



COMMONS REGISTRATION ACT 1965

Reference Nos 215/D/159 to 162
inclusive

In the Matter of Bradnor Hill,
Kington Rural, Leominster District,
Hereford and Worcester

DECISION

These disputes relate to the registrations at Entry Nos 1, 2, 3, 4, 5, 7, 8, 11, 12, 14, 16, 17, 18, 20 and 22 in the Rights Section of Register Unit No CL. 158 in the Register of Common Land maintained by the Hereford and Worcester County Council and are occasioned by Objection No 253 and made by the National Trust and noted in the Register on 23 November 1970 and Objection Nos 250, 251 and 252 also made by the National Trust and noted in the Register on 13 September 1971.

I held a hearing for the purpose of inquiring into the disputes at Hereford on 7 February 1968. At the hearing (1) National Trust for Places of Historic Interest or Natural Beauty ("the National Trust") were represented by Mr O Stirling Lee, chartered surveyor, being the Assistant Regional Agent for their Severn Region; (2) Mr Peter William Pryce Burgoyne and Mr Andrew Frederick Burgoyne (Rights Section Entry No 1, now replaced by Entry Nos 27 and 28, were made on their application) were represented by Mr E P Sloane solicitor of Vaughan & Davies, Solicitors of Kington; (3) Mr Harold John Watkins and Mrs Irene Eleanor Watkins (Rights Section Entry No 3 was made on their application) were represented by Mr J M Davies solicitor of T A Matthews & Co, Solicitors of Hereford; (4) Mr Edward George Walter Ridout (Rights Section Entry No 4 was made on his application) attended in person (he said he could if necessary speak for Kington Golf Club); (5) Mr Edward Owen Davies (Rights Section Entry No 6, now replaced by Entry No 24, was made on his application) was also represented by Mr E P Sloane; (6) Mr Arthur Evan Lloyd (Rights Section Entry No 7 was made on his application) attended in person; (7) Mr Evelyn Charles Bounds and Mr Allen George Bounds (Rights Section Entry No 17 was made on their application) were represented by Mr W D Turton solicitor of Lloyd & Son, Solicitors of Leominster; and (8) Mr Stanley James Price (Entry No 22 was made on his application) was also represented by Mr Turton.

The Unit Land is a tract of land extending (according to the Register) to about 340 acres; the registration of it in the Land Section, which being undisputed has become final, was made on the application of the National Trust; an application by Mr Harold Backhouse is noted in the Register. In the Rights Section there are 23 (formerly 22) subsisting Entries, being Nos 1 to 22 inclusive (of which No 1 has been replaced by Nos 27 and 28 and Nos 6 and 19 replaced by Nos 24 and 26). Of these Entry Nos 9, 10, 13, 15, 21, 24 (formerly No 6) and 26 (formerly No 19), being undisputed have become final. In the Ownership Section the National Trust is registered as the owner of all the land, and this registration being undisputed has become final. The grounds stated in all the Objections are substantially to the same effect, being that in accordance with the formulae therein set out the grazing rights claimed are excessive or include matters not properly registrable.



After Mr Stirling Lee, Mr Davies, Mr Sloane and Mr Turton had summarised their cases very briefly, and Mr Lloyd said (as regards Entry No 7) that he did not now daim pannage, I adjourned the proceedings so that those present could discuss the matters in question.

On resuming Mr Stirling Lee said that all those present (except Mr Lloyd) had agreed to a stocking formula as follows:- "For a holding of less than 5 acres, 4 sheep per acre of the home holding of the claimant with a maximum of 15 sheep for any one grazier. For a holding of 5 acres or over but less than 10 acres, 3 sheep per acre of the home holding with a maximum of 20 sheep for any one grazier. For a holding of 10 acres or over but less than 25 acres, 2 sheep per acre of the home holding with a maximum of 37 sheep for any one grazier. For a holding of 25 acres or over, one and a half sheep per acre of the home holding with a maximum of 150 sheep for any one grazier. Sheep to become adult on 30 September next following their birth. Grazing of goats and pigs to be disallowed."

Mr Stirling Lee produced a letter dated 29/1/78 signed by Mr H Backhouse (Rights Section Entry No 16 was made on his application) and forms of consent dated 24/1/78 signed by Mr D T Ruell (Rights Section Entry No 2 was made on his application), dated 12 January 1978 signed by Mr W T Powell (Rights Section Entry Nos 12 and 14 were made on the application of him and Mr A E Jones as executors of William Powell deceased), dated 14.1.78 signed by Mr H Backhouse (see above) and dated 16.1.78 signed by Mr D G Habberley of Orestones (the right registered at Entry No 18 on the application of Mr A Tedstone is attached to Orestones). In accordance with this stocking formula all those present or represented (other than Mr Lloyd) agreed to the modification of the Rights Section Entries as set out in the Schedule hereto.

