



COMMONS REGISTRATION ACT 1965

Reference Nos 268/D/501  
268/D/502In the Matter of Aislaby Moor &  
Gally Hill, Aislaby, Scarborough  
Borough, North YorkshireDECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and at Entry Nos 1 to 31 inclusive in the Rights Section of Register Unit No. CL51 in the Register of Common Land maintained by the North Yorkshire (formerly North Riding) County Council and is occasioned by the Rights Section registration at Entry No. 22 being in conflict with the Land Section registration and all the other Rights Section registrations.

I held a hearing for the purpose of inquiring into the dispute at Scarborough on 21 October 1986. At the hearing (1) Aislaby Parish Council were represented by Mr H Greaves solicitor of Buchanan & White, Solicitors of Whitby; (2) Mr Ronald Murrell Haram and Mrs Valerie Haram of Moor End, Aislaby as successors of Mr Paul Warwick Redway who applied for the Rights Section registration at Entry No. 22, was represented by Mr K Gillance of counsel instructed by Nixon & Nixon, Solicitors of Redcar, Cleveland; (3) Mr Ernest John Muncer of Hunt House, 17 Egton Road as successor of Mrs Marjorie Alice Hunter who applied for the Rights Section registration at Entry No. 6, attended in person; (4) Mr John William Wooding of Church Farm, Aislaby as successor of Mr Harry Jackson who applied for the Rights Section registration at Entry No. 7, attended in person; (5) Mrs Mary Louise Mackenzie of 28 Egton Road, Aislaby, being a house locally known as Cragwell (a house so named is mentioned in the Rights Section registration at Entry No. 15) attended in person (she explained she did not own her house as successor of Mr John Halder Bedlington who applied for this registration and may be her house is not included in the map therein referred to); (6) Mrs Sybil Tucker of Moor Edge, No. 5 White Row, Aislaby as successor of Mr William Wray who applied for the Rights Section registration at Entry No. 16, attended in person; (7) Mr Alfred Vivian Day of 9 Moor Road, Aislaby who applied for the Rights Section registration at Entry No. 21, attended in person; (8) Mr David Ian Carrack of Hill View, High Cragwell, Aislaby as successor of Mr David Storey Atkinson who applied for the Rights Section registration at Entry No. 23, attended in person; (9) Mr Frank Hall of Toft House Farm, Aislaby, as successor of Mr George Reginald Elders who applied for the Rights Section registration at Entry No. 24, attended in person; (10) Mrs Dorothy May Maxwell of St Oswalds, Aislaby who applied for the registration at Entry No. 25 attended in person; and (11) Mrs Margaret Wendy Pickles and Miss Susan Pickles of Gordon Cottage, Aislaby, as successors of Mrs Eva Mary Henderson who applied for the Rights Section registration at Entry No. 28 attended in person.

The conflict occasioning this dispute arises as follows:- All the Rights Section registrations except No. 22 are of rights attached to lands which are variously described in column 5 of the Register and none of which include any part of the land in the Land Section specified as that in this Register Unit; the registration at Entry No. 22, made on the application of Mr P W Redway "as owner" is of a right attached to land which is described in column 5 of the Register and which is part of the land in the Land Section specified as that comprised in this Register Unit.



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There is a conflict because (as stated in County Council letter dated 5 October 1982 to Goodswens, Solicitors of Guisborough) the essence of rights of common is that they are exercisable over land which is not in the ownership of the right holder.

In the course of his oral evidence Mr Ronald Murrell Haram produced the documents specified in the Schedule hereto. He explained that he and Mrs V Haram became owners of Moor End under the 1986 conveyance (RMH/7) and that his knowledge of the before 1986 events relating to it and its surroundings was derived from what he had been shown and told at the County Record Office and the documents he produced.

