



COMMONS REGISTRATION ACT 1965

Reference No. 270/D/104-105
270/D/106-107
270/D/112-113

In the Matter of (1) Castle Shaw and Denshaw Moors, Denshaw, (2) Castle Shaw Moor Delph, and (3) an additional part of Castle Shaw Moor, all in Oldham Metropolitan Borough, West Yorkshire.

DECISION

These disputes relate to the registrations (1) at Entry No. 1 in the Land Section and at Entry Nos 1 to 6 inclusive 10 and 12 in the Rights Section of Register Unit No. CL 310 in the Register of Common Land maintained by the West Yorkshire Metropolitan (formerly West Riding) County Council; (2) at Entry No. 1 in the Land Section and at Entry Nos 1 to 5 (inclusive), 9 and 11 in the Rights Section of Register Unit No. 494 in the said Register; and (3) at Entry No. 1 in the Land Section and at Entry Nos 1 and 2 in the Rights Section of Register Unit No. CL 536 in the said Register, and are occasioned by (1) Objection No. 1580, (2) Objection No 1581 and (3) Objection No. 1582 all made by West Pennine Water Board, and noted (1) in the CL 130 Register on 22 February 1972, (2) in the CL 494 Register on 24 February 1972, and (3) in the CL 536 Register on 2 March 1972.

I held a hearing for the purpose of inquiring into the disputes at Huddersfield on 8 December 1981. At the hearing (1) North West Water Authority as successor of West Pennine Water Board were represented by Mr G A Hartley their Solicitor; (2) Mr Gilbert Knight and Mrs Alice Jane Lawton on whose application were made the CL 310 Rights Section registrations at Entry No. 2 and 3, the CL 494 Rights Section registrations at Entry No. 1 and 2 and the CL 536 Rights Section registration at Entry Nos 1 and 2, were represented by Mr M Dean solicitor with Megson & Nicholson, Solicitors of Oldham; (3) Mr J T Flint and Mrs M E Crowther as the personal representatives of Mrs Grace Flint on whose application were made the CL 310 Rights Section registration at Entry Nos 10 and 12 and the CL 494 Rights Section registrations at Entry Nos 9 and 11 and who before her death had acquired Hopwoods Farm, Green Owlers (otherwise Higher Green Owlers) and Pipers Holes and Park Farm being the lands to which were attached the rights in the CL 310 Rights Section registrations at Entry Nos 4, 5 and 6 and the CL 484 Rights Section registrations at Entry Nos 3, 4 and 5, were represented by Mr Donald G Berry solicitor of Ramsdens Solicitors of Huddersfield; and (4) Mrs Amy Maylor of Higher Castle Shaw Farm attended in person on her own behalf and as representing her husband Mr Brian Maylor (an application by them was noted in the CL 494 Land Section).

The land ("the CL 130 Land") in Register Unit No CL 130 is crossed in two places by the A640 road from Rochdale to Huddersfield; for the purposes of this decision I divide it into two parts: one ("the CL 130 Rapes Hill Part") being the part north of the more easterly of the two places where the road crosses, being an area about 1/2 a mile long from north to south and having an average width of about 1/4 of a mile; and the other ("the CL 130 South Part") being nearly all south of the said road and being about one mile long from southwest to northeast and having an average width of about 1/2 a mile. The land ("the CL 494 Land") in Register Unit No CL 494 is in three pieces: one ("the CL 494 Largest Part") being an area bounded



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on the north by the south boundary of the CL 310 South Part and being from north to south a little under $1\frac{1}{2}$ miles long and having a width from east to west varying between one mile and about $\frac{1}{2}$ a mile; another ("CL 494 Roadside Strip") being an area about 500 yards long and nowhere more than about 50 yards wide situated between the A640 road and the CL 310 South Part; and the remaining one being a strip about the same size as the CL 494 Roadside Part extending northward from the CL 494 Largest Part. The land ("the CL 536 Land") in Register Unit No. CL 536 is a strip about $\frac{1}{2}$ mile long and nowhere more than about 150 yards wide bounded on the north by Dowry Water and on the south by part of the north-west boundary of the CL 310 South Part.

