



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/163-187

In the Matter of Bircher Common,
Yarpole, Leominster District,
Hereford and Worcester

DECISION

These 25 disputes relate to the registrations at Entry Nos 1 to 60 in the Rights Section of Register Unit No CL. 57 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No 265 made by Mr G W Thomas as Secretary of Bircher Common Graziers' Committee and noted in the Register on 19 January 1971, by Objection Nos 56 and 428 made by the Ministry of Agriculture, Fisheries and Food and noted in the Register on 20 October 1970 and 15 February 1972 and by Objection Nos 105 to 117 (inclusive) made by The National Trust and noted in the Register either on 3 November 1970 or on 9 June 1971.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 7 and 8 February 1978. At the hearing (1) National Trust for Places of Historic Interest or Natural Beauty ("the National Trust", in addition to being objectors, and the applicants for the disputed and now final Land Section Entry, they are shown as owners of all the land in the undisputed and now final Entry in the Ownership Section) were represented by Mr O Stirling Lee chartered surveyor, the Assistant Regional Agent for their Severn Region, (2) the Ministry of Agriculture, Fisheries and Food were represented by Mr F Mallows, barrister at law of their Legal Department, (3) Mr Thomas (the Objector) and Bircher Common Graziers' Committee were represented by Mr W D Turton solicitor of Lloyd & Son, Solicitors of Leominster, and (4) the persons who applied for Rights Section Entries and persons claiming as their successors in title either attended in person or were represented professionally either by Mr Turton (above mentioned) or by Mr S L Beaumont solicitor of Beaumont Smith & Davies, Solicitors of Hereford or represented by a friend or relation or were not represented as specified in the First Schedule hereto.

Of the 60 Entries in the Rights Section, four (being nos 10, 55, 57 and 59) are formal; so essentially 56 different Entries are in dispute; these include grazing rights variously expressed, and also in some cases of rights of pannage, turbary, estovers and of taking stone. The grounds of Objection No 265 (Mr Thomas) are: "Objection is made on the grounds that the claims for grazing are excessive". The grounds of Objections Nos 56 and 428 (the Ministry of Agriculture) are: "(1) The right of pannage, cutting bracken, taking stone, brushwood, estovers, turbary and gathering firewood do not exist, (2) such rights of common as may still exist are limited to rights of grazing in the summer months and extend only to horses and cattle, and (3) the rights claimed are excessive". The grounds of Objection Nos 105 to 126 inclusive (the National Trust) are all to the following effect: The grazing claim is excessive, the following stocking formula being suggested:



For a Holding of		Sheep per acre	Maximum for any one grazier
More than	Less than		
-	5	4	15
5	10	3	20
10	25	2	37
25	50	1½	50
50	-	1	100

so that 8 sheep - 1 beast, 10 sheep - 1 horse, 5 sheep - 1 pony: grazing of goats and pigs to be disallowed: pannage to be limited to 2 pigs per claim.

The land ("the Unit Land") comprised in this Register Unit is in the Register described as: "The tract of land known as Bircher Common...extending to 335½ acres or thereabouts and being numbered 164 on the Ordnance Survey map...as marked with a green verge line...on...the Register map...". Mr Mallows said that there was a conflict between the descriptive words and the green verge line on the map in that the line surrounded not only OS No 164 (containing 335.5 acres) but also OS Nos 91, 92 and 93 (marked as Bircher Coppice and Oaker Coppice being about a quarter of the area so surrounded). He thought some confusion may have arisen because of the map and suggested that I should give a ruling that the descriptive words were decisive and the green verge line was erroneous. Mr Turton and Mr Beaumont indicated, as did some of the others present at the hearing that they regarded the extent of the registered land as shown by the green verge line. I expressed the view (to which I now adhere) that I have no jurisdiction in these proceedings to determine the boundaries of the Unit Land unless it became necessary (as it did not) to determine the boundary for the purpose of deciding how if at all any Rights Section Entry should be modified.

At this stage of the proceedings, those present indicated that a discussion as to how the Rights Section Entries should be modified might be helpful, so I adjourned the proceedings.

