



Corrected (p 11) 24 Feb 89 PL-D
re corrected (p 4) 4 June 90 PL-D
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COMMONS REGISTRATION ACT 1965

Reference No. 273/D/134-147

In the Matter of Manmoel Common, Gwent

DECISION

These disputes relate to the following registrations in the Land and Rights section of Register Unit No. CL.12 in the Register of Common Land maintained by the Gwent County Council -

Land Section

| <u>Reference No.</u> | <u>Register Unit No.</u> | <u>Objection No.</u> | <u>Made by</u> | <u>noted in the Register</u> |
|----------------------|--------------------------|----------------------|--------------------------------|------------------------------|
| 278/D/134 | 1 | 5 | Richard Thomas and Baldwin Ltd | 15 June 1970 |
| 273/D/135 | 1 | 23 | Forestry Commission | 14 Oct 1970 |
| 273/D/136 | 1 | 85 | National Coal Board | 3 Nov 1970 |
| 273/D/137 | 1 | 89 | National Coal Board | 4 Nov 1970 |
| 273/D/138 | 1 | 141 | Trustees of Llanover Estate | 18 Nov 1970 |

Rights Section

| | | | | |
|-----------|--------------------|-----|-----------------------------|-------------|
| 273/D/139 | 1-34 | 5 | as above | as above |
| 273/D/140 | 1-34 | 23 | as above | as above |
| 273/D/141 | 1-34 | 85 | as above | as above |
| 273/D/142 | 1-34 | 89 | as above | as above |
| 273/D/143 | 1-34 | 141 | as above | as above |
| 273/D/144 | 2-4, 18-23, 30-33 | 50 | Manmoel Commoners | 22 Oct 1970 |
| 273/D/145 | 2-4, 18-23, 30-33 | 138 | Trustees of Llanover Estate | 1 Nov 1970 |
| 273/D/146 | 7, 9-13, 15-17, 29 | 139 | Trustees of Llanover Estate | 18 Nov 1970 |
| 273/D/147 | 1, 25-28 | 140 | Trustees of Llanover Estate | 18 Nov 1970 |



I held hearings to inquire into these disputes at Cwmbran on 12 January and 9 November 1988 and on 10 January 1989.

At the hearings the Trustees of the Llanover Estate (objectors) were represented by Mr W G Morris, solicitor, of Harding Evans and Davies of Newport, the Manmoel Commoners Association (objectors and registrants in the Rights Section) by Mr Jonathan Stephens, solicitor of Usk; the Forestry Commission (objectors) and the registrants at Entry Nos. 2, 19, 43 and 16, by Mr E Harris, solicitor, of Edward Harris & Co, solicitors of Swansea; the registrants at Entry Nos 1, 9, 16, 30, 36 and 37 by Mr H Patchell, solicitor of Howard Patchell and Co of Blackwood; The British Coal Corporation (formerly the National Coal Board) (objectors in the Land Section and registrants at Entry No. 20 in the Rights Section) by Mr S Weisbard, solicitor; the Blaenau Gwent District Council by Mr B Hill FRICS and Mr Clark represented the Registration Authority.

Land Section

At the first hearing all parties agreed in writing that the correct boundary of the common was represented by the red line on the map which will accompany the copy of this decision which will go to the Registration Authority.

I accordingly confirm the registration at Entry No. 1 in the Land Section with the modification that all land which lies outside that line shall be omitted from registration.

Rights Section

Entry No. 1

Mr Patchell agreed that this registration should not be confirmed since it duplicates Entry No. 9.

Entry No. 2

The parties agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 275 sheep or 55 cattle or 55 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 3

Mr Morris told me that he had received a letter dated 7 November 1988 from the registrant Thomas Gwyn Thornton withdrawing this claim. No one supported this registration and I shall not confirm it.



Entry No. 4

Blaenau Gwent Borough Council, the present owners of the dominant land did not support this application, nor did anyone else and I shall not confirm it.

