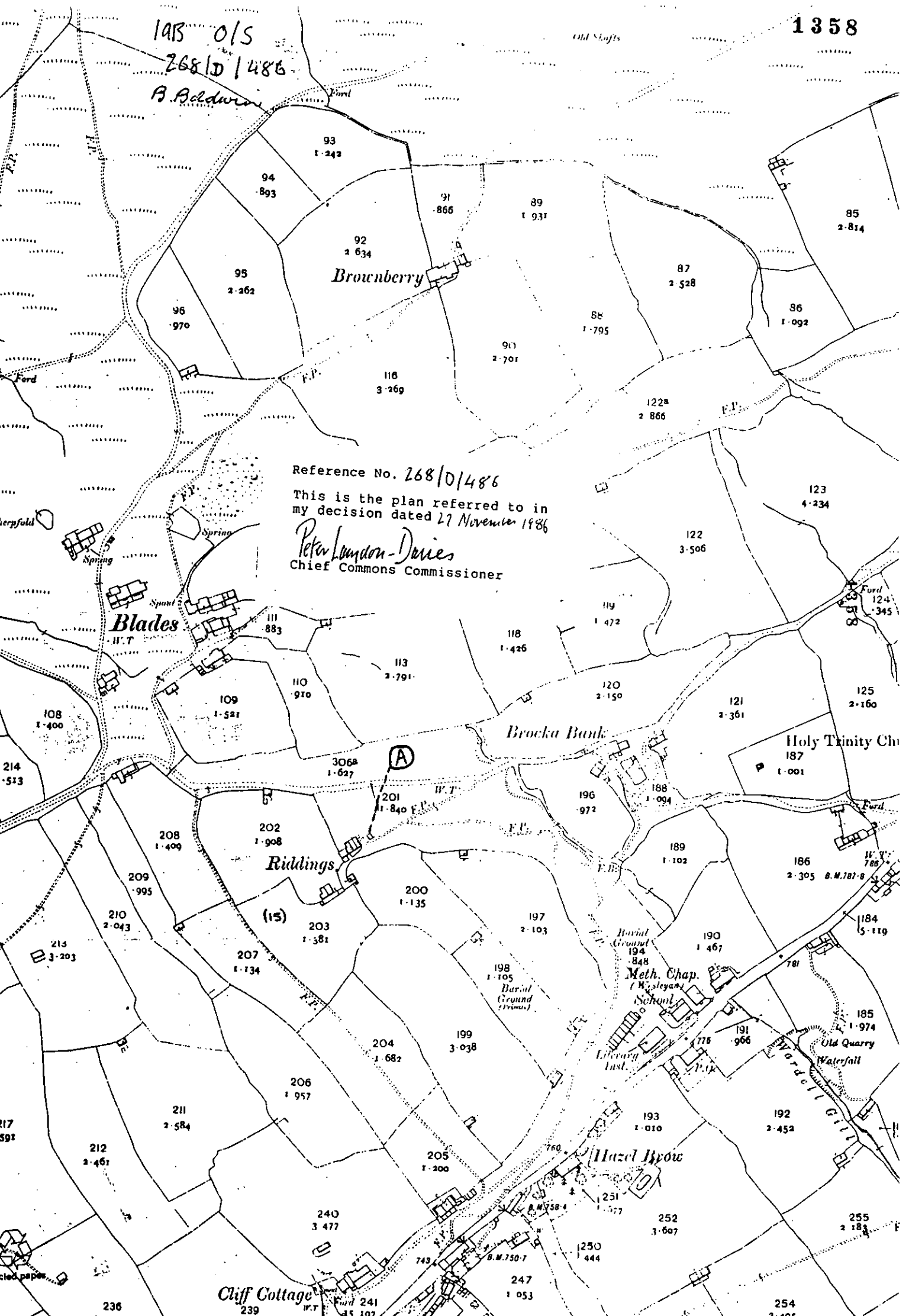
The objection relates to a small piece of land said to measure about 9' x 14' which is nevertheless clearly marked on the plan attached to this decision and marked 268/D/486. On that plan it is shown in O.S. 201 near a house called Riddings and indicated by me by the letter "A".

Mrs Bertha Baldwin of Gorton Ledge, Low Row gave evidence that she was the widow of Thomas Earnest Baldwin, the objector, and that when he had purchased Riddings in 1956 this land was flagged and surrounded by four tumbledown walls. It had been used as a calf house but she and her husband used it as an ash pit. It was so used in 1968.

No one disputed this and I shall accordingly direct the Registration Authority to omit from registration the land marked "A" on the plan attached hereto and, on a larger scale on the plan attached to objection No. 0301.