Mr Turton said that Messrs E C & A G Bounds in their application for the registration of a right now described in Entry No 17 had among the OS Nos describing the attached land inadvertently omitted No 49. Mr E C Bounds produced a plan showing Wallstych Farm (Kington) as including not only the land as now described in column 5 of the Register but also OS No 49. The agreed figure of 105 sheep inserted in column 4 had been calculated by applying the stocking formula to the area of Wallstych Farm on the basis that the attached land includes OS No 49. Nobody at the hearing objecting to the correction of this mistake, I conclude that the registration should be altered accordingly.

The right registered on the application of Mr Lloyd at Entry No 7 is "to graze (a) 70 sheep and their lambs to weaning time, (b) a right of estovers, (c) a right of pannage, (d) a right to cut and carry bracken". Bank House to which the right is attached contains 18.225 acres, and in accordance with stocking formula above quoted 70 should be reduced to 37. Mr Lloyd in the course of his oral evidence in support of the registration said (in effect):- He bought Bank House in 1958 from Mr Roberts; the lands of this farm have a substantial length of common boundary with the lands comprised in this Register Unit; he had spent a lot of money fencing this boundary; it was reasonable that he should stock more than those who had agreed to the formula because he was under the necessity of providing an adequate fence. Mr Stirling Lee gave oral evidence against the registration. However before the matter had proceeded very far, it appeared that if Mr Lloyd agreed (as he did) to abandon his claim to pannage, to limit his sheep to 54 and to his right being conditional on his maintaining a sheep-proof fence where the boundary of the land to which his right is attached adjoins the land comprised in this Register Unit, Mr Stirling Lee on behalf of the National Trust would not press Objection No 251



any further. In the circumstances this being a reasonable compromise, I conclude that I ought to modify the registration accordingly.

As regards the Rights Section Entries made on the application of persons who were neither present nor represented at the hearing, with only two exceptions the stocking formula agreed by those present at the hearing was such that no modification of these Entries was requisite. Exceptionally Rights Section Entry Nos 8 and 17 (made on the application of Mr T J Parsons and Mrs E A Bayliss who were not present or represented) were in excess of the formula, being 60 sheep and 95 sheep instead of 18 sheep and 65 sheep. That the above quoted stocking formula had been agreed by all the other persons entitled to graze on this land, is some evidence that such formula is reasonable; and in the absence of any evidence given in support of Rights Section Entry Nos 7 and 11 as they now stand, I conclude that so far as they are in excess of such formula the registrations should not have been made.

For the above reasons I confirm the registrations in the Rights Section at the Entry Nos mentioned in the first column of the Schedule hereto with the modifications specified against such numbers in the second column thereof.

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.

SCHEDULE

(Modifications of the Rights Section Entries)

Entry No	Modification (reference is to column 4 except where otherwise expressly stated)
No 1 (replaced by Nos 27 and 28); Messrs P W P and A F Burgoyne	(No modification)
No 2; Mr D T Ruell	For "10 sheep or 2 cattle" substitute "7 sheep"
No 3; Mr H J and Mrs I E Watkins	(No modification)
No 4; Mr G W Ridout	Delete "Right of Turbary. (c)"
No 5; Mr A E Crane	(No modification)



No 7; Mr A E Lloyd For "Right to graze; (a) 70 sheep" substitute (a) Right conditionally upon maintaining a sheep-proof fence where the boundary of the land to which this right is attached as described in column 5 of this Schedule adjoins the land comprised in this Register Unit to graze 54 sheep"; and delete (c) Right of pannage. (d)"

No 8; Mr T J Parsons For "(sans nombre) 60 sheep" substitute "18 sheep"

No 11; Mrs E A Bayliss For "95 sheep" substitute "65 sheep"

No 12; Mr W I M Powell and Mr A W Jones For "5 sheep" substitute "3 sheep"

No 14; ditto For "5 sheep" substitute "4 sheep"

No 16; Mr H Backhouse Delete "(d) Right of pannage"

No 17; Messrs E C & A G Bounds For "140 sheep" substitute "105 sheep"; and delete "(d) Right of pannage"; and (in column 5) insert "49" between "...O.S. Nos" and "464..."

No 18; Mr A Tedstone (now Mr D J Habberley) For "25 sheep" substitute "16 sheep"; and delete "Right of pannage".

No 20; Mr S Williams (No modification)

No 22; Mr S J Price (No modification)

Dated this 28th day of February — 1978

Corrected on page 41 against No 18: Mr A Tedstone... reading after "16 sheep", the following: - and delete "Right of pannage" by a. a. Baden Fuller

Commons Commissioner