As regards the Rights Section registrations with which those represented by Mr Dean and Mr Berry were concerned, Mr Hartley said that agreement had been reached. Explaining this agreement he produced a plan of the Piethorn and Castle Shaw (Oldham) Estate owned by the North West Water Authority; this Estate (more than 2,000 acres) included the two pieces of land edged red on the plan attached to the CL 310 objection being the Rapes Hill Part and an area about $\frac{1}{2}$ a mile square in the CL 310 South Part, the portion of the CL 494 and hatched red on the plan attached to the CL 494 objection being the west part of the CL 494 Largest Part and the CL 494 Roadside Part; and included also the whole of the CL 536 land. The plan ("the Decision Plan") being page 3 of this decision is an uncoloured extract made by myself of the plan attached to the CL 494 Objection; it shows near the top right hand corner CL 310 Rapes Hill Part hatched black surrounded by a thin black line and shows hatched black and surrounded by a thick black line the other part of the CL 310 land, the two parts of the CL 494 land and the whole of the CL 536 land included as above stated in the said Estate. For the purpose of explaining the agreement so reached Mr Hartley produced a copy of the Saddlesworth (Township of Quick) Inclosure Act (49 Geo. 3c.4) and a conveyance dated 12 August 1878 by J Seville, P Gartside and R A Gartside to the Mayor, Alderman and Burgesses of the Borough of Oldham. The agreement was in effect that the said rights should not be exercisable over the CL 310 Rapes Hill Part, that they should be modified as hereunder specified, but should in all other respects be treated as properly made. Nobody at the hearing suggesting the contrary, I said I would give effect to this agreement.

As regards CL 310 Rights Section registration at Entry No. 1 of the right attached to Rams Head Inn of a right to graze and to take peat, made on the application of Mr John Michael Hopkinson, I have a letter dated 26 November 1961 written on his behalf by Norcross Lees & Riches Solicitors Oldham in which they said that he is withdrawing his application No. 1043 CL 310 Entry No. 1; this letter is I think reason enough for my refusing to confirm this registration.

Mr Hartley pointed out that the result of this withdrawal and of my giving effect to the agreement above mentioned, the CL 310 Rapes Hill Part would be altogether free from any rights of common; he contended that such part ought to be excluded from the CL 310 Land Section. In the absence of any registered rights of common over this Part the Land Section registration can only have been properly made if the Part is "waste land of a manor" within the definition of "common land" section 22 of the 1965 Act. I had no evidence that the CL 310 Rapes Hill Part was such waste land and the 1878 conveyance is some evidence to the contrary. Accordingly I conclude that it ought to be removed from the Register.

