



COMMONS REGISTRATION ACT 1965

Reference No 274/D/39 &amp; 40

In the Matter of Conway Common,  
Conway, Aberconwy BC

---

DECISION

These disputes relate to the registrations at Entry No 1 in the Land Section and Entries 1 to 11 inclusive in the Rights Section of Register Unit No CL. 98 in the Register of Common Land maintained by the former Caernarvonshire County Council and are occasioned by Objection No 57 made by the Mayor, Aldermen and Burgesses of Conway and noted in the Register on 16 September 1970.

I held a hearing for the purpose of inquiring into the dispute at Pwllheli on 27 May 1976. The hearing was attended by Mr Pritchard on behalf of all the applicants for common rights and Mr R L Jones on behalf of the ~~Conway~~ Council. *abstracted by B. Smith*

The land in question comprises the Conway Mountain and to the North of the mountain part of the Conway Morfa now developed as a caravan site. There are between the mountain and the relevant part of the Morfa a railway and the A55 main road. Mr Jones at an early stage conceded that the mountain was common land and limited his objection to the Entry in the Land Section to the Morfa.

During the 1939/45 war the relevant part of the Morfa was under requisition and was a camp. In 1946 the Conway BC which owns the land commenced to develop the site of the camp as a caravan site using for that purpose some of the structures placed on the site while it was under requisition. The site has been progressively developed over the years and now comprises a supermarket, roads, and other permanent structures necessary for and usually found on a caravan site.

When I appreciated what the situation was on the ground I suggested to Mr Pritchard that the caravan site was no longer suitable for grazing and that it was unlikely that after nearly 30 years the commoners could obtain any equitable relief to have the land restored to a condition in which it would be suitable for grazing. Mr Pritchard then very frankly told me that what the commoners hoped to achieve if these disputes were resolved in their favour was the fencing of the mountain at the expense of Conway BC in order to prevent sheep sustaining casualties on the A55 road. The factual situation is therefore that the commoners are seeking to establish grazing rights on the caravan site with the object of procuring the erection of a fence which will prevent the exercise of these rights and indeed if I were to decide that the mountain and the Morfa are one common that decision would prevent the erection of any fence on the common. However notwithstanding the unrealistic character of these disputes I must decide them according to the facts and the relevant law.

Mr D T Rowlands of the NFU gave evidence and produced a report by T J Hogg of 1838 presented by command of Her Majesty from which it appeared that at that date the mountain and the whole of the Morfa was common land.

Mr Jones produced a newspaper report of a case in the Conway County Court in 1935 before Judge Artemas Jones KC in which the Caernarvonshire Golf Club claimed damages for sheep trespass and an injunction to restrain further trespass against



Mrs Annie Owen. The golf course was part of the Morfa and in the case in the County Court it was established that the golf club has been lessees of their land for 40 years and that on other parts of the Morfa the Tremorfa building estate comprising 114 houses had been built and that on another part of the Morfa the Whinacres residential estate had been laid out. There is now no claim to grazing rights over any of these parts of the Morfa. The learned County Court Judge found against Mrs Owen and in the course of his judgment said:-

"As regards the ownership of the Morfa Conway was a very ancient and historical place and that quite apart from the charters and old grants the Corporation had from time immemorial exercised rights of ownership over the Morfa and been in possession of it from the point of view of the law for some generations."

It is relevant to mention that in the course of the case the Town Clerk of Conway gave evidence that in 1911 the Council issued a warning that no sheep would be allowed for grazing on the Morfa unless licences had been first obtained. Several licences were applied for and granted at a nominal fee. In 1918 the grazing rights were let on lease to one person.

Mr Rowland Roberts aged 75 gave evidence that in 1900 his father lived in Conway and from the age of 10 he took an interest in farming and helped farmers to drive sheep from the farms to the mountain. The sheep travelled down to the Morfa, the militia, later the territorials were there. The sheep came down to the mor because there was no fence. He collected sheep on the morfa and on the shore - once he was caught on the rocks. The railway was there; at the time there were three means of access, by a bridge, by the housing estate and by the golf course. The golf course was not fenced at that time; it was when it was fenced that the trouble started.

Mr John Arthur Jones gave evidence that he bought his farm in 1946 and his sheep graze on the mountain and some graze on the Morfa without challenge; they mostly go by the bridge but there is now a cattle grid. There is no fence by the road but there is a broken down wall. He did not remember any gates.

David Davies bought his farm in 1946; he had grazed sheep on the Morfa and never been challenged. The sheep went mostly by the bridge. He did not remember any gates.

The evidence of the three witnesses as to sheep on the morfa does not in my view establish that sheep were grazed there as of right. Sheep put to graze on the mountain have no doubt strayed on to the Morfa but the right of the Conway BC to exclude sheep from the Morfa or to do acts, such as building on the Morfa, which are detrimental to grazing has not been challenged since 1935 and then only by way of defence to an action for trespass. In my view any rights which may have existed in 1835 have been abandoned - and any grazing on the Morfa by sheep which have strayed from the mountain has been permissive and not as of right. I attach particular importance to the charge for licences and the granting of exclusive grazing rights in 1911 and 1918 respectively, as no doubt did Judge Artemas Jones KC in arriving at his decision in 1935. These acts of the Conway BC were never challenged, nor were the developments of the building estates and the golf course. Furthermore the development of the caravan site has made it impossible for a right of pasture to be exercised on that site and rights of pasture can at this point of time no longer be maintainable, see Harris & Ryan The Law Relating to Common Land at p.77, indeed the commoners do not wish to exercise rights of common on the site; what they wish to achieve is the erection of a fence which will preclude the exercise of any such grazing.



For these reasons I confirm the Entry at No 1 in the Land Section of the Register modified so as to exclude all land North of the Road A55.

As regards the Entries in the Rights Section Mr Jones conceded that all the inhabitants of the Borough have rights on the mountain, but his objection did not raise in the alternative any objections to individual claimants on the ground that they were not inhabitants of the Borough - nor did he adduce any evidence that any claimants were not entitled to rights on the mountain. In these circumstances I have no alternative but to confirm all the Entries 1 to 11 inclusive in the Rights Section as applicable to the Entry in the Land Section as modified. I have not overlooked the fact that Mr Griffith has withdrawn his claim Entry No 11. This is a joint claim by Mr Tunnock as owner and Mr Griffith as tenant and since the claim is for rights appendant to Mr Tunnock's land and he has not withdrawn his claim I must confirm his Entry.

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

5<sup>th</sup>

day of

July

1976

C A Little

Commons Commissioner

revised pursuant to Regulation 33

C A Little

29.7.76