On Day 2 of the hearing Mr Turton said that the discussions had been productive in that there appeared to be general agreement as to the stocking formula to be adopted and also general agreement that there were no rights of turbary but that the Objections to the right to take bracken, to pannage, or to the right to graze pigs or to having poultry should be withdrawn and that the taking of stone should be limited to the existing quarry(ies). There were certain mistakes of a minor character which ought to be corrected, eg column 5 of Entry No 51 should be corrected by inserting OS Nos 159 and 166. All present at the hearing except Mr McLean said that they were agreeable to the Rights Section Entries being



modified as outlined by Mr Turton; he was agreeable subject to pannage being controlled in some way. Mr Turton then went through the Rights Section Entries in detail, stating that to give effect to the general agreement he had outlined, each should be modified as set out in the Second Schedule hereto.

Those present or represented at the hearing then agreed that the Rights Section Entries be modified as stated by Mr Turton. Mrs McLean said that she objected to pigs being left out at night because they root the fences up; as I understood her she wished my decision to oblige those entitled to pannage or to graze pigs in some way to accept liability for this.

In my opinion I have no jurisdiction to impose any such liability on those entitled to pannage or to graze pigs, and accordingly I do not regard the contentions made by Mr & Mrs McLean as providing any good reason why I should not give effect to the modifications set out in the Second Schedule hereto. Mr Turton made it clear that those who took part in the discussion were only agreeable to their registrations being modified as set out in the Second Schedule hereto if all the registrations were modified on a similar basis. I consider that I can properly so modify the registrations made on the application of persons who were neither present nor represented at the hearing, and who had therefore not agreed to them for the following reasons:- Rights as now registered cannot all exist to the extent of the numbers of animals claimed, because if all these numbers be added up, the total is so large that it would be practically impossible to graze such a number of animals on the Unit Land (having regard to its area). So if the registrations are to identify rights which exist, some considerable modification of the numbers is unavoidable. The circumstance that the National Trust as owners of the land and that a very large proportion of those who claimed rights over the Unit Land agreed to the formula which had been adopted in preparing the modifications set out in the Second Schedule hereto is in my opinion some evidence that the rights of all persons over the Unit Land are in accordance with such formula. In the absence of any evidence in support of any other formula, I conclude that the rights of those who have made registrations, including those who were neither present nor represented, if they exist at all should be registered in accordance with the agreed formula. For these reasons I confirm all the registrations with the modifications ~~as~~ set out in the Second Schedule hereto.

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.

FIRST SCHEDULE
(Representation at the hearing)

Entry No	Original applicant as named in the Register	Land to which right is attached	Representation at hearing: "S" means a successor in title; "No" means no attendance or representation
1	Thomas Alfred Morgan	Gate House Farm	Mr Turton
2	George Samuel Enoch Humphries	Vicarage Farm	Mrs E J Humphries (S); Mr Turton
3	George Samuel Enoch Humphries	Tudor House	Mr A W Thompson (S); Mr A W Thompson attended in person



4	George Samuel Enoch Humphries	Dingle Dale	H B Griffiths (S); No
5	Thomas Bayliss	The Brick House	Mr Turton
6	Sarah Jane Cresswell	Yewtree Cottage	Mr Turton
7	Charles Henry Jones	Coppice Farm	Mr Turton
8	Daisy Margaret Cross	The Bell Inn	Mrs M A Lewis and Mrs A Brooks (S); Mr Beaumont
9	Geoffrey Benjamin Hern	Byecroft	J M McCarter (S); Mr R R Hamer attended in person as his successor
10	Replaced by Entry Nos 56, 58 and 60	-	-
11	Hugo Herman Schmidt	Holding at Welshmans Lane	Mr Turton
12	Donald John McLean and Ruth McLean	Rowan Cottage	Mr D J McLean attended in person on his own behalf and as representing Mrs R McLean
13	Albert James Cooke and Molly Elizabeth Cooke	Stanley Bank	J D Carpenter (S) and E M Carpenter (S); Mr J D and Mrs E M Carpenter attended in person
14	Thomas Raymond Dunne	Woodland in Yarpole	Represented by Mr R A Stamford his Estate Secretary
15	John Lloyd Cadwallader and Michael Cadwallader	Home Farm	No
16	Albert William Molineux and Flora Molineux	Lane Gate Cottage	G Gibbons (S); Mr Turton
17	Alan Lewis	Part OS No 187	No
18	Cyril John Beaumont Griffiths	2 Stanley Bank	Mr Turton
19	Wallace Edward James Rees	Neal Cottage	Mr Turton
20	Avril Barbara Blanche Griffiths	Lower Wood End	Mr Turton



