



COMMONS REGISTRATION ACT 1965

Reference Nos 231/D/77
to 93 inclusive

In the Matter of (1) Little Stretton Village Green being about 0.71 acres in Church Stretton; and (2) Lands in the Manor of Stretton-en-le-Dale (including part of the Long Mynd) being about 5,470 acres in All Stretton, Church Stretton, Ratlinghope and Wentnor, South Shropshire District, Shropshire.

DECISION

These 17 disputes relate to the registrations at Entry No. 1 in the Land Section of Register Unit No. VG 5 in the Register of Town or Village Greens maintained by the Shropshire County Council and the registrations at Entry No. 1 in the Land Section and at Entry Nos 1, 2, 3, 5 to 106 inclusive, 108 and 109 in the Rights Section of Register Unit No. CL 9 in the Register of Common Land maintained by the said Council, and are occasioned by Objection No. 0.15 (to the CL Land Section and the VG registrations) made by Mrs J A Eyslop and Miss K E Eumphries and noted in the Registers on 7 May 1971, by Objection No. 0.150 (to the VG registration) made by Mrs Freda Katz and noted in the Register on 25 January 1972, by Objection No. 0.37 (to the CL Land Section registration) made by Commoners Association of Stretton-en-le-Dale and noted in the Register on 7 May 1971, by Objection Nos 38, 39, 132, 134, 137, 141, 145, 184 and 185 (to the CL Rights Section registrations specified in the First Schedule hereto) made by the said Commoners Association and noted in the Register on 27 September 1971, and 25 July and 31 August 1972, and by the said VG and CL Land Section registrations being in conflict.

I held a hearing for the purpose of inquiring into the disputes at Shrewsbury on 25 February 1982. At the hearing (1) Mrs Juliet Annie Eyslop and Miss Kathleen Ellen Eumphries were represented by Mr A F Daybourn chartered surveyor of John German Ralph Pay, Land & Estate Agents of Shrewsbury; (2) Mr Alfred Bertram Mason and Mrs Elsie May Mason of Nettle Dene, Elms Lane, Little Stretton as successors of Mrs F Katz who owned the land on which Nettle Dene was built, attended in person; (3) Stretton-en-le-Dale Commoners Association were represented by Major H G Longstaff their Secretary; (4) Church Stretton Parish Council were represented by Mr A H Horrocks their clerk; (5) Myndtown Parish Council were represented by Mr M Williams, their chairman; (6), (7), (8) and (9) the persons who applied for or who were otherwise concerned with the CL Rights Section registration at Entry Nos 6, 46, 67 and 95 (to all of which one of the said Objections related particularly) were either represented by Mr K Fraser solicitor of Wace Morgan & Salt, Solicitors of Shrewsbury or attended in person as stated in the 4th column of the First Schedule hereto; and (10) Mr William Frank Prince on whose



application the registration at Rights Section Entry No. 64 (modified at Entry No. 159) was made (to this registration none of the said particular Objections was applicable) was represented by Mrs S E Woodhouse, solicitor, of J S Winny & Co., Solicitors of Craven Arms, Salop.

The land ("the CL Land") in Register Unit No. CL 9 is a tract extending for about 5 miles from All-Stretton on the north (the boundary there being an irregular line about 3 miles long) to Minton on the south (the boundary there being a line from a little northwest of the Village to near Minton Batch Farm Buildings and there northwestwards upwards along the line of the (stream known as) Minton Batch. Its east boundary corresponds (more or less) with the enclosed farmlands on the west side of the valley in the centre of which stands Church Stretton and along which runs north-south the much used A49(T) road and the railway from Ludlow to Shrewsbury. The CL Land includes the greater part of the moor land known as Long Mynd, being nationally famous as one of the most beautiful in England and easily enjoyable by a motorist who can drive from Church Stretton up Burway Hill by the Devil's Mouth and thence to a road junction near Boiling Well and then go on down the other side either northwest to Ratlinghope or southeast to (a steep hill) Asterton. Many of the Rights Section registrations as modified at the Entry Nos 110 to 194, refer to a line "ABCD" on the Register map; this is the line of "The Port Way" (approximately north-south along or near the line of watershed) part of which is part of the said Asterton road and most of the rest of which is roadway or track generally identifiable although (so I understood) doubtful in some places; the part of the CL Land west of ABCD (less than 1/10th of the whole) is in two pieces: one northeast of Starbatch and including Pole Bank, and the other (about 4 times larger) being east of Ratlinghope and including Wild Moor. The part of the CL Land east of ABCD is divided by streams flowing eastwards in valleys (in places steep) such as Gaddingham Mill Valley, Ashes Hollow and Callow Hollow. The CL Land includes the lower part Small Batch (one of these valleys), shown on the Register map as a strip about 200 yards long and about 50 yards wide the east end of which is a short distance from Little Stretton. The CL Land includes numerous places on its east side, compared with the rest all very small which are either wholly detached or connected only by narrow strips with the remainder; of these I was at the hearing only concerned with that next mentioned.

The land ("the VG Land") in Register Unit No. VG 5, and also included in the CL Land, is in Little Stretton and contains 0.711 acres; it is north of and open to Elms Lane, a side road suitable for motor traffic running from a crossroads near the Church in the middle of the village on the west to a bridge over the railway and then to the A49(T) road on the east.

The CL Rights Section contains 107 registrations of rights to graze attached to lands in the Register specified; many of these rights as originally registered have been modified, as appears at Entry Nos. 110 to 194 inclusive, such modifications being a variation of the numbers of animals originally mentioned and/or limiting the grazing right either to land lying to the east of ABCD or to land lying to the west of ABCD. In the CL 9 Ownership Section the National Trust are registered as the owners of all the CL land except the comparatively very small parts of which Church Stretton Parish Council are at Entry No. 2 registered as owners and except part within WOPQ (less than 1/50th of the whole) near Church Stretton of which Mr Harold Holmes is the registered



owner, and except also a comparatively very small area enclosed by JKLM, being a strip near the northeast corner of the said part of the CL land west of ABCD northeast of Stanbatch including Pole Bank.