Entry Nos. 5, 6, 8, 14, 24, 25, 34

Entry No. 34 relates to 6 farms owned by the Trustees of the Llanover Estate who are also the owners of part of the common. It was agreed that there could therefore be no rights appurtenant to these farms. The other six entries were made by the tenants of the six farms. I shall accordingly confirm none of these registrations.

Entry No. 7

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 615 sheep or 123 cattle or 123 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 9

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 775 sheep or 155 cattle or 155 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

and that in column 5 the O.S. Nos shown in column 5 of Entry No. 1 shall be added. I confirm it accordingly.

Entry No. 10

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 480 sheep or 96 cattle or 96 horses or a combination of such animals pro rata over the whole of the land confirmed in this register unit".

I confirm it accordingly.

Entry No. 11

It was agreed that this registration should be confirmed with the modification that column 4 shall read -



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45mm

640

125

125

"to graze ~~128~~ sheep or 25 cattle or 25 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 12

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 160 sheep or 32 cattle or 32 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 13(a)

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 35 sheep or 7 cattle or 7 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 13(b)

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 80 sheep or 16 cattle or 16 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 15

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 480 sheep or 96 cattle or 96 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.



Entry No. 16

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 125 sheep or 25 cattle or 25 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit"

and that the words -

"edged red, blue and brown on the map attached to this decision and marked "Rights Entry No. 16; 24.9 acres"

shall be added to the entry in column 5. I confirm it accordingly.

Entry No. 17

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 320 sheep or 64 cattle or 64 horses or a combination of such animals pro rata over the whole the land comprised in this register unit"

and that the words -

"as shown on the map attached to this decision and marked "Rights Entry 17"

shall be added to the entry in column 5. I confirm it accordingly.

Entry Nos. 18 and 23

These entries were registered by Mr Edwin Coffey. On 2 December 1987 the Clerk to the Commons Commissioners received a letter from him stating that he wished to withdraw his application. No one else supported the entries and I shall not confirm them.

Entry No. 19

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"to graze 110 sheep or 22 cattle or 22 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit"

and that in column 5 "22 acres" shall be substituted for "25 acres".



Entry No. 20

In this entry the National Coal Board ("NCB") claimed a right to graze "576 sheep 77 store cattle, 77 dairy cattle, 3 horses" over the whole unit land. It is registered as being attached to "Marine Collier (sic), Ebbw Vale. 394 acres" but is not further identified. In fact the application made on behalf of the NCB on 26 June 1968 describes the land as "land adjacent to Marine Colliery Cwm, Ebbw Vale - see attached plan area coloured blue". Why no reference to this plan was made in the register has not been explained. The registration was objected to by the Manmoel Commoners Association on the grounds that the rights claimed do not exist or are too extensive, and by the Trustees of the Llanover Estate on the same grounds.

This land ("the NCB land") lies to the east of the unit land at its southernmost end. It is known as the Troedrhiwgyngi Farm land, the house and buildings of that farm having long ago been demolished. It slopes up steeply from the village of Cwm which lies at the bottom of the Ebbw Valley. It is partly divided from the common land by an ancient wall but a considerable part of the boundary is obscured by the mining and tipping activities of the NCB and its predecessors over many years.

In the remaining wall there are several gateways leading from the NCB land to the common, a fact which suggests that there may have been grazing rights attached to this land at some time but is not enough in itself to prove that such rights ever existed still less that they existed at the date of registration. Nor indeed did the NCB suggest that it did so.

Mr Weisbard for the NCB based his case on the doctrine of lost modern grant. The right claimed had, he said, been continuously exercised from at latest 1942 until it was registered on 29 July 1968 - a period of more than 20 years. It was exercised, he said, by tenants of the NCB and of their predecessors in title. He conceded, however, that he must confine his claim to a right attached to 243.5 acres because after 1951 only that area had been let to agricultural tenants.

The history of this land, as far as relevant to this inquiry, is not in dispute. It is as follows.

Up to May 1942 about 330 acres including the whole of the 243.5 acres was let to a certain Theophilus James by the then owners Partridge Jones and John Paton Limited.