21	Ernest John Davies	Brick House	No
22	Gerald Ernest Theodore Griffiths and Christobel Edith Griffiths	Covent Garden	Mr G E T Griffiths attended in person on his own behalf and as representing Mrs C E Griffiths
23	Michael Ormond John Behr	The Shanty	Mr Turton
24	Joseph Morris and Sarah Morris	South Bank	No
25	Sarah Alice Morris	South Bank	No
26	Alfred Baker Lloyd	Little Leys	Mr Beaumont
27	George Harman	(1) Stanley Bank (2) Sunnyside	No (Letter dated 20 January 1978 from Phillips & Co, Solicitors of Lincoln saying Mr Harman accepts for Stoneybank 75 sheep and 1 pony and for Sunnyside 20 sheep)
28	Norman Davis	(1) Elm Cottage (2) Vernon Cottage	Mr Turton
29	Ivy Elizabeth Powell	Leys Farm	Mr Turton
30	Thomas Lloyd Roach and Elsie Ellen Betsy Rawlings	The Coopers	No
31	Douglas Maurice Poole	Court House Farm	Mr D M Poole attended in person
32	Harold Sam Cooper	Chapel House	G D P Jacobs and H Jacobs (S); Mr Beaumont
33	Annie Florence Richards	Yew Tree Villa	Mr Turton
34	Annie Florence Richards	Yew Tree Farm	Mr Turton
35	James Price	Sunny Valley	Mr Turton
36	Charles Frances Pugh	Ashcroft	No
37	Francis Margaret Melling	Brook House Farm	Mr Turton
38	Louis Cross	Pool Cottage	Mr Turton
39	Richard John Amos	Sunny Bank	No
40	Terence Edward Lewis and Diana Lewis	No 1 Stanley Bank	Represented by Mr G E T Griffiths (applicant for Entry No 22)



41	Albert Josiah Sherratt Niblett	Brook House Farm	No
42	Frances Mary Godding	Manor House	C A J Jarrold (S); Mr Jarrold attended in person
43	Brian Thomas Adams	Enmore Fields	Mr Turton
44	Brian Thomas Adams	Greycot, Croft Lane	Mr Turton
45	John Henry Lewis	White House	No
46	Brian Peter Brooks	Rose Bank Farm	Mr Beaumont
47	George Wilfred Thomas	Upper House Farm	Mr Turton
48	Kenneth Samuel Cradduck	Yew Tree Cottage	Mr K S Cradduck attended in person
49	Richard Victor Lea	Bicton Pool Farm	No
50	Robert Ernest Jones and Edith Jones	Woodend Farm, Orleton	Mr Turton
51	Hubert George Smith	Stonehouse	Mr Turton
52	Stephen Tomlinson	Sunnydene	No
53	George Gibbons	OS Nos 353 and 459	Mr Turton
54	Emily Elizabeth Bayliss	Enmore House	No
55	(Registration amended)	-	-
56	Robert Ernest Jones and Edith Jones	Part of High Wood Farm	Mr Turton
57	(Registration amended)	-	-
58	Thomas Bayliss and Elizabeth Bayliss	Part of High Wood Farm	Mr Turton
59	(Registration amended)	-	-
60	Thomas Bayliss and Elizabeth Bayliss	Part of High Wood Farm	Mr Turton

SECOND SCHEDULE

(Modification if any in registration)