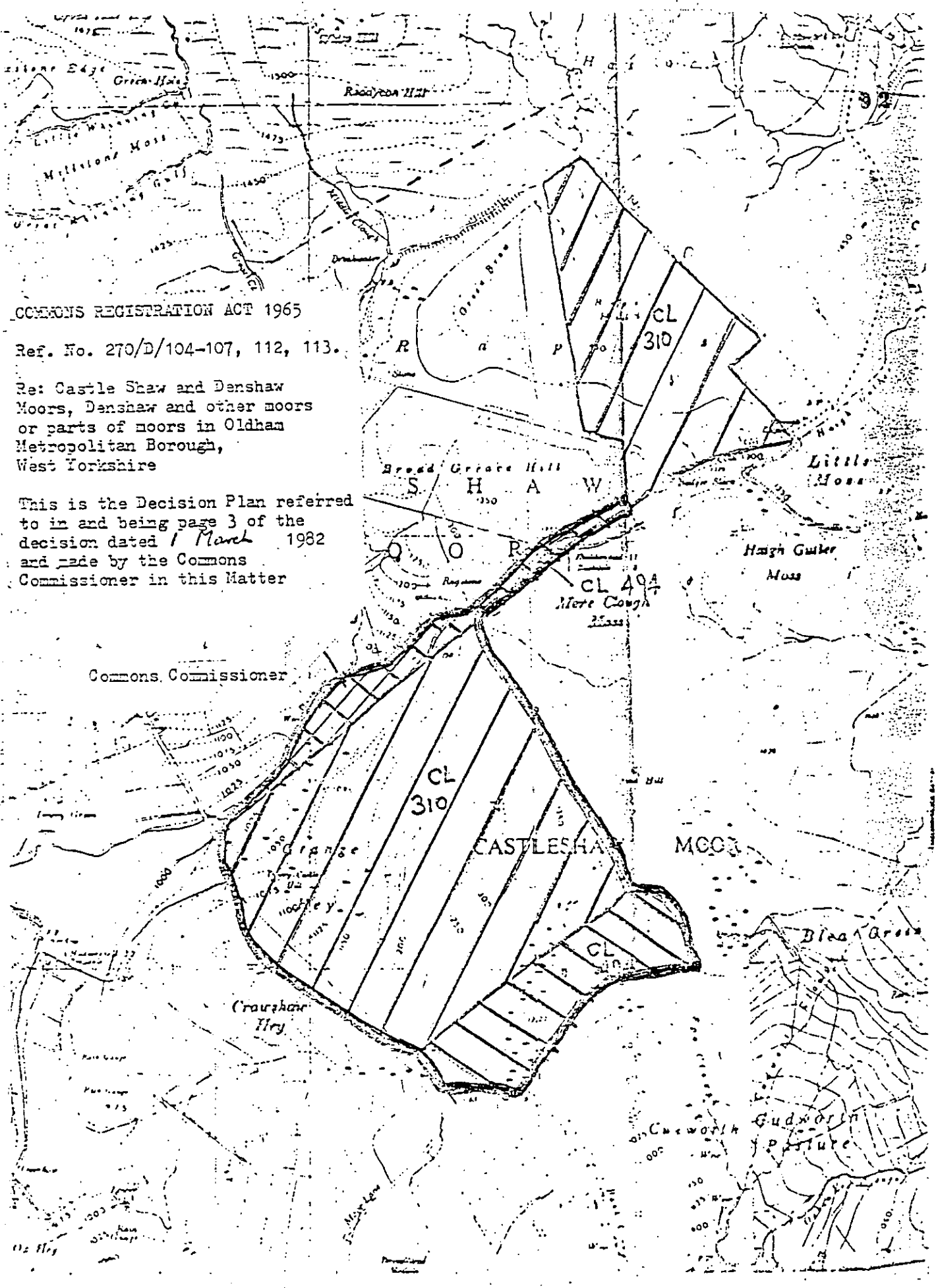
COMMONS REGISTRATION ACT 1965

Ref. No. 270/D/104-107, 112, 113.

Re: Castle Shaw and Denshaw
Moors, Denshaw and other moors
or parts of moors in Oldham
Metropolitan Borough,
West Yorkshire

This is the Decision Plan referred
to in and being page 3 of the
decision dated 1 March 1982
and made by the Commons
Commissioner in this Matter

Commons Commissioner



TITLE



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Mrs Maylor said that she and her husband as owners of Higher Castle Shaw Farm, had rights of common which by some mistake had not been, but should have been registered, and asked me to correct this mistake. The information I had at the hearing shows (as above recorded) that there is a note on the CL 484 Land Section of an application by Mr & Mrs Maylor: but apart from this note, I have nothing to suggest that they ever made an application for any registration. Further under the 1965 Act my jurisdiction is limited to considering disputes which under section 5 have been referred to a Commons Commissioner by the County Council as registration authority: no such reference has been made to me relating to anything done by Mr & Mrs Maylor.

