



Reference Nos 51/D/135
to 51/D/141

In the Matter of Mynydd Llantysilio,
Llantysilio and Bryneglwys, Glyndwr,
Clwyd

SECOND DECISION

This second decision is supplemental to a decision dated 13 April 1976 and made by Mr Commons Commissioner C A Settle QC about the registrations at Entry No 1 in the Land Section and at Entry Nos 1 to 29 inclusive in the Rights Section of Register Unit No. CL21 in the Register of Common Land maintained by Clwyd County Council (formerly Denbighshire County Council). According to the Register the land in this Register Unit contains about 890 acres.

This second decision relates to the registration at Entry No. 20 in the said Rights Section which was made on the application of Mr Thomas Emyr Jones as owner of a right attached to Bryn Mawr, Glyndyfrdwy, expressed in column 4 as "The right to graze one hundred and fifty sheep over the area of land hatched red and marked J (ie 104 acres or thereabouts) on ... Register map"; and to a notice dated 7 October 1976 in pursuance of section 6(2) of the 1965 Act that the said registration (among other registrations) at Entry No. 20 had become void.

In a letter dated 4 March 1977 the Clerk of the Commons Commissioners told Solicitors acting for the said Mr T E Jones (in reply to their letter of 3 December 1976) that the Commons Commissioner had corrected his said decision and said notice and a copy of the corrected decision and notice were enclosed for their information. By the decision as so corrected, the registration at Entry No. 20, instead of its confirmation being refused, was confirmed modified by deleting all the words in column 4 and inserting in lieu thereof the words "the right to graze 150 sheep over this Unit and Unit No. CL132, but so that the number of sheep grazed at any one time over this Unit and CL132 shall not exceed 150 sheep". The October 1976 section 6(2) notice was corrected to the same effect.

By an order dated 11 December 1981 and made by the High Court of Justice before the Honourable Mr Justice Glidewell, on an application by Mr Griffiths Thomas Francis for judicial review it was ordered (in effect) that the said 1976 decision and the amendment thereto made in March 1977 whereby Trevor Hywel Jones or his predecessor in title was granted the right to graze 150 sheep over the whole of the land comprising Register Unit CL21 and numbered 20 in the Rights Section of the Register of Common Land maintained by Clwyd County Council be removed into the Queens Bench Division of the High Court of Justice and that thereupon such part of the said decision as relates to Trevor Hywel Jones be quashed.

In the course of his judgement Mr Justice Glidewell said (in effect) that the said 1976 decision as amended in 1977 made a fundamental change in the registration at Entry No. 20 in that before the said decision the right registered at Entry No. 20 was limited (to the area J on the Register map), and after the said amendment extended to the whole of the CL21 Land, and that there had been no agreement to any such change.

Following the said High Court Order, those concerned were informed by the Clerk of the Commons Commissioners that it was necessary for a fresh decision to be made



- 2 -

by a Commons Commissioner, which could only be given after either a hearing or a consent signed by all persons entitled to be heard. After some correspondence, I, concluding that it was unlikely that any such consent would be forthcoming, held a hearing for the purpose of determining all questions requiring a decision of a Commons Commissioner to give full effect to the said 1981 High Court Order, at Llangollen on 29 April 1986. At the hearing (1) Mr Trefor Hywel Jones and Mrs Ceinwen Mair Jones who are the son and daughter-in-law of the said applicant Mr Thomas Emyr Jones, were represented by Mr Hywel Ll Davies, Solicitor of Bala; and (2) Mr Griffiths Thomas Francis who applied for the registration at Entry No. 29 of the said Rights Section, and who was the applicant in the said High Court proceedings, was represented by Mr Maurice Kay of counsel instructed by Charles Richard & Sons, Solicitors of Llangollen; and (3) Mr Bertie Jones of Blaen Ial, Bryneglwys who with Mrs Laura Winnie Jones applied for the registration at Entry No. 3 in the said Rights Section was represented by his son Mr Alun Jones. In a letter dated 27 March 1986, Charles Richards & Sons said that they would at the hearing be representing Mr R L and Mrs G Jones who had recently completed the purchase of those parts of the Llantysilio Mountain which were formerly owned by Pine View Development Limited (they made Objection No. 146, the grounds of which are in effect that no part of the land in this Register Unit is common land).

Mr Kay said his client was concerned to restrict the registration at Entry No. 20 to the part of the CL21 land to what it was when it was first made, that is that the registration should be over part only and not over the whole.

Mr Alun Jones said (in effect):- In 1967 his father bought Blaen Ial (the farm specified in the registration at Entry No. 3 in the said Rights Section) with grazing rights over the land ("the CL132 land") in Register Unit No. CL132 which adjoins the farm. The CL21 land is about one mile from the Farm. Mr B Jones mistakenly made an application for registration of a right not over the CL132 land but over the CL21 land. This registration by the said 1976 decision was confirmed without any modification.