Some time in 1941 Theophilus James died and his nephew Theophilus Jones took over the tenancy. He had a written tenancy agreement but it has not survived. In 1947 the freehold was vested in the NCB. In 1951 Theophilus Jones gave up the tenancy and on 6 February 1951 a tenancy under a written tenancy agreement was granted to Phillip Isaacs of part of the land in three pieces amounting in all to 243.5 acres. On 2 February 1954 he was succeeded as tenant by his son Mostyn Jones Isaacs (nephew on his mother's side of Theophilus Jones) who was granted a written tenancy agreement on the same terms as his father dated 25 October 1954 and who remained tenant of this land at the date of registration and who remains tenant of parts of the land to this day.



In order to succeed the NCB must show that during the whole of the period of 20 years before the date of registration in 1968 sheep from this farm had been grazed on the common and that they had been grazed as of right.

The 20 years on which the NCB rely is that commencing in 1948 and ending in 1968. It follows that to succeed they must show that the sheep were grazed as of right both in the latter part of the tenancy of Theophilus Jones and throughout the tenancies of Phillip and of Mostyn Isaacs.

In order to prove this the NCB relied entirely on the evidence of Mostyn Isaacs in order to disprove it the objectors relied largely on the evidence of Theophilus Jones.

In order to evaluate the evidence it is necessary to consider the lie of the land. The NCB land is for the most part steep and the sheep, as everyone agreed, left to their own devices tended to congregate at the bottom of the slope near the colliery and the village of Cwm and, if the tenant was not careful, to get into the village streets, get lost, cause ill-feeling between the tenant and the inhabitants, and possibly get impounded by the local authority. In order to prevent this it was necessary regularly, sometimes two or three times a day, to drive them up the top of the hill. At the top of the hill largely due to the mining activities the fences were at all material times defective. When the sheep got there, since there was nothing to stop them, some of them sometimes went further and got on to the common. The extent to which this happened and whether it amounted to grazing the common "as of right" are the matters of contention in this case.

Mostyn Isaacs, who was born in 1930, has lived near by all his life and moved to Tir Capel Farm which is only about half a mile from the land in about 1935. He remembered when Theophilus James was tenant. He had two flocks. One he kept at Tir Bach and one on the NCB land. The flocks had different ear-marks and different raddle marks. He said that during Theophilus James's tenancy he often went on the common with his father's sheep. He always saw some of his uncle's sheep there including some from the NCB land, but he could not say how many. He was "too young to evaluate the numbers".

He described seeing how Theophilus James and two men used to drive the sheep up the slope and how some continued on to the common because there was nothing to stop them. He accepted that those sheep "strayed" on to the common and at no time suggested that the men driving the sheep themselves went as far as the common land.

He said that when Theophilus Jones took over the tenancy there was no change in the way the sheep were managed.

When it was put to this witness in cross-examination that Theophilus Jones did not drive his sheep on to the common he said that he did do so.



Theophilus Jones, however, in his evidence stated that he knew from the start that he had no rights on the common and never drove his sheep on to it. He was born in 1911 and before he took over he had helped his uncle Theophilus James for over 20 years. He said that Theophilus James knew he had no hill rights in respect of the farm and never drove the stock on to the common. He produced a letter dated 5 May 1941 from Partridge Jones and John Paton Limited (the then owners) to himself offering him the tenancy in succession to his uncle if he agreed to put the wall and fence into repair for which they would supply him with sufficient wire rope free of cost. He claimed to have put the wall into repair (he said it was not in very bad condition) and to have repaired the fence but agreed that it was still possible for sheep to stray on to the common and that some odd sheep did so when they were driven up to the top of the farm as he agreed that they were daily.

Other witnesses were called on behalf of the objectors but, though I found their evidence impressive as to what happened during Mostyn Isaacs' tenancy, they were all too young to give any useful evidence as to what happened before 1951.

