



COMMONS REGISTRATION ACT 1965

Reference Nos. 215/D/92-95

In the Matter of Castle Morton, Shadybank, Hollybed  
Coombe Green Commons. Castle Morton and Birts Morton  
Malvern Hills D

DECISION

These disputes relate to the registration at Entry No 1 in the Land Section and all the Entries in the Rights Section of Register Unit No. CL.9 in the Register of Common Land, maintained by the former Worcestershire County Council and are occasioned by Objection No. 44, made by C H Weaver and noted in the Register on 9 November 1970 Objection No. 29 made by the Malvern Hills Conservators and noted in the Register on 5 November 1970 and Objection No 11 made by Worcestershire County Council and noted in the Register on 17 July 1969.

I held hearings for the purpose of inquiring into these disputes at Worcester on 16 June 1976 and 10 May 1979.

At the hearing on 16 June 1976, I expressed the view that the Commons would carry 4 sheep to the acre and that it would therefore carry 3132 sheep or their equivalent and I adjourned the matter in order to give all the interested parties an opportunity to agree as to the validity of claims for rights and the quantification of agreed claims.

At the adjourned hearing there appeared Mr P C Davis of Messrs. Foster and Finley on behalf of the Castlemorton Commoners Association and individuals some of whom are members of the Association and others who are not members. Mr Bowness on behalf of Hereford and Worcester County Council, Mr Schooling on behalf of the Malvern Hills Conservators and Messrs. Wade, Bevan Crashaw Brooks and Rushton on behalf of various applicants for rights.

As regards the Entry in the Land Section Mr Weavers objection was to the inclusion of a small parcel of land identified on the plan annexed to his objection No. 44 and it was accepted that I should confirm the Entry in the Land Section modified by the exclusion of the land, identified as aforesaid and I confirm the Entry in the Land Section so modified.

As regards the Entries in the Rights Section, I must at the outset express my appreciation of the work done by Mr Davis and his Commoners Association and the Hereford and Worcester County Council who formulated and circularised a stocking scheme dated 11 November 1976.

The Scheme as set out in the circular is as follows:

Penquisites

1. The holding must contain at least  $\frac{1}{2}$  acre of genuine grazing.
2. The holding must adjoin the common or a road bounding the commons or <sup>passes</sup> ~~passes~~ Green Lane access to the common.



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- Then
- (a) Holdings  $\frac{1}{2}$  to 15 acres  
Entitlement 7 sheep per acre  
acreage of holdings in this category 325 Total 2254
  - (b) Holdings of 15 to 25 acres  
Entitlement 5 sheep per acre  
acreage of holdings in this category 160 Total 806
  - (c) Holdings over 25 acres  
Entitlement 3 sheep per acre  
Acreage of holdings in this category 590 Total 1741

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4795

My observations on this scheme are:-

- (1) The weighting in favour of the smaller holdings was consequent on a suggestion made by me at the first hearing. Historically before the days of the motor car and before the milkman delivered, tenants usually had rights to graze a "house cow" and/or the horses or ponys for their transport or required for the cultivation of the small holdings.
- (2) I was asked to accept the figures of 4795 sheep on the ground that they would not all be grazed at the same time and on the further ground that it will be reduced by reason of some applicants having only applied for and can therefore only have rights for less sheep than their entitlements would be under the scheme.
- (3) Quite a number of applicants have registered claims for their holdings on other units on the Malvern Hills. Registrations on more than one unit for the same holding are not cumulative and insofar as sheep are grazed on another unit they will go to relieve the burden on this unit.

Mr Davies summarised the response to the above mentioned circular as follows:-

53 applicants accepted the scheme, there were 4 withdrawals, 11 applications were rejected by the Commoners Association and there was no response from the remaining 69 applicants, some of whom are members of the Association.

Two applicants whose claims were rejected sought to pursue their claims.

Mr Wade called Mr Williams who identified on the map the land for which he claimed rights under Entry 123 viz 8 Oaks Cottage and a plot of land at Druggors End. This plot of land which adjoins a plot which has green lane access to the common and fronts Druggors End Lane, which leads to the common.

He said in evidence that he takes his animals by motor transport to the common from the above mentioned plot because in view of the traffic it is more convenient than driving them. I would be reluctant to find that rights could be established by bringing animals by motor transport, but in the instant case where the land adjoins other land which it is accepted has rights with a green lane access and where the two holdings may formerly have been one and where, with the exception of his cooperation neighbour, Mr Williams may be able to use the green lane, I felt that this was a borderline case with merits and Mr Davis agreed that he should have rights on the proposed scale for 5 acres. Mr Brooks claimed rights for Entry No. 116 also on Druggors Lane but further from the common than Entry No. 123. He had no evidence



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of the recent exercise of any rights and the land for which they are claimed is in an area where others have withdrawn their claims. In the absence of the special circumstances present in Mr Williams case, I must refuse to confirm Entry No. 116.

Mr Rushton called Miss Owen, the applicant under Entry No. 90 for Barrow Downs, a holding like many other discribed by Mr Davis as a "cottage holding" entitled to graze 5 sheep.

Miss Owen said in evidence that she had always grazed a number of cows on part of the common, the numbers varied but she grazed as many as 25 cows. When asked how she managed to do this from her cottage holding, she said she rented other land. So long as Miss Owen continues to rent other land entitled to rights she will be able to exercise the rights appurtenant to that other land, but it is clear beyond doubt that Barrow Downs can only carry the rights of a cottage holding.

