



COMMONS REGISTRATION ACT 1965

Reference Nos. 44/D/53  
44/D/54  
44/D/55  
44/D/56  
44/D/57  
44/D/58  
44/D/59  
44/D/60  
44/D/61

In the Matters of (1) Bowes Moor, Bowes and  
(2) a Recreation Allotment, Bowes, Teesdale  
District, Durham

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DECISION

These 9 disputes relate (D/53, 55 and 56) to the registration at Entry No. 1 in the Land Section of Register Unit CL.1 in the Register of Common Land maintained by the Durham County Council, (D/57, 58, 59, and 61) to the registrations at Entry Nos. 2-6, 12, 15, 17-23, 25-28, 30-35, 37-39, 41-43, 45-53, 55-57, 59-85, 87-110, 112, 114, 116, 118, 120, 122, 124, 127, 129, 131, 133, 135, 137 and 139 (in all ~~105~~ Entries) in the Rights Section of the said Register Unit CL.1, and (D/54) to the registration at Entry No. 1 in the Land Section of Register Unit No. VG 158 in the Register of Town or Village Greens maintained by the said Council, and are occasioned (D/53 and 54) by the said Entry No. 1 in the Land Section of Unit Nos. CL.1 and VG.158 being in conflict, (D/55 and 57) by Objection No. 077 by Mr Robert Grenville Marsh and Mrs Norah Marsh and noted in the Register on 6 August 1970, (D/56 and 58) by Objection No. 0223 made by Mr Lewis Guy and noted in the Register on 13 November 1970, (D/59) Objection No. 0223 (to Entry No. 80 only) and made by Mr Edward Bruce Samuel Coates (as Secretary of the Bowes Moor Field Reeves) and noted in the Register on 22 October 1970, (D/60) by Objection No. 0240 (to Entry Nos. 99, 101 and 102 only) made by the Lords in Trust for the Ancient Manor of Bowes by Mr W I Watson their chairman and noted in the Register on 3 November 1970, and (D/61) by Objection No. 0243 (to Entry Nos. 70 and 107 only) and also made by the Lords in Trust for the Ancient Manor of Bowes by Mr W I Watson their chairman and noted in the Register on 22 October 1970.

I held a hearing for the purpose of inquiring into these disputes at Bishop Auckland on 30 April 1975. At the hearing (1) Mr William Innes Watson, OBE, TD, DL, Mr John Davey Cooke-Hurle, Mr John Robert Ettey, Mr Robert Angus Morritt MBE and Mr Lewis Guy ("the Lords in Trust") of the Manor of Bowes, the Lordship of which has ever since 1686 been vested in trustees were represented by Mr W I Watson (one of their number), solicitor of Watsons, Solicitors of Barnard Castle; (2) the Commons Open Spaces and Footpath Preservation Society on whose application the said registration in Unit VG.158 was made, were represented by Mr J J Pearlman, solicitor of Pearlman Segal, Solicitors of Leeds; (3) the Churchwardens of the Parish of Bowes, being concerned (D/53 and 54) only with the validity or otherwise of the registration VG. 158 were also represented by Mr W I Watson; (4) (a) the Trustee in Bankruptcy (Mr Edward Taylor) of Mr Colin William Kellett, Mrs Elizabeth Kellett, and Mr Paul Colin Kellett and (b) Samuel Webster and Sons Limited both as successors in title of Mr R G and Mrs N Marsh were represented by Mr C Dickinson,



solicitor of Hay & Kilner, Solicitors of Newcastle upon Tyne; (5) Mr L Guy in respect of his Objection No. 0283 was represented by Mr R B Wood, assistant county secretary of the North Riding and Durham Counties Branch of the National Farmers Union; (6) Dr Louis William Smith on whose application Entry No. 107 had been made was represented by Mr R J North, solicitor with Darling, Heslop & Forster, Solicitors of Barnard Castle; (7) Mrs Elizabeth Tallentire on whose application Entry No. 80 was made was also represented by Mr R J North; and (8) Bowes Moor Field Reeves (in respect of Objection No. 0223) were also represented by Mr W I Watson.

