



In the Matter of Neuadd Fach, Gwynfe, part of the Black Mountain,
Dinefwr

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. CL.18 in the Register of Common Land maintained by Dyfed County Council and is occasioned by the conflicting registration at Entry No.2 in the Rights section of the same Register Unit.

I held a hearing for the purpose of inquiring into the dispute at Llandeilo on 17 June 1994.

Mr P A Bishop of Messrs. Gabb & Co, Solicitors, appeared for David Morgan Luther Griffiths, Mr N M Rolt appeared for Powys County Council and Dyfed County Council as registration authority were represented by Mr W J Lewis of their County Planning Department.

The land in this Register Unit is known as The Black Mountain. It is a tract extending to over 18,000 acres, or about 29 square miles. It includes O S Nos. 1661, 1662 and the eastern part of 4677.

Entry No. 2 in the Rights Section states that the grazing rights therein specified are attached to Neuadd Fach in the Parish of Llangadog comprising (inter alia) 1661 and 4677. Hence the conflict. (1662 is not included in the Rights Section).

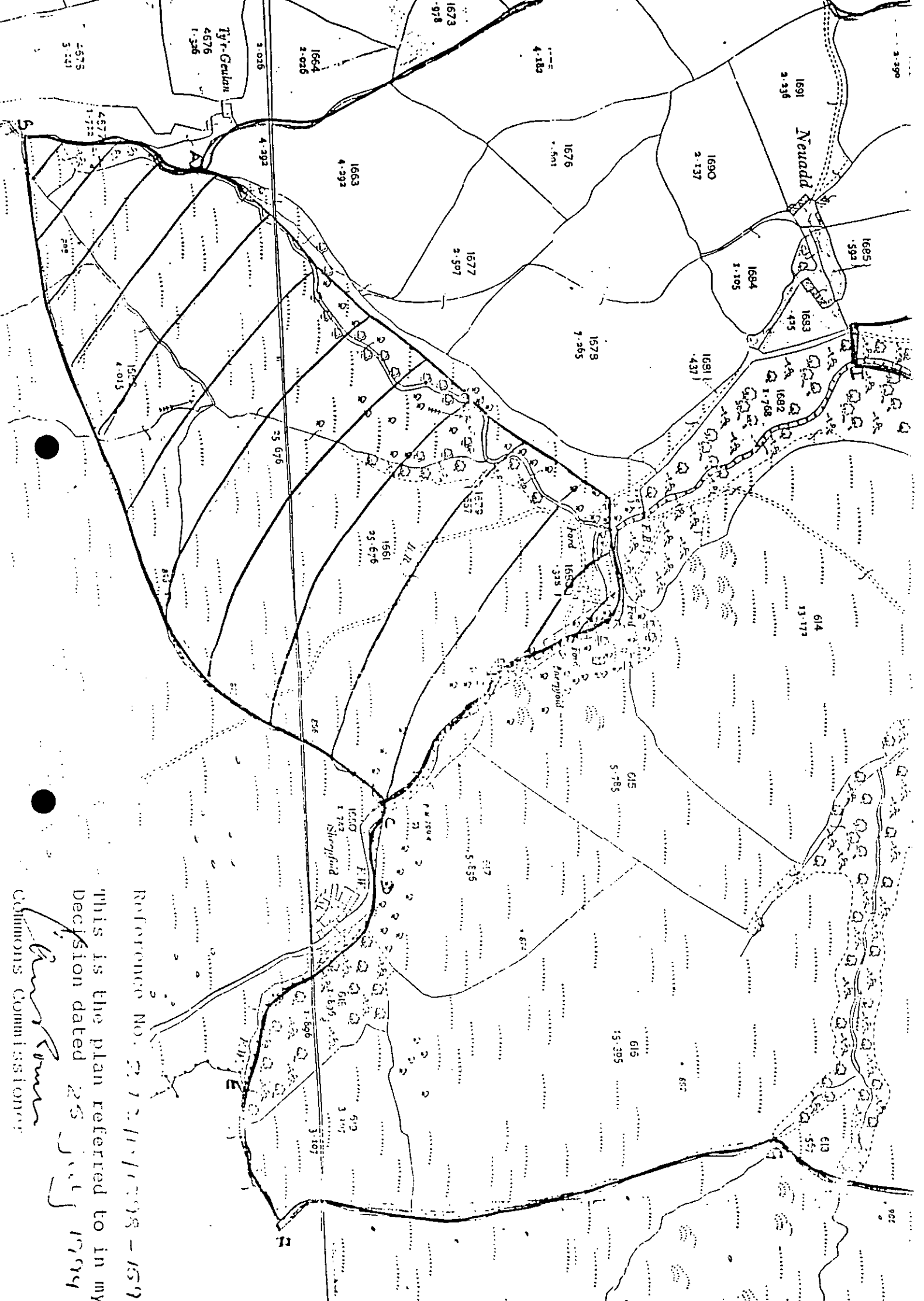
Mr Bishop said that his client, Mr Griffiths, was in course of selling Neuadd Fach to Mr Robert Elwyn Morgan ("Mr Morgan"). He said that the holding had for many years, going back to at least 1921, included O.S. Numbers 1661, 1662 and the eastern part of O S Number 4677.

These areas are shown hatched black on the plan attached to this decision. They form an extremely small part of the unit land.