Apart from the VG Land, the only part of the CL Land to which its inclusion in the Land Section has been particularly mentioned in any objection is that mentioned in Objection No. 0.37 being the land shaded red on the enclosed plan because it "should be part of the holding known as High Park Cottage, All Stratton" being the land to which the rights register at Entry No. 16 on the application of Mr H H Finch are attached; the land so shaded is OS No. 627 containing 0.130 acres and situated along and within the north boundary of the CL land a short distance south of High Park House. Those present or represented at the hearing either agreed or had no objection to the exclusion of this land from the Register, and accordingly at the commencement of the proceedings I said that unless some good reason to the contrary later appeared (none did appear) my decision would be that this land should not have been included in the registration.

By subsection (7) of section 5 of the 1965 Act, I must treat Objection No. 37 (as also Objection No. 15 below mentioned) as an objection to all the 107 Rights Section registrations. Except as regards the registrations at Entry Nos 5, 10, 31, 33, 46, 67, 93, 95 and 101 summarised in the First Schedule hereto nobody suggested at the hearing that these 98 registrations (modified as aforesaid) were not properly made. Bearing in mind that they would have become final under section 7 of the 1965 Act without the necessity of any hearing before a Commons Commissioner if the said two Objections had never been made, I said at the commencement of the hearing unless later I had some reason to do otherwise (I had none) my decision would be that all these 98 registrations (modified as aforesaid) were properly made.

So on this basis at the hearing I first considered the VG Land. The grounds of Objection No. 0.15 (Mrs Hyslop and Miss Humphries) are that the land verged in red on the plan enclosed "was purchased in fee simple with no rights of common and that no one has exercised their rights of common over it since purchase". The land so verged comprises the west part (about 3/4 of the whole) of the VG land. The grounds of Objection No. 0.130 (Mrs Freda Katz) are in effect that none of the VG land was at the date of registration a town or village green: I have letters dated 10 December 1981 and 17 February 1982 from J C H Bowdler & Sons, Solicitors of Shrewsbury saying on her behalf that she because she no longer owns land in Church Stretton, does not wish to pursue her Objection. I have a letter dated 26.1.82 from Mr A B Mason saying that the VG land is in front of property owned by him and his wife and that they have a 15 feet right of way over it and support the registration of the VG land.

At the hearing in support of the VG registration oral evidence was given by Mr Richard Arthur Swain who is now 70 years of age and has lived in the parish for 42 years, and Mr Horrocks produced an extract from the Tithe map (PC/1). In support of the CL registration oral evidence was given by Major Longstaff who additionally relied on statements by Mrs E L Bishop and Mr D M Davies (CA/2 and CA/3) as written evidence by them. In support of one or other of the registrations, or possibly so that I could be informed of the facts, oral evidence was given by Mr Alfred Bertram Mason. Against the registration of the VG land either in the VG or in the CL register oral evidence was given by



Mrs J A Hyslop who explained that Mr Robert Ernest McCartney who died 10 February 1941 was the owner of The Elms (dwellinghouse to the west of the VG land) and was an uncle of her husband and that Miss Agnes Helen McCartney who succeeded him as owner and died on 2 August 1949 was her husband's aunt. Mr Fraser said that neither of his clients were interested in claiming the rights registered at Entry Nos 6 and 47 extended over the VG land. In the course of this evidence the documents listed in Part 1 of the Second Schedule hereto were produced.

At the hearing I next considered the propriety of the registration at Rights Section Entry No. 46 (applicant Mr W E Davies). In support of his registration Mr Davies who is 67 years of age and has farmed Minton Batch Farm since 1947, first as tenant and after 1955 as owner, gave oral evidence in the course of which he produced the documents listed in Part II of the Second Schedule hereto. Against the registration Major Longstaff continued his evidence in the course of which he explained why the Stretton-en-le-Dale Commoners Association considered that rights over the Unit Land should be limited to those attached to lands in the parishes of All Stretton, Church Stretton and Little Stretton to the exclusion of land in Myndtown.

Next I considered the propriety of the registration at Rights Section Entry No. 67 (applicant Mr C J Davies). In support of his registration Mr Davies gave oral evidence in the course of which he was asked to consider the letter written by himself mentioned in Part III of the Second Schedule hereto. About the rights of persons having land in the parish of Myndtown, Mr N Williams explained that the Parish Council area comprised Minton, Wentnor, Ratlinghope and Norbury and said that in his view the persons in these parishes were concerned only with the west part of the Unit Land, meaning west of ABCD. Reference was again made to the Minton Estate 1952 Particulars of Sale, mentioned in Part II of the Second Schedule hereto.

Next I considered the propriety of the registration in Rights Section Entry No. 95 (applicant Mr J E I Penny). In support of his registration Mr Penny gave oral evidence in the course of which he produced the documents mentioned in Part IV of the Second Schedule hereto. Against the registration Mr Major Longstaff said that the attached Land was not agricultural land.

As to the registration at Entry No. 10 (not supported at the hearing):- Major Longstaff said that Holly Cottage is not agricultural land and contended that in the absence of any evidence, the registration should not be confirmed.

As to the registration at Entry No. 6 (applicant Mr W E Medlicott since deceased):- Mr K Fraser represented Mr G A Medlicott now concerned to support the registration. I have a letter dated 7 December 1971 from Salt & Sons, Solicitors of Shrewsbury written on behalf of Mr W E Medlicott saying about the grounds of Objection No. 39 (in effect) that they did not agree the west of ABCD limitation, they accepted limitation of ponies to 42 and they did not wholly understand how the right could be increased so as to refer to the part of the CL 40 Land not included in Medlicott Manor Farm. Interposed during my hearing of this Matter relating to the Unit Land, I enquired into the disputes relating to the CL 40 Land (reference 251/D/104-105); in the CL 40 Rights Section there was at the date of the hearing one registration only made on the application of Mr W E Medlicott of a right attached to Upper Sandbatch Cottage to graze 20 sheep and 2 ponies and the CL 40 Land Section registration (Pole Bank Moor containing 179.390 acres) was registered pursuant to this application; at the said CL 40



hearing, Mr K Fraser, Major Longstaff and Mr M Williams all agreed that I should avoid the registrations; and I then indicated that my decision would be, as it (of even date) now is, accordingly. At this hearing relating to the Unit Land, Major Longstaff and Mr Fraser at first disagreed; but later in the hearing they agreed as I now record, that the land to which this right is registered as being attached should be enlarged so as to include 72.277 acres of Pole Bank Moor formerly owned by Mr W E Medlicott, that the land over which the rights were exercisable should be limited to the part of the Unit Land west of ABCD and that the number of ponies should be reduced from 100 to 42. In order to give the precision to this 72.277 acres necessary to enable the County Council as registration authority to make modifications so agreed, I have included in this decision as page 6 thereof an extract from a plan produced to me at the hearing and have on it marked with a thick black line the boundary of this 72.277 acres as I now understand it to be, having taken the north boundary from the south boundary of the land mentioned in Rights Section Entry No. 57 as being the south boundary of the nearest part of Medlicott Manor Farm.