The first question is, in so far as they differ, which of these two accounts is to be preferred. Mr Theophilus Jones is 77 years old. It was not suggested that he is deliberately lying but it was suggested that his memory was at fault. Mr Weisbard pointed to several matters which he said supported this view. Firstly he said that the witness was unable to remember whether his written tenancy agreement contained any clause requiring him to keep a flock of hill sheep. This arose from the fact that in both the 1951 tenancy agreement to Lewis Isaacs and in the 1954 tenancy agreement to Mostyn Isaacs there was a typed-in clause under which the tenant agreed -

"(21) To keep and maintain a flock of Mountain sheep of not less than two hundred (200) of suitable type on the farm and to offer the same to the Board at the termination of the tenancy."

It was argued that this clause actually required the tenant to graze the common land and that, if there had been a similar clause in the tenancy to Theophilus Jones, it would have cast much doubt on his evidence and that his failure to remember if there was such an important clause also cast doubt on his evidence.

In my view this argument is quite untenable. On its own express terms the clause does not require the tenant to graze any common land but to keep the flock "on the farm" which is perfectly intelligible since the "farm" was itself hill land.

It was also said that doubt was cast on Mr Jones's memory by the fact that he said that a gate had been put in in about 1938 to 1940 by the National Coal Board while that body had not come into existence until 1947 and that he had said he had known the land since 1920 whereas in a written proof of his evidence which had been supplied by the objectors to the NCB he had said that it was in 1930 (he said that the date in the proof was a mistake).



In my view none of these matters casts any doubt on Mr Jones's memory of the facts relevant to this case.

In spite of his age Mr Jones gave his evidence quite clearly. If he had regularly exercised grazing rights on the common he could not possibly have forgotten it. The only question could be whether he was deliberately lying and I am not satisfied that he was. His opportunities for knowing what went on during that period are very much greater than those of Mr Mostyn Isaacs. In so far as there is any conflict between the evidence of these two witnesses I prefer that of Mr Jones.

I find as a fact that during Mr Jones's tenancy up to 1951 there were only a few sheep from the Troedrhiwgyni land on the common and that these sheep had strayed there and had not been deliberately driven on to it.

On those facts it follows that up to 1951 there was no grazing "as of right" from that farm and that the NCB have failed to prove such use for a period of 20 years. This makes it unnecessary to consider whether there was any such grazing after 1951.

I am unable to presume a lost modern grant and shall not confirm this registration.

Entry No. 21

This entry was not supported and I shall not confirm it.

Entry No. 22

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 78 sheep or 15 cattle or 15 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit."

I confirm it accordingly.

Entry No. 26

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 150 sheep or 30 cattle or 30 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit."

I confirm it accordingly.



Entry No. 27

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 210 sheep or 42 cattle or 42 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit."

I confirm it accordingly.

Entry No. 28

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 600 sheep or 120 cattle or 120 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 29

It was agreed that this registration should be confirmed with the modification that column 4 shall read -

"To graze 400 sheep or 80 cattle or 80 horses or a combination of such animals pro rata over the whole of the land comprised in this register unit".

I confirm it accordingly.

Entry No. 30

Mr Patchell told me that his office had received a message on 8 November 1988 from the registrant, Mr Wyndham Morris, to say that he did not wish to support this registration. No one else supported it and I shall not confirm it.

Entries Nos. 31, 32 and 33

These registrations were not supported and I shall not confirm them.

Summary

Land Section

Entry No. 1 confirmed with modification that all land which lies outside the red line on the map which will be sent with the copy of this decision which will go to the Registration Authority shall be omitted from registration.