1915 O/S
268/D/486
A. Aldwin

Old Slafts



Reference No. 268/D/486
This is the plan referred to in
my decision dated 27 November 1986
Peter Landon-Davies
Chief Commons Commissioner

(A)

(15)

93 1-242
94 893
91 865
89 1-931
92 2-634
87 2-528
95 2-262
86 1-795
96 970
90 2-701
116 3-269
122A 2-866
85 2-814
86 1-092
123 4-234
122 3-506
119 1-472
118 1-426
120 2-150
121 2-361
125 2-160
108 1-400
109 1-521
113 2-791
110 970
112 883
124 3-345
125 2-160
187 1-001
196 972
188 1-094
189 1-102
186 2-305 B.M.781-B
184 5-119
208 1-409
202 1-908
200 1-135
197 2-103
198 1-105
199 3-038
204 1-682
206 1-957
207 1-134
203 1-381
205 1-200
209 995
210 2-043
213 3-203
194 848
190 1-467
191 966
193 1-010
192 2-452
211 2-584
212 2-461
214 5-513
217 591
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254 2-007
255 2-183

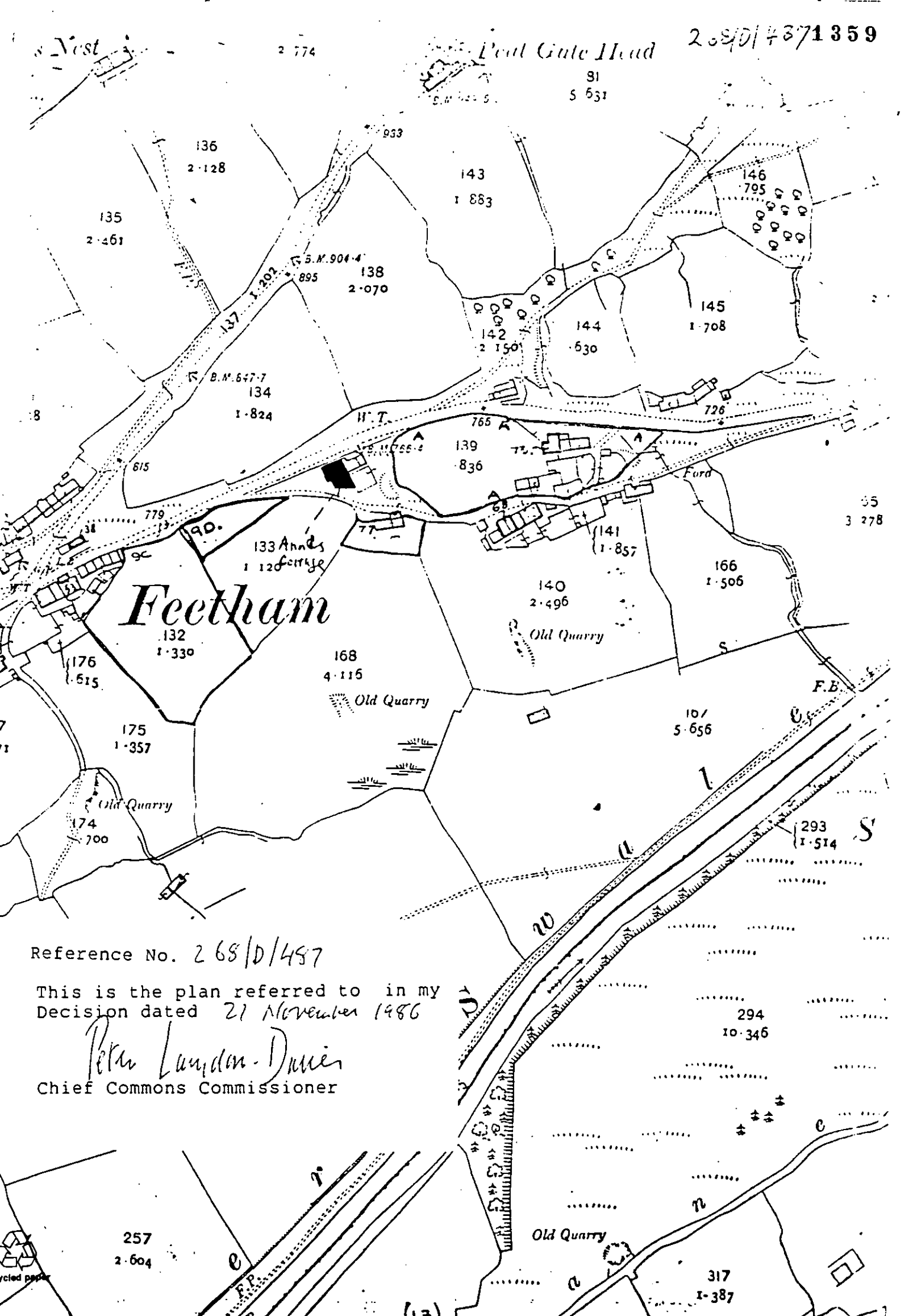


268/D/487

This dispute relates to the registration at Entry No.4 in the Land Section and is occasioned by objection No. 0349 made by Miss Eileen L Whitworth and noted in the register on 30 November 1970.

