



COMMONS REGISTRATION ACT 1965

Reference No.268/D/53

In the Matter of Westerdale Moor,  
Westerdale, North Yorkshire (No.5).

DECISION

This dispute relates to the registration at Entry No.8 in the Rights Section of Register Unit No.CL 8 in the Register of Common Land maintained by the former North Riding County Council and is occasioned by Objection No.0166 made by the Rt.Hon.R.F.Wood, Mr C.C.Egerton, and Mr M.J.B.Todhunter and noted in the Register on 15th September 1970.

I held a hearing for the purpose of inquiring into the dispute at Scarborough on 6th November 1974. The hearing was attended by Mr H.Hewitt, solicitor, on behalf of Mr R.E.Fishpool and Mrs R.Fishpool, the applicants for the registration, and by Mr H.Harrood, of counsel, on behalf of the Objectors.

The registration for which Mr and Mrs Fishpool applied was for the right to graze 375 ewes and followers and the right of turbary, bracken, and stones. The only dispute between the parties was as to the number of ewes and followers.

Wood End Farm, to which Mr and Mrs Fishpool's rights are annexed, has never been part of the Objectors' estate. It has always been a separate freehold property during the period covered by the surviving deeds. The earliest of these deeds is dated 27th September 1679, and by it the property was conveyed subject to various rights of common, including common of pasture. These common rights are carried forward through the subsequent deeds, though nowhere is it stated what number or kind of animals are covered by the right of pasture. It is agreed by the parties that the right extends to sheep levant and couchant on Wood End Farm.

Each side called an expert witness on the question of levancy and couchancy. Evidence was given on behalf of Mr and Mrs Fishpool by Mr J.S.Fawcett, a hill sheep farmer, who is a member of the Hill Farming Committee of the National Farmers Union, a member of the Minister of Agriculture, Fisheries and Food's Hill Farming Advisory Committee, and a member of the North Regional Wool Board Advisory Committee. Mr Fawcett inspected Wood End Farm shortly before the hearing and he formed the opinion that the farm could winter 140 to 150 sheep "at the very most". That figure, he said in cross-examination, was "an absolute top limit". This he based on there being 30 ac. of land out of a total of 53 ac. which could be mown for hay to produce 100 bales an acre and on having to feed the sheep on hay for 100 days during the winter.

Evidence for the Objectors was given by Mr D.S.Heasman, a chartered surveyor, who manages about 50,000 ac. of tenanted land. Mr Heasman had not inspected Wood End Farm, but he knew its position. He agreed with Mr Fawcett's estimate



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of the hay which it could produce, though he thought that it could only be done in a first-rate summer. Mr Heasman said that in his view Wood End Farm was not one of the best farms in Westerdale and that, while the best farms could winter about 3 sheep to the acre, he put Wood End Farm in the 2 sheep to the acre class.

Thus on the one side Mr Fawcett put the capacity of the farm at up to 150 sheep, while on the other Mr Heasman put it as low as 106. In evaluating their respective views I have in mind that Mr Heasman has never inspected the farm, so I would hesitate to accept his view that taking the best land in Westerdale at 3 sheep to the acre this farm is only 2 sheep to the acre land, but, on the other hand, Mr Fawcett was going as far as he possibly could to assist Mr and Mrs Fishpool's case in estimating the hay-making capacity of the 30 ac. on the basis of a really good summer. This I would regard as wrong in principle: what has to be estimated as the winter capacity of the farm taking one year with another, that is to say in an average year. In my view the correct way of arriving at a figure is to regard Mr Fawcett's 140 to 150 sheep as a starting figure of 145, and then to discount it to allow for the difference between an exceptionally good year and an average year. It seems to me that a fair discount would be 10%. As a matter of arithmetic that produces 130.5, which I round up to 131.

I therefore confirm the registration with the following modification:- namely, the substitution of the figure "131" for the figure "375".

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 **20th** day of December 1974

Chief Commons Commissioner