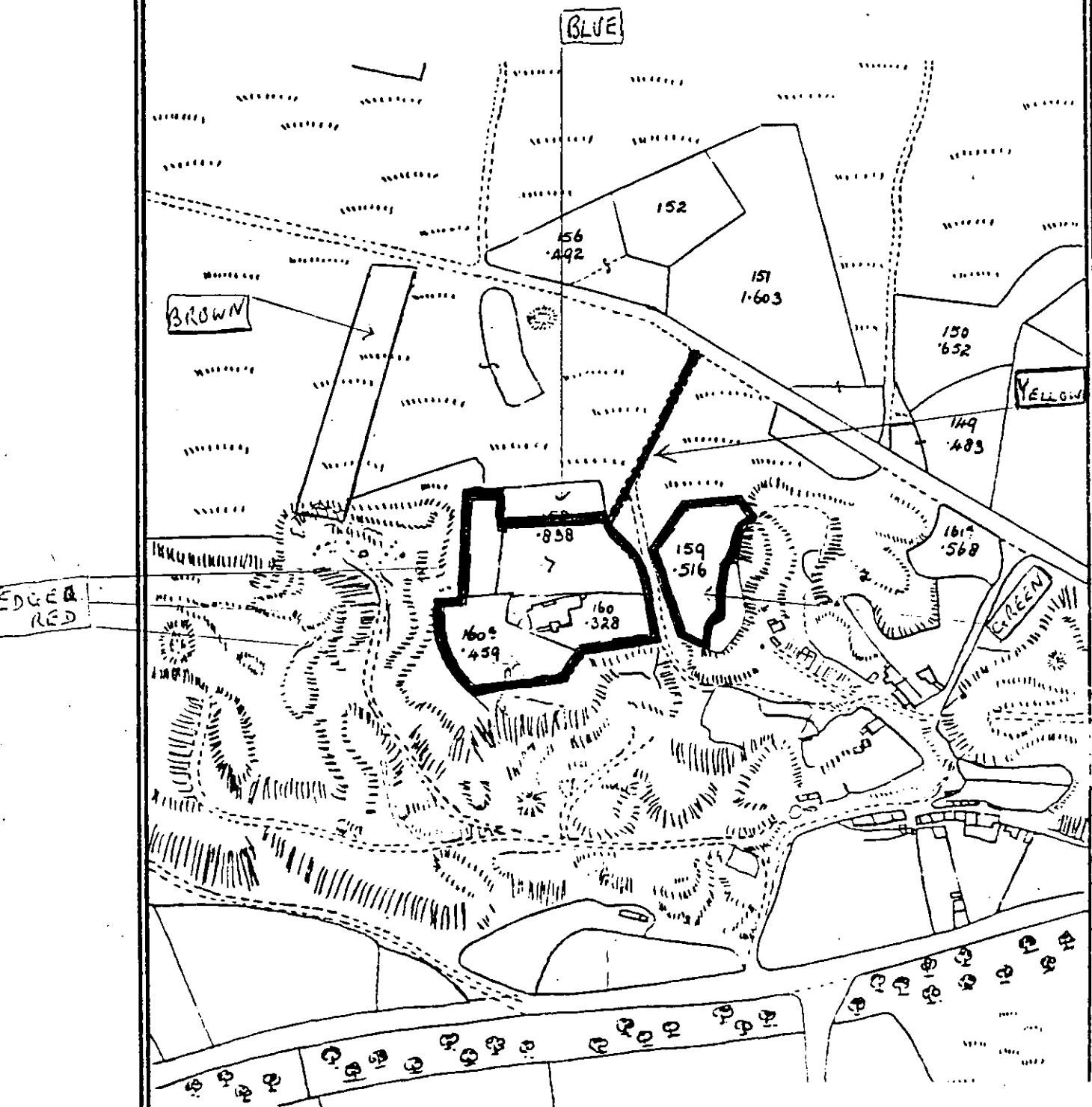
At the conclusion of the hearing it appeared that my decision could most conveniently be made by reference to the plan being exhibit P.W.R.I. to the 1982 statutory declaration (RMH/3) of Mr P W Redway, such plan being based on that drawn on the 1915 conveyance (RMH/1). The plan ("the Decision Plan") being page 3 of this decision, is an uncoloured copy of the plan drawn on the 1915 conveyance on which I have edged with thick black lines the land edged red and the land coloured green on the declaration plan, marked as a thick black line the drive marked on the 1915 conveyance with parallel dotted lines and on the declaration plan coloured yellow, have delineated with a thin black line the land coloured brown on the declaration plan, written "edged red", "brown", "blue", "yellow" and "green" the said lands and drive so coloured. The blue land is delineated with thin black lines on the 1915 conveyance plan and is a rectangular piece about 150 feet from east to west and adjoins the north side of the edged red land.