The objection relates to a house and garden known as Ann's Cottage, Feetham, Low Row. It was agreed between Mrs Anyan, the owner, and Mr Alderson that there was such a house at Feetham and that it did not form part of the common. Unfortunately, however, the plan attached to the objection does not indicate where it is. Accordingly Miss Fox, who appeared for Mrs Anyan the owner at the adjourned hearing, arranged for a better plan to be produced. This plan, on which Ann's Cottage and its garden is shown coloured red, is attached hereto and numbered 268/D/487.

I shall accordingly direct the Registration Authority to omit this land from registration.



Feetham

Reference No. 268/D/487

This is the plan referred to in my Decision dated 21 November 1986

Peter Landon-Davies
 Chief Commons Commissioner





268/D/488-489

These two references arise from a supposed conflict between Entry No. 4 in the land section and Entries Nos. 20, 70, 71 and 72 in the Rights Section. No one appeared at the hearing on 26 June 1985 to explain what the supposed conflict was. Enquiry was made of the Registration Authority by letter and on 23 July 1985 the Clerk to the County Council informed the Clerk to the Commons Commissioners that the reference was made in error. That being so no modification of Entry No. 4 need be made as a result of these references.

Rights Section 268/D/490-500

There are no express objections to the registration in this section but, by section 5(7) of the 1965 Act the objections in the land section fall to be treated as objections to all the registrations in the rights section. Thus the validity of all these registrations has been put in question. The burden of proof therefore lies on the registrants.

In the absence either of any formal objection or of any objection raised at the hearing no doubt is raised in my mind as to the validity of the great majority of the registrations and I shall treat the statutory declarations made by the registrants as sufficient discharge of that burden.

The very terms of some registrations, however, raised a doubt in my mind. These were nos. 19, 20, 21, 61 and 62 which claim a right to take rabbits and no 54 which claims various rights in gross.

I therefore caused notice to be given to the registrants of these registrations that I would, at the adjourned hearing, require strict proof of these rights. In fact no one appeared to support these registrations.

I shall, accordingly, not confirm Entry no. 54 and confirm registrations nos 19, 20, 21, 61 and 62 with the modification that the words "and rabbits" shall be struck out wherever they appear.

I express no opinion as to whether a right to take rabbits is capable of registration as a right of common. I merely decide that if such a right can exist it has not been shown to exist in the case of these registrations.

Rights Entry 62

Rights entries 20 and 62, both of which are stated to arise from application 892, register a greater (no. 20) and a lesser (no 62) right both stated to be attached to the same land (Hatters Roof, Low Row). Examination of application no 892 shows that in fact the lesser right was claimed not in respect of the Hatters Roof land which is 23.3 acres but of O.S. 104, 105 and 220 near Blades, Low Row which according to the O.S. map amount to 3.687 acres. Two separate plans were attached





to the application. There is no need to go into further detail because Miss Fox who acts for Mrs Anyan who owns a half-share of both areas, Mr. Beadon F.R.I.C.S for the owners of the common and Mr Alderson all agree that Entry No.62 should be modified by striking out the words in column 4 and substituting "O.S. Nos 104, 105 and 220 near Blades, Low Row."

I shall therefore confirm registration 62 with that modification, in addition to that concerning rabbits

Quantification of grazing rights

There is one, perhaps unusual, feature about the grazing rights registered in this unit. Instead of being expressed in terms of numbers of animals they are expressed (as far as the areas which have been referred to me are concerned), in the case of rights over entry no 3 in the land section (Little Rowleth Pasture) in terms of sums of money and the case of rights registered over entry no. 4 in the land section (Little Row Pasture) and over entry no.5 in that section (Feetham Pasture otherwise known as Kearnton) in terms of gaits. At first I felt some doubt whether this method of registration complied with section 15 of the 1965 Act, which requires applicants for registration of grazing rights to state the number of animals to be entered in the register. Since, however, there is set out at the head of the rights section an explanation which, in respect of each entry in the land section, states the number of animals which may be grazed as equivalent to a particular sum of money or gait, as the case may be, it seems to me that, read in the light of these "stinting tables", as they are called, the rights registration do (though in a roundabout way) comply with the requirements of section 15.

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 27th day of November 1986

Peter Langdon-Jones
Chief Commons Commissioner