107 The land ("Bowes Moor") comprised in Register Unit CL. 1 is a tract of moorland having an area of over 15 square miles. The disputes referred to me relate in substance either to various small parts of Bowes Moor or to some only of the 106 Entries in the Rights Section. However if regard be had to the provisions of the 1965 Act, formally all these disputes put in issue the registration of the whole of Bowes Moor and the registrations at all the Entries in the Rights Section, with the result that I cannot confirm any of these registrations either with or without a modification without disposing of all the disputes. Having regard to these considerations, I am, notwithstanding that the 92 disputes referred to me are in many respects quite distinct from each other and depend for the most part on quite different evidence, combining into this one decision my decision as regards each such dispute.

General considerations applicable to all 9 disputes:-

Bowes Moor is (as registered) U-shaped and lies between Bowes which is on the east and the boundary between Durham (formerly North Riding) and Cumbria (formerly Westmorland) which is on the west. Through the middle of the U and crossing it at its west end near the County boundary runs the A66 road between Bowes (from Richmond) and Brough (from Appleby). The north part of the U is a strip about 6 miles long (its east end being just north of Bowes and its west end being the county boundary) and between 1 and 1½ miles wide. The south part of the U is approximately triangular each side being about 4 miles long extending from about 2 miles southwest of Bowes to the County boundary and being crossed by the road from Bowes to Tan Hill and beyond.

107 Bowes Moor was registered <sup>(as common land)</sup> (CL.1) on the application of Mr W I Watson, Mr J R Ettey, Mr J O Cooke-Murle, Mr J G F Milbank "being the Lords in Trust for the time being of the Ancient Manor of Bowes". Of the ~~92~~ Entries in the Rights Section, 44 Entries are of sheep or cattle gaits or stints, it being noted: "Bowes Moor cattle gaits = one right of common is one sheep stint = one sheep or ewe with unweaned lamb, or one three year old or upward cow or beast or one and a half two years' cows or beasts or ten geese = eight sheep stints, or one horse or mare with unweaned foal not exceeding six months = 16 sheep stints"; 59 Entries are of "A proportionate share and interest in all the rights royalties liberties franchises minerals quarries game manorial rights and monies arising therefrom out of the Manor of Bowes to and upon a rateable value as shown... (in column 4) against each Entry the rateable value is stated, not being the same in each case) of the whole of the land comprised in this Register Unit; and the remaining 3 Entries (Nos. 99, 101 and 102) are "to take stone". The Ownership Section contains one Entry of the ownership of Mr Watson, Mr Ettey, Mr Cooke-Murle and Mr Milbank of part of Bowes Moor being 70 acres and known as Drygill Allotment.



At hearings held pursuant to references made to me under section 8 of the 1965 Act before and after the hearing of these disputes I was provided by Mr Watson and others with much information relating to the administration and management of Bowes Moor. I have summarised this information in my decision of even date of which the Reference Nos. are 211/U/1, 211/U/2, 211/U/3, 211/U/6 and 211/U/10. On this information I am satisfied that the persons represented by Mr Watson at the hearings before me of these disputes can properly be regarded as representing in all these disputes all other persons who are interested in Bowes Moor either as beneficiaries under the trusts applicable to the Manor of Bowes or to rights of common registered over it. For this reason it is not necessary for me in this decision to discuss the position of "the Lords in Trust" in relation to Bowes Moor.

The Recreation Allotment dispute (D/53 and D/54):-

The land comprised in Register Unit No. VG.158, according to the Register map is square (or nearly so), and its northwest, southwest and southeast corners are marked by a stone; no stone is marked on the map at its northeast corner, although a stone is marked on the east side. It is situate about half a mile northwest of Bowes Castle (remains of) on the west side of a side road which near the Castle turns north from the A66(T) road. In the Ownership Section, the Churchwardens of the Parish of Bowes for the time being are registered as the owners of all the VG.158 land, and such registration being undisputed has become final; their original application for ownership appears to have been limited to an area a little less than the whole bounded by lines joining the four stones marked on the map, and there was some discussion at the hearing as to whether this boundary was not the more correct.

The whole of the VG.158 land is included in Bowes Moor as now registered provisionally under Register Unit No. CL.1.

