



COMMONS REGISTRATION ACT 1965

Reference Nos 213/D/115-126  
inclusive

In the Matter of: A tract of land consisting mainly of  
Minchinhampton Common including  
Stchloe's Green, Littleworth Common,  
Watledge Hill, Iron Mills Common  
Besbury Common, Hyde Common  
Old Common and several unnamed pieces

DECISION

These disputes relate to all the registrations in the Rights Section of Register Unit No CL 58 in the Register of Common Land maintained by the Gloucestershire County Council and are occasioned by:-

<u>Objection No</u>	<u>made by</u>	<u>Noted in the Register</u>
OB 122	The National Trust	4 March 1971
OB 123	The National Trust	4 March 1971
OB 551	The National Trust	23 January 1973
OB 550	The National Trust	23 January 1973
OB 672	New Lodge Hotels Ltd	23 January 1973
OB 645	The National Trust	23 January 1973

and the conflicting Registrations at

Entries Nos 110 and 241  
Entries Nos 110 and 242 and  
Entries Nos 250 and 251  
in the said Rights Section

I held a hearing for the purpose of inquiring into these and other disputes at Gloucester on 13 October 1977 and gave a decision dated 2 March 1978 by which I dealt with the Entries in the Land Section and I adjourned all the disputes relating to the Entries in the Rights Section all of which were and still are provisional.

I held the adjourned hearing for the purpose of inquiring into these disputes at Gloucester on 6 April 1978.

The hearing was attended by Mr Major of Messrs Winterbottam Hall and Gadsden on behalf of the National Trust Mr Mugford of Messrs A E Smith & Son on behalf of William Hague and also Mr Seymour (Entry No 202) in person and Mr Harris on behalf of the Registration Authority.

The relevant history commences with an Indenture dated 7 April 1913 whereby Major H G Ricardo, the Lord of the Manor conveyed the Common to the National Trust on terms that the rights of common of pasturage and the common which had been deferred by and were then exercised in accordance with rules established by a Court Leet held on the 3 May 1895 should continue to be exercised subject to and in accordance with the powers vested in the Commons Committee appointed by the Court Leet. The said Indenture further provided that in the event of the said Committee ceasing to exist a committee of Commoners might be chosen and appointed by the Commoners duly assembled in meeting for the purpose instead of by the Court Leet and that the said powers of regulation might be exercised by any Committee appointed at any such meeting.



The 1895 Rules and Regulations were set out in a Schedule to the said Indenture.

There has throughout the period from 1913 down to the present day been in existence a Committee of Commoners which has regulated the exercise of grazing rights on the Common. At the hearing on 13 October 1977 my attention was drawn to the fact that the Court Leet had been abolished by the Administration of Justice Act 1977 and I took the view that since the Committee derived its powers from the Court Leet it ceased to exist when the Court Leet was abolished. One purpose of the adjournment was to enable the Commoners assembled in meeting to appoint a Committee in accordance with the provision in the said Indenture above referred to. This meeting was convened by a Notice dated 19 December 1977 produced at the adjourned hearing and was held on 20 January 1978 and the present Committee was duly appointed. I am satisfied that the Committee of Commoners from the time being appointed in accordance with the resolutions of the said meeting of Commoners has the powers for regulating the exercise of grazing rights on the Common formerly vested in the Court Leet and a Committee to which these powers were delegated.

The remaining difficulty stems from the definition of the rights of grazing as stated in the 1895 Rules and Regulations. The scale of grazing in 1895 was fixed by reference to the rateable value of the land to which the right was appurtenant and by way of illustration I quote the 1895 Rule 4 -

"that every occupier of land or house in the parish be allowed to turn out for pasturage one horse or beast for the first £5 (or under) of rateable value and one more horse or beast for any further £5 or part of £5 (above the first £5) of rateable value".

In my view I must construe the 1895 Rules and Regulations so as to give them what, in a different field, would be called commercial efficacy. The 1913 Indenture draws a distinction between the definition of the rights and the exercise of the rights. No doubt in 1895 the acreage of the parish was known and also the rateable value of all property in the Parish; the population was not large and the Lord of the Manor and the owners of land and houses knew how many animals they were entitled to graze in accordance with the 1895 scale. In my view the rights as defined by the 1895 Rules and Regulations were the rights to graze from the properties to which they were appurtenant the numbers of animals quantified in accordance with the scale laid down. Any other construction of the Rules and Regulations would be ~~absurd~~, insofar as the Common and its ability to maintain stock was bound to remain constant whereas rateable values have risen very substantially over the years (though the substantial increase was probably not foreseen in 1895). Clearly if rateable values doubled the common could not be expected to maintain twice the amount of stock.