Entry No	Words in existing registration to be deleted ("No" means no alteration)	Words in existing registration to be substituted for those deleted ("None" means no substitution)
1	100 sheep	60 sheep
2	150 sheep and 8 ponies	60 sheep or an equivalent number of ponies not exceeding 8, on the basis that 1 pony equals 5 sheep
3	30 sheep	12 sheep
4	20 sheep and 1 pony	11 sheep or an equivalent pony not exceeding 1 pony on the basis that 1 pony equals 5 sheep
5	(A) 100 sheep and 2 horses (B) Stone to	(A) 70 sheep or an equivalent number of horses not exceeding 2 on the basis that 1 horse equals 10 sheep (B) Stone from existing quarries to
6	50 sheep and one horse or pony	23 sheep or an equivalent number of horses or ponies not exceeding 1 horse or 1 pony on the basis that 1 horse equals 10 sheep and 1 pony equals 5 sheep
7	80 sheep and 10 cattle and 6 ponies	59 sheep or an equivalent number of cattle or ponies not exceeding 10 cattle or 6 ponies on the basis that 1 beast equals 8 sheep and 1 pony equals 5 sheep
8	50 sheep and 3 horses or 3 ponies	20 sheep or an equivalent number of horses or ponies not exceeding 2 horses or 4 ponies on the basis that 1 horse equals 10 sheep and 1 pony equals 5 sheep
9	40 sheep and 4 horses	15 sheep or an equivalent horse not exceeding 1 horse on the basis that 1 horse equals 10 sheep
10	Replaced by Entry Nos 56, 58 and 60	(See below)
11	150 sheep and 5 cattle	26 sheep or equivalent cattle not exceeding 3 beasts on the basis that 1 beast equals 8 sheep



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| 12 | 24 sheep and 3 head of cattle and 3 pigs and 3 ponies or donkeys | 29 sheep or an equivalent number of cattle not exceeding 3 beasts or an equivalent number of ponies not exceeding 3 on the basis that 1 beast equals 8 sheep and 1 pony equals 5 sheep and to graze 3 pigs |
| 13 | (A) 50 sheep
(B) Quarry stone | (A) 23 sheep or equivalent ponies not exceeding 4 on the basis that 1 pony equals 5 sheep
(B) Quarry stone from existing quarries |
| 14 | 250 sheep and 25 cattle and 20 pigs and 10 horses | 26 sheep or an equivalent number of cattle not exceeding 3 beasts or an equivalent number of horses not exceeding 2 horse on the basis that 1 beast equals 8 sheep and 1 horse equals 10 sheep and to graze 20 pigs |
| 15 | 100 sheep | 60 sheep |
| 16 | 20 sheep and 5 ponies | 23 sheep or an equivalent number of ponies not exceeding 4 ponies on the basis that 1 pony equals 5 sheep |
| 17 | (A) 20 sheep and 1 cow and 3 ponies
(B) Right of Turbary | (A) 23 sheep or an equivalent number of cattle not exceeding 2 beasts or an equivalent number of ponies not exceeding 4 ponies on the basis that 1 beast equals 8 sheep and 1 pony equals 5 sheep
(B) Delete "Right of Turbary" |
| 18 | (A) (a) 10 sheep or (b) horses to the equivalent of 5 sheep to 1 horse
(B) Amend the map referred to in column 5 of this Entry No so that the land coloured red on it includes OS No 590 (acreage 1.506) in Yarpole Parish | (A) (a) 29 sheep or (b) an equivalent number of horses not exceeding 2 on the basis that 1 horse equals 10 sheep |
| 19 | (a) 40 sheep (b) 5 horses | 23 sheep or an equivalent number of horses not exceeding 2 horses on the basis that 1 horse equals 10 sheep |
| 20 | 200 sheep | 38 sheep |
| 21 | (a) 40 ewes
(b) 1 pig

(c) 1 pony | (a) 23 sheep or
(b) an equivalent pony not exceeding 1 pony on the basis that 1 pony equals 5 sheep and