As to the registration at Entry No. 101 (not supported by anyone at the hearing):- Major Longstaff said that Wyndham is a bungalow not having any agricultural land and contended that in the absence of any evidence I should refuse to confirm the registration.

As to the registrations at Entry Nos 33 and 93 (not supported by anybody at the hearing):- Major Longstaff said that the Station Inn and New Measowes Farm are in relation to the Unit Land situated similarly to numerous other pieces of land to which the rights attached had been limited to the part east of ABCD and contended that I should modify the registrations accordingly.

As regards the registration at Rights Section Entry No. 31 (at the hearing not supported by anyone):- I have the letter dated 18 February 1982 mentioned in the Second Schedule hereto. Major Longstaff said that having considered the letter Objection No. 38 was withdrawn, so that I could confirm the registration without any modification.

So at the conclusion of the hearing it appeared that the only registrations which required my special consideration related to: (1) the VG Land; (2) the land to which Mr Penny claimed was attached a right as registered at Entry No. 95, being land in Church Stretton on the south side and accessible from Hazler Road and a short distance east of Hazler Crescent; (3) Minton Batch Farm to which Mr W E Davies claimed there was a right attached as registered at Entry No. 46; and (4) the lands to which Mr C J M Davies said there was a right attached as registered at Entry No. 67. On the day after the hearing, I inspected the lands, by walking over (1), by looking at (2) from the road, by looking at the Unit Land from the bank of Minton Batch where it flows in front of Minton Batch Farm and by looking from the road at the part of (4) which is nearest to the Unit Land; I also viewed the Unit Land by motor car from Plush Hill in All Stretton and from the road to thence Little Stretton, and from the road from Asterton by Boiling Well to Church Stretton.

As to the VG Land, OS. No. 260 containing 0.711 of an acre:-

Mr Swain said (in effect):- Mr William Humphreys of Walcot who he understood was the Lord of the Manor until it was sold to the National Trust, used to employ part time Mr Langford who lived up the Cardingmill Valley to collect rents and other monies locally due in respect of the Manor. From persons who parked

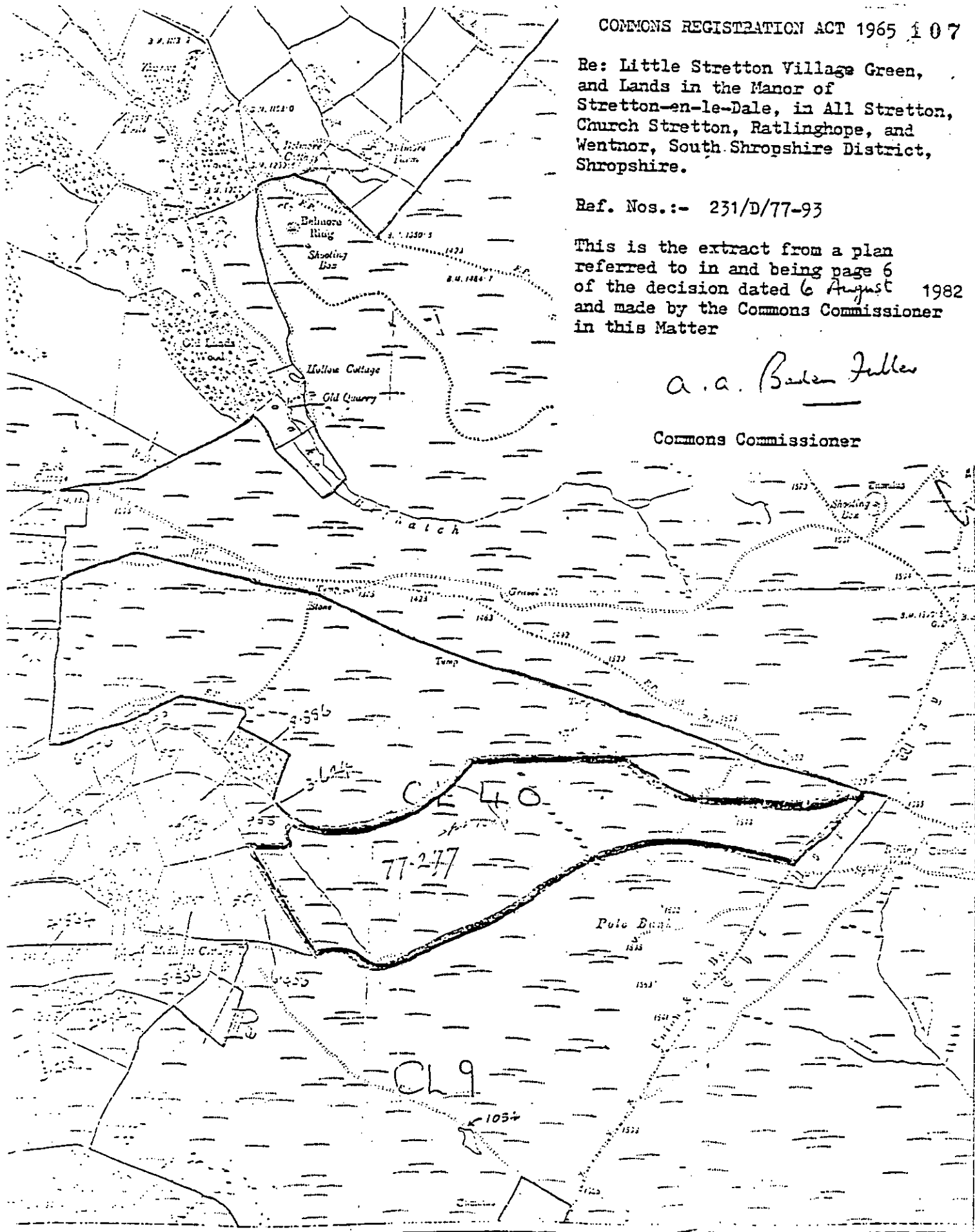
Re: Little Stretton Village Green, and Lands in the Manor of Stretton-en-le-Dale, in All Stretton, Church Stretton, Ratlinghope, and Wentnor, South Shropshire District, Shropshire.