Unfortunately no evidence was led as to rateable values in 1895 and indeed such evidence would not have been very helpful, holdings of land have been divided and added to over the years and new houses built and it would be difficult if not impossible to apply the 1895 rights to the situation in 1978.



What I do know is that there has been continuity. From 1913 to 1977 the Committee regulated the grazing on the Common and in 1969 it issued its last amended Rules and Regulations in accordance with the powers conferred upon it by the Court Leet on 3 May 1918. No evidence was given of any objection ever having been taken to the manner in which the Committee regulated the grazing rights nor to the last mentioned Rules and Regulations. In these circumstances I must and indeed I do presume that the Committee for the time being over the years has admitted the numbers of animals entitled to graze in accordance with what the Committee and the Commoners have believed to be the rights as defined in 1895.

Ever since 1895 grazing has been carefully regulated animals grazed have to be marked on 13 May or as the 1969 Rules provide on some fixed later dates and the commoners are now required to certify in writing that the animals are his property and have been on his holding during the whole of the month immediately prior to the marking. As will appear from the evidence both the Committee and the commoners have at all times been aware of the numbers of animals grazed and the scale of permitted grazing.

I turn now to the 1969 Rules and Regulations which fixed a scale for rights appertenant to agricultural land which was then no longer rated by reference to acreage but which continued to pay lip service to the scale of one horse or beast for over £5 rateable value of other property.

It is now necessary to refer to the situation as it is today. There are 256 applicants for rights and the scale proposed by the Committee is as follows:-

- Two horses or beasts for the first acre or part of an acre.
- One horse or beast for each subsequent acre or part of an acre up to 5 acres.
- One horse or beast for every 5 acres over 5 acres and up to 55 acres.
- One horse or beast for every 5 acres or part of 5 acres over 55 acres subject to an overall limit of 40 horses or beasts for any one holding.

This proposed scale contains an amendment to the scale originally proposed and which some 75 commoners agreed in writing was acceptable to them in that it was increased from one to two horses or beasts for the first acre.

Many of the applicants for rights have claimed to graze one horse or beast for every £5 of rateable value. Even if this is their entitlement in terms of present day rateable values, which in my view it is not Section 17 of the Act of 1965 requires registrations to state the numbers of animals for which the rights are claimed and I cannot therefore confirm Entries quantified by reference to rateable value.

Evidence was given by Mr W. W. Gardner assistant clerk to the Commoners Committee for 10 years and a member for 15 years. He said he was regularly present when animals were marked and about half the committee were usually present.



He said the graziers were mostly farmers and small holders and a very small number of residential owners and he gave the following figures for the years 1969-77.

1969	409 animals grazed by 25 applicants
1970	368 "
1971	219 "
1972	188 "
1973	215 "
1974	289 "
1975	269 "
1976	169 "
1977	174 " by 16 applicants

He further stated that if the common was under grazed the Committee had a <sup>sc</sup>direction to permit additional animals to be turned out and that animals in excess of the current scale are in fact refused marking. The expert advice from the Agricultural College is that the viable grazing on the Common is a maximum of 400 animals. He further said there were never more than one or two owners of less than one acre who applied to graze, that Rule 20 of the 1969 Rules was strictly enforced and that prior to 1969 graziers were required to hold their animals on their own land prior to marking, that in his experience the question of rateable value had never arisen.

Cross examined by Mr Mugford. He said one or two people turn up who require to graze one animal, that over grazing could be an issue but is not an issue at present. He did not think the Common would cease to be used because a payment of £2 is cheap.

Mr V L Fawkes who had been associated with the Committee for 12 years and who is the chairman of the new Committee said he had been present at every marking during that period and he is a farmer and he confirmed Mr Gardners evidence. His researches showed that in 1877 the Court Leet considered the needs of tradesmen who had recently started the practice of delivering ~~their~~ <sup>their</sup> goods and who required a horse for this purpose (In my view this is probably the origin of Rule 7 of the 1895 Rules). He stressed the necessity for ensuring that graziers could keep their animals on their own land so that in the event of an outbreak of foot and mouth disease the animal, which would have to be taken off the common could be returned to their owners land.

