

*Amended under regulations to PP 8, 10
Peta Llanidan-Davies 31 May 1980*

In the Matter of Mynydd Maen and Mynydd Llwyd Common, Abercarn

DECISION

These disputes relate:

- (1) (273/D/108) to the registration at Entry No 1 in the land section of Register Unit No CL25 maintained by the Gwent County Council occasioned by Objection No 113 made by the Pontypool Park Estate and noted in the Register on 11 November 1970 and by Objection No 45 made by the Forestry Commission and noted in the Register on 21 October 1970;
- (2) (273/D/109) to the registration at Entries Nos 1-26 in the rights section of that register unit occasioned by those objections.

I held a hearing for the purpose of inquiring into the disputes at Monmouth on 29 April and 16 July 1986. At the hearing Mr L L Lewis, secretary, represented the Mynydd Maen Commoners Association, Mr L H Marshall FRICS represented the Trustees of Llanover Estate the owners of part of the unit land, Mr Richard Hanbury-Tenison, the owner of the Pontypool Park Estate, which includes another part of the unit land, appeared in person.

The following rights claimants appeared in person - Mr J Burge the successor to Mr E Burge the claimant at Rights Entry 17, Mr W J Hardy the claimant at Rights Entry 1, Mr W J Vicary claimant at Rights Entry 13, Mr B J Williams successor to Mr T J Davies the claimant at Right Entry 7, Mr J H Haines the claimant at Rights Entry 3, Mr and Mrs H B Marland successors to J Maloney, the claimant at Rights Entry 10 and Mr L H Taylor.

The Land Section

Both objections are to the inclusion in the registration of the same area of forest land of which the Pontypool Park Estate are the owners and the Forestry Commission the lessees. There is a slight discrepancy in the plans attached to the objections but it is now agreed by all parties that the plan attached to objection No 113 shows

the true boundary of the forest. All parties agree that this land was not common land at the date of registration and, since the rest of the unit is clearly subject to rights of common I shall direct the Registration Authority to confirm the registration in the land section with the modification that the area shown on the plan attached to objection No 113 shall be omitted from registration.

Apart from these two objections which have been referred to me there was another objection (No 6) made by the British Steel Corporation (who then stated that they were the owners) which was withdrawn.

The Ownership Section

No disputes have been referred to me regarding this section. The ownership of the greater part of the land is registered in the name of the Trustees of the Llanover Estate and a smaller part in the name of Richard Hanbury-Tenison (the Pontypool Park Estate). The ownership of the remainder (at the north-east of the unit) is not registered but it appears from objection No 6 in the land section (since withdrawn) that at the time of registration it was claimed by the British Steel Corporation.

The Rights Section

Reference 273/D/109 comprises a number of disputes occasioned by the 2 objections in the land section and by a total of 7 specific objections (Nos 83, 143, 144, 145, 146, 147 and 149) to one or more rights entries.

The matter has, however, been simplified by the fact that all but one of these specific objections were made by the Trustees of the Llanover Estate who are the registered owners of most of the common and that the majority of the rights claimants are represented by the Mynnyd Maen Commoners Association. The Trustees have reached agreement with the Association and with Mr Hanbury-Tenison on the majority of the entries which makes it unnecessary to consider these objections in detail.

Agreed Modifications

This agreement involves a modification of the numbers of animals which may be grazed to comply with a formula based on 50 sheep per farm plus 3.5 sheep for each acre of the dominant tenement or alternatively horses or cattle on the basis of one horse or one head of cattle for 5 sheep. To give effect to this agreement, I have adopted the formula in column 4 of Model Entry No 7 in Schedule 2 to the Commons Registration (General) Regulations 1966 with the substitution of the word "unit" for "gate" which in this context may not be a familiar expression in Gwent.

This enables me to confirm the following Rights Entries with the modifications set out in Schedule I to this decision -

2	9	14
3	13	

Rights claimed over land in common ownership with the dominant tenement

Rights Entry No 25 claims, in the name of the Trustees of the Llanover Estate, extensive rights of grazing as attached to 5 farms belonging to that Estate over part of the land comprised in the register unit.