(c) 1 pig |



- 22 (A) (a) 50 sheep or (b) 10 ponies (1 pony to equal 5 sheep)
(B) Stone, over
- 23 (A) (a) 100 sheep or (b) 20 ponies (1 pony to equal 5 ewes)
(B) Poultry. (e) Right to get stone for
- 24 (a) 100 sheep. (b) 20 cattle, or (c) 20 ponies
- 25 20 sheep
- 26 (a) 150 sheep. (b) 4 cattle. (c) 4 horses. (d)
- 27 (A) (a) 300 sheep. (b) 10 cattle (c) 10 pigs, (d) 6 horses or ponies
(B) From quarry
- 28 (A) 5 sheep
(B) (d) Right of turbary
- 29 200 sheep
- 30 (a) 25 sheep or (b) 8 cattle
- 31 100 sheep
- 32 (a) 2 ponies
(b) 10 sheep
(c)
- (A) (a) 23 sheep or (b) an equivalent number of ponies not exceeding 4 ponies on the basis that 1 pony equals 5 sheep
(B) Stone from existing quarries over
- (A) (a) 23 sheep or (b) an equivalent number of ponies not exceeding 4 ponies on the basis that 1 pony equals 5 sheep
(B) Poultry. (e) Right of estovers (f) Right to get stone from existing quarries for
- 20 sheep or an equivalent number of cattle not exceeding 2 beasts or an equivalent number of ponies not exceeding 4 ponies on the basis that 1 beast equals 8 sheep and that 1 pony equals 5 sheep
- 11 sheep
- 47 sheep or an equivalent number of cattle not exceeding 5 beasts or an equivalent number of horses not exceeding 4 horses on the basis that 1 beast equals 8 sheep and 1 horse equals 10 sheep, and
- (A) (a) 59 sheep or (b) an equivalent number of cattle not exceeding 7 beasts or (c) an equivalent number of horses not exceeding 5 horses on the basis that 1 beast equals 8 sheep and 1 horse equals 10 sheep
(B) From existing quarry
- (A) 23 sheep
(B) Delete "Right of turbary"
- 70 sheep
- 23 sheep or an equivalent number of cattle not exceeding 3 beasts on the basis that 1 beast equals 8 sheep
- 60 sheep
- 23 sheep or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 pony equals 5 sheep and



- 33 (a) 50 sheep with their lambs. (b) 2 sows and their followers. (c) 2 ponies. (d) Right of turbary. (e) Right to take stone from the quarry 12 sheep or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 pony equals 5 sheep and 2 sows and their followers and Right to take stone from the existing quarry
- 34 (a) 200 ewes with their lambs. (b) 50 pigs. (c) 5 ponies. (d) 20 pigs all the year round. (e) Right of turbary. (f) Right to take bracken. (g) Right to take stone from quarry 70 sheep or an equivalent number of ponies not exceeding 5 on the basis that 1 pony equals 5 sheep and 20 pigs all the year round and right to take bracken and right to take stone from existing quarry
- 35 20 sheep 23 sheep
- 36 100 sheep 25 sheep
- 37 100 sheep 55 sheep
- 38 (A) (a) 50 sheep or horses and cattle in any proportion 1 beast to equal 5 sheep (A) (a) 23 sheep or an equivalent number of horses not exceeding 2 horses or an equivalent number of cattle not exceeding 3 beasts on the basis that 1 horse equals 10 sheep and 1 beast equals 8 sheep
(B) (d) Right to cut and take turf (None)
- 39 (a) 50 sheep (b) 6 horses 13 sheep or an equivalent horse not exceeding 1 horse on the basis that 1 horse equals 10 sheep
- 40 (A) (a) 50 sheep or (b) ponies and sheep (one pony to equal 5 sheep) (A) (a) 23 sheep or (b) an equivalent number of ponies not exceeding 4 ponies on the basis that 1 pony equals 5 sheep and
(B) From quarry (B) From existing quarry
- 41 (a) 250 sheep or (b) cattle and horses in proportion 1 beast being equal to 8 sheep 60 sheep or an equivalent number of horses not exceeding 6 horses or an equivalent number of cattle not exceeding 7 beasts on the basis that 1 horse equals 10 sheep and 1 beast equals 8 sheep
- 42 50 sheep 12 sheep
- 43 (a) 50 sheep or (b) 2 ponies 24 sheep or an equivalent number of ponies not exceeding 2 on the basis that 1 pony equals 5 sheep