Mr Watson produced a copy (certified on 4 January 1897 by the Board of Agriculture as being a true copy) of the Bowes Moors Inclosure Award dated 17 October 1859 (made under the Annual Inclosure Act 1857, 20 Vict. c.5). This Award contains an allotment in these words:- "...unto the Churchwardens and Overseers of the Poor of the said Parish of Bowes All that piece or parcel of land numbered 1 on the said map hereunto annexed containing four acres to be held by them and their successors in trust as a place for Exercise and Recreation for the inhabitants of the said Parish and neighbourhood And subject thereto to permit and suffer the same to be pastured in the same manner and by the cattle of the same parties as the rest of the lands of Bowes Moor aforesaid and in obedience to an Order and direction under the Seal of the said Inclosure Commissioners that the said Allotment should be distinguished by metes and bounds, but should not be fenced, I have set up boundary stones at the several corners thereof And I direct that such boundary stones shall forever hereafter be maintained and kept in repair by the churchwardens and overseers of the Poor for the time being of the Parish".

Mr Watson, who knew the land, said that the land so allotted was quite indistinguishable from the rest of the Moor, and that the 2 stones marked on the map as being near to the side road were no longer there. However he conceded that so far as the land comprised in the above allotment could properly be defined, it must be within the definition of a town or village green in section 22 of the 1965 Act and therefore could not remain registered as common land.



After the hearing Mr Pearlman sent me a copy of the relevant part of the Award map which he had obtained from the County Archivist, and on this map plot 1 is shown to be square or nearly so. Mr Watson agreed at the hearing that I could act on this map as if it had then been produced.

After the hearing I inspected the alleged recreational allotment. I found the two boundary stones described by Mr Watson between 150 and 200 yards from the fence which now separates the Moor lands from the side road but I could find no sign of the other two stones. The alleged site, however its true boundaries be determined, as a piece of land has no reality at all; the site is quite indistinguishable from the rest of the Moor and appears quite unsuitable for any recreational purpose. I cannot imagine how any person could now use, or could have ever used, or could ever at any future time want to use the site for any recreational purpose. However on its history as proved to me it is legally within the definition of the 1965 Act and in my view ought therefore to remain on the town and village green register.

Any determination of mine of the present boundary of the recreational allotment must necessarily be somewhat arbitrary. I paced the line between the two stones and concluded that a square one of whose sides was this line might contain more than four acres: it would be a pure chance if the opposite sides of such a square coincided with the existing fence separating the road from the Moor lands. No useful purpose would I think be served by any great degree of precision. My conclusion is that the words "containing 4 acres bounded on the west by the line joining the two existing old boundary stones" should in the description in the Land Section be inserted before the existing words "as marked with a green verge line..." such line shows the land square or nearly so) and that is all I need do.

By regulation 14 of the Commons Registration (General) Regulations 1966, every Entry in the Rights Section of Register Unit No. CL.1 is deemed to have been made in the Rights Section of Register Unit No. VG.158, and in accordance with such regulation a note to this effect has been made in the Land Section. I had no argument from Mr Watson or Mr Pearlman as to how I should deal with these deemed Entries. The above quoted allotment expressly permits the allotted land "to be pastured in the same manner...as the rest...of Bowes Moor"; it follows I think that the deemed Entries of stints or cattle gaits should continue to be applicable to the land comprised in Register Unit No. VG.158. But in my opinion the other deemed Entries are inconsistent with the terms of the above quoted allotment, and should therefore cease to be applicable to it.

The Tann Hill House and Inn Dispute (D/55 and D/57):-

The grounds stated in Objection No. 077 are:- "The property known as Tann Hill Inn with the site thereof and the stables and other buildings is not common land...".

Mr Dickinson produced a plan which shows three pieces of land edged red:- (1) a piece about 35 yards long and 15 yards wide, with a house (Tann Hill House) thereon, (2) a piece with a frontage of about 35 yards to the Brough-Reeth road and a depth of about 50 yards with an Inn (Tann Hill Inn) thereon and (3) a piece about 3 yards square, marked "stone shed" about 7 yards northeast of the Inn; on the plan piece (3) is and pieces (1) and (2) are not hatched red. He also produced certified copies of (1) a conveyance dated 3 May 1969 of lands to Mr R G and Mrs N Marsh, (2) a conveyance dated 17 May 1971 by Mr and Mrs Marsh to Messrs C W, E A and P C Kellett, (3) a mortgage dated 15 March 1972 by Messrs Kellett to Watney Mann (North) Limited, and (4) a transfer of this mortgage to Samuel Webster & Sons Limited. The said three pieces are or may to some extent, be within the land comprised in Register Unit CL.1, being situate at the extreme southwest part on or near the County boundary.



