



In the Matter of piece of land, part in the  
Parish of Colwall and part in the Parish of Malvern

DECISION

This dispute relates to the registration at Entry Nos. 2, 6, 15 and 16 in the Rights Section of Register Unit No. CL 14 in the Register of Common Land maintained by the former Worcestershire County Council and is occasioned by Objection No. 33 made by the Malvern Hills Conservators and noted in the Register on 13 November 1970.

I held hearings for the purpose of inquiring into the dispute at Worcester on 16 June 1976 and 10 May 1970. The hearings were attended by Mr J Schooling who appeared for the Malvern Hills Conservators and Mr R J Brooks of Messrs R and C B Masfield appeared for Mr Weaver the applicant for rights under Entry No. 2.

The applicants for Rights under Entry Nos. 15 and 16 did not appear at either hearing and at the first hearing Dorothy Bayliss a near neighbour of both these applicants gave evidence that in the last 50 years, she had not seen an animal of any sort being grazed from their respective properties. In the light of this evidence and because the applicants did not appear to support their claims, I refuse to confirm Entry Nos. 15 and 16. The hearing was adjourned because I was told that Mr Weaver (Entry No. 2) and Mr Ballard (Entry No. 6) have Entries in the Rights Section of other units which form part of the complex of the Malvern Hills.

On one such Unit, CL 9, where there were 140 Entries in the Rights Section which if confirmed could have resulted in that Unit being substantially over grazed. The Castle Morton Commoners Association put forward a scheme which if my decision on that Unit becomes final will achieve a viable stocking rate. This was possible in that case because all the Entries in the Rights Section were provisional. In the instant case all the Entries except the four mentioned above are final.

The view which I take is that applications on several Units for rights appurtenant to the same property cannot be cumulative. The rights is the right to graze the animals which the property can sustain and the applicant cannot graze all those animals on two Units at the same time. By way of illustration, I take the case of Mr Weaver. If the scheme on CL 9 takes effect he will be entitled to graze 264 sheep or their equivalent on CL 9. On this Unit, CL 14 he has applied to graze 600 ewes with lambs and various other animals. He appeared at the hearings on both Units by Mr Brooks and if I correctly understood Mr Brooks, he does not claim to graze 864 sheep and other animals on the Malvern Hills. It would in my view be a hardship on Mr Weaver if I were to reduce his qualification of rights on this Unit merely because he has agreed to a scheme relating only to CL 9. When other applicants, on this Unit have secured the rights they have claimed without objection. Mr Weaver can of course if the scheme becomes effective graze no more than 264 sheep or their equivalent on CL 9 if the scheme takes effect. The Commoners on that Unit will not be prejudiced if he grazes additional sheep on this Unit. In my view however, his applications are not cumulative and he cannot graze more than 600 sheep at any one time. On CL 9, 5 sheep are equivalent to 1 cow or 1 horse or pony or 1 donkey. I understand that on this Unit, Mr Weaver



is content to have the right to graze 600 sheep or their equivalent on the scale adopted for CL 9.

I will confirm Entry No. 2 modified so as to confer the right to graze 600 sheep or their equivalent subject to the proviso, that not more than 600 sheep or their equivalent shall be grazed at any one time on this Unit and on any one or more of the other Units on the Malvern Hills.

For the same reasons I confirm Entry No. 6 subject to the same proviso.

I have no power to modify the Entries which are final. The Malvern Hills Conservators may, if they agree, consider publicising my view that multiple Entries for the same holding are not cumulative.

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 19<sup>th</sup> day of June 1979

*G. A. Little*

Commons Commissioner