Rights Entry No 26 claims, in the name of Mr Hanbury-Tenison, rights of grazing as attached to 2 farms belonging to him over the whole of the land comprised in the register unit. At the hearing Mr Hanbury-Tenison abandoned his claims as to rights attached to one of these farms (Gelligravog) but pursued his claim as to the other (part of Coedcae Watkin Daffyd).

Now the register shows that at the date of registration of these rights the Trustees of the Llanover Estate owned the greater part of the unit land, Mr Hanbury-Tenison owned part and no owner was registered for the remainder ownership of which was claimed by the British Steel Corporation in their objection No 6 in the land section. Since a right of common is a right to take something from the land of another the Trustees cannot have had rights of common over the land they owned and Mr Hanbury-Tenison cannot have had rights of common over the land he owned.

On the other hand the parties are all agreed that the farms owned by the Trustees were, at the date of registration, if not entitled to common grazing rights over the whole of the unit land, at least, entitled to such rights over those parts of the unit land not owned by them and that Coedcae Watkin Daffyd was entitled to common grazing rights over that part of the unit land not owned by Mr Hanbury-Tenison.

The result of this is that the rights claimed in the following Rights Entries (as modified as to number by agreement) extend only to those parts of the unit land ownership of which is not registered in the name of the Trustees of the Llanover Estate -

4	6	11
5	7	12

It was further agreed that Rights Entry 26 should be modified so as to comprise a right to graze 65 ewes only, attached to Coedcae Watkin Daffyd and exercisable over that part of the unit land of which Mr Richard Hanbury-Tenison is not the registered owner.

The necessary modifications to the register to achieve this result are set out in Schedule II to this decision. Since the rights attaching to the farms owned by the Llanover Estate are registered under these entries there is no need for Rights Entry 25 which will not be confirmed.

Rights Entry No 10 is registered as attaching to 142 acres. It is agreed that the appropriate grazing right is 646 ewes. Part of that land amounting to 11 acres, however, is owned by the Trustees of the Llanover Estate and has, therefore no rights of common over that part of the unit land which is owned by them. It is therefore necessary to divide this entry into two parts as follows:-

- 10a 596 ewes over the whole unit attached to 131 acres
- 10b 50 ewes over that part of the common which is not owned by the
 Trustees attached to 11 acres.

The registration as modified is set out in Schedule III to this decision.

Disputed Rights Entries

Rights Entry No 1 is disputed by Mr Marshall and the Association on the grounds that the 145 acres to which the right is claimed to attach include not only Rhyswg Ganol, to which they admit rights attach, but also Pen y Pant to which they say no rights attach.

John William Hards junior, aged 43, of Rhyswg Ganol Farm gave evidence that in 1965 his father bought Rhyswg Ganol and took a tenancy of the adjoining farm, Pen y Pant. He went to live there with his father and brother. They used the two as one farm and have turned out sheep on the unit land ever since. None of them knew the farm before 1964 and they were unable to call any evidence as to what happened before then.

That evidence clearly does not establish a right of grazing appurtenant to Pen y Pant at the date of registration in 1968. That being so there is no need to refer in detail to the evidence called by Mr Marshall to the effect that sheep have never within living memory been turned onto the unit land from Pen y Pant.

I shall accordingly modify Rights Entry No 1 so that it attaches to Rhyswg Ganol only and not to Pen y Pant. That reduces the acreage of the dominant tenement from 145 acres to 72 acres. The parties agree that the appropriate grazing right for that acreage is 302 ewes and I shall confirm the registration with that modification.

The registration as modified is set out in Schedule IV to this decision.

The following rights entries have been withdrawn -

19	21	24
20	23	

No one appeared to support the following disputed rights entries -

8	16	18
15	17	22

I accordingly refuse to confirm these entries.

The Dominant Tenements

Many of the descriptions of the dominant tenements in column 5 of the rights section are inaccurate or insufficient. The parties have however agreed a map, a copy of which is sent to the Registration Authority with this decision, showing accurately the dominant tenements and column 5 should be modified by reference to that map.

Conclusion

Accordingly -

(1) I confirm the registration in the Land Section with the modification that the land shown on the plan attached to objection No 113 made by the Pontypool Park Estate shall be omitted from registration.