Ref. Nos.:- 231/D/77-93

This is the extract from a plan referred to in and being page 6 of the decision dated 6 August 1982 and made by the Commons Commissioner in this Matter

a. a. Baden Fuller

Commons Commissioner



SOUTHERN OR LEDLOW DEVE

461	6047
950	6776
976	1949
955	5826
954	6006
	8281



cars on or near the VG Land, Mr Langford collected from those who were not commoners, 1/- (one shilling), mostly on Sundays. He also collected 1/- a year from two of the three cottages which adjoined the southeast side of the VG Land (marked on the Register map as being between it and Elms Lane). The cottages were knocked down in about 1963. The VG Land as long as he had known it had always been open to Elms Lane (known to him as Nettlebed Lane); on it there was a Guy Fawkes bonfire, and children played cricket and football there. Adults did not play in any organised way, it being a "kick about area", but they helped with the bonfire. He remembered that at least 5 of the nearby houses had children. He had never seen anyone grazing the land.

The VG Land is shown on the 1840 Tithe map without any number; indicating that it was not tithable.

Major Longstaff referred to the minute book of the Commoners Association which indicates that Mr A E Roberts who died about 5 years ago and who had for 56 years been secretary and chairman successively, recorded he distinctly remembered a Mr Wace as agent for the Lord of the Manor (Mr Benson) collecting from residents of the adjoining "railway cottages" fees of 1/- for clothes lines and pigs; as to this he was supported by Mr F Prince.

Mrs Bishop aged 79 years in her statement said she had lived at Elms Cottages for 16 years during which time her 3 neighbours paid Mr Langford as agent for the Lord of the Manor 1/- a year to have a clothes line on the land "known as the Village Green ~~by~~ Common Land", and this had been done as long as she could remember, and her parents and grandparents before her.

Mr Davies in his statement said that it was Common Land and that he remembered more than 45 years ago his mother paying 1/- a year for the right to have a clothes line.

Mr Mason who had known the VG Land for the last 4 years said (in effect):- He had on many occasions seen horses (probably children's riding ponies) and goats grazing there. The pieces of land on which the cottages stood is now a coppice, very overgrown and untidy. He had seen children playing hide and seek there: in the very tall grass.

Against the registrations, Mrs Eyslop said (in effect):- She with her 3 sisters under the 1963 conveyance became the owners not only of the VG Land but also the site of the cottages. She had lived in Little Stretton all her life at Carrdoc House about 100 yards away from the VG land. Mr R E McCartney and Miss A E McCartney, relatives of her husband, occupied The Elms (the large dwellinghouse on the west side of the VG land). Before 1963 she had been the owner of the paddocks (OS Nos. 261 and 264 of 3.418 and 3.446 acres) to the north and northwest of the VG Land. These circumstances were the reason why Mrs K B Byrd in 1963 approached her as a possible purchaser of the VG Land. She had never regarded it as a play area for the Village. The Village bonfire was always held at the Manor House; she did not know of any other play area for the Village children.

To be properly registered under the 1965 Act as a town or village green, the land must be within the section 22 definition: (so far as relevant) "land ... on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes". To be properly registered under the 1965 Act as common land, it must be within the section 22 definition: (so far as relevant) "(a) land subject to rights of common ... (b) waste land of a manor".



The present appearance of the VG Land and its surroundings is on balance against it being subject to any such customary recreational right in that it is not centrally situated in relation to the apparently long standing dwellinghouses in the Village and bears no resemblance to the grass open lands on which in so many villages, the more important dwellinghouses front, and which are generally regarded as being village greens within the popular meaning of these words. I accept that the VG Land has by children and others been used recreationally as described by Mr Swain; however I infer that such use was by those living in the cottages and a few other dwellinghouses nearby. In my view such cottages and dwellinghouses do not constitute a "locality" within the meaning of the above quoted definition; nothing less than the whole of the Village of Little Stretton could be such a "locality", and I am not persuaded that the recreational use described can in any now relevant way be regarded as by the inhabitants of the Village. Further to conclude from any such use that there was a customary recreational right, I must be satisfied that such use was "as of right" within the legal meaning of these words as explained in *Beckett v Lyons* 1957 1 Ch 449. For activities to be as of right it is not enough that those concerned consider they were not doing anything wrong; activities which the ordinary owner would tolerate because they would do no harm are not (in the absence of other evidence) treated as being done "as of right"; see *ib.* pages 469 and 475. I am not persuaded that anything described by Mr Swain went beyond what an ordinary owner would tolerate.

The VG Land is too far and too distinct from the other part of the CL Land for them to be regarded for grazing purposes as one piece of land. So for the purpose of paragraph (a) of the above quoted definition, I decline to ascribe the grazing rights undoubtedly existing over the rest of the CL Land to the VG Land. The grazing described by Mr Mason is too indefinite and for too shorter period to establish a grazing right.

The documents produced by Mrs Eyslop are inconsistent with the VG Land being "of a manor" within paragraph (b) of the definition. The 1955 assent is some evidence that the Elms (the dwellinghouse) and the VG Land were at that time in the same ownership. That the VG Land is historically associated with the Elms and its present appearance, (a house at least 100 years old) ~~with~~ its main or one of its main entrances opening immediately on the west side of the VG Land; giving the impression that the reason (and possibly the only reason) for the VG Land being open to Elms Lane was its convenience to the occupiers of this house.