In the absence of any other evidence and bearing in mind that the Malvern Hills Conservators have administered part of the common since 1962 and the whole common since 1966 and that the scheme is accepted by them and a very large proportion of the commoners I must presume that it accords with the established practice and I will in this decision give effect to the said scheme.

Mr Davis took me through a list of the Entries in the Rights Section giving me in each case the acreage of the holding for which rights are claimed and the numbers of sheep which the applicant will be entitled to graze in accordance with the scheme. He also drew my attention to the applications which have been withdrawn or rejected.

The schedule to this decision sets out the effect of the scheme as told to me by Mr Davis at the hearing. Holdings described as cottages are so described for convenience being less than 1 acre.

The right to graze 5 sheep confers the right to graze 1 cow, or 1 horse or pony or 1 donkey in lieu of 5 sheep, the number of 5 sheep therefore carries the right to graze on other type of animal as an alternative.

Registrations rejected were rejected on the ground that the lands for which the rights were claimed do not qualify under the scheme by reason of their location.

The Rights which I confirm are subject to the proviso that commoners who are entitled to rights on more than one unit on the Malvern Hills shall not at any one time graze more animals on any one or more of such units than their maximum entitled in any Rights Section.

For these reasons I refuse to confirm Entries Nos. 1 13 40 49 56 57 60 61 64 77 99 111 112 116 118 120 136 137 138 and 140.

I confirm all the other Entries set out in the Schedule hereto modified where necessary to confer the rights to graze the numbers of sheep or their equivalent set opposite them respectively and subject to the proviso that any commoner who is entitled to rights on more than one Register Unit on the Malvern Hills shall not at any one time graze more animals on any one or more of such units than his maximum entitlement in any Rights Section.

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Entry No. 62 is further modified by deleting OS ~~550~~ from column 5.

Corrected under reg. 29+33

CP 29/2/80



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It is to be observed that this decision does not affect any rights of estovers turbary piscary or the right to take gorse or furze claimed. These rights must be exercised for the benefit of the premises for which they are claimed or in the case of piscary for consumption on those premises. The conservators will not doubt control the exercise of these rights.

Finally I will welcome the comments of the Registration Authority. The direction which I envisage giving in due course will be that

The rights which I confirmed in my decision dated 12<sup>th</sup> 79 became final modified as stated in that decision and the schedule thereto.

I would be grateful if the Registration Authority will inform me that a direction in that form will be adequate for their purposes.

12 October 1979

*Y A Le Hle*  
Commons Committee

The Schedule referred to

Unit No.	Acres	Sheep
1		withdrawn
2	3	15
4	7	49
5	6	42
7	43	100
8	8	56
9	6½	45
10	3½	24
11	½	5
12	10	70
13		withdrawn
14	7	49
15	5	35
16	8	56
17	1¼	9
18	cottage	5
19	2¾	19
21	cottage	5
22	20	100
23	1	7
24	3	21
25	200	600
26	3½	24
27	cottage	5
28	3½	24
29	7	49
30	3	21
31	1	7
32	1	7
33	2	14
34	8	56
35	1½	10
36	3	21



CONTINUED

Unit No.	Acres	Sheep
37	1	7
38	1	7
39	1	7
40	outside area	rejected
41	5	35
42	12	84
43	23	115
44	4½	31
45	88	264
46	10	70
47	3/4	5
48	7(only OS308 qualifies)	60
49		rejected
50	cottage	5
51	10	70
52	9	63
53	8	40
54	19	54
55	46	90
56		rejected
57		rejected
58	cottage	5
59	cottage	5
60		rejected
61		rejected
62	<sup>552</sup> 3½ OS <del>552</del> does not qualify	24
63	1½	10
64		rejected
65	14	98
66	cottage	5
67	cottage	5
68	6	42
69	cottage	5

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Unit No.	Acres	Sheep
70	11	77
71	2	14
72	11	77
73	cottage	5
74	1 $\frac{1}{4}$	9
75	20	100
76	1 $\frac{1}{2}$	9
77		rejected
78	$\frac{3}{4}$	7
79	cottage	5
80	cottage	5
81	1	7
82	21	105
84	5	35
85	1	7
86	1 $\frac{1}{2}$	10
87	1	7
88	1 $\frac{1}{4}$	8
89	cottage	5
90	cottage	5
91	cottage	5
92	3 $\frac{1}{2}$	24
93	cottage	5
94	cottage	5
95	20	100
96	7	49
97	cottage	5
98	14	98
99		withdrawn
100	cottage	5
101	cottage	5
102	cottage	5
103	5	35
104	cottage	5



Unit No.	Acres	Sheep
105	$3\frac{1}{2}$	23
107	cottage	5
108	20	100
109	4	28
110	cottage	5
111		rejected
112		withdrawn
113	8	56
115	7	5
116	rejected by Commissioner	
117	cottage	5
118	rejected by Commissioner	
119	$1\frac{1}{2}$	10
120		rejected
121	cottage	5
122	$6\frac{1}{2}$	45
123	5	35
124	14	98
125	1	7
126	cottage	5
127	173	519
128	19	95
129	cottage	5
130	4	28
131	$1\frac{1}{4}$	9
132	$1\frac{1}{4}$	10
133	$5\frac{1}{2}$	38
134	$7\frac{1}{2}$	65
135	$1\frac{3}{4}$	10
136		rejected
137-138		withdrawn
139	$\frac{3}{4}$	7
140		rejected