Mr Watson and Mr Dickinson said that they were agreed that so much of the said two pieces as are edged red and are not hatched red, and as are included in the Register Unit should be excluded. On the information given to me by them, I conclude that I can and should act on this agreement.

The right to take stone (Entry Nos. 99, 101 and 102) dispute (D/60):-

The Entries were all made on the application of Mrs Mary Alice Handley and Mr William Edward Handley and are registered as attached to (99) Lower Broates Farm, (100) Milestone House Farm and (101) Clint Fields. The grounds stated in Objection No. 0240 are:- "No such rights exist".

Mr J C N Donald who is and for the last 9 years has been Steward of the Manor of Bowes in the course of his evidence on this dispute, referred me generally to the evidence he had given on the previous day (summarised in my said decision of even date) and said that there are no rights to take stone from Bowes Moor save as may be vested in the freeholders, a list of whom he then produced; Messrs Handley are not on this list.

In the absence of any evidence supporting these Entries, and upon a consideration of the information given to me by Mr Donald at this hearing and at the previous hearing to which he referred, I conclude that these registrations should not have been made.

The Gilmonby Moor dispute (D/56 and D/58):-

The grounds stated in Objection No. 0283 are:- "That part of the land (shaded red on the attached sketch plan) was not common land at the date of registration". The plan shows shaded edged red a strip about  $\frac{1}{2}$  of a mile long (northwest-southeast) and having a variable width (nowhere more or much more than 100 yards). It is east of Seven Hills Tarn and west of Suet Set Hills.

Mr Wood said (in effect):- The boundary between Mr Guy's grouse moor (Gilmonby Moor) and Bowes Moor is the stone wall shown on the said plan as the southwest and west boundary of the strip thereon shaded edged red. In one respect the Register map shows Bowes Moor smaller than it is, because the stone wall continues south of the strip (for about 200 yards) to the parish boundary (which runs approximately east-west through the summit of Citron Seat, O.S. mark 1450; Mr Guy did not claim the triangular piece which is west of the stone wall and north of this boundary.

Mr Watson agreed that the Objection was properly made, and that the true boundary of Bowes Moor is the said stone wall.

In my opinion I can give effect to this agreement notwithstanding that in the result the Register map will in some places show the registered land to be larger than it is now on the map shown to be, because in substance the dispute is not as to the extent of the land registered, (such land is that known as Bowes Moor), but as to the green verge line on the Register map by which such land so known is identified. By giving effect to the Objection and the agreement about the stone wall, I am not in any way changing the area of the registered land, I am doing no more than changing the description of it in the Register.

The Mr L W Smith repeated Entry (Nos. 46 and 107) dispute (D/61):-

These two Entries are of proportionate rights each for 237 rateable value. The grounds of Objection No. 1243 (so far as now relevant) are:- "These rights have been registered twice". Mr North said that the second registration No. 107 was a mistake.



It was agreed that the necessary correction should be made.

The stints of Mrs Tallentine dispute (D/59):-

At Entry No. 80, on her application, 11 stints have been registered. The grounds of Objection No. 0223 are:- "That the right does not exist at all".

Mr North said he was authorised to say that Mrs Tallentine applied for this registration by mistake.

The deemed disputes relating to all the Rights Entries:-

Mr G V Cooper who was attending the hearing as representing the County Council as registration authority pointed out that apart from the disputes dealt with above, there were no other disputes relating to Register Units Nos. CL.1 and VG.158 and contended (in my view correctly) that I ought in this decision to determine the final form of all the Entries in these Register Units.

I see no reason to modify the Land Section of Register Unit Nos. CL.1 and VG.158 save as indicated above. As regards the Rights Section, but for the conflicting registrations and the Objections above mentioned, all the Entries in Register Unit No. CL.1, would have become final under section 7 of the 1965 Act without any hearing before a Commons Commissioner. Nobody at the hearing suggested that I ought not to produce the same result. Further I have in these proceedings and in the proceedings in which I have given my said decision of even date, been given much information which supports in a general way all these Entries. In my view without investigating in detail any of these Entries, I can and should properly treat all these Entries (save those hereinbefore mentioned) as validly made. On the same reasoning, I shall treat all the Entries deemed to have been made in the Rights Section of Register Unit No. VG.158 so far as they are stints or cattle gaits (save those hereinbefore mentioned) as validly made. The Entries in the Ownership Sections of these Register Units were not referred to me, so that (except insofar as at all as they will cease to be applicable to land which as a consequence of this decision is removed from the Registers) nothing in this decision will affect them.