Next, some of those present saying they wished to discuss the situation as it then appeared, I adjourned the proceedings to enable them to do this.

After an adjournment of about 3 hours, on my resuming the hearing Mr H Ll Davies said that his client and Mr Francis were agreed that so far as I was concerned I should confirm the registration at Entry No. 20 to graze 150 sheep over the area edged blue on the plan handed in (THJ/1), being the same as that marked J referred to in the registration, that is I should restore the registration as it was (provisionally) before the beginning of the March/April 1976 hearing which led to the said 1976 decision; the substance of the matter was that the registration would no longer be in accordance with the amendment (made in March 1977), ie no longer over the whole, but only over part of the CL21 land.

Next Mr A Jones somewhat amplified what he had previously before the adjournment said about the CL21 registration at Entry No. 3 and requested me if at all possible to delete such registration from the CL21 Register Rights Section and transfer it to the CL132 Rights Section.

I said to Mr A Jones that I considered I had no jurisdiction at my then hearing to insert a new registration in the CL132 Rights Section, which register unit was not then before me for consideration, but I would give a reasoned decision if I was asked to do so within 6 weeks. I have not been so asked, I therefore now merely



- 3 -

draw attention to the above quoted purpose of my 1986 hearing which was notified to those concerned without any indication that I might consider any Register Unit other than No. CL21.

In support of the CL21 registration at Entry No. 20, oral evidence was given by (1) Mr Trefor Hywel Jones who under a deed of gift dated 18 February 1971 and made by his father Mr Thomas Emyr Jones is with his wife Mrs C M Jones the owner of Bryn Mawr Farm, (2) Mr Ernest Trevor Roberts of Afallon, Bala who is now 67 years of age and who had known Bryn Mawr Farm since he was 13 years old, and (3) Mr William Jones of Islwyn, Birch Hill who is 78 years of age and started to work in the area of Glyndyfrdwy when he was 14 years of age. Mr T H Jones said he had been at the farm (which contains about 47 acres) since May 1965 and there had always been with it a right to graze on the Mountain at Llantysilio. Mr E T Roberts gave some information about the boundary of the sheepwalk attached to the Farm but to some of the questions he was asked said he could not remember. Mr W Jones gave information about the grazing on the Mountain by reference to numerous places which he named but which it would have been time consuming to identify on the Register map.

I considered that no useful purpose would be served by further questioning Mr E T Roberts and Mr W Jones because nobody at the hearing suggested that the right as agreed between Mr Kay and Mr H Ll Davies was not properly claimed because such agreement gave effect to the 1981 High Court Order and the intention of Mr Justice Glidewell deducible from his judgment.

When writing this decision I felt uncertain whether the registration should contain words "but so that the number of sheep grazed at any one time over this Unit and CL132 shall not exceed 150 sheep". Against the inclusion of these words, I have no note or recollection of anything being said about them at my hearing. But in favour of my including them I have: (a) they were asked for in the said December 1976 letter from the solicitors for Mr T E Jones, (b) they were included to the amendments made in March 1977 by the Commons Commissioner pursuant to such letter, (c) corresponding words were then and still are included in the corresponding CL132 registration, (d) in a letter of 16 December 1982 Mr T A G Sopwith on behalf of Mr Duncan Robertson the original owner of the whole of Llantysilio Mountain except that part owned by Pine View Developments Limited and on behalf of his son-in-law Captain P M de W Greenwell to whom Mr Robertson gave part of the Mountain agreed that the registration at Entry No. 20 could be confirmed with the addition of the said words, and (e) I have a letter dated 22.4.83 from Mr T H Jones saying he had signed a consent form which contained the words. It would be confusing for the words to be included in the CL132 but not in the CL21 Register Unit; I conclude therefore that what was said at the hearing by Mr H Ll Davies was to be taken in the context of the said correspondence and that I should therefore in my decision include the said words. In case I have misunderstood him, I give to Mr and Mrs T H Jones liberty to apply within TWO MONTHS from the date on which this decision is sent out that this part of the decision be varied; any such application should in the first instance be made by letter to the Clerk of the Commons Commissioners in London.

Subject to such last mentioned liberty to apply, my decision is: I confirm registration at Entry No. 20 in the Rights Section of the CL21 Register Unit as it stood as a provisional registration immediately before 31 March 1976 when the Commons Commissioner started the hearing leading to his 1976 decision without any modification such as he purported to make to it in or before March 1977 but with the modification at the end of column 4 add the words "but so that the number of



- 4 -

sheep grazed at any one time over this Unit and CL132 shall not exceed 150 sheep". Consequentially on such confirmation, I shall in due course give notice to Clwyd County Council as registration authority pursuant to section 6(2) of the 1965 Act that the said registration at Entry No. 20 has become final with the modification hereinbefore set out, so that the notice so given dated 7 October 1976 and in or before March 1977 amended by the Commons Commissioner is as regards such registration abrogated.

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 6th — day of January 1987.

A. A. Baden Fuller

Commons Commissioner