The 1840 map although consistent with the VG Land being then considered as waste land of the manor, is equally consistent with it then being considered highway land. At that time the main road which as A49(T) now bypasses the Village appears to have turned westward so as to pass through it. The VG Land could well have at that time been a convenient place for persons driving animals along the road (it is near its highest point) to rest them for a while.

Mr Langford's collection of shillings for clothes lines for many years and of possible similar collection by Mr Wace before him, in the absence of some evidence connecting their employers with some Manor is by itself of little weight. To find that VG Land is within paragraph (b) of the definition I must be able to conclude that it was at the date of registration waste land connected with a manor, see re Box 1980 1 Ch 180. The documents produced by Mrs Eyslop are against there then being any such connection. Balancing these conflicting considerations as best I can and helped by its present appearance, my conclusion is that the VG Land was not at the date of registration within paragraph (b).



For the above reasons, my decision is that the VG Land was not properly registered either as a Town or Village Green or as Common Land.

As to the grazing rights attached to Minton Batch Farm: Mr W E Davies, Entry No. 46:-

Minton Batch Farm contains 107a. Or. 37p. of which about 55 acres are in the parish of Little Stretton, and 52 acres in the parish of Myndtown. The registration as it now stands is of a right attached to all the 107 acres to graze 1,000 sheep, 100 cattle and 100 horses over all the CL Land. The objection of the Commoners Association is to the effect that the right should be attached only to the 55 acres in Little Stretton, should be 415 sheep, 32 cattle and 17 ponies only, and should be only over the part of the CL Land east of ABCD.

Mr Davies became the owner of the 107 acres under the 1955 conveyance made by the Public Trustee: this recited the settlement created by the will of Mr William Francis Beddoes who died on 26 November 1928, a vesting assent dated 18 February 1930 in favour of Mr Edward William Minton Beddoes comprising part of the 107 acres, a subsidiary vesting deed dated 6 May 1942 made by Mr John Williams in favour of Mr E W M Beddoes comprising the remaining part of the 107 acres and a deed dated 27 February 1952. This 1955 conveyance indicates that 55 acres in Little Stretton and the 52 acres in Myndtown first came into the ownership of the same person in 1942.

On the instructions of the Public Trustee the Minton Estate (1,559 acres) was offered for sale in 25 lots by public auction held on 23 October 1952: lot 15 was Minton Batch Farm therein described as containing 107.229 acres; lot 7 was the part of the CL Land southwest of Callow Hollow (on the Register map the line EF), and was therein described as Minton Hill. The Auction Particulars at page 2 contained words to the effect that Minton Hill was part of the well known local land mark, the Long Mynd, and that the farm tenants of the Estate had "the grazing rights on its slopes".

Mr W E Davies said (in effect):- The farmhouse and buildings of the Farm are (as shown on the Register map) all on the 52 acres in Myndtown Parish. The Farm lands (as shown in the Register map) adjoin the CL Land; that is they, being U shaped inclose the south part of the CL Land for about $\frac{1}{3}$ rd of a mile south-eastwards down the stream (Minton Batch) and about $\frac{1}{3}$ rd of a mile southwestwards from the direction of the village (Minton). On the other side of the west boundary of the Farm lands (on the Register map called the Knowls) is now and has been for the last 15 to 20 years forest land, well fenced from the Farm. He had claimed 1,000 sheep, 100 cattle and 100 horses because he wanted to graze up to this number. When in 1947 he first became tenant of the Farm, he started with a flock of 30 ewes which he gradually increased. He now had 550 sheep; the greatest number he had ever had on the Farm was 620, exclusive of lambs. These sheep had been put out on the CL Land.

Major Longstaff who has been since 1957 the Secretary of the Commoners Association of Stretton-en-le-Dale, said that after the publication of the 1965 Act, the members discussed the position and agreed that the only persons who could put animals on the CL Land east of ABCD were those who had agricultural holdings in the parishes of All Stretton, Church Stretton and Little Stretton. That all the numerous registrations in the Rights Section to which (except those mentioned in the First Schedule hereto) no Objection has been made are in accordance with this agreement is some evidence that the agreement correctly



summarised the relevant custom of the Manor of Stretton-en-le-Dale. This evidence is supported by the general appearance of the CL Land which generally slopes downwards towards these three Parishes and so can be conveniently grazed from them. Accordingly notwithstanding the brevity of the evidence of Major Longstaff, I consider that I should approach the evidence of Mr Davies on the basis that ~~Mr Davies~~ to have an entitlement to graze on the CL Land east of ABCD the right claimed must as a general rule be attached to land within one of these three Parishes.

But no such general rule however long it may have been accepted can prevent the operation of the general law that a right of common may be established under the Prescription Act 1832 by being exercised as of right for a period of 30 years, or under a presumed grant in accordance with *Tehidy v Norman* 1971 2 QB 528 by being exercised as of right for a period of 20 years. I accept the evidence of Mr Davies that he has ever since 1947 when he first became tenant grazed the CL Land or at least the part (Minton Hill) near his farm southwest of the line EF as of right; I must therefore somehow determine in legal terms the right which he has so long exercised. The contention of Major Longstaff was (in effect) that the only right Mr Davies exercised was in respect of the 55 acres in Little Stretton and that none of his grazing can be ascribed to the 52 acres in Myndtown; so in the result the registration should be altered in the manner suggested in the Commoners Association's Objection.

The evidence of the ownership of the 107 acres before 1955 was confusing. On a consideration of the 1955 Conveyance by itself, I would conclude that the 52 acres in Myndtown were before 1928 owned by Mr W F Beddoes and after his death by Mr E W M Beddoes or the other persons entitled under his will, and that the 55 acres in Little Stretton were added in 1942 as a result of a conveyance made by Mr John Williams. But Mr Barnes and Mr Evans stated that as they first knew it (I suppose in about 1920 they were old enough to notice) Minton Batch Farm consisted only of lands in the parish of Myndtown (I suppose the 52 acres) and was then considered part of the Minton Estate, owned by Mr William Marston. They both say that Mr Marston and his tenants grazed sheep on Long Mynd; but I am left in doubt as to the legal effect of such grazing because the 1952 particulars show that the part of the CL Land southwest of the line EF was then owned by the Estate and because it being practically impossible to graze the Long Mynd from the 52 acres in Myndtown without going over this part neither Mr W F Beddoes nor his predecessors could by any grazing activities of their tenants acquire a legal right over their own land. However I can I think reach a conclusion on what Mr Davies has himself done since 1947.

The Public Trustee could by a conveyance made in 1955 grant to Mr Davies a right of common for the benefit of the 107 acres over the part of the CL Land southwest of line EF, being as I infer from the 1952 particulars then in his ownership; the 1955 conveyance as actually made would operate by section 62 of the Law of Property Act 1925 as such a grant if Mr Davies was then actually enjoying such a right as tenant, see *Doidge v Carpenter* 6 M & S 47 cited in *Baring v Abington* 1892 2 Ch 375.

As to the right Mr Davies was in 1955 enjoying: on the one hand I have the evidence of Major Longstaff suggesting that it was only in respect of the 55 acres in Little Stretton; and on the other hand I have the above quoted statement in the 1952 particulars and the circumstance that the whole 107 acres adjoin the



CL Land and it makes little sense having a grazing right exercisable only from the part of the farmland which does not include the farmhouse and the farm buildings. Balancing these conflicting considerations, my conclusion is that the right exercised was attached to the whole 107 acres and that I should therefore presume that such a right was granted if not by the 1955 conveyance then in accordance with *Tehidy v Norman* supra by some other deed which has been lost.

As to the number which should appear in the register:- The 1965 Act provides that for the purposes of the 1832 Act the 30 year period shall commence with the date of the Objection, see section 16, in this case 4 November 1972; I think for the purposes of the 20 year period in *Tehidy v Norman* supra the date should be the same. On the basis that Mr Davies's flock steadily increased between 1947 and 1992 from 30 ewes to 620, his flock in 1972 was about 450. I think the right he was exercising in 1955 was a right to graze the same number as that grazed by other comparable commoners in the three parishes; so I can calculate on the basis of the Association's figure of 415 sheep, 32 cattle and 17 ponies for 55 acres of land. But even on this basis the whole of the 52 acres in Myndtown does not qualify because much of it is the moorland Batch Hill (OS No 322 containing 33.479 acres). So although I am against increasing the Association's figures by a fraction of 107/55, the fraction I chose is unavoidably somewhat arbitrary. Considering all the circumstances which seem to me to be relevant my decision is that the Association's figures should be increased by the fraction 85/55, resulting in 641 sheep, 49 cattle and 26 ponies. On the basis on which I give this decision, it follows that the limitation for the right on the part of the CL Land east of ABCD as suggested in the objection should stand.

As to the grazing rights attached to Cwm Head: Mr C J Davies, Entry No. 67:-

These rights are attached to 4 pieces of land: one ("the 1 acre piece") in the Parish of Little Stratton being about 600 yards north of Hamperley and having a frontage of about 50 yards to the northwest side of the road from there to Minton; and three ("the south pieces") in the Parish of Myndtown being together about 19 acres a little under a mile southeast of Hamperley by and not far from the B4370 road at Pillocksgreen.

Mr C J Davies said (in effect):- He took the holding (about 20 acres known as Cwm Head) in the 1950's. As to the objection only the 1 acre piece was in Little Stratton, "you can't have a right in a parish unless you have a house and buildings", so his house and buildings on the south pieces in Myndtown make his whole holding eligible. He had exercised/enjoyed the right from 1952 to 1962.

In reply to questions by Major Longstaff, Mr Davies agreed that he had written to him about "recently received ... official objection" saying (among other things) "I have now enquired from the best authority I know on this subject & I am assured that you are quite right, & as you say Hill right can only be claimed from land within the Parish ..." Mr Davies also said:- He had sold the 1 acre piece to a Youth Adventure Camp "who as that have no claim". In 1950, when just out of the Army he came from Ludlow and worked with his brother (the said Mr W E Davies) at his farm (the said Minton Batch) for 2 or 3 years. When he bought Cwm Head he started a flock of 30 ewes and gradually increased them to about 100, and put them on the hill "via his brother's house". About 5 years ago for health reasons he stopped keeping sheep and since then he had grazed sheep for other people.



Mr Williams pointed out that lot 19 on the said 1952 Minton Estate Auction Particulars was "Cwm Head: 24.462 acres".

The objection is dated 4 March 1972. The sale particulars are dated 23 October 1952. In the absence of any production by Mr C J Davies of his conveyance I am not prepared to assume it was much earlier than June 1955 the date of that (WED/3) made to his brother pursuant to the same auction. Further in the early 1950's, at least any sheep brought from Cwm Head via Minton Batch with a view to being put on the CL Land would not be apparently distinguishable to those of Mr W E Davies with whom he had been recently working. From these considerations and also the way in which Mr C G Davies gave his evidence, I am not persuaded that at any rate in or before 1955 Mr C J Davies grazed any sheep either from the 1 acre piece or from the south pieces as of right within the legal meaning of these words; so, a presumed grant under *Tehidy v Norman supra* is not possible.

In the absence of the conveyance under which Mr C J Davies acquired Cwm Head and in the absence of any evidence that at that time any right of grazing was enjoyed with it over part of the CL Land southwest of EF or any other part of the CL Land, I am unable to make any inference for his benefit such as I have earlier in this decision made for the benefit of Mr W E Davies.

As to the concession made in the Objection (No. 0137) that there might be attached to the 1 acre piece the right to graze 20 sheep and 1 pony:- He said in his said letter that "20 sheep will be totally unworthwhile & may as well be cancelled altogether"; this view is consistent with what Mr Davies said about the Youth Adventure Camp and with its present appearance. I reject his suggestion that any right there may be attached to the 1 acre piece can be transferred to the south pieces.

My decision is therefore that this registration as regards grazing was not properly made either as of a right attached to Cwm Head (about 20 acres) or as a right attached to the 1 acre piece, or at all. A right to cut and take bracken could not sensibly exist in relation to Cwm Head or the 1 acre piece independently of a right of grazing; at the hearing no evidence or argument in support of such a right was offered; my decision is therefore that this part of the registration was also not properly made.

As to the grazing right attached to The Birtles, Hazler Road: Mr J H I Penny, Entry No. 95:-

The land to which this right is attached is on the OS map 1/2,500 plot no. 343 containing 0.975 of an acre. It is on the south side of Hazler Road a short distance south of it connected to it by a narrow access strip which at its north end is a short distance east of Hazler Crescent.

Mr Penny said (in effect):- He purchased the plot in 1964. It had been lot 1 in the 1945 Particulars being therein described as "Distinctive Building Site". He relied on the concluding words of the Particulars (relating to all the 5 lots, 54 acres altogether):- "Customary rights of grazing to the Long Wynd Hills attached to all lots". When he bought the plot, there was on it a house, so it was not in 1969 (the date of registration) agricultural land; now in addition to the house there is a bungalow. He had never kept any animals on the plot; his case was that "it may be used in conjunction with other land"; he understood that Mr A Brudrett purchased the plot at the 1945 auction; his 1964 purchase was from his executors; he did not know whether Mr Brudrett ever grazed animals on it. No right



of common was expressly conveyed by Mr Brudrett to him and apart from the above quoted reference in the 1945 Particulars, none of his documents of ~~the~~^{the} referred to any such right.

I can I think infer (as above stated) upon the evidence of Major Longstaff and the numerous Rights Section registrations to which no objection has been made that for the benefit of various lands in Church Stretton there were in 1945 (and still are) customary rights of grazing on Long Mynd Hills. But I also infer from such evidence of registrations these rights were customarily limited to agricultural land. So the 1945 Particulars do not (as Mr Penny contended) support the right he claimed. The Plot is in an area built up with dwellinghouses and between it and the CL Land there is not only the A49(T) road, the railway and the B4370 road but also much similarly built up land; I cannot imagine how animals could sensibly be grazed on the CL Lands from it either separately or together with other land. From these considerations my decision is that this registration was not properly made.

As to the other grazing rights mentioned in the First Schedule hereto: Entry Nos 6, 10, 31, 35, 93 and 101:- As to the registration at Entry No. 6, I consider I can properly act upon the above recorded agreement made between Mr Fraser, Major Longstaff and Mr Williams. As regards the 5 other registrations, on the evidence of Major Longstaff and the other information I have, consider that I can properly give effect to his contentions and concessions as above recorded. As regards these 6 registrations, my decision is accordingly.

As to the other 88 Rights Section registrations to which no particular Objection has been made:- I shall act on the statutory declarations made when these registrations were applied for, on the evidence of Major Longstaff and the general information about the CL Land put before me at the hearing; and accordingly my decision is that all these registrations with the modifications recorded in Rights Section Entry Nos. 110 to 194 inclusive were all properly made.

I put my decisions above recorded into effect as follows:- I refuse to confirm the VG 5 Land Section registration and also refuse to confirm the registrations in the VG 5 Rights Section which are by regulations 14 of the Commons Registration (General) Regulations 1966 deemed to have been made therein by reason of the registrations in the CL 9 Rights Section. I confirm the CL 9 Land Section registration with the modification that there be removed from the register (A) the land shaded red on the plan enclosed with Objection No. O.37 being OS No. 627 containing 0.150 acres and part of a holding known as High Park Cottage, and (B) the land which was from 31 October 1968 (the date of registration) to 25 February 1982 (the said hearing) that comprised in Register Unit No. VG 5. I confirm the registrations in the CL 9 Rights Section at Entry Nos 1, 2, 3, 5, 7, 8 and 9, 11 to 30 inclusive, 32, 34 to 45 inclusive, 47 to 66 inclusive, 68-92 inclusive, 94, 96 to 100 inclusive, 101 to 106 inclusive, 108, and 109 with the modifications applicable thereto as stated at Entry Nos 110 to 194.

TURN OVER



inclusive and with the modification necessarily consequential on the removal of the lands (A) and (B) from the Land Section as above specified but without any other modification. I confirm the registration at CL 9 Rights Section Entry No. 6 (W E Medlicott) with the modification that for the words in column 4 there be substituted "To graze 1,000 sheep and 42 ponies over the part of the land comprised in this register unit lying to the west of the red line A-B-C-D on the register map" and that the supplemental map mentioned in column 5 be altered by including in the land thereon verged blue, the land containing 72.277 acres edged with a thick black line on the extract plan being page 6 of this decision. I refuse to confirm the CL 9 Rights Section registration at Entry No. 10 (Thomas Edgar Morris). I confirm the registration at CL 9 Rights Section Entry No. 31 (Edward Medlicott) without any modification. I confirm the registration at CL 9 Rights Section Entry No. 33 (Maidia Gwenlllyen Kirby) with the modification that for the words in column 4 "the whole of the land comprised in this register Unit" there be substituted "over that part of the land comprised in this register unit" lying to the east of the red line A-B-C-D on the register map. I confirm the registration at Rights Section Entry No. 45 (William Edward Davies) with the modification that for the words in column 4 there be substituted "To graze 641 sheep, 49 cattle and 26 ponies over the part of the land in this register unit lying to the east of the red line A-B-C-D on the register map". I refuse to confirm the CL 9 Rights Section Entry No. 67 (Clifford John Morgan Davies). I confirm the registration at CL 9 Rights Section Entry No. 95 (Edwin Peter Ratcliffe) with the modification that for the words in column 4 "the whole of the land comprised in this register unit" there be substituted "over the part of the land comprised in this register unit lying to the east of the red line A-B-C-D on the register map". I refuse to confirm the registration at CL 9 Rights Section Entry No. 95 (John Herbert Ian Penry). I refuse to confirm the CL 9 Rights Section registration at Entry No. 101 (George Edward Preece).

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.

FIRST SCHEDULE
TURN OVER



FIRST SCHEDULE
(Disputed Rights Section registration)

Entry No	Applicants and land to which right is attached	Right claimed	Representation if any Objection No. applicable and short statement of grounds
6	Wilfred Edmund Medlicott. Dwellinghouse, buildings and land at Medlicott	graze 1,000 sheep and 100 ponies	Mr W E Medlicott died 29 August 1973; Mr Graham Arthur Medlicott of No. 7 Six Acres, Redbrook, Shrewsbury as his successor was represented by Mr K Fraser. (D/88) Objection No. 0.39: Rights should be over part lying west of ABCD; 1,000 sheep is agreed, but ponies should be restricted to 42; the plan to which right claimed is attached should be increased so as to include area of CL 40 which is not included in the area to which the right registered at Entry No. 57 as being attached to Medlicott Manor Farm.
10	Thomas Edgar Morris. Holly Cottage, Bullocks Moor, All Stretton	graze (a) 5 ponies (b) 50 sheep	No attendance or representation. (D/87) Objection No. 0.132 Land is only .417 acre, is in no way "agricultural land" and therefore carries no rights. <u>If</u> a right is given should only be for 10 sheep or 1 pony and should be restricted to east of ABCD.



- 31 Edward Medlicott.
Medlicott Cottage
- Graze 20 sheep
and 2 ponies
over land west
of red line CD
- No attendance or
representation but
letter dated 18 February
1982 saying
accident unable to attend,
and also saying "if the
main objection is with-
drawn I have no objection
to approach road being
designated part of the
common.
(D/93) Objection No. 0.38
correct boundary of
northeast corner of holding
Medlicott Cottage marked
red on enclosed plan;
his boundary should not
include small portion
indicated by green arrow.
- 33 Mrs Maida Gwenllyen
Kirby.
The Station Inn,
Marshbrook
- Graze 2 ponies
and 20 sheep
- No attendance or
representation.
(D/91) Objection No. 0.184:
Right should extend only
to land east of ABCD
- 46 William Edward Davies.
Minton Batch Farm
- Graze 100 cattle,
1,000 sheep and
100 horses
- Mr W E Davies was
represented by
Mr K Fraser.
(D/86) Objection No. 0.134:
Land in Myndtown parish
does not carry a grazing
right therefore only land
marked red on plan is
eligible. Sheep should be
reduced from 1,000 to 415:
horses should be reduced from
100 to 17 ponies: cattle
should be reduced from
100 to 32. Grazing should
be restricted to east
of ABCD.
- 67 Clifford John Morgan
Davies.
Cwm Head
- (1) cut and take
bracken.
(2) Graze 2 ponies
(excluding foals),
60 sheep
(excluding lambs)
and 4 cattle
(excluding calves)
- Mr C J M Davies attended
in person.
(D/85) Objection No. 0.137:
Land in Wistanstow parish
does not carry grazing
right, therefore only land
marked red on plan eligible.
Sheep should be reduced
from 60 to 20. Ponies
should be reduced from 2 to 1
Grazing should be only to
east of ABCD.



95	Edward Peter Ratcliffe New Leasowes Farm	Graze 220 sheep and 7 ponies	No attendance or representation. (D/92) Objection No. O.185: should extend only to east of ABCD.
95	John Herbert Ian Penny. Land edged blue on supplemental map	Graze 2 ponies and 10 sheep and their lambs	Mr J H I Penny attended in person. (D/89) Objection No. O.141. Land in no sense agricultural land and therefore no right of grazing. <u>If</u> a right is given should be 5 sheep and 1 pony and restricted to east of ABCD.
103	George Edward Preece. Wynham	Graze 25 sheep and 4 ponies	No attendance or representation. (D/90) Objection No. O.143: Land is in no sense agricultural land and therefore carries no right of grazing. <u>If</u> a right, it should be limited to 5 sheep and 1 pony and restricted to east of ABCD.

SECOND SCHEDULE
(Documents produced)

Part I: VG 5 Land

(By Mr Horrocks)

PC/1	1840	Extract from Tithe map (By Major Longstaff)
CA/1	-	Minute book of proceedings of Stretton-en-le-Dale Commoners Association.
CA/2	31 January 1982	Statement by Mrs E L Bishop of Windsor Place, Church Stretton.
CA/3	21.2.92	Statement by Mr D M Davies of 21 Central Avenue, Church Stretton.



(By Mrs J A Hyslop)

JAE/1	31 July 1963	Conveyance by Mrs Kathleen Betty Byrd to Miss Kathleen Ellen Humphries, Mrs Barbara Sarah Ann Allen, Mrs Eveline Mary Pratt and Mrs Juliet Annie Hyslop of VG land including site of cottages and other land to the east and south of the west part of the VG land.
JAE/2	16 September 1965	Deed by which Miss K E Humphries, Mrs B S Allen, Mrs E M Pratt and Mrs J A Hyslop granted a right of way over (west part of VG land) adjoining The Elms to Mrs Freda Irene Burns Katz.
JAE/3 JAE/4 JAE/5 JAE/6 JAE/7	1959	Abstracts of the title of Mrs K B Byrd included a vesting assent dated 2 March 1942 made in accordance with the will of Mr R E McCartney, grant of probate to the estate of Miss A H McCartney to Mr R M Blakeway and an assent dated 22 March 1955 by him as her personal representative to Mrs K B Byrd (then Alexander).
JAE/7		Copy of "Little Stretton Village Plan" showing "outstanding planning permissions for housing" and "agricultural land to be retained".

Part II: Rights Section Entry No. 46

(Produced by Mr W E Davies)

WED/1	6 September 1973	Statutory declaration by John Downes.
WED/2	20 September 1973	Statutory declaration by Arthur William Evans.
—	23 October 1952	Particulars of sale by auction of Minton Estate.
WED/3	29 June 1955	Conveyance by the Public Trustee to William Edward Davies of Minton Batch Farm.



Part III: Rights Section Entry No. 67

Put to Mr C J Davies by Major Longstaff

CJD/1

Letter written by Mr C J Davies giving "recently received official objection to number of sheep allowed".

Part IV: Rights Section Entry No. 95

Produced by Mr J H I Penny

JHP/1

Surveyed 1882 Revised 1937,
relevelled — (map torn)

OS map 1/2,500 (40" x 30") of
Church Stretton: Sheet LVI.9.

JHP/2

13 August 1945

Particulars of 54 acres Building
Lands for sale in 5 lots by auction.

Dated this

6th —

day of August

1932

a. a. Baden Fuller

Commons Commissioner