158 For the above reasons:- I confirm Entry No. 1 in the Land Section of Register Unit No. CL.1 with the following modifications:- (A) That there be removed from the Register (i) the land comprised in Register Unit VG.159 and (ii) so much of the two pieces of land which are edged red but not hatched red on the plan which shows Tann Hill House and Tann Hill Inn, which was produced at the hearing by Mr C Dickinson, and a copy of which has been signed by myself, and (B) that the green verge line marking on the Register map Bowes Moor be redrawn where it is now drawn on O.S. Sheet NY 91 SE in the neighbourhood of Gilmorby Moor so that southwards from Sleightholm Beck it coincides with the stone wall which is delineated on the plan attached to Objection No. 0223 and which is thereon the west and southwest boundary of the strip thereon edged red, and further south coincides with the continuation of the said wall until it meets the parish boundary running approximately east-west through Citron Seat (O.S. mark 1450) and thereafter coincides with the said parish boundary westwards until such boundary joins another such boundary running approximately north-south. I refused to confirm the following five Entry Nos. in the Rights Section of Register Unit No. CL.1, No. 80 (being a right to 11 stints); Nos. 99, 101 and 102 (being rights to take stone) and No. 107 (being a right proportionate to a rateable value of £37). I confirm the following Entry Nos. in the Rights Section of Register Unit No. CL.1:-

114, 120, 129  
and 137 (being  
58 Entries)



122, 124, 127, 136, 133,  
135 and 139 (being 41

Nos. 2, 3, 4, 5, 6, 12, 15, 17, 18, 19, 20, 21, 55, 56, 79, 81, ~~82~~, 83, 84, ~~85~~,  
87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 103, 109, 112, 116, 118 (being 36  
Entries of stints), Nos. 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, ~~35~~, 37, 38,  
39, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57, 59, 60, 61, 62, 63, 64,  
65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 97, 98, ~~105, 106, 108,~~ 104,  
110 and ~~111~~ (being 55 Entries of rights proportionate to rateable value), in  
all cases without any modification. I confirm Entry No. 1 in the Land Section  
of Register Unit No. VG.159 with the modification that after the words "...  
Parish of Bowes" and before the words "as marked with a green verge line..."  
there be included the words "containing 4 acres bounded on the west by the line  
joining the two existing old boundary stones". I confirm the following Entries  
which are by regulation 14 of the Commons Registration (General) Regulations 1966  
deemed (because they have been made in Register Unit No. CL.1) to have been made  
also in Register Unit No. VG.158, that is to say following 36 Entries Nos. being  
36 Entries of stints), 2, 3, 4, 5, 6, 12, 15, 17, 18, 19, 20, 21, 55, 56, 79, 81,  
~~82~~, 83, 84, ~~85~~, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 103, 109, 112, 116,  
and 118, to the intent that the said Entries, so far as applicable to Register  
Unit No. VG.158 shall be transferred to the Rights Section of such Unit adapting  
the wording which would have been applicable under paragraph (4) of the said  
regulation 14 if the registration of land affected thereby under and so far as  
comprised in Register Unit No. CL.1 had been cancelled under regulation 12. I  
refuse to confirm the other Entries deemed under the said regulation 14 to have been made  
under and so far as comprised in Register Unit No. VG.158.

122, 124  
127, 131  
133, 135  
and 139

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 22nd day of December 1975

a. a. Baden Fuller

Commons Commissioner

I record that notwithstanding Entry Nos 85  
82 and 85 in the Rights Section are not  
in reference from 36 file of 57 and 6/18/  
date 22 March 1973 & the County Council  
to the Commons Commission. I am sorry  
to discover about the Entries being  
(as appears from the register) they have been  
referred to Entry Nos 59, 109 and 118  
referred to.

Corrected as per (typewritten)

stated I consider signed by  
myself (initials)

a. a. Baden Fuller

28 January 1977