To support his claim Mr Bishop produced copies of the following deeds:-

(a) An indenture dated 29 September 1921 and made between J E Moore-Gwyn (1) L J Kempthorne and H P Charles (2) L J Kempthorne (3) F W Gilbertson and J H P Lloyd (4) and Morgan Thomas as purchaser (5) whereby the messuage and land known as Neuadd Fach comprising 170 acres and particularised in the 1st schedule and shown on the plan endorsed thereon were conveyed to M Thomas in fee simple. This plan includes the whole of the three areas mentioned above but (unlike 1661 and part 4677) 1662 is not referred to expressly, either on the plan or in the 1st schedule

(b) a vesting assent dated 18 March 1944 whereby William Thomas and Hugh Williams (as executors of the said Morgan Thomas, who died in 1942) assented to the vesting in W Thomas of the property comprised in the 1921 indenture of Conveyance



Reference No. 27/211/1998-1599

This is the plan referred to in my Decision dated 25 July 1999

[Signature]
 Commons Commissioner



(c) an assent dated 11 August 1971 whereby S G Thomas purported as personal representative of the said W Thomas (who died in 1971) to assent to the vesting in Mr Griffiths of the property comprised in the 1921 indenture "as now in the occupation of Elwyn Morgan as tenant thereof" and all which said property was "edged red on the plan endorsed on" that indenture.

Mr Bishop also produced a copy of a tenancy agreement dated 16 March 1960 whereby William Thomas agreed to let to Mr Morgan the farm and land containing about 170 acres known as Neuadd Farm "more particularly described in the schedule hereto and delineated on the plan hereto annexed and thereon coloured pink". No plan is attached to this copy: the schedule includes O S 1661 and pt 4677 but does not refer to O S 1662: in these circumstances I shall assume the parcels were copied from the 1921 indenture and that the plan is so delineated as to include 1662 as well as 1661 and pt 4677.

I also make this assumption as a result of the evidence given by Mr Morgan at the hearing. He said he had been tenant since 1959 of Neuadd Fach and that throughout this period the boundaries, including the southern boundary, of the property had been fenced and had included in the holding let to him the whole of O S Nos. 1661 1662 and the eastern part of 4677, as shown hatched blue on the plan produced to him and hatched black on the plan attached to this decision. Mr Morgan further said that throughout this period only his animals had grazed the land.

No other evidence on this matter has been presented, either at the hearing or otherwise.

On this evidence I conclude that none of the three areas mentioned above should have been registered as common land.

As to O S Nos. 1661 and part 4677 I can clearly remedy this error since there is a patent conflict in the register. Both these areas are included in the Land Section and specified in the Rights Section.

But as to O S No. 1662 there is no such conflict since there is no reference to this number in the Rights Section. By reason of Regulation 7 of the Commons Commissioners Regulations 1971, however, a conflict, when referred to a Commissioner, triggers the provisions of the Commons Registration Act 1965 which relate to the making of objections to provisional registrations.

Regulation 7 provides as follows:

"Where there is a conflict between two registrations then for the purpose of sections 5(6), 6 and 7 of the Act and for the purposes of these Regulations each shall be treated as an objection to the other...."

Section 5(6) of the Act provides as follows:-

"Where such an objection is made..... the registration authority shall refer the matter to a Commons Commissioner"



Section 6(1) of the Act provides as follows:

"The Commons Commissioner to whom any matter has been referred under Section 5 of the Act shall enquire into it and shall either confirm the registration, with or without modifications, or refuse to confirm it"....

It therefore seems clear that in the present case, although in terms the references by Dyfed County Council dated 20 September 1993 are merely of a "dispute" occasioned by "conflicting registrations", as mentioned in the first paragraph of this Decision, the effect of the legislation mentioned above is to refer the whole of the registration.

In Re West Anstey Common 1985 Ch p.329 at p.340, Slade L J said that "an objection made under Section 4 to the registration of any land as common land necessarily puts in issue the entire registration. It is the act of registration to which objection is taken: and that act is indivisible". Also on p.340 Slade L J said that "the provisions of Section 5(6) which envisage a matter being referred to the Commissioner and those of Section 6(1) which envisage him "inquiring into it" presuppose that he must address his mind to a question. That question is, I think, what is to be done about the registration to which objection has been taken? That is the matter which is referred to him".

The question in the present case is thus: what is to be done about the registration in the Land and Rights Sections to which objection is deemed (by Regulation 7) to have been made? The answer to this is, first, that any land included in the Land Section which it is shown during the course of the enquiry should not have been registered should be removed: (this includes O S No. 1662 as much as Numbers 1661 and part 4677): and, secondly, that any land shown to have been omitted from Column 5 of the Rights Section should be added.

For these reasons I confirm the registrations but with the following modifications, namely:

- (a) that the three areas mentioned above, shown hatched black on the plan attached to this Decision, should be removed from the Land Section: and
- (b) that 1662 should be added to Column 5 of Entry 2 in the Rights Section between 1661 and 4677.

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.

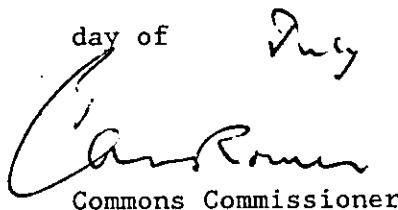
Dated this

25th

day of

July

1994


Commons Commissioner