Rights Section

Not confirmed: Entry Nos -

- 1 3 4 5
- 6 8 14 18
- ~~19~~ 20 21 23 31 32 33 -
- 24 25 30 ✓ 34

Confirmed with the modifications set out above: Entry Nos -

- 2 7 9 10
- 11 12 13a 13b
- 15 16 17 ✓ 22 19 -
- 26 27 28 29

*Corrected
PL-D
24 February 1989*

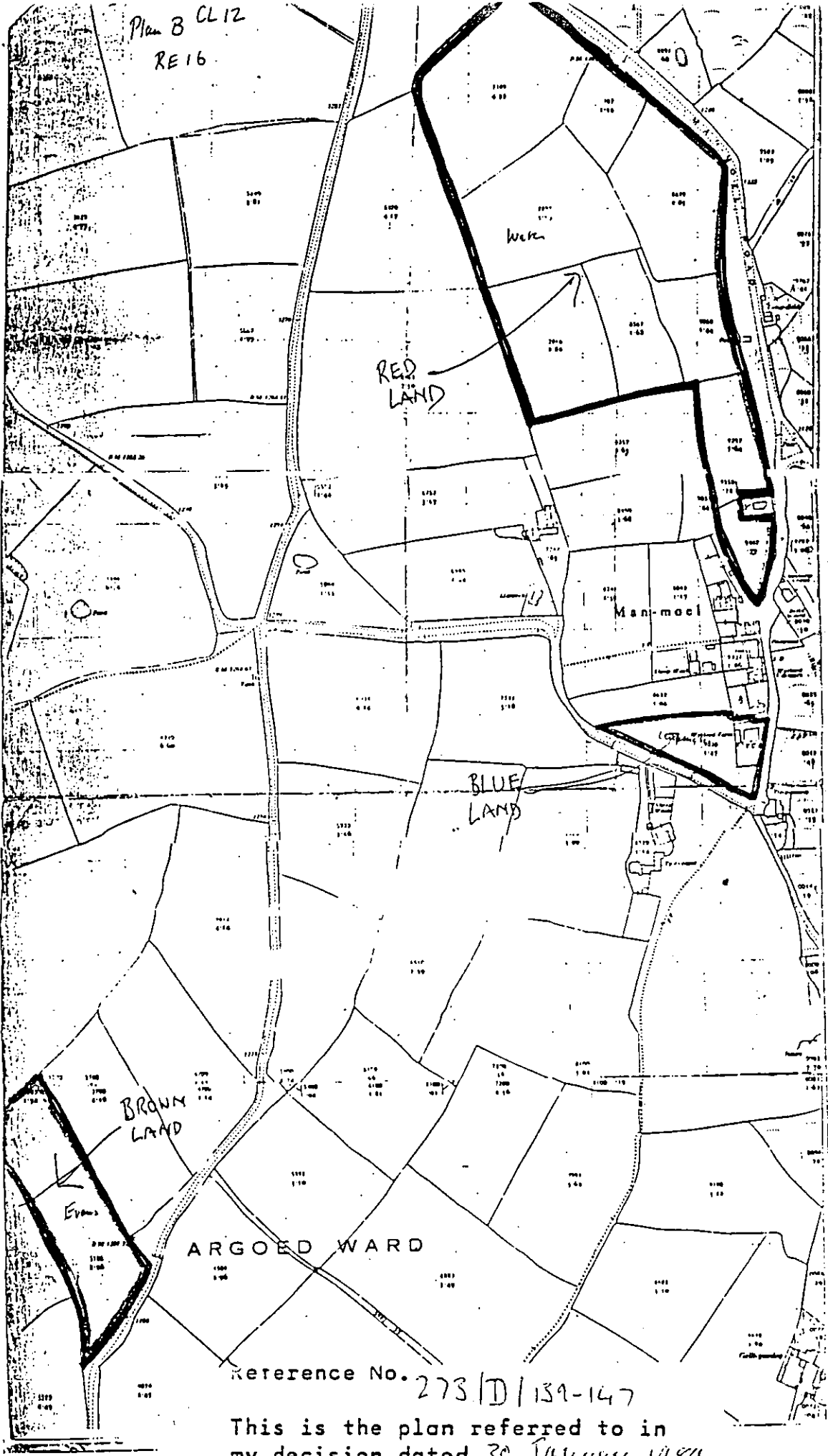
I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this *30th* day of *January* 1989

