



In the Matter of Gelligaer and Merthyr Common

DECISION

This Decision is supplemental to the Decision relating to (and intituled in the matter of) this Common made by Mr Peter Langdon - Davies, Commons Commissioner, dated 8th June 1993 ('the Main Decision')

This Decision concerns only the paragraph on page 34 of the Main Decision headed 'New Objection No 38: Ryan Industrial Fuels Ltd'.

As appears from the Main Decision, this was an objection to the registration (as part of Gelligaer and Merthyr Common) of certain land ('the relevant land'), identified by a plan, a copy of which is appended to this Decision; and although the Gelligaer and Merthyr Commoners Association at first opposed the objection, it was stated at the hearing held on 29 May 1991 that agreement had been reached that the objection might be allowed but on the basis of a new plan. It further appears that no such plan was ever agreed and in all the circumstances Mr Langdon-Davies concluded that he would 'simply not deal with this matter in this Decision, leaving it to the parties to make such application to the Chief Commons Commissioner as they may be advised'.

In or about April 1993 it appears that the relevant land was acquired from Ryan Industrial Fuels Ltd by the British Coal Corporation. Subsequently it became vested in Celtic Energy Ltd.

By letter to the Commons Commissioners dated 27th February 1997, Nabarro Nathanson, Solicitors to that Company, having recited that part of the Main Decision quoted above, claimed that 'as the registration has not been confirmed and because as far as we are aware the Commoners Association has not made any application to the Chief Commons Commissioner, the registration must be deemed to have been refused or in the absence of any appeal after this length of time, be void'.

This matter having been referred by the Chief Commons Commissioner to myself, I took the view that probably the effect of the action taken by Mr Langdon-Davies in 1993 was not as suggested by Nabarro Nathanson, but should be considered as a general adjournment of the hearing so far as it was concerned with New Objection No.38 with liberty to any interested party to apply for the matter to be restored for a further hearing: but that the point was arguable, that a further hearing should be held and that at that hearing the following should be heard as preliminary issues:-

Whether -

- 1.(a) this matter was (by that Decision or otherwise) adjourned



or

(b) this matter was determined or deemed to have been determined: and

2. If the answer to question 1 above is in the terms of paragraph (b) whether:

(a) New Objection No 38 was allowed (or is to be treated as having been allowed) in full

or

(b) the matter has been determined in some other and if so what manner'

A further hearing was accordingly held at Merthyr Tydfil on 9 December 1997.

The further hearing was attended by Mr E Harris, Solicitor of Edward Harris and Son, representing the Gelligaer and Merthyr Commoners Association, Mr M Wright, Solicitor of Nabarro Nathanson, representing Celtic Energy Ltd, Mr Philip Evans representing Merthyr Tydfil County Borough Council (the Registration Authority) 8 individual members of the Commoners Association and others.

At the outset of the hearing Mr Harris stated that on further consideration the Association did not wish to support the application for registration and tendered no evidence to support it.

Mr Wright then submitted that in the light of what Mr Harris had said it followed, first, that the preliminary issues became of only academic interest and need not be determined; and secondly, that the objection to registration should be upheld.

At my invitation, Mr Wright said that from his firm's knowledge of the relevant land gained while acting for the British Coal Corporation and Celtic Energy Ltd it seemed clear that it had been used since some date prior to the 1914-18 World War exclusively for coal mining and ancilliary Colliery purposes and that no rights of common had been exercised during that period. He had seen the 1915 edition of the Ordnance Survey map of the area which confirmed this; and aerial photographs taken in the 1940's which he had seen confirmed the use of the land for solely Colliery purposes at that time.

I invited all others present at the hearing to give evidence or to make submissions but none did so.

In the above circumstances, I accept Mr Wright's submission as to the status of the land and direct that the relevant land be excluded from registration. This would have been the result had Mr Langdon-Davies' Decision had the effect contended for by Nabarro Nathanson in their letter of 27 February 1997 and I therefore also accept Mr Wright's submission that it is unnecessary to determine the preliminary issues.

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 15th day of December 1997

Commons Commissioner

Car Roman

