



In the Matter of Northam Burrows, Northam, Devon (No. 2)

DECISION

These disputes relate to the registrations at Entry Nos 1 - 42, 44, 91 and 93 - 457, in the Rights section of Register Unit No. CL 9 in the Register of Common Land maintained by the Devon County Council and are occasioned by Objections Nos 713 and 894 made by the former Devon County Council and noted in the Register on 9 February 1971 and the conflicting registration at Entry No. 453 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Northam on 12, 13 and 14 January, 19, 20, 21 and 22 April, and at Watergate House, London WC2 on 24 October 1977. The hearing was attended by Mr Ian McCulloch, of counsel, on behalf of the Devon County Council both as Registration Authority and as Objector; Miss Sheila Cameron, of counsel, on behalf of the Torridge District Council as successor to the former Northam Urban District Council, the applicant for the registration at Entry No. 453, and also on behalf of the Northam Town Council; Mr J D Philipp, Mr L E Long, Mr J J Ferguson, and Mr R J Keast, solicitors on behalf of a number of applicants for registrations; and Commander M B C Sumner, Mr J R Day, Mr R H K Evers, Mr R D Bradford, Mrs E P L Holman, Mrs P Lawes, Mrs L S Stead, Mr J Roberts, Mr J Woolf, Mr R Mills, Mr R G Cobby, Mr O F Squire, Mrs S Griffey, Mr F J G Dell, Mr L G Poole, Mrs M E Palmer and Mr W E Bartlett, applicants or successors to applicants for registrations.

For the reasons given in my decision in In the Matter of Northam Burrows, Northam (No. 1), (1977), Ref. No. 209/D/91 I have confirmed the registration at Entry No. 453. This, however, does not make it inevitable that I should refuse to confirm the registrations the subject of these disputes, for it does not appear to me to be impossible as a matter of law for all the registrations to remain on the Register.

As appears from the evidence summarized in my decision in In the Matter of Northam Burrows (No. 1), *supra*, the inhabitants of the ancient parish of Northam, sometimes described as potwallopers, have from time immemorial grazed their animals on Northam Burrows and I have held that they had a right so to do.

Some of the applicants for the registrations the subject of these disputes based their applications on the fact that they were potwallopers. While I accept that each of these applicants has a right to graze his animals as a potwalloper, he has that right as a member of a class and is not thereby entitled to a personal registration in addition.

The remainder of the applicants who appeared or were represented at the hearing sought to support their registrations by claiming that they had acquired rights by prescription. Many of them adduced evidence which would have supported a claim by prescription against the owner of the soil had that evidence stood alone. This was accepted by Mr McCulloch on behalf of the Devon County Council, the present owner of the soil. But that evidence does not stand alone. Each of the persons so claiming was entitled by virtue of being an inhabitant of the ancient parish of Northam to graze animals on the Burrows. In my view, such enjoyment of the grazing could not be the foundation of a separate right by prescription. Prescription is based on adverse user known to the owner of the soil, which he



could stop at any time, if he were so minded. In this case the successive owners of the soil must be taken to have been aware of the rights of the inhabitants and would therefore have known that they were not entitled to put an end to the grazing. Enjoyment which the owner of the soil is bound to suffer cannot give rise to a right different from or more extensive than the right by virtue of which that enjoyment is had.

I have therefore come to the conclusion that the only rights which these applicants have proved are their rights as inhabitants. However, should this view ultimately be held to be mistaken, it seems desirable that I should set out the rights which were established against the County Council as owners of the soil and the number of sheep applicable to each. They were as follows:-

Entry No.	Name of Applicant	Number of sheep with their lambs.
15	Waters	7
67	Withecumbe, W.F.	90
107	Withecumbe, A	126
113	Wilcox and Morrish	84
174	Griffey, A.R.D.	18
195	Griffey, W.G.	28
271	Tucker and Woolf	15
277	Withecumbe, A. S.	70
405	Mills	200
430	Withecumbe, W. F., Withecumbe, E., Bradley, A.W., and Hall-Tomkin, B.D.	280
445	Squire	80

For these reasons I refuse to confirm any of the registrations.

I do not regard this as an appropriate case for an award of costs.

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 21st day of Nov. 1977.

Chief Commons Commissioner