- 44 (a) 20 sheep.(b) 5 ponies 11 sheep or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 pony equals 5 sheep
- 45 (a) 20 sheep.(b) 8 ponies 11 sheep or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 pony equals 5 sheep
- 46 30 sheep 41 sheep
- 47 (a)200 sheep or (b) sheep, cattle or horses together in any proportion to a limit of 200 sheep. Each head of cattle or horse to equal 8 sheep. One sheep to include its young to weaning time. (c) (a) 60 sheep or an equivalent number of cattle not exceeding 7 beasts or an equivalent number of horses not exceeding 6 horses on the basis that 1 beast equals 8 sheep and 1 horse equals 10 sheep; (b)
- 48 (a) 30 sheep, (b) 5 pigs, (c) 2 horses, (d) Right of turbary, (e) Right to herbage over the whole of the land comprised in this register unit (a) 23 sheep or an equivalent number of horses not exceeding 2 horses on the basis 1 horse equals 10 sheep; (b) 2 pigs
- 49 (a) 50 sheep, (b) 10 cattle 50 sheep or an equivalent number of cattle not exceeding 10 beasts on the basis that 1 beast equals 8 sheep
- 50 (a) 150 sheep (a) 70 sheep or an equivalent number of horses not exceeding 6 horses or an equivalent number of cattle not exceeding 8 beasts or an equivalent number of ponies not exceeding 6 ponies on the basis that 1 horse equals 10 sheep, 1 beast equals 8 sheep and 1 pony equals 5 sheep
(b) 10 cattle
(c) 6 horses or 6 ponies
(d) 6 pigs
- 51 (A) (a) 10 sheep, (b) 2 ponies (c) 6 pigs (A) 29 sheep or an equivalent number of cattle not exceeding 3 beasts or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 beast equals 8 sheep and 1 pony equals 5 sheep.
(d) 6 cattle, Right of estovers, Right to remove stone Right to graze 6 pigs
Right of estovers
Right to remove stone from existing quarry
(B) Nos 165, Pt 183 on the OS map (B) Nos 159, 165, 166 and Pt 183 on the OS map
- 52 (a) 30 sheep (b) 5 horses 23 sheep or an equivalent number of horses not exceeding 2 horses on the basis that 1 horse equals 10 sheep



- 53 (a) 90 sheep, (b) 4 ponies 19 sheep or an equivalent number of ponies not exceeding 3 ponies on the basis that 1 pony equals 5 sheep
- 54 (a) 40 sheep and their lambs 14 sheep or an equivalent number of ponies not exceeding 2 ponies on the basis that 1 pony equals 5 sheep
(b) 2 ponies
- 55 (Registration amended)
- 56 (a) 75 sheep (b) 1 horse 70 sheep or an equivalent horse not exceeding 1 horse on the basis that 1 horse equals 10 sheep
- 57 (Registration amended)
- 58 (a) 75 sheep (b) 1 horse 70 sheep or an equivalent horse not exceeding 1 horse on the basis that 1 horse equals 10 sheep
- 59 (Registration amended)
- 60 (a) 25 sheep (b) 2 horses 29 sheep or an equivalent number of horses not exceeding 2 horses on the basis that 1 horse equals 10 sheep

As this Second Schedule may contain errors or omissions or may for some other reason be not in accordance with the agreement mentioned at the hearing, I give to all persons entitled to be heard liberty to apply to me as to this. Any such application should be sent within 42 days of the notice of this decision being sent to the applicant and should be by letter written to the Clerk of the Commons Commissioners.

Dated this 2nd day of March —

1978

a. a. Baden Fuller

Commons Commissioner