The oral evidence of Mr Haram was to this effect:- From what he had seen from the County archives and been there told, he had deduced that under the conveyance of 1911 Mr F H Pyman (the grantor under the 1915 conveyance) became entitled 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 consequentially the house Moor End was built and part of the wastes (the edged red land) to be held with it was enclosed. The 1982 declaration (RMH/3) of Mr P W Redway shows the subsequent history of Moor End and its surroundings (see summary in the Schedule hereto).

Questioned by Mr Runcer, Mr R M Haram said (in effect) that he did not claim that the pond marked "X" on the plan on the 1976 conveyance (RMH/6) was not common land properly included in the Land Section registration.

Either after or during the evidence of Mr Haram, Mr Greaves on behalf of the Parish Council conceded that the edged red land should not have been included in the Land Section registration, and Mr Gillance on behalf of Mr and Mrs Haram said it was conceded that the blue land was properly included in such registration. There followed further discussion, after which Mr Gillance on behalf of Mr and Mrs Haram and Mr Greaves on behalf of the Parish Council said they were agreed that the Land Section registration would be confirmed with the modification that there be excluded from it the edged red land, the green land and the yellow land, it being understood that such exclusion would not extend to the 7 yards on either side of the drive mentioned in the 1976 conveyance (RMH/6) and that I should confirm all the Right Section registrations without any modification other than such as was necessarily consequential on the removal of the said lands from the Land Section registration. I shall act on this agreement, although not all the persons concerned with the rights were parties to it, because of those present, many of whom had local knowledge, none suggested I should not, and because I think it a fair compromise of the questions of fact and law arising on the documents produced.





COMMONS REGISTRATION ACT 1965  
 Re: Aislaby Moor & Gally Hill, Scarborough Borough, North Yorkshire  
 Register Unit No. CLS1  
 Ref. No.:- 268/D/501-502  
 This is the Decision Plan referred to in and being page 3 of the decision dated 4 February 1987 and made by the Commons Commissioner in this Matter

*a. a. Bradwell*

Commons Commissioner





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When preparing this decision, it seemed to me necessarily consequential on the agreement mentioned in the preceding paragraph in the context of what was said at the hearing that the land specified in column 5 of the Rights Section registration at Entry No. 22 (being the land to which the rights are attached) should not include either the brown land or the blue land or the 7 yards on either side of the drive or any other part of the land specified in the Land Section registration at Entry No. 1 as such specification will be when the edged red, green and yellow lands have been removed from the Register pursuant to such agreement. My copy of "the supplemental map bearing the no. of this register unit" referred to in column 5 of Entry No. 22 delineates as included in the land to which rights are attached some land east of and adjoining the green land, the whole of the blue land and a piece to the north of it which is either the brown land or land which is a short distance to the east of it and which nobody at the hearing suggested was not properly included in the Land Section registration. Accordingly my confirmation of the registration at Entry No. 22 will be subject to the modification of part of it in column 5 below specified.

At the conclusion of the hearing Mr Gillance submitted that I should order that the costs of these proceedings incurred by Mr R M and Mrs V Haram be paid by one or more to those who applied for the Rights Section registrations in dispute. The Commons Registration Act 1965 required persons to make registrations within a time not long enough to enable them to make a full investigation of the relevant circumstances, and put them at risk of losing valuable rights if they did not make any registration at all; so I consider that the making of a mistake in an application is not reason enough for ordering the applicant for it to pay costs; to be at risk as to costs, it must appear that the applicant was acting not in good faith or unreasonably after having his mistake pointed out to him or did some other thing putting persons concerned to unnecessary expense; of any of the applicants for any of the Rights Section registrations ever having done anything so putting themselves at risk, I have no evidence at all. Further although the mistake seems to have originated from the erroneous map attached to the application which was made by Mr J H Hogarth and which led the Rights Section at Entry No. 1, all the other applicants including Mr P W Redway being a predecessor in title of Mr and Mrs Haram, in their applications accepted the map of Mr Hogarth. For these reasons I do not think fit to make any order as to costs.