(2) I confirm the following entries in the Rights Section with the modifications set out in Schedules I-IV -

1	4	7	11	14
2	5	9	12	
3	6	10	13	26

(3) I refuse to confirm the following entries in the Rights Section -

8	17	20	23
15	18	21	24
16	19	22	25

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 28th day of July 1986

Peter Landon-Davis

Chief Commons Commissioner

SCHEDULE 1
RIGHTS ENTRIES CONFIRMED WITH MODIFICATION TO NUMBERS ONLY

Rights Entry

Modification to column 4

- 2 To graze -
 - (a) 197 ewes with their lambs, or
 - (b) 40 horses, or
 - (c) 40 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 197 units, one ewe and her lambs counting as one unit and one horse or one head of cattle counting as five units; over the whole of the land comprised in this register unit.

- 3 To graze -
 - (a) 61 ewes with their lambs, or
 - (b) 13 horses, or
 - (c) 13 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 61 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over the whole of the land comprised in this register unit.

- 9 To graze -
 - (a) 708 ewes with their lambs, or
 - (b) 142 horses, or
 - (c) 142 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 708 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut bracken and rushes; over the whole of the land comprised in this register unit.

SCHEDULE 1 (continued)

13 To graze -

- (a) 411 ewes with their lambs, or
- (b) 83 horses, or
- (c) 83 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of ~~83~~ units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over the whole of the land comprised in this register unit.

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PLD 31 May 90

14 To graze -

- (a) 152 ewes with their lambs, or
- (b) 31 horses, or
- (c) 31 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of 152 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units; over the whole of the land comprised in this register unit.

SCHEDULE II

RIGHTS ENTRIES CONFIRMED WITH MODIFICATION TO NUMBERS AND AREA

Rights EntryModification to column 4

- 4 To graze -
- (a) 120 ewes with their lambs, or
 - (b) 24 horses, or
 - (c) 24 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 120 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.
- 5 To graze -
- (a) 236 ewes with their lambs, or
 - (b) 48 horses, or
 - (c) 48 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 236 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.
- 6 To graze -
- (a) 488 ewes with their lambs, or
 - (b) 98 horses, or
 - (c) 98 cattle, or
 - (d) ewes and/or horses and/or cattle together to a limit of 488 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut fern and rushes; over that part of the land comprised in this register unit of which Trustees of the Llanover Estate are not the registered owners.

SCHEDULE II (continued)

7

To graze -

- (a) 295 ewes with their lambs, or
- (b) 59 horses, or
- (c) 59 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of ~~275~~ units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.

295
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11

To graze -

- (a) 239 ewes with their lambs, or
- (b) 48 horses, or
- (c) 48 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of ~~181~~ units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.

239
PL-D
31/11/95
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To graze -

- (a) 181 ewes with their lambs, or
- (b) 36 horses, or
- (c) 36 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of 181 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.

SCHEDULE 11 (continued)

26

To graze -

67 ewes with their lambs over that part of the land comprised in this register unit of which Richard Hanbury-Tenison is not the registered owner.

SCHEDULE III
MODIFICATION OF RIGHTS ENTRY 10

<u>Col 1</u>	<u>Col 4</u>
10A	<p>To graze -</p> <ul style="list-style-type: none">(a) 596 ewes with their lambs, or(b) 129 horses, or(c) 129 cattle, or(d) ewes and/or horses and/or cattle together to a limit of 596 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over the whole of the land comprised in this register unit.
10B	<p>To graze -</p> <ul style="list-style-type: none">(a) 50 ewes with their lambs, or(b) 10 horses, or(c) 10 cattle, or(d) ewes and/or horses and/or cattle together to a limit of 50 units, one ewe and her lambs counting as one unit and one horse or one head of cattle counting as five units and to cut rushes and fern; over that part of the land comprised in this register unit of which the Trustees of the Llanover Estate are not the registered owners.

SCHEDULE IV
MODIFICATION OF RIGHTS ENTRY 1

Column 4

To graze -

- (a) 302 ewes with their lambs, or
- (b) 61 horses, or
- (c) 61 cattle, or
- (d) ewes and/or horses and/or cattle together to a limit of 302 units, one ewe with her lambs counting as one unit and one horse or one head of cattle counting as five units; over the whole of the land comprised in this register unit.

Column 5

Rhyswg Ganol Farm, Abercarn, 72 acres as shown on the agreed plan sent to the Registration Authority with this decision.