A short time after the hearing had as regards all other questions been concluded, Mrs Maylor renewed her application to me to correct the mistake. West Yorkshire County Council as registration authority ^{was} then represented by Mr M D Healey an Assistant Administrative Officer, and he produced the CL 484 application made by Mr & Mrs Maylor (No. 2636 dated 2 January 1970); it was in effect an application to register land as common land (form 7) and not an application to register a right of common (form 9). Mrs Maylor said that when they signed the form they understood that they would secure for themselves a right of common.

In so signing the form they must have been mistaken. In my opinion I have no jurisdiction to correct this mistake; as a Commons Commissioner I am bound by section 1 of the 1965 Act which provides in effect that a right of common not registered within the period prescribed (this period expired some years ago) shall cease to be exercisable. I express no opinion as to whether Mr & Mrs Maylor could in High Court proceedings or otherwise be relieved from their mistake.

Upon the considerations above set out:- I confirm the registration at the CL 310 Land Section Entry No. 1 with the modification that there be removed from the Register that part of the land in this Register Unit which is north of the A640 road and which is north of the east-west line on the Register map very near to "WP Huddersfield 11, Rochdale 8" thereon marked (being the part in this decision called "the CL 130 Rapes Hill Part"). I confirm the registrations at the CL 484 Land Section Entry No. 1 and the CL 536 Land Section Entry No. 1 without any modification. I refuse to confirm the registration at CL 310 Rights Section Entry No. 1 (Mr J M Hopkinson). I confirm the registrations at the CL 310 Rights Section Entry No. 2, the CL 494 Rights Section Entry No. 1 and the CL 536 Rights Section Entry No. 1 (Mr G Knight) and the registrations at the CL 310 Rights Section Entry No. 3, the CL 494 Rights Section Entry No. 2 and the CL 536 Rights Section Entry No. 2 (Mrs A J Lawton) with the modification that at the end of column 4 there be added "provided that in exercise of the rights over the land in this register unit and the lands in register unit no. CL 310 and no. CL 494 and no. CL 536 (note the Registration Authority will omit whichever of these ~~units~~ ^{units} ~~is~~ ^{are} the number of "this registration unit") the number of animals that at any one time graze over the NWWA land as hereinafter defined shall not at any one time exceed 4 cattle or 45 sheep and with the modification that there shall be included in the Rights Section a definition of the NWWA land in such words and by reference to such map if any as West Yorkshire County Council as registration authority consider appropriate which will in effect show the NWWA land in the relevant Entry No. means the land which is on the Decision Plan both hatched black and edged with a thick black line and as regards the CL 310 land with such further modification as is necessarily consequential on the removal as hereinbefore directed of some of the land ~~is~~ ^{is} the CL 310 Register. I confirm the registrations at the CL 310 Rights



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was before his decision

Section Entry Nos 3, 4, 5 and 6 and the CL 494 Rights Section Entry Nos 2, 3, 4 and 5 (Mr J and Mrs P A Wood) and the registrations at CL 310 Rights Section Entry Nos 10 and 12 and the CL 484 Rights Section Entry Nos 9 and 11 (Mrs G Flint) with the modification to be made in such words and by reference to such map if any as the West Yorkshire County Council as registration authority shall consider appropriate which will have the effect that the words "as shown edged red on the register map" in the two places where they occur in each registration shall not include any part of the ~~NWNA~~ land defined as hereinbefore set out but shall in all other respects be as ~~shown~~ shown edged red on the register map and as regards the CL 310 land with such further modification as is necessarily consequential on the removal as hereinbefore directed of some part of the land from the CL 310 registration.

Because much of this decision is dependent upon an agreement made at the hearing, and it may be that I have recorded it incorrectly, I give to all persons who were then represented or were then entitled to be heard liberty within 42 days of this decision being sent to them or to their solicitors to apply to me to correct this decision (any such application should in the first instance be made by letter to the Clerk of the Commons Commissions).

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 the 1st _____

day of March _____ 1982

a. a. Baden Fuller

Commons Commissioner