Peter Landon-Jones

Chief Commons Commissioner

Plan BCL12
RE16



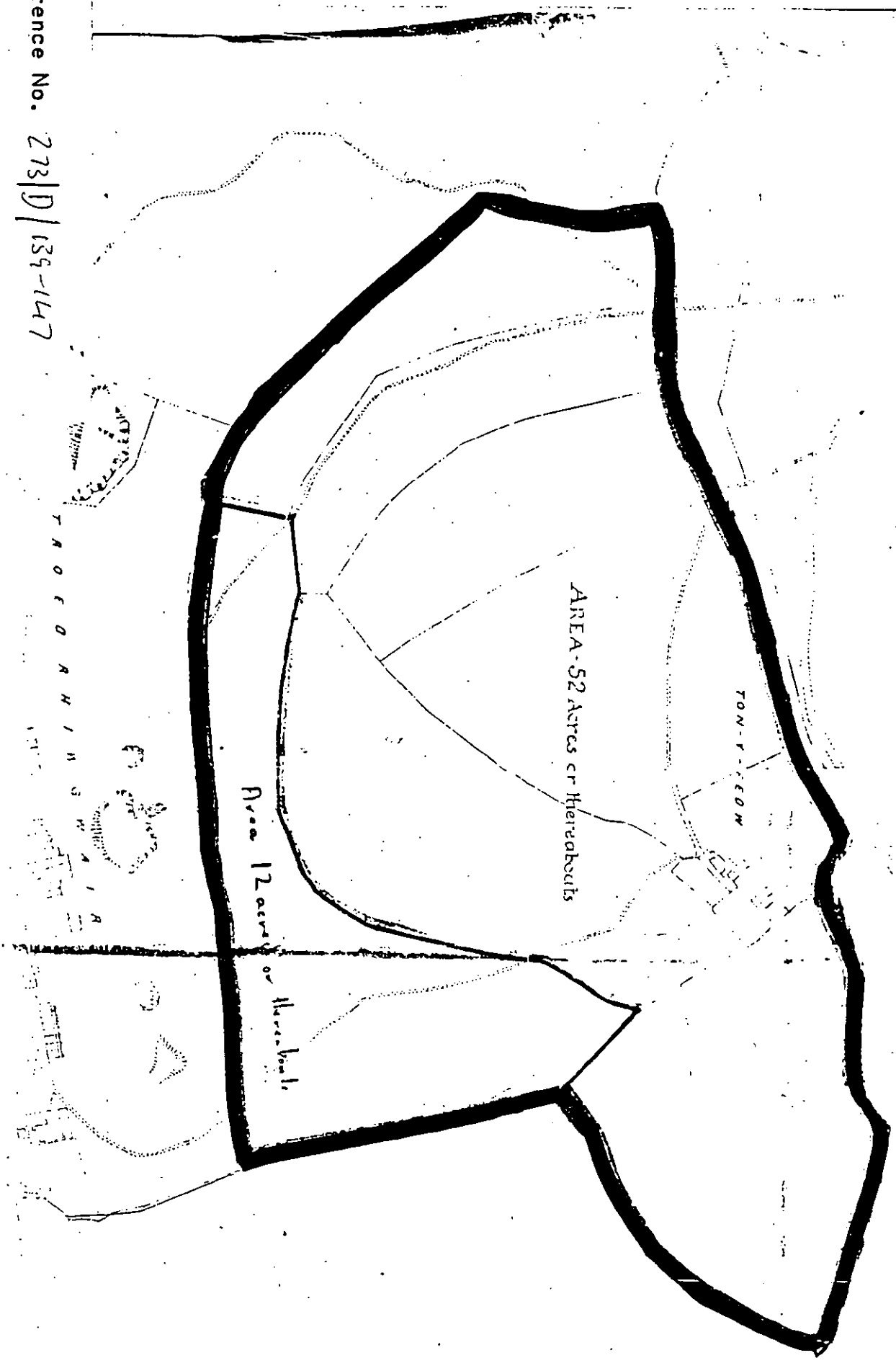
Reference No. 273/D/139-147

This is the plan referred to in
my decision dated 30 January 1989
marked "High Entry No 16"

Peta Llanigle Jones
Commons Commissioner

Reference No. 273/D/134-147

This is the plan referred to in
my decision dated 30 January 1989
under Light Entry No 17



T A O E O R N I N S M A I R