Upon the considerations hereinbefore set out, formally my decision about this dispute is as follows:- I CONFIRM the registration at Entry No. 1 in the Land Section of this Register Unit with the modification that there be removed from the Register the land on the decision plan edged with a thick black line and thereon marked "edged red", the land on the decision plan edged with a thick black line and thereon marked "green", and the drive delineated on the Decision Plan as a thick black line and thereon marked "yellow" and so that the said drive will be exclusive of the 7 yards on either side of the drive mentioned in the 1976 conveyance (RMH/6) and exclusive of any other land not between the parallel dotted lines showing the drive on the OS map on which the Decision Plan is based; I CONFIRM the registrations at Entry Nos 1 to 21 inclusive and 23 to 31 inclusive in the Rights Section of this Register Unit without any modification save such as is necessarily consequential on the removal of the said lands and drive from the Register; and I CONFIRM the registration at Entry No. 22 in the Rights Section with such modification as is necessarily consequential as aforesaid and with the further modification that there shall be excluded from the land delineated on "the supplemental map bearing the no. of this register unit" referred to in column 5 of the said registration as being the land to which the rights described in the



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registrations are attached, any land which will be specified in the registration at Entry No. 1 in the Land Section as it will be when from the Register have been removed the lands and drive identified by the words "Edged Red", "Green" and "Yellow" pursuant to the modification in this paragraph first set out.

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)

RMH/1	15 December 1915	Conveyance by Frederick Haigh Pyman as Lord of Manor of Aislaby to Frederick Cresswell Pyman of land surrounded on all sides by waste of the said Manor of Aislaby delineated on plan surrounded by a red verge line together with all such rights of road ... across the Moor ... as are now used or enjoyed or can be lawfully granted by the said Frederick Haigh Pyman.
RMH/2	1986	Unsigned Schedule of Deeds.
RMH/3	10 February 1982	Statutory declaration made by Paul Warwick Redway: (1) between 3 November 1958 and 30 December 1976 joint owner with wife of property red edging on plan P.W.R.1. and the drive leading thereto ... yellow colouring; (2) June 1959 cleared area hatched green and during his ownership occupied the area coloured green or parts of it from time to time; (3) in April 1967 began to use area hatched blue for the purpose of rearing pheasants for approximately 3 years; (4) in April 1967 area shown hatched brown to be cleared for the purpose of a fire break between the moors and "Moor End".
RMH/4	15 May 1923	Conveyance by Frederick Cresswell Pyman to John Kenneth Foster; recites 1915 conveyance (RMH/2) and erection of dwellinghouse.
RMH/5	3 November 1958	Conveyance by Evelyn Sylvia Crook to Paul Warwick Redway and Jacqueline Kelleway Redway of First land surrounded on all sides by waste of the manor of Aislaby coloured blue on plan annexed, Secondly strip of ground being a drive and pathway from first described to main road, coloured yellow on plan.



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RMH/6	30 December 1976	Conveyance by Paul Warwick Redway and Jacqueline Kelleway Redway to Neal Dalby and Patricia Dalby of land within 1958 conveyance (RMH/5) and 7 yards on either side of drive.
RMH/7	4 June 1986	Conveyance by Patricia Dalby to Ronald Murrell Haram and Valerie Haram.
RMH/8	13 February 1986	Letter addressed to Common Commissioners (not received in their office) by solicitors on behalf of Mr Hogarth of Ivy House Farm renouncing his claim to common rights of Moor End, Aislaby.

Dated this 4/c —

day of February — 1987

*a. a. Baden Fuller*

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Commons Commissioner