Mr O N Curwen who had been on the Common Committee for 12 years and claimed for 2 years and is a farmer also stressed the necessity to provide against the contingency of an outbreak of foot and mouth disease. He said that two or three owners or residential property turned out usually a horse or a donkey and that he had not turned out recently because he had fewer cattle.

Mr William Hague gave evidence and produced a document which compared what he described as "the Present Entitlement" with the Committees "Proposed Entitlement".

Mr Hagues figures relating to what he described as the "Present Entitlement" were derived from the Rights Section of the Register and he had not appreciated that the Entries in the Rights Section were only provisional and were only claims and not entitlements.



In answer to me he said his property now had about half an acre of ground though it might previously have had  $2\frac{1}{2}$  acres and he claimed to graze 26 animals.

Mr Hague was reluctant to accept that the grazing rights were defined in 1895 and that his right was to graze one animal for every £5 rateable value of his property in 1895. Even if quite understandably he relied on the reference to £5 rateable value in the 1969 Rules it must have been manifest to him that he could not comply with Rule 20 of these ~~rules~~ and keep 20 animals on his  $\frac{1}{2}$  acre for one month prior to marking.

On this evidence the conclusion I have arrived at is that in 1895 it was convenient to quantify the grazing rights by reference to rateable values and that such quantification defined the rights at that time any other construction of the 1895 Rules and Regulations whereby the scale of grazing would fluctuate as rateable values rose or fell cannot in my view be sustained.

The Committee dealt with the difficulty which arose when agricultural land ceased to be rateable in 1969 or possibly earlier. I was told there had been amendments prior to 1969 to the 1895 Rules but these were not produced.

The Committee never got around to dealing with rights appurtenant to residential property because this was never a problem until the Act of 1965 came into force. In my view the 1895 quantification was designed to meet the case of a cottager with a small paddock who kept a "house cow" a horse as his means of transport and in my view the Scale now proposed by the committee preserves these historic rights.

For these reasons, subject as hereinafter mentioned I confirm all the Entries in the Rights Section modified so as to give effect to the scale of grazing proposed by the Committee. The quantification of the Rights in accordance with that scale is set out in the Schedule to this decision.

The exercise of the said rights shall be regulated by the Commoners' Committee for the time being.

The National Trust contended that the applicants under Entries Nos 200, 203, 211, 249, 250 and 251 have no rights on Michinhampton Common their rights being confined to Rodborough Common. The applicants for these rights did not appear to support them and I refuse to confirm these Entries.

Except as regards Entry No 202 no evidence was led in support of claims for estovers, pannage or turbarry and I refuse to confirm all such claims and the Entries in the Rights Section will be modified accordingly. As regards Entry No 202, The National Trust accepts that I shall confirm the claim to a right of estovers modified so as to be limited to a right for fencing stakes provided that no timber shall be felled in excess of 3" at the Butt.

New Lodge Hotels Ltd did not appear to support its Objection,

As regards the conflicting entries I confirm Entry No 110 and refuse to confirm Entries Nos 241 and 242. I have already in this decision refused to confirm Entry Nos 250 and 251.



The Registration Authority for whose invaluable assistance I am most grateful have agreed that I shall annex to my direction a clean copy of the Rights Section with the appropriate modifications and the National Trust has agreed to complete to provide me with that clean copy.

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 5<sup>th</sup> day of July

1978

G. A. Little

Commons Commissioner

For schedule see next page.

IN SCHEDULE ABOVE REFERRED TO  
COMMONS REGISTRATION ACT, 1965

ACRES OF HOLDINGS TO WHICH RIGHTS OF COMMON OVER MINCHINHAMPTON COMMON ARE ATTACHED AND REGISTERED UNDER REGISTER UNIT NO. CL58, CALCULATED BY THE COUNTY PLANNING DEPARTMENT FROM THE MAPS AND MAP REFERENCES SUBMITTED TO THE REGISTRATION AUTHORITY WITH THE APPLICATIONS FOR REGISTRATION OF THE RIGHTS.

Rights Section Entry No.	Acreage	Qty of Beasts.
1.	Under 1 acre	2.
2.	" " "	2
3.	10 acres	8
4.	2.9 acres	3.
5.	Under 1 acre	2
6.	7.4 acres	7
7.	Under 1 acre	2.
8.	" " "	2.
9.	" " "	2
10.	" " "	2
11.	" " "	2
12.	" " "	2
13.	" " "	2
14.	" " "	2
15.	1.8 acres	3
16.	Under 1 acre	2
17.	" " "	2
18.	6.5 acres	7
19.	Under 1 acre	2
20.	" " "	2
21.	" " "	2
22.	" " "	2
23.	" " "	2
24.	1.2 acres	3.
25.	40.2 acres	18
26.	Under 1 acre	2.

Section  
by no.

Acreage

132

27.	Under 1 acre	2
28.	" " "	2
29.	" " "	2
30.	" " "	2
31.	" " "	2
32.	<u>9.1 acres</u>	<u>8</u>
33.	Under 1 acre	2
34.	2.1 acres	3
35.	<u>Under 1 acre</u>	<u>2</u>
36.	" " "	2
37.	" " "	2
38.	" " "	2
39.	" " "	2
40.	" " "	2
41.	3.1 acres	5
42.	Under 1 acre	2
43.	" " "	2
44.	" " "	2
45.	" " "	2
46.	<u>7.2 acres</u>	<u>7</u>
47.	Under 1 acre	2
48.	2.7 acres	3
49.	Under 1 acre	2
50.	" " "	2
51.	" " "	2
52.	" " "	2
53.	<u>" " "</u>	<u>2</u>
54.	3.65 acres	5
55.	6.7 acres	7
56.	Under 1 acre	2
57.	" " "	2
58.	14 acres	9



rights section  
entry no.

Acreage

	<u>Under 1 acre</u>	<u>2</u>
60.	" " "	2
61.	1.6 acres	3
62.	Under 1 acre	2
63.	" " "	2
64.	<u>6.5 acres</u>	<u>7</u>
65.	Under 1 acre	2
66.	9.5 acres	8
67.	Under 1 acre	2
68.	" " "	2
69.	<u>5.1 acres</u>	<u>7</u>
70.	Under 1 acre	2
71.	1.6 acres	3
72.	Under 1 acre	2
73.	" " "	2
74.	" " "	2
75.	<u>3.8 acres</u>	<u>5</u>
76.	Under 1 acre	2
77.	" " "	2
78.	" " "	2
79.	" " "	2
80.	<u>3.1 acres</u>	<u>5</u>
81.	Under 1 acre	2
82.	1.4 acres	3
83.	Under 1 acre	2
84.	" " "	2
85.	" " "	2
86.	1.8 acres	3
87.	Under 1 acre	2
88.	" " "	2
89.	" " "	2
90.	" " "	2
91.	<u>106.7 acres</u>	<u>31</u>

Entry no.

92.	Under 1 acre	2
93.	" " "	2
94.	2.1 acres	3.
95.	<u>412.98 acres</u>	<u>40.</u>
96.	Under 1 acre	2
97.	" " "	2
98.	1.9 acres	3
99.	6.3 acres	7.
100.	Under 1 acre	2
101.	13.3 (excluding O.S. no.355 which does not appear on the O.S. map)	9.
102.	<u>22.5 acres</u>	<u>12</u>
103.	<u>80.3 acres</u>	<u>26.</u>
104.	1.4 acres	3.
105.	Under 1 acre	2
106.	<u>7.9 acres</u>	<u>7</u>
107.	Under 1 acre	2
108.	" " "	2
109.	" " "	2
110.	4.5 acres	6
111.	Under 1 acre	2
112.	" " "	2
113.	" " "	2
114.	" " "	2
115.	2.16 acres	4.
116.	<u>21.5 acres</u>	<u>12.</u>
117.	Under 1 acre	2
118.	" " "	2
119.	" " "	2
120.	" " "	2
121.	" " "	2
122.	" " "	2
123.	" " "	2
124.	" " "	2

s section

Acreage

Entirety no.

125.	Under 1 acre	2
126.	35.8 acres	17
127.	Under 1 acre	2
128.	" " "	2
129.	" " "	2
130.	" " "	2
131.	3.2 acres	5
132.	Under 1 acre	2
133.	" " "	2
134.	" " "	2
135.	" " "	2
136.	" " "	2
137.	" " "	2
138.	" " "	2
139.	" " "	2
140.	" " "	2
141.	" " "	2
142.	" " "	2
143.	" " "	2
144.	1.8 acres	3
145.	Under 1 acre	2
146.	" " "	2
147.	" " "	2
148.	5.2 acres	7
149.	6.1 acres	7
150.	Under 1 acre	2
151.	" " "	2
152.	" " "	2
153.	" " "	2
154.	7.15 acres	7
155.	Under 1 acre	2
156.	1.18 acres	3

Entry no. section

Acreage

136 "

157.	Under 1 acre	2	
158.	" " "	2	
159.	" " "	2	
160.	" " "	2	
161.	2.5 acres	4.	
162.	Under 1 acre	2	
163.	1.2 acres	3	
164.	1.3 acres	3.	
165.	Under 1 acre	2	
166.	" " "	2	
167.	" " "	2	
168.	2.5 acres	4.	
169.	1.4 acres	3	
170.	Under 1 acre	2	
171.	" " "	2	
172.	" " "	2	
173.	" " "	2	
174.	<u>110.2 acres</u>	<u>32.</u>	
175.	38.76 acres	17.	
176.	3.4 acres	5	
177.	Under 1 acre	2	
178.	" " "	2	
179.	<u>36.99 acres</u>	<u>17</u>	
180.	35.51 acres	<del>16</del> 17.	
181.	<u>39.6 acres</u>	<u>17.</u>	
182.	1.7 acres (West Field), 1.7 acres (West Field Cottage)		
183.	Under 1 acre	2	3. = 3.4
184.	<u>16.48 acres</u>	<u>10.</u>	
185.	Under 1 acre	2	
186.	1.3 acres	3.	
187.	<u>24.4 acres</u>	<u>13.</u>	
188.	<u>31.5 acres</u>	<u>15.</u>	

nts section  
Entry no.

Acreage

189.	Under 1 acre	2.	137
190.	8.5 acres	8	
191.	1.7 acres	3	
192.	Under 1 acre	2	
193.	" " "	2	
194.	1.5 acres	3.	
195.	Under 1 acre	2	
196.	1 acre	2.	
197.	Under 1 acre	2.	
198.	342.2 acres	40.	
199.	163.2 acres	40.	
200.	2.9 acres	4.	
201.	Under 1 acre	2	
202.	" " "	2	
204.	" " "	2	
205.	8.4 acres	8	
206.	25.3 acres	13.	
207.	5 acres	6.	
208.	15 acres	10.	
209.	Under 1 acre	2.	
210.	" " "	2.	
212.	141.8 acres (Little Britain Farm), 10.4 acres (Broadmead Field)		
213.	Under 1 acre	2	
214.	" " "	2	
215.	1.8 acres	3.	
216.	23.2 acres	13.	
217.	14.5 acres	10.	
218.	Under 1 acre	2	
219.	" " "	2	
220.	1.1 acres	3	
221.	Under 1 acre	2	
222.	29.3 acres	15.	

38

8

ats section  
Entry

Acreage

223.	1.2 acres	3
224.	Under 1 acre	2
225.	" " "	2
226.	" " "	2
227.	7.8 acres	7
228.	4.9 acres	6
229.	39.8 acres	17
230.	43.3 acres	18
231.	38.6 acres	17
232.	Under 1 acre	2
233.	1.3 acres	3
234.	401.88 acres	40
235.	Under 1 acre	2
236.	27.8 acres	14
237.	Under 1 acre	2
238.	" " "	2
239.	" " "	2
240.	12.1 acres	9
243.	117.6 acres	33
244.	39.25 acres	17
245.	1.7 acres	3
246.	225.6 acres	40
247.	14.5 acres	10
248.	25.86 acres (OS. nos 71, 72, 73, 86 & 82 are shown as being in Nailsworth Parish on the O.S. map)	13
252.	2.7 acres	4
253.	18.995 acres	11
254.	Under 1 acre	2
255.	Under 1 acre	2
256.	8 acres	7

Commons Registration Act 1965  
 Gloucestershire County Council  
 Registration Authority  
 (Date